The Swedish Club
Triton
No. 3 - 2015

Ready to **rescue**

Page 28-31

4 YEARS WITH PEME
encouraging Cost Benefit Analysis Page 14-15

SAFETY SCENARIOS
every month from the Club Page 33

New German Maritime Law: The Actual Shipper's legal position now weaker
Page 10-11

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Page 8-9

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Page 12-13

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Page 28-29

Accidents do happen

PHOTO: Jonas Ahlsén

Lars Rhodin
Managing Director

Dear members and associates,

The world marine market has experienced a rise in major casualties in 2015 according to the relevant statistics. The Swedish Club has not been immune from this. In the first six months of the year we were involved in five total losses under four classes of insurance, in contrast to 2014 when we experienced only one total loss in the whole year.

Is this rise in major claims happenstance, or is there a common denominator? The answer is yes and no. Yes - marine insurance is inherently volatile and 2014 was an extraordinary benign claims year. No – we cannot see a common cause or denominator.

Could the total losses have been avoided? Yes, I would think so, at least most of them. What is happening then? Accidents happen – we know that. Casualties are never simple in terms of causes as they occur, only perhaps in hindsight when all the facts are available.

We make mistakes – this is human nature – but a "from the top" safety culture can reduce what would otherwise result in shortcomings. There is pressure, fatigue and the like that all serve as "explanations" for incidents. It is interesting to see that some companies have consistently a lower casualty frequency, whereas others do not have the same outcome. It falls back on the safety culture and attention to detail.

The Club is happy to help with analysis, benchmarking and practical loss prevention advice. It is our mission to feed back the experience we have. We are in this together and casualties cannot be eliminated but the right attitude can reduce claims.

The Club celebrated its 35th anniversary in Greece a little while ago. Foresighted people at the Club saw the opportunity to make The Swedish Club more international. It started in Piraeus followed by Hong Kong two years later. The driver was not only to be present in important shipping markets; shipowners in all markets deserve the same high level of service. We are local and international. The latest addition to this ambition is our greater presence in London. The Club looks much different today compared with 35 years ago, but our values remain the same.

Many interesting topics and social events are featured in this edition of Triton. I hope you enjoy reading it.

Triton

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Claims and Loss Prevention

Anyone for ENGLISH?

Lars A. Malm
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THIS SUMMER a collision occurred just at the entrance of the port of Gothenburg. The two vessels involved had their respective views of reality established on the basis of information available. As it turned out neither their views of reality, nor the respective sets of information, were symmetrical. As a consequence, both vessels acted in accordance with their perception and yet another avoidable casualty occurred.

So why did the vessels end up with differing views of reality?

One circumstance of relevance was the lack of a closed loop feedback communication between the VTS and the vessels involved. Another was the use of Swedish between the VTS, the vessels and the pilot onboard one of the vessels. This happened, despite it being clear that one of the vessel's crew did not speak Swedish. In addition, nothing was done by either parties involved to challenge or question what the respective vessels' intentions were. As always in a collision there are many underlying contributory factors but in this particular case it is quite clear that the main contributors were a closed loop feedback not being used and the choice of language.

> **"It's difficult to find a more spot-on casualty that could have been avoided if the involved parties had gone through the MRM training"**

It is unfortunately not the first time that the VTS and the Pilots at the port of Gothenburg have decided to communicate in the Swedish language. The consequence of this, needless to say, is that a non-Swedish speaking Master onboard a vessel does not understand what is being said. Worst case, it could even be that the Pilot on that particular vessel is speaking Swedish with the VTS and to other vessels in the vicinity. How then should the non-Swedish speaking Master know what has been agreed upon when the Pilot leaves that vessel?

As a matter of fact the obligation for Pilots to communicate in English is very clear and the regulation supporting this is the TFSF 2012:38 which in its relevant parts mirrors the IMO resolution A.960 (23) annex 2 which deals with communication on the bridge. This includes, but is not restricted to choice of language on the bridge. It is clear from the TFSF 2012:38 Chapter 4, Section 8 that the choice of language should be English in case the relevant crew members on the bridge do not understand Swedish. Clearly, in this case this was not adhered to. As mentioned there have been other incidents in the past where the choice of language and the lack of a closed loop feedback communication between VTS and the vessels involved may have contributed to incidents.

This matter is a perfect illustration of what our Swedish Club Academy and its Maritime Resource Management (MRM) is designed to address. It's difficult to find a more spot-on casualty that could have been avoided if the involved parties had gone through the MRM training and in particular the training module called: "Working with Pilots and VTS".

Business Development

Throughout 2015, the Club has seen good growth in all segments: P&I, FD&D, Charterers and Marine & Energy. The Club's strategy is not to grow just for the sake of it, but instead grow with quality and sustainability. This has been achieved very much during the year. In challenging shipping markets, such as they are right now, it is of course our job to provide competitive insurance solutions on demand.

To that end, we launched our Extended Charterers' Cover at the end of last year and this year we added Delay Cover to our already extensive list of products, which is designed to provide cover in areas where the assured may otherwise find themselves without cover. The work on our side to look at new products, or re-vamped products that are adapted to the contemporary needs of our business partners, is continuous.

One of the things that has become more obvious this year is the need to have a cover in place that can respond in case the assured is exposed to claims from third parties, such as bunker suppliers. Many times, the assured is not liable for the underlying debt, but due to a lien in the vessel for unpaid bunkers, it becomes the assured's problem. To post security quickly in these cases is vital and is something which we see a growing demand for.

Another area of product development in a challenging market is of course products that are designed to ease the owners' exposure to a negative cash flow in connection with collision and General Average situations. In connection with these types of casualties, owners are often left hanging in respect of an expected recovery from an opponent and/or other interests in a General Average. Also in this respect, the Club is in the process of developing a cover that could bridge the immediate negative cash flow impact.

Bulk Liquid Chemicals and Fuels

Insight into Specifications and Contaminations

PHOTO: iStockphoto

Dr. Wesley Tucker
Consultant Scientist
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Problems associated with liquid cargo specifications and contaminations are nuanced and require careful consideration.

The causes are many, and often not quickly and easily identifiable, thus bringing lab tests to the forefront. Involved parties should be critical of the way bulk liquids are judged through sampling and testing, while at the same time respecting practical limitations. A lot of guidance exists regarding tanker sampling, but a specialist may be necessary to help in interpreting the testing.

The Problem

Liquid cargoes are inherently vulnerable to changes in composition through interaction with the surroundings and hold the potential to become damaged or absorb contaminants. This is especially true at the interface between cargo and tank, with many issues arising from factors such as coatings, temperature, compatibility, cleaning and inerting.

Importantly of note, a contamination is a tainting of the cargo with a foreign material, which may or may not reveal itself in the panel of tests that define product specifications; while an off-specification is the failure of a material to fall within a specified range of test values, and may or may not be related to a contamination.

These problems can occur in inorganic (i.e. ammonia), organic (i.e. benzene) and aqueous (i.e. hydrochloric acid) cargoes alike, but are much more prevalent in purified organic chemicals and fuels which are strong solvents, predisposed to chemical changes, or shipped in non-dedicated tanks.

The issue can arise from the shore tank, barge, piping, or vessel, thus making each investigation a complex assessment of the entire process from production lot to receiver.

The Cause

The cause of a contamination or off-specification can be influenced by many factors and often more than one is relevant in an investigation. Contaminations are sometimes caused by things such as rust, tank coatings, residuals in piping, remnants of previous cargo in the tank, water ingress, and biological growth.

Off-specifications that are not due to contamination, on the other hand, can be caused by changes in the chemistry of the material such as degradation, oxidation, isomerization, or polymerization.

Sampling

In order to protect the vessel from false judgments, it is imperative that crews take samples from the manifold, first foot, and final tank during loading, and manifold and tank samples at discharge.

Clean, closed sampling systems and cargo-compatible sample containers should be used, and tank samples should be taken in zones with separate composites. Stored sample sizes of 1 liter are most often sufficient for repeated testing, but due diligence regarding the sum of test sample volumes is advised. Additionally, attention must be paid to careful labeling of samples, recording of storage details, and judicious invitations for other parties to participate in the sampling.

Testing

Once samples are obtained, parties look to major analytical laboratories to serve their testing. What is often overlooked, however, are the many nuances associated with the tests for which results are too often taken simply at face value.

Although we cannot provide a comprehensive overview of cargo testing in a small article, a few key points should be realized by parties that seek judgment of their samples:

1. Different test methods used to test the same parameter are not usually considered interchangeable.
2. All test methods have inherent error, as well as limitations in scope and applicability.
3. Laboratories vary considerably in their operations and capabilities.

As seen here, the qualification of commodities contains many features that lend themselves to interpretation and decision making.

This article is an excerpt from the full version which can be found at:
www.swedishclub.com/ Loss Prevention / Cargo / Tanker

Res Cogitans

Court of Appeal decides OW Bunker claim against the owners

ON 22 OCTOBER 2015, the English Court of Appeal handed down an eagerly awaited decision on a preliminary issue. The court had been charged with the task of deciding whether an OW Bunker contract – in line with most standard type of bunker supply contracts – is a contract within the meaning of the UK Sale of Goods Act (SOGA). The question may seem academic but has great practical importance. The owners of the Res Cogitans were namely faced by duplicate claims for the same bunker stem; one from OW Bunker, including its assignees ING Bank, and one from the physical suppliers, who had not been paid by OW Bunker.

The owners disputed that OW Bunker had a valid claim on the basis that OW Bunker had never paid the physical suppliers and therefore had never obtained title to the bunkers. In essence, the owners' argument was that OW Bunker could not claim payment under the OW Bunker contract since the bunkers had never belonged to OW Bunker. The legal basis for the argument was that SOGA applied to the OW Bunker contract and, as such, the seller (OW Bunker) must have title to the goods in order to sell them to owners.

The bunker contract was a hybrid

The Tribunal and Commercial Court had held that the OW Bunker contract was not subject to SOGA, and that therefore passing of title was not a condition for OW Bunker to claim payment under the contract.

However, the Court of Appeal adopted a more refined approach, concluding that the contract was a hybrid under which bunkers are to be delivered to the owners as bailees with a license to use them for the propulsion of the vessel, coupled with an agreement to sell any bunkers remaining at the date of payment after the expiry of the credit period, in return for a monetary consideration, which in commercial terms can be properly described as the price.

Anders Leissner
Director
Corporate Legal & FD&D

"The Res Cogitans decision – so far – illustrates that there is a fundamental risk for owners and charterers when purchasing bunkers through intermediaries"

As a result, SOGA did not apply to the bunkers consumed during the credit period, but it supposedly applied to any bunkers that remained after the credit period. The rationale is that the Court of Appeal, for all practical purposes, confirmed the previous decisions regarding this issue whether SOGA applied.

A delicate issue for the Court of Appeal

At a first glance, the decision is hard to digest since it leaves the door open for both OW Bunkers (their assignees ING Bank), and the physical bunker suppliers, to pursue the vessel owners for unpaid bunkers. Having said this, it is difficult to fully grasp the consequences had the Court of Appeal followed the owners' argumentation. After all, the owners contracted with, and received bunkers from, OW Bunkers.

Credit sales are common in modern business life and the Court of Appeal might have opened up Pandora's Box if they had undermined the right to claim payment under similar contracts involving a credit sale. In addition, the bunker stem involved three sub-suppliers and in total four contracts, and the Court of Appeal was charged to decide a specific, preliminary issue pertaining to only one of the contracts involved.

A long way to go

It should be noted that that decision by the Court of Appeal is not the end of the Res Cogitans case. It was essentially only the "SOGA argument" that was on appeal. The case is expected to be referred back to the arbitration tribunal where the parties are at liberty to elaborate on other arguments, inviting the arbitrators to adopt a more holistic approach taking the practical consequences of the duplicate claims into consideration. In addition, the "SOGA argument" may be appealed to the Supreme Court.

Hence, there is long way to final determination of the Res Cogitans and the important points of principle involved. In the interim, owners and charterers are regretfully left to fight off duplicate claims in the best way they can using whatever remedies there are at hand, such as making deposits in courts and commencing interpleader action.

The situation is very unsatisfactory since such remedies have proven to be very expensive and not providing full protection;

the prospects to pursue claims vary in the world's jurisdictions and a decision in one country may not be recognized in other countries. In addition, facts and contract terms may materially differ, rendering a decision in one case inapplicable to other OW Bunker cases.

The contractual chain

It is easy to solely blame OW Bunker and ING Bank for all the problems caused to owners and charterers receiving duplicate claims. However, from the perspective of the innocent owner or charterer, the problem actually manifests itself when a different party not being the contractual counterparty – the physical supplier – pursues a claim against the vessel despite the fact that the contractual supplier has been paid.

Admittedly, the ancient right for a bunker supplier to have a lien in the vessel for unpaid bunkers may not sit very well with an arrangement involving an intermediary since, as the Court of Appeal has suggested, owners' obligation to pay the intermediary is absolute.

After all, the physical supplier has contracted with OW Bunker, and has agreed to receive payment form OW Bunker. If the contractual chain was to be honoured, which would seem reasonable, the physical supplier should submit a claim against OW Bunker's bankrupt estate to the extent the bunkers are not paid.

Be that as it may, the Res Cogitans decision – so far – illustrates that there is a fundamental risk for owners and charterers when purchasing bunkers through intermediaries.

It's not **what** you do, it's **how** you do it

I WAS RECENTLY ASKED to be part of a working group consisting of lawyers from the Nordic countries, with the aim of promoting Nordic maritime and offshore arbitration. It's an interesting project that is relevant to The Swedish Club, being involved in dispute resolution in various shapes and forms on a regular basis. The idea is to balance out the present overweight towards London arbitration. Last year 3,800 disputes were referred to the full members of the London Maritime Arbitrators Association. 384 awards were issued and 223 mediations were held. By way of contrast, the Stockholm Chamber of Commerce, which is considered as one of the leading centres for international arbitration, administered 183 arbitrations during the same period. The overwhelming popularity for London and English law is easy to understand; English maritime law is very well developed and the English legal system as a whole is sophisticated, robust and reliable.

Anders Leissner
Director
Corporate Legal & FD&D

Robust English justice

The robustness of the English legal system was recently well-illustrated in a Commercial Court decision, ADM Rice Inc. v Corcosa, when a London arbitration award had been issued against a Nicaraguan trading company. The company did not satisfy the award and the winning party obtained a Worldwide Freezing Order resulting in the company's worldwide assets of up to USD 2.7 million were frozen. The company however failed to comply with one of the key obligations in the order to provide information about its assets. As a result, the Commercial Court sentenced the directors to 18 months imprisonment each. Notably, the Court was able to render its judgement despite the directors having obstructed service on them.

Stick to Nordic values

According to the Law Society, legal services in the United Kingdom generate some GBP 20 billion towards its gross domestic product annually and English law has become an important export product. Competing against London, and New York for that matter, will therefore be a challenge. However, there are some incentives. The shipping industry in Scandinavia is fairly large and resolving disputes "domestically" makes sense, at least from a practical perspective. In addition, Nordic culture is signified by sound values such as good sense, quality and impartiality, meaning the business case for exporting dispute resolution services abroad is clear. It is no secret that arbitration in London and New York can be very costly and time-consuming, partly because of a different litigation culture. A word of caution is that Nordic lawyers need to ensure they stick to Nordic values and that they do not allow the litigation culture to become influenced by the UK and the US in the wrong way.

So how should "Nordic arbitration" be conceptualised? I would say that it's not what you do that matters, but instead how you do it. There are undoubtedly numerous, highly qualified, maritime lawyers in Scandinavia, a well-renowned dispute resolution centre in Stockholm and an equally well-renowned academic maritime law institution in Oslo. The trick is perhaps to combine all these factors to create top notch competence and a product that can meet the industry's demands. In order to formulate this vision it's important not to get stuck in details, such as whether the arbitration should be ad hoc or institutional. Perhaps it can be a hybrid?

Rice Cargo
– a continued problematic issue

The shipment of rice to West Africa remains a problematic issue and continues to generate a significant number of claims for our members. The frequency and quantum of such cargo claims warrants a reminder of the problems and potential liabilities that an owner is likely to face in the carriage of bagged rice to West Africa, and what can be done to mitigate those risks.

James Bamforth
Senior Claims Executive, P&I and FD&D
Team Piraeus

Experience shows that allegations of loss or damage are essentially unavoidable for most shipments of rice cargoes to West Africa. However, there are still a number of preventative measures which can be undertaken by a prudent owner to ensure that the likelihood of facing serious problems at discharge can be reduced.

PREVENTIVE MEASURES

At the load port

- Owners are well-advised to arrange a precautionary survey well in advance of the vessel's arrival at the first load port.
- All cargo holds should be checked prior to arrival to ensure they are clean and dry and free of previous cargo residues. The attending surveyor should be invited to verify that the holds are fit for loading the cargo.
- Upon arrival at load port the Master should request a written specification of the cargo, including its moisture content.
- It is recommended that a tally is performed to verify cargo quantities, and cargo should be checked to ensure it's within acceptable moisture levels. Any discrepancies should be notified to the correspondent and Club and any cargo unfit for loading should be rejected and replaced by sound cargo.
- Ideally, random samples should be taken of cargo throughout loading, which should be sent to a laboratory for analysis in order to determine whether the moisture content accords with the specification provided by the shippers.
- Hatch covers, doors, vents and access areas should be checked to ensure watertight and in good working order. Any deficiencies should be rectified prior to the vessel's departure from the load port.
- Weather conditions should be monitored to ensure that cargo is not exposed to rainfall. The crew should be alert to this risk and ready to ensure hatch covers can be closed in time.
- The Master should discuss with the surveyor the method of stowage and dunnaging. The nature of cargo operations should be carefully monitored, and any problems noted by the crew and, where appropriate, letters of protest issued. For example, is cargo being loaded from open barges / lighters which are exposed to weather conditions? Are stevedores handling the cargo carefully so as to ensure that damage to the bags is avoided? Are adequate ventilation channels being built into the stow? Whilst the level of intervention from an owner's side should be dictated by the terms of the charterparty, the owner's surveyor should monitor the stowage in every case to ensure there is no risk to the vessel's seaworthiness.
- Owners should procure clear voyage instructions from shippers/charterers and ensure the crew are fully informed about any specific requirements (such as ventilation).
- Where cargo is to be discharged at more than one port, the cargo should be separated so as to ensure that cargo for one port is not discharged at a different port.
- If appropriate, owners may consider holds being sealed upon completion of loading (although this is unlikely to be appropriate where the vessel has only natural ventilation).

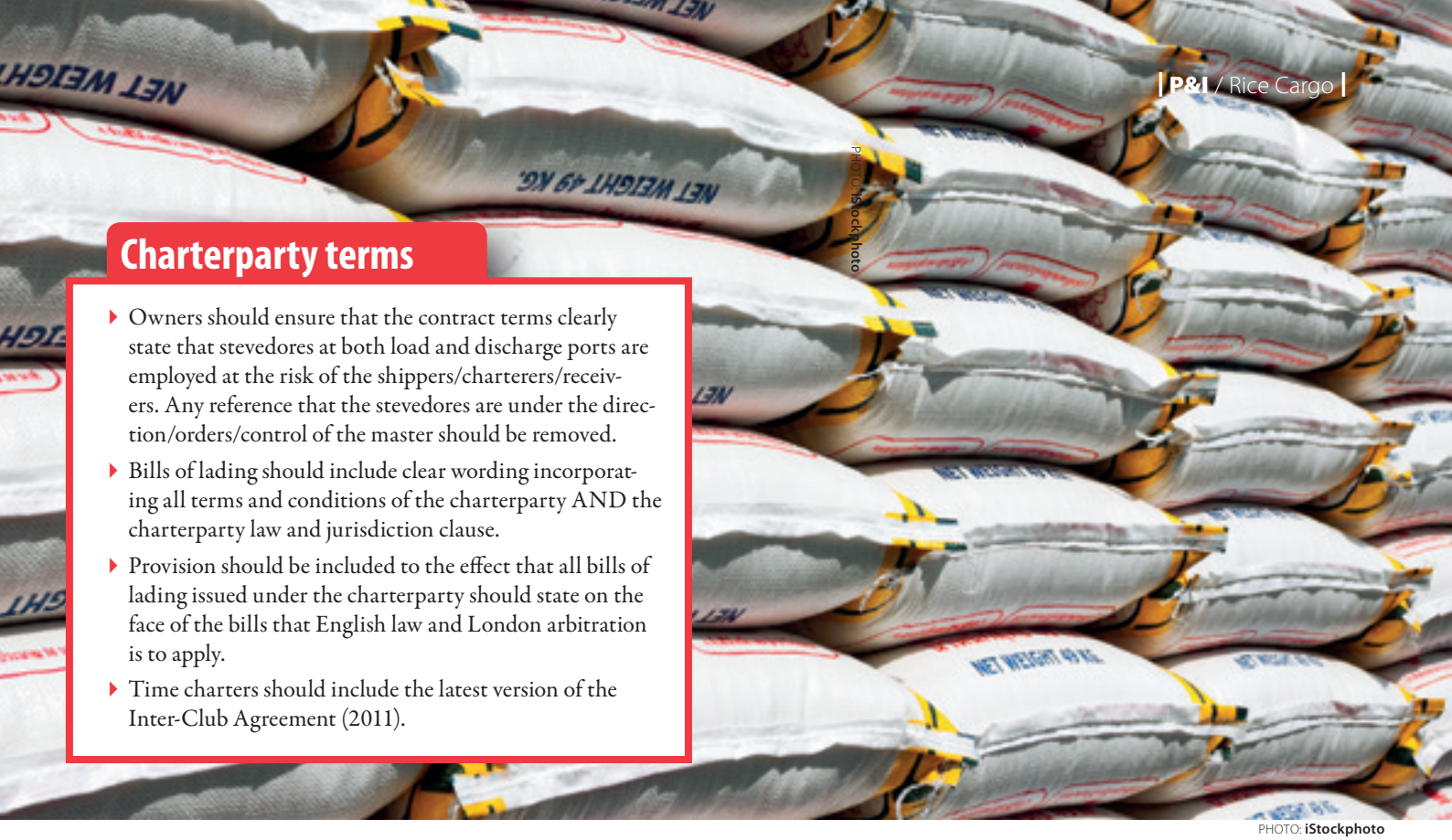

PHOTO: iStockphoto

Charterparty terms

- Owners should ensure that the contract terms clearly state that stevedores at both load and discharge ports are employed at the risk of the shippers/charterers/receivers. Any reference that the stevedores are under the direction/orders/control of the master should be removed.
- Bills of lading should include clear wording incorporating all terms and conditions of the charterparty AND the charterparty law and jurisdiction clause.
- Provision should be included to the effect that all bills of lading issued under the charterparty should state on the face of the bills that English law and London arbitration is to apply.
- Time charters should include the latest version of the Inter-Club Agreement (2011).

PHOTO: **iStockphoto**

TO CONSIDER

During the voyage

- Ventilation should be conducted in accordance with voyage instructions and the ventilation and deck log must be kept regularly updated. Normally, hold temperature readings should be taken on a six-hourly basis. Where weather conditions do not permit ventilation of the holds by way of opening the hatch cover, this should be properly recorded by the crew. Records should be kept of whenever the ventilation is started, stopped or resumed, together with the reasons for doing so.
- Soundings of cargo hold bilges should also be recorded at least daily.
- Cargo hold dew points, external air dew points and the sea temperature should be recorded at least once per watch.
- Cargo holds should be inspected for signs of condensation on the steelwork, and any signs of cargo deterioration. Any such signs should be recorded, and in the case of deterioration the Club should be notified to consider what steps should be taken prior to the arrival of the vessel at the first discharge port.

At the discharge port

- Owners should consider appointing their own protective agent rather than simply relying upon the agent appointed by their charterer.
- If the holds were sealed at the load port, receivers should be invited to witness unsealing upon arrival at the first discharge port.
- An outturn tally is strongly recommended. Failure to do so will leave owners without independent means of verifying the discharged quantity.
- In addition, draught surveys should be considered. These are a useful additional tool to support the outturn tally and to challenge the inevitable allegations of shortage.
- In case discrepancies are noted between vessel and shore tallies during the early period of discharging operations, the correspondent should intervene and investigate the cause of discrepancy. Copies of the tallies of the various other interests should be provided and checked on a daily basis: often, the stevedores' and receivers' tallies will not match with each other during the course of discharging, but ultimately will correspond upon completion (evidencing the collusion between the respective parties). Continuous checking of the shore tallies will identify discrepancies and assist in highlighting that the tallying is not being properly recorded by shore interests. This can greatly assist in refuting any allegations of shortage.
- Any pilferage should be documented in the form of letters of protest and brought to the attention of the stevedores and receivers. Where possible, photographic or video evidence can be used to evidence the pilferage.

The Actual Shipper's le
weakened under the nev

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Lina Wiedenbach's special areas of activity are shipping law (with emphasis on P&I, Charter Party disputes and recovery) and freight forwarding law. She is a legal graduate of the University of Lund and holds a Ph.D. from the University of Hamburg, where she did her postgraduate studies as a scholar at the International Max Planck Research School for Maritime Affairs.

The party delivering the cargo for transportation has been entitled to obtain order bills of lading in his name under German law, for a long time. He has had this right in his capacity as the actual shipper (Ablader), regardless of whether he is also simultaneously the contractual shipper or not.

While holding that this independent right had to be preserved in the 2013 reform of the German maritime law (adopted on 23 April 2013) as a necessary means to safeguard the seller's interest in an FOB/FAS sale, the legislator chose to align the wording of the German law with the Hague-Visby and the Rotterdam Rules (Deutscher Bundestag Drucksache 17/10309, p. 90).

It hereby seems to have overlooked that the right of the seller to obtain the bill of lading was effectively put in the hands of the contractual shipper and thus, greatly diluted. This also affects the carrier, who must now be cautious as to whom he issues the bill of lading.

Background

As is well known, an order bill of lading grants its holder the right to dispose of the cargo. This for one enables merchants to trade goods in transit. In Germany, in addition, the bill of lading serves also as security for a FOB/FAS seller. In a sale on FOB/FAS terms, the buyer concludes the contract of carriage with the carrier.

This means that once the seller has delivered the cargo for shipment, albeit remaining formally the owner, he is unable under the contract of carriage (for he is not the carrier's contractual party) to prevent the cargo from being delivered to the buyer/contractual shipper in the case of non-payment.

This problem has been addressed in Germany by granting the party delivering the goods – i.e. the seller or somebody presumed to be in close connection with the seller – a statutory right to demand from the carrier the issuing of a bill of lading to his order. As the holder of the bill, the seller will thereby be entitled to give instructions regarding the cargo, withhold it or even re-sell it.

The Hamburg Higher Regional Court confirmed as late as autumn 2013, (OLG Hamburg, Urteil vom 16.8.2013 – 6 U 44/12) in a case under the old maritime law, the right to obtain the bill of lading was an exclusive right of the party delivering the goods that could not be affected by the terms of the contract of carriage.

The very purpose of the regulation, the court emphasised, was to ensure in a sale on FOB terms that the buyer/contractual shipper did not get his hands on the bill of lading before full payment had been effected.

The new law

The corresponding regulation under the new German maritime law is completely different. In total contrast to the legal position prior to the reform, the provision explicitly makes the actual shipper's right to demand a bill of lading subject to any deviating terms in the contract of carriage.

Further, if the party delivering the goods is not the party appointed by the contractual shipper as the actual shipper, or if no actual shipper has been appointed at all, the contractual shipper shall be deemed the actual shipper by default. Effectively, it

gal position
w German Maritime Law

is difficult to draw any other conclusion than that the right of the person delivering the goods under the new maritime law, has been greatly diluted.

Weakened legal position of the FOB/FAS seller

This has numerous consequences on the law relating to bills of lading, not all of which can be dealt with here. First and foremost, however, it obviously puts the FOB/FAS seller in a worse position. The new law enables the buyer/contractual shipper to do exactly what the old law aimed at preventing – to overcome the bill of lading without having effected payment. And there is little the seller can do about it.

The law is clear in that the issuance of the bill of lading follows only after delivery of the goods for shipment so that the seller cannot withhold the cargo until he has a bill of lading in his hands. And, once the goods have been delivered, if it turns out that the contractual shipper has instructed the carrier not to issue bills of lading, or not appointed an actual shipper with the effect that the buyer/contractual shipper himself will be the actual shipper and obtain the right to demand the bill of lading, the seller's only remedies will be under the contract of sale.

How the carrier is affected

Out of the carrier's perspective the change is likely to cause problems as to the identity of the actual shipper. Whereas formerly the carrier could rely on that the party objectively delivering the cargo was entitled to obtain the bill of lading, he must now ensure first that the contract of carriage does not contain terms to the effect that no bill of lading is to be issued, and second that the party delivering the goods is the actual rightful shipper.

Uncertainties as to whether the contractual shipper has appointed an actual shipper or not, are likely to arise. Where he has not, the default rule provides that the contractual shipper himself shall be deemed the actual shipper and thus be entitled to the bill of lading. Simultaneously, the party physically delivering the goods might not be aware that he is not entitled until the carrier informs him accordingly.

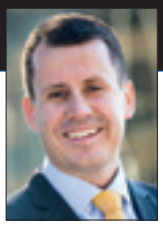
The party delivering the cargo, however, remains responsible in all cases for the accuracy of the statements in the transport document. The carrier should be prepared to deal with disputes upon delivery. For his own protection, it is advisable that he secures evidence for possible disputes by insisting on any communication with the contractual shipper concerning the issuance (or non-issuance) of bills of lading, as well as the identity of the actual shipper, be made in writing.

Ramifications of the explosions in on vessels trading to the United S

The tragic series of explosions at the container storage station in the Port of Tianjin, China on 12 August 2015, and the secondary explosions on 15 August 2015, killed over one hundred people and caused millions (if not billions) of dollars in damage to the port.

While the precise causes of the explosions remain unclear, it is believed that the interaction of several types of hazardous chemicals played a role. The explosions also resulted in discharges of a significant amount of sodium cyanide and other hazardous and toxic substances.

This article examines some of the ramifications of the Tianjin explosions on vessels and cargo entering the United States, and discusses actions Members can take to minimize or eliminate trade disruption, or potential cargo claims.



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James Marissen is a partner with Keesal, Young & Logan in its Long Beach, California, office. James focuses his practice on litigating maritime and insurance disputes on behalf of shipowners and their insurers, with a particular specialty for arrest and attachment actions, bill of lading disputes, cargo claims and maritime lien disputes. James also has extensive experience in emergency response to serious shipping casualties and pollution incidents throughout the United States and the world. His practice also includes non-contentious maritime transactional work including drafting charterparty agreements and bill of lading terms. James is a member of the Maritime Law Association of the United States. James has published articles in various international maritime law journals and is a speaker at seminars on shipping and trade matters.

THE UNITED STATES COAST GUARD (USCG) Office of Commercial Vessel Compliance issued a Marine Safety Information Bulletin on 26 August 2015 (the "Bulletin") that identifies measures the United States has implemented to prevent the entry into the United States of vessels or cargo contaminated by the Port of Tianjin explosions.

According to the Bulletin, USCG and the United States Customs and Border Protection Department intend to monitor all United States bound cargo and/or vessels that were in the Port of Tianjin between 12 August through 18 August, due to the concerns that there may be potentially hazardous ash, debris, or other residues on the vessels or cargo bound for United States ports. The USCG is most concerned with vessels whose cargo bays or hatch covers were open when the explosions occurred and any cargo or containers that were likewise exposed during the explosions.

While there have been no reports of vessels with confirmed hazardous debris or residues on board, many United States companies, such as stevedores and cargo handlers, are looking for assurances regarding the health and safety of their employees who may work on such vessels and/or handle such containers.

The USCG's Approach to the Entry of Vessels or Containerized Cargo into the United States

On 1 September 2015, the first vessel with potentially contaminated containers from the Port of Tianjin attempted to enter a port on the West Coast of the United States. The ves-

Tianjin, China, tates

PHOTO: TT

sel was carrying 39 potentially contaminated containers, even though the vessel itself was not in the Port of Tianjin when the explosions occurred. In advance of the vessel's arrival, the USCG activated an Incident Command System to deal with the threat of the introduction of sodium cyanide into the United States from the potentially contaminated containers.

The USCG also issued Captain of the Port Orders requiring the vessel operator to inspect, sample and test the 39 potentially contaminated containers for the presence of sodium cyanide, and to notify the USCG of any "hazardous conditions" related to those containers. To address the requirements of the USCG, the vessel segregated potentially contaminated containers during cargo discharge operations and arranged for samples to be taken of each. The USCG required the vessel to conduct initial "wipe tests" to analyze acid levels on the surface of the containers. The results of such wipe tests provided a preliminary indication of the presence of sodium cyanide on the external surfaces of the containers. These wipe tests were followed by laboratory analyses of samples from the containers to more definitively determine whether they were contaminated with sodium cyanide. While the results of the laboratory testing, done at the vessel's expense, were all negative, the testing implemented by the USCG caused a modest delay to the vessel's schedule.

The USCG has continued to perform random "wipe tests" on other potentially contaminated vessels and/or cargo arriving at ports on the West Coast of the United States. Given this situation, Members whose vessels will call at ports on the West Coast of the United States should anticipate that the USCG will conduct "wipe tests" on containers aboard their vessels if those containers or their vessels were in the Port of Tianjin during the explosions. Members should also consider issuing customer advisory notices that such testing by the USCG may cause delays in cargo operations.

Potential Cargo Claims

Although no contamination has been detected on any containers tested to date, an interesting question arises as to whether the carrier would be liable to cargo interests if a contaminated container is found and the cargo is disposed of (assuming remediation measures were either unavailable or cost prohibitive).

Assuming that any relevant contract of carriage for the shipment of cargo to the United States is governed by the United States Carriage of Goods by Sea Act, 46 U.S.C. 30701 et seq. ("US COGSA"), ocean carriers will be able to avail themselves to the defenses under the US COGSA, notably the "Clause Q" defense. Generally speaking, the "Clause Q" defense under US COGSA exempts carriers from liability for cargo loss or damage occurring from any cause without the actual fault and privity of the carrier. The carrier has the burden of proving the cause of the loss and that it was without fault. See: American Home Assurance Co. v. American President Line, Ltd., 44 F. 3d 774 (9th Cir. 1994).

Here, ocean carriers can likely establish that the explosions in Tianjin were the sole cause of the contamination and thus the cargo loss. Furthermore, ocean carriers are also likely to be able to establish that they are without fault in causing the explosion, as they possibly have few connections to the operations of the Port of Tianjin or its warehouses, thus providing them with a complete defense under US COGSA to any cargo claims.

Costs

The Swedish Club PEME Summaris

Birgitta Hed
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Team Gothenburg

WHEN THE SWEDISH CLUB'S PEME (Pre Engagement Medical Examination) scheme was made available to our members in January 2011, the hope was that not only would we provide and facilitate a service to our members, but we would also be able to measure the result of enhanced PEMEs for the benefit of our membership.

For that reason we continually monitor statistical information from our two clinics with reference to the number of PEMEs conducted, but also the results, with the aim of establishing correlating factors between medical findings and repatriations.

The information is received, collected and reviewed on a strictly anonymous basis and we are pleased to be able to show the result of our study for 2011 to 2014.

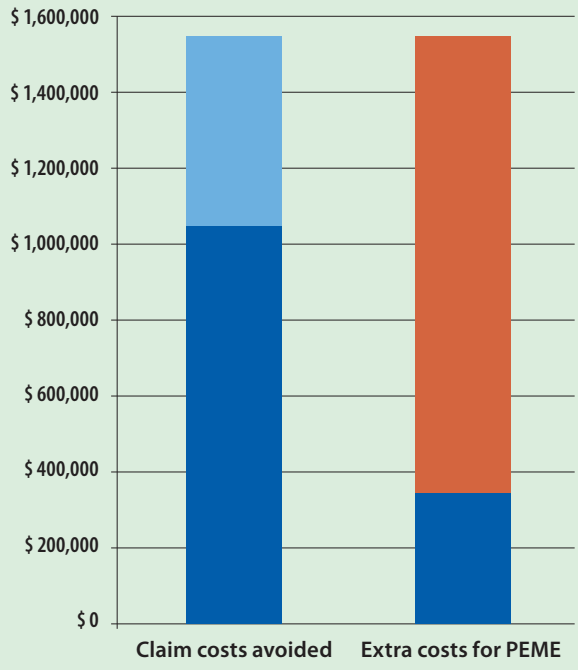
The Swedish Club's PEME Designated Medical Examiner's Handbook is constantly being revised to consider and comply with medical as well as legal developments, for instance the ILO standards from the implementation of the Maritime Labour Convention 2006. Regrettably the revised standards have led to a reduction in the quality of the national requirements in the compulsory PEME in some jurisdictions. For The Swedish Club's PEME, it is essential to emphasize that a seafarer who does not fulfil the medical criteria set out in our enhanced PEME is not declared unfit for sea service, but not to be in compliance with the Club's recommended medical policy. The Swedish Club's PEME is performed in accordance with a strict Code of Conduct complying with our ethical values and legal requirements for confidentiality, non-discrimination and focusing on the interests of the individual seafarer, as well as the safety on board the vessels we insure.

Our ambition is to provide our members with a service and tool by which it is possible to minimize risks and costs for seafarers who should not be employed on board for their own safety and for the safety of the vessel. Our members' P&I cover is not prejudiced if they choose not to utilize the relevant service, nor can we interfere with the recruitment process. The sometimes expressed concern that a significant number of existing crew members would be rejected can thus be easily met. The important question is, does the possibility of operating a commercially viable vessel in a highly competitive market increase with healthy and suitable crew on board? Is it perhaps even a good marketing tool for recruiting good seafarers that they are cared for and medical problems resolved, for their own sake and the care of others, before they are allowed to be deployed?

62% of cases which did not pass the enhanced PEME would have passed the government required examination

During 2011 and 2014 a total of 3,706 examinations were carried out by our two clinics in Manila. In 196 cases, or 5.3% of all cases, the result was not in compliance with The Swedish Club's enhanced PEME. What is quite remarkable is that 122 of those cases, i.e. 62% of those cases would have passed the government required examination.

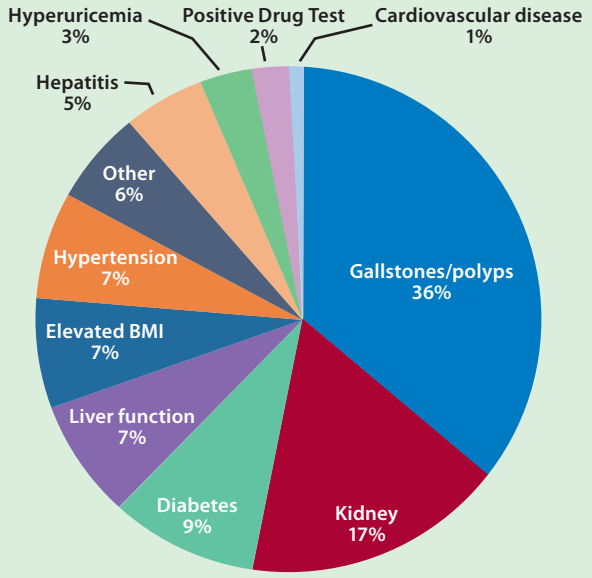
The below graph show the reasons for not being in compliance where the seafarer would have passed the compulsory PEME.



Graph 1.

ing the first four years

Benefits



Graph 2.

Avoided claim costs on basis of our database and average costs applied

The average illness claim cost at The Swedish Club during the relevant years was USD 23,300. The average total cost is thus USD 23,300 plus the average deductible applied in illness cases. Analysing the causes of repatriations in the cases reported to The Swedish Club, i.e. cases that are above our members' deductibles, we have applied the accurate figures representing each of the five most common categories of illness in the above graph and not the average illness cost of USD 23,300.

The total estimated claim costs avoided by means of The Swedish Club's PEME, based on our figures, would then be USD 1,054,000 plus the deductibles avoided amounting to USD 499,000 leading to total costs avoided for the Club and our relevant members being USD 1,553,000.

So what is the estimated financial result of enhanced PEMEs for the benefit of our members?

The cost of The Swedish Club's PEME, for very obvious reasons, is higher than the cost for a compulsory PEME. When the contracts with the two clinics were negotiated last year we were able to maintain the cost at USD 105 per examination. The cost for the compulsory PEME is estimated at USD 25 per examination. When looking at the cost benefit for our members the added cost has to be included. The total extra cost incurred for The Swedish Club's PEME for the 3,706 examinations carried out is USD 296,000.

With claim costs of USD 1,553,000 avoided and taking into consideration the extra costs for The Swedish Club's PEME, the total cost benefit for The Swedish Club, i.e. our members, is USD 1,257,000 for the four full years the enhanced PEME scheme has been available. Together with our members using the enhanced PEME, we have prevented a significant number of illness claims involving human suffering and reduced the relevant members' exposure by up to USD 1,257,000. For our members utilizing The Swedish Club's PEME this means reduced exposure, after the cost of the enhanced PEME, of approximately USD 314,000 per annum.

It should be noted that the graph 2 is an indication of cost savings since it is impossible to know exactly how many of the seafarers who did not pass the enhanced PEME but would have passed the compulsory PEME, and would have become a reported illness claim exceeding the applicable deductible.

However, even if only 20% of the seafarers, who did not pass the enhanced PEME but would have passed the governmental required examination, were repatriated due to illness, the scheme is economically beneficial.

Having fit crew on board is a matter of safety and apart from greater safety and other financial benefits through reliability, avoidance of deviations, reduced administration based on repatriations and replacements, there are of course commercial aspects which are difficult to measure but vitally important in a competitive market where there is a demand for fit and competent crew.

We are able to conclude that The Swedish Club's PEME is of benefit to the individual member through less claims and costs in their records, but also our membership at large. The scheme made available to our members in January 2011 has met our expectations and we hope for our members' continued support for the benefit of all.

FOOTNOTE; A separate study is entailed in a bachelor theses in the Shipping and Logistics programme at Chalmers University of Technology called "Can increased health requirements for seafarers decrease exposure to illness claims?" written by Marcus Waserbrot who was a trainee at The Swedish Club in 2015 and to whom we are grateful for his study and work conducted. The thesis is still at a draft stage but will be published in 2016.

Complying with EMISSION CONTROL

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Team Asia

"In Hong Kong, the Air Pollution Control Regulation came into force on 1 July 2015. A person who commits an offence is liable on conviction to a fine of HKD 200,000, and to imprisonment for six months"

MARPOL ANNEX VI sets the limits on sulphur oxide (SOX) and nitrogen oxide (NOX) emissions from a ship's exhausts, and prohibits the deliberate emissions of ozone-depleting substances. It also contains provisions that allow member states to establish special SOX Emission Control Areas (SECAS) where more stringent sulphur emission controls would apply. As of February 2011, a total of 60 countries have ratified Annex VI.

Local regulation regarding the penalty for non-compliance

Following Annex VI coming into force, member states have adopted strict measures to control emissions, penalizing crew or shipowners for reckless or negligent violation, or non-compliance. In the Netherlands, the authorities may detain ships in violation of emission controls until compliant sulphur fuel has been supplied. In Italy, the fine for non-compliance of sulphur requirement at berth may be imposed in the ranges from EUR 15,000 to 150,000. In practice the port authority in Italy normally imposes a fine of double the minimum, or a third of the maximum for a first time offender.

In Shanghai, a new anti-pollution regulation took effect from 1 June 2015. Violators will be fined between 10,000 and 100,000 Yuan according to the new regulation. In Hong Kong, the Air Pollution Control Regulation came into force on 1 July 2015. A person who commits an offence is liable on conviction to a fine of HKD 200,000, and to imprisonment for six months. Similar regulations were also established and published in many other countries.

Risks accompanying the compliance

In most cases so far reported, loss or damage occurs in the following circumstances:

- Engine stoppage or equipment damage due to improper operation of the changeover from fuel oil to low sulphur oil;
- Laboratory test shown the fuel oil in use at berth or ports or SECAs is non-complainant due to incomplete changeover, which leads to high sulphur fuel residue existing in the system. This also mostly involves an operation problem;
- Incorrect or incomplete entry in the log books regarding the oil changeover, which leads to a penalty by the port authority.

Make compliance safely

For the avoidance of loss or damage arising out of the associated operation for compliance,

FIRSTLY, owners should be well aware of their duty to make their ships technically suitable to run on the low sulphur oil (seaworthiness). Some modification for the burning apparatus might be necessary on some low standard vessels in this regard;

SECONDLY, owners need to work out a set of specific and applicable operation procedures, i.e. a fuel oil changeover manual for each single ship to safeguard the oil changeover operation. A practicable fuel oil changeover manual should contain detailed changeover procedures. If engine crews follow the procedures closely then the risk of violation can be substantially reduced. Compared to the standard practice of changeover between heavy fuel oil grades, changeover from heavy fuel oil to marine gas oil is completely different. Precautions should be taken and technical skills are required to prevent gassing of gas oil in the system, which can easily cause abnormal airlock in the fuel oil supply system, and leads to engine stoppage. When this happens it can have serious consequences. This Association had a major RDC/FFO claim when an entered ship had contact with a terminal and a ship along the berth due to a stoppage of the main engine causing the vessel to lose control in the process of the fuel oil changeover. The changeover manual could have guided the engine crew to make a smooth changeover operation.

There are some templates of the manual readily available on the website (http://www.marsig.com/downloads/SECA%20-%20Fuel%20Oil%20Change-over%20Manual.pdf). It should be noted that ship managers should tailor the manual to fit each and every respective ship with reference to the actual condition of the ship itself, including, but not limited to, the tank specification and arrangements, pipe lines for fuel oil transfer and supply system, as well as specific bunker consumption under different loads etc.

Normally, low sulphur oil is required when the ship is along the berth or sailing within SECAs. Obviously the owners would not like to burn more low sulphur oil than necessary due to obvious economic considerations, as low sulphur oil is more expensive. Therefore the changeover should normally take place just before the vessel reaches the berth or comes across the boundary of SECAs. The engine crew should also ensure that the fuel supply system has been completely filled with low sulphur oil as soon as reaching the berth or coming within the boundary of SECAs. This can be achieved by following the

continues on page 17

EASIER TO ARREST vessels in China?

In February this year, China's Supreme Court released a new Judicial Interpretation on Vessel Arrest in China. The Interpretation has been in force since 1 March 2015.

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Counter-security for arrest

When a vessel is arrested in China, two guarantees have to be provided. The one is the guarantee to lift the arrest; the other is the guarantee required to secure any claim for wrongful arrest. This second guarantee is commonly referred to as 'counter security'. The Interpretation does not concern itself with the guarantee to lift the arrest but does deal with the counter security to be provided.

Previously, it was unclear what constituted satisfactory counter security. The courts, therefore, had a broad discretion as to what possible losses the ship-owners might suffer from the arrest and, accordingly, what the counter security needed to cover. There was no uniform practice adopted among the ten maritime courts, nor even any consistent approach taken within individual maritime courts. The counter security required by a court might be as low as 30 days hire or as high as the value of the vessel arrested.

The Interpretation sets out three categories of costs that should be taken into account as the 'possible losses':

- the costs and expenses of maintaining the ship during the period of arrest;
- the loss of earnings resulting from the arrest and
- the costs of lifting the arrest.

The counter security should cover the aggregate of all three categories. Additionally, the Interpretation stipulates that in cases involving claims from seafarers, personal injury or death, the court may excuse the claimant from providing any counter security guarantee at all.

The form of acceptable security

Although the Interpretation now clarifies the quantum of the counter security to be provided, it does not regulate the forms of security the courts are obliged to accept. In practice, foreign bank and foreign P&I club guarantees are not considered acceptable because the courts believe the claimant may encounter problems with enforcement. The forms of guarantee generally accepted are, therefore, letters of undertaking issued by Chinese banks and Chinese insurance companies, including China P&I club. In theory security may also be established by way of a bond, a charging order or cash deposit. In some instances, the court has even accepted a letter of undertaking provided by the Chinese claimant.

Foreign applicants with no relationship with a Chinese bank or insurance company may find themselves at a disadvantage when compared with Chinese applicants.

The recent development of "Property Preservation Liability Insurance" by which the insurer undertakes to pay any liability for wrongful arrest, has been used successfully by the Club, on behalf of a foreign member, to provide counter security in respect of a claim against a Chinese shipper.

Arrest and judicial sale of bareboat chartered vessels

The Interpretation also makes it clear that a vessel can be arrested in respect of the debts of its bareboat charterer and even sold whether or not the registered owner has anything to do with the dispute. The court is entitled to ignore any 'no-lien' or indemnity clauses intended to protect the registered owners' interests. This is a significant change which may well adversely impact on both registered owners and those financing them.

Conclusion

The Interpretation deals with a number of other issues – we highlight in this article only the more important aspects. For readers who would like to discuss this further, please contact the writer at julia.ju@swedishclub.com

continues from page 16

manual. As to how to maximise the saving of low sulphur oil, the engine crew should reference the "Changeover Calculator", e.g. FOBAS etc., for calculating times. This is also available on the website http://www.lr.org/en/_images/213-35926_FOBAS_Change-over_calculator_5_.xlsx

THIRDLY, provide training for engine room crew members on fuel oil changeovers;

LASTLY, maintain a complete record or log entry including any other relevant documents covering the changeover operation.

Deal with non-intentional violation

In case there is a violation, owners and ship managers can rely on the fuel oil changeover manual and proper entries in the ship's logbook recording the changeover operation in mitigation of penalties or fines. The manual and logbook can be good evidence to show that the owners and managers have tried to exercise due diligence to comply with the convention.

Moving from draconian certainty **to fair uncerta**

The Insurance Act 2015 (IA2015) aims to modify the legal regime of marine insurance that has been dominated for more than a century by the Marine Insurance Act 1906 (MIA1906). The IA2015 recasts two functions of the insurance policies in self-contained units with their own definitions, defences and remedies.

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Marine Claims Adjuster
Team Piraeus

These are the pre-contractual process and the operation of the live contract during the policy. In addition, it codifies the effect of fraudulent claims and separately defines the strict guidelines in case the parties wish to contract out of the Act.

Pre-contractual duties

The pre-contractual conduct of both parties under the MIA1906 was governed by the principle of utmost good faith. The same basis is maintained under the IA2015, but only as an interpretative principle. According to s.18 of the MIA1906, the insured had the duty to make a reasonable representation of all material circumstances that describe the risk. Failure in this particular duty, the so-called misrepresentation, would entitle the insurer to automatically and unmeritoriously rescind the contract. Such rescission would work retrospectively, which means that the contract will be considered void ab initio, premiums should be returned and indemnities paid (if any) during the whole policy year should be paid back to the insurer.

The good news

The automatic rescission of the policy, due to misrepresentation of any kind is abolished. IA2015 introduces a new regime where in case of a qualifying breach of the insured's duty of fair representation, the insurer will be asked to demonstrate that he would have acted differently if the risk had been sufficiently represented. The effect of such re-drafting of the policy ranges from **i**) complete avoidance of the risk which practically has the same effect as in MIA1906 s.17 (last sentence), **ii**) acceptance of the risk but under different terms (deductibles, warranties, etc.), **iii**) acceptance of the risk but at a higher premium, or a combination of **ii**) and **iii**). The effect of **ii**) and **iii**) is that the indemnity of all past and present claims should be re-adjusted according to the new terms and/or in case of an increased premium the indemnities should be proportionally reduced.

The bad news for the insured

The insured's representation of the risk should be much more elaborate, structured and professional. The state of knowledge is not limited to the insured himself, but extends to the senior managers of the company. The knowledge is not only what the individuals concerned (insured, senior management, brokers, etc.) already know, but also what they should reasonably suspect and have an obligation to enquire. Following The Eurysthenes [1976] dictum, turning a blind eye is not a defence.

The bad news for the insurers

1. The insurer can no longer be a passive recipient of information. It should have professional opinion, of the risks *"... of the class in question ... and in the field of activity in question ..."* So, an aviation risk estimator may not be deemed qualified enough to underwrite marine risks.
2. A second headache, connected with the first one, is that the insured will have absolved itself from the duty of fair representation if it has disclosed *"...sufficient information to put a prudent insurer on notice that it needs to make further enquiries..."* The insurer cannot claim that he was deceived if the insured can demonstrate that the representation although incomplete included sufficient hints to trigger a knowledgeable insurer to enquire further.
3. If it can be proven that the insured has made a qualifying breach, the insurer will have to disclose solid evidence that if the real risk had been properly presented, either the risk

inty?

would never have been underwritten, or it would have been insured at very different and specific terms and/or at a different premium. Hence, the insurer should disclose internal – probably confidential – underwriting procedures and of course it should maintain very clear, detailed and quantifiable internal processes and records.

Post-contractual application of the contract terms

The draconian regime of the MIA1906 warranties of s.33, is dead. First of all the pre-contractual duty of the insured of fair representation is expressly not conceived as a warranty. Cover may be limited or suspended if a term in the contract is breached, but the contract remains partially alive and it is fully re-instated after the breach has been remedied.

Any term of the contract, explicit or implied, that aims to reduce the risk of a loss of **i**) a particular kind, or **ii**) at a particular location, or iii) at a particular time, if not complied with at the time of a loss, may be activated by the insurer as a defence against its liability. Subsequently, it is up to the insured to demonstrate that *"...the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred"*. It is not the strict causative connection that is required to be proved, demonstration of relatedness between the peril and the term breached is sufficient.

Fraudulent claims

The Act does not define what a fraudulent claim is, but the term fraudulent action encompasses not only fraudulent claims but also fraudulent devices to pursue legitimate claims as in "The DC Merwestone" case. The term "relevant event" used in the IA2015 indicates the point in time that the insurer's liability is triggered and this depends on the conditions in the policy. The Act codifies the remedies available to the insurers. The insurer may reject the fraudulent claim and terminate the policy, by giving notice to the insured, as from the time of the fraudulent act (not its discovery if different in time), maintain the premiums paid, reject any claim of the insured whether legitimate or not, when the "relevant event" occurred after the fraudulent act, but remain liable for any truthful and recoverable claim made before the time of the fraudulent act.

"The IA2015 will reshape and modernise the English legal system. At the same time a new era will commence in the courts and among the experts for interpreting the new provisions."

Contracting out

Just like the MIA1906, the IA2015, shapes the structure within which the parties in the insurance contracts should practice their business. However, in order to maintain the "freedom of contract" particularly for specialised risks such as marine, energy, etc., the parties are free to contract out of the guidelines provided they comply with two very strict provisions.

1. "Basis of contract" warranty cannot be imposed.
2. The insurer that wishes to impose warranties of stricter effect than provided by the default regime of the Act, should be very explicit regarding the particular "disadvantage" that this will bring on the shoulders of the insured, the clause should be drafted in "clear and unambiguous" terms and reasonable steps should be taken to bring it to the attention of the insured at its full extent and consequences, before the conclusion of the contract.

Conclusion

The IA2015 will reshape and modernise the English legal system. At the same time a new era will commence in the courts and among the experts for interpreting the new provisions. From the practitioner's point of view, the Act demands more specialisation and professionalism in the way the marine insurance business is conducted, both from the insurer as well as from the insured.

THIRD PARTY LIABI
under Hull and Machinery ins
– differences between conditions

Third party liability under Hull and Machinery (H&M) insurance can generally be split between liability arising from a collision with another vessel and liability arising from damages caused to other objects, so called fixed and floating objects (FFO). The rules relating to third party liabilities are different under various conditions, for example English (ITC), Nordic Plan (NMIP) and German (ADS/DTV) conditions.

Under ITC, H&M insurance traditionally covers only 75% of the liability arising from a collision, and the FFO risk is excluded in full. It was believed that when the liability for collisions – also called Running Down Clause (RDC) – was introduced under the ITC in the mid-19th century, the shipowner would exercise greater care in the navigation of the vessel, if 25% would remain on account of the owner. Nowadays the remaining 25% and the FFO risk, are usually covered under the vessel's P&I cover.

Both the Nordic and German conditions provide full cover for third party liabilities under their H&M insurance clauses, including cover for FFO. Hence these conditions do not distinguish between collisions with vessels or contacts with foreign objects.

In this article the different rules under the Nordic and the German conditions regarding FFO cover will be reviewed. The ITC will not be part of the study as FFO damages are excluded by default.

The Nordic Plan

Starting point

The starting point under the Nordic Plan is clause 13-1 where it is stated that the insurer is liable for damages "due to collision or striking by the ship, its accessories, equipment or cargo, or by a tug used by the ship". In the commentary to the Plan it is further stated that there is need for a physical contact between the vessel (including its accessories etc.) and the damaged object and that the contact has to be a consequence of a movement of the vessel.

Hence wash damage, i.e. a damage caused by waves or backwash, is not covered under the Nordic Plan as the physical contact is missing. The same applies for striking damage with accessories caused by independent movements, for example a lifeboat that falls down and damages a shore installation whilst the vessel is safely moored undergoing cargo operations. There is physical contact, but not in consequence of the movement of the vessel itself.

Exclusions and exceptions

The scope of liability is restricted in several ways as per NMIP clause 13-1 points a-j, e.g. liability for personal injury/loss of life, liability for damage to, or loss of, cargo, liability for pollution damage etc. is excluded. When it comes to the actual parts of the ship that may cause a liability to a third party, point h provides further clarification when looking at FFO damages. The insurer does not cover "liability for loss caused by the ship's use of anchor, mooring and towing gear, loading and discharging appliances, gangways and the like [...]". This wording includes two requisites, namely

a) the exclusion applies to certain items only, such as anchors, gangways etc.
b) there must be a causal link between "the ship's use" of these items and the damage.

Whilst the first requisite seldom gives reason for dispute, the term "the ship's use" can occasionally give rise to questions. According to the commentary to the Plan, for example, an anchor that is situated in the hawse pipe is not considered in "the ship's use". The same applies to a gangway that is hoisted up and fastened to the side of the ship. These examples seem to be clear. An anchor that is lowered to the surface in preparation for an anchoring manoeuvre, however, may just be outside the clear boundaries. Here the judgement ND 1976.263 NV MOSPRINCE/BIAKH provides clarity in stating that the word "use" should be interpreted widely, and included all the time from the start of mounting the item until mounting is complete. It follows that a lowered anchor will be considered in "use" and, therefore, any damage caused by the contact of the anchor with a foreign object will be excluded under H&M insurance.

No exception without exception: when these items are used outside their ordinary intention, i.e. in connection with ex-

LITY
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traordinary measures to avert or minimise loss in accordance with NMIP clause 4-7, potential third party liabilities would be covered under the H&M insurance. This would, for example, apply to damages caused to a cable in consequence of the extraordinary use of an anchor in an attempt to avoid running aground.

German conditions

Starting point

For the German conditions the starting point regarding third party liabilities is clause DTV 34.1.1, stating that the insurer is liable for "claims based on legal regulations and caused by movements of the vessel or by any navigational measures directly connected therewith". There is no need for physical contact between the ship and the damaged object under the German conditions, as long as the ship's movements caused the damage. Hence, liabilities resulting from e.g. wash damage, are covered under H&M insurance.

Usually, there should be no uncertainty as to what is to be considered a movement: a vessel making contact with the quay during berthing operations, or the previously mentioned wash damage, are typical examples of damage caused by the vessel's movements. There are, however, different interpretations of the term "movements".

On the one hand a very broad view is taken considering all movements of a vessel covered under this clause, even movements caused by mere tidal changes when the vessel is safely moored and with the main engine shut down.

On the other hand the term "movements" can be interpreted more narrowly, limiting the vessel's movements to those movements that are directly connected to navigational measures, which would surely not include a "dead ship" being safely moored and undergoing cargo operations.

Exclusions and exceptions

Similar to the Nordic Plan, there are limitations in cover under the German conditions for third party liabilities arising from movements of the cargo gear, ramps, hatch covers etc. Any such damage is excluded under H&M insurance but would usually be covered under the vessel's P&I cover.

Final remarks

Example

The following example may help to illustrate these rather theoretic rules: a safely moored vessel is shifting berth along the quay under its own power and with the gangway mistakenly still in lowered postion. Damage is consequently caused to some shore installation. This would be covered under the German conditions as the damage was caused by the movement of the vessel and during a navigational measure. The same would apply if the vessel was moved by a tug as these movements are no doubt a navigational measure as well.

Under the Nordic Plan the main rule is that as long as the damage is caused by direct contact and in consequence of the movement of the vessel, the same would be covered under H&M insurance. As far as the gangway in our example is concerned, however, the Plan defines that when the gangway is in use, any damage caused will be covered under the vessel's P&I cover.

Conclusion

It should be stated finally that the rules in the two conditions outlined above generally follow the same principles. The main difference in any outcome under the two H&M insurance plans would be the recognition of indirect damages, such as wash damage, under the German conditions, as well as the interpretation of a ship's movement and the installations being in "use". For any cases beyond the borderline to H&M insurance, cover can be sought under the P&I rules.

The International Union of Marine Insurance (IUMI) Annual Conference 2015

Technical, Financial and Hu – Is there a ne

Tore Forsmo
Area Manager
Team Norway

IUMI held its 141st conference this year in Berlin, from 13 to 16 September, with the above headline as the theme for the event.
With Lars Rhodin representing The Swedish Club on the IUMI Executive Committee, this forum is seen as an important meeting place and listening post for the Club.

One of the main overall conclusions from the conference is that a greater degree of volatility in the marine insurance market will become the new normal and that volatility is invariably costly for all parties concerned.

Statistics presented in Berlin point to 2014 as being a profitable year for hull underwriters, mainly because claims were at an extraordinary low level. It is however to be expected that due to a run of large claims through the first half of the year, 2015 will become a further year of underwriting losses for the global hull market. A similar case can be made for the energy market, which is also suffering from low activity due to falling oil prices. Many of today's projects, or wells drilled, will subsequently be plugged or mothballed in anticipation of increasing returns from increasing oil prices.

Influx of capital in the market is worrying

The greatest worry for hull underwriters is not however a run of large casualties in the time to come, but the influx of capital in the market. In a hull market already awash with excess capital, the introduction of further underwriting capacity is the issue most likely to shape the hull market over the next five years according to a market poll held at the ocean hull workshop. Other topical concerns such as M&As and Solvency II regulations were clearly outranked by the capacity issue.

The new normal

Extensive discussions over what constitutes a new normal also pointed to the current market where claims frequency is reducing while at the same time the severity of those incidents occurring is on the rise. An increase in average claims costs may perhaps be another aspect of the new normal. Additionally, a

Insurers and clients i

Martin Hernqvist
Managing Director
The Swedish Club Academy AB
Gothenburg, Sweden

An increased cooperation between insurers and clients in the loss prevention sector was a recommendation made by myself during a speech at the IUMI conference in Berlin. Insurers have extensive experience from accidents, while clients may have little. Learning from own mistakes is a good thing, learning from others is even better. And insurers can help.

The Swedish Club recently produced a study into navigational claims where the Club looked specifically at trends and causes of collisions, groundings and contact claims. A disturbing fact is that these claims occur at a frequency that has seen little change over the past ten years. So, have we reached the limit where no further improvements can be made?

Well, according to the study this is not the case. We must tackle the human factors better – such as non-adherence to procedures, lack of communication and poor situation awareness. Involving shore-side management is critical, which means that we have to go outside and beyond the STCW requirements to make progress.

man Factors
w normal?

serious grounding and a complex salvage operation to a container ship was chosen by a majority of underwriters as the sort of casualty that concerned them most. Something that The Swedish Club can only echo.

Cyber Risk was also addressed in Berlin

It was concluded that an overall industry awareness is needed and that a risk-based approach to ships exposed to cyber threat should be called for. The industry needs best management practices to deal with this issue. Ships are vulnerable to cyber attacks, particularly when chartered to third parties, leaving the owner no real control over IT systems. Cyber risk is increasingly also becoming a facet of the new normal.

Unmanned ships

As a novelty of the new normal, the concept of unmanned ships was introduced and discussed on the back of the ReVolt project of DNV GL. This entails autonomous zero emission coastal box ships of around 100 TEU, an operational range of 100 nautical miles and no ballast. Even though capex will be substantial, opex savings could run as high as $50m over a projected 30-year lifespan, according to DNV GL. Needless to say, cyber risk certainly comes into play in such a scenario.

On the human element side

Martin Hernqvist of The Swedish Club Academy unveiled the findings from recent claims analysis by the Club and the impact of human behaviour on the frequency and costs of such claims. The new normal would ideally be a situation where claims related to human error or human behaviour could be eliminated entirely, although there may still be some way to go for this to become reality.

PHOTO: GDV

Lars Rhodin representing The Swedish Club on the IUMI Executive Committee.

PHOTO: GDV

Martin Hernqvist, The Swedish Club Academy AB, was one the speakers at the IUMI Conference.

n cooperation

As most members and readers of this newsletter already know, we call this Maritime Resource Management (MRM). This training tool, dealing with the root causes of accidents and available to all members, is the Club's most important contribution to safety in shipping.

The Club's MRM campaign ends and continues

In October 2013, the Club announced a two-year long MRM campaign where members were offered an MRM licence free of charge for a period of two years. The campaign gives members a chance to try and evaluate MRM and learn how MRM may assist in developing an effective safety culture in the whole company – onboard and ashore. The campaign ends on 31 December 2015. Members wishing to try MRM, with a free licence for the next two years, need to hurry up and contact the Club before the year-end.

However, as a result of the success of the campaign, the Club's management has decided to extend the campaign after the New Year with slightly amended conditions. As of 1 January 2016, there will be a 50% reduction on the start-up and licence fee.

Members who require more information, or wish to get started before the year-end, are requested to contact Lorraine Hager at The Swedish Club Academy at lorraine.hager@swedish-club.com or +46 31 638 400. You can also contact your Club underwriter.

Welcome on board!

NOTICE BOARD

PHOTO: STENA

Stena Line launches the world's first methanol ferry

SUSTAINABLE MARITIME TRANSPORT demands new solutions. Stena Line has chosen to focus on the alternative fuel, methanol, and now the world's first methanol-powered ferry, the Stena Germanica, has been launched, which operates on the route Kiel–Gothenburg. Stena Line is thus the first shipping company to operate with eco-friendly methanol as one of its main fuels.

Methanol is a biodegradable, eco-friendly and cost-effective fuel that reduces sulphur emissions and particles by 99%. The ferry's fuel system and engines have been adapted in the shipyard in collaboration between Stena Line and Wärtsilä. The technology is called dual fuel – methanol is the main fuel, but there is the option to use MGO (Marine Gas Oil) as backup. The conversion has already attracted praise for the innovative new technology and the progress this means for the marine environment.

Ban on use and carriage of heavy grade oils in the Antarctic area – now includes oil used as ballast

FURTHER TO CLASS NEWS 30/2010, a change to MARPOL Annex 1 (Chapter 9, Regulation 43) means that use of heavy grade oil (HGO) as ballast in the Antarctic area is now prohibited. The Antarctic area is defined as the sea area south of Latitude 60°S.

This new requirement applies to both new and existing ships operating in the Antarctic area from 1 March 2016, and is in addition to the existing Antarctic area ban on carriage of HGO in bulk as cargo or carriage and use as fuel.

The remainder of Regulation 43 remains the same. The specification of HGO is unchanged. If previous operations have included the carriage or use of HGOs, cleaning and flushing of oil pipelines is not required. The ban does not apply to vessels engaged in securing the safety of ships or in search and rescue operations.

What will the new requirement mean?

Shipowners and operators need to ensure that ships have the capability to discharge all heavy grade oil to available shore facilities before entering the Antarctic area. Shipbuilders and designers need to ensure that ships intending to travel in the Antarctic area are designed and built to be able to comply with the new regulation.

This information has been provided by Lloyds register.

The Swedish Club is offering free MRM licences for two years

THE CLUB IS OFFERING ALL MEMBER companies, whether P&I or lead Hull, the chance to sign-up for the Maritime Resource Management (MRM) course free of charge for a period of two years from the date of sign-up. This initiative started 1 January 2014 and will remain in place until 31 December 2015.

Starting 1 January 2016, the Club will continue the initiative by offering to pay 50% of the licence fee for a period of two years. In order to receive an MRM licence free of charge, you must sign up before 1 January 2016.

The MRM course is designed to minimise the risk of incidents by encouraging safe and responsible behaviour. It aims to foster positive attitudes, favouring good personal communication, excellence in leadership and team-working skills, and compliance with operating procedures. It is ideal for deck and engineering officers, together with maritime pilots and shore-based personnel. The objective is to ensure that sound resource management practices underpin everyday operations.

The Swedish Club's Marine Insurance Seminar 2015 is completed in Piraeus

THE MARINE INSURANCE SEMINAR is a three half-day introduction to the world of marine insurance and this year's participants had the possibility to learn more about Maritime Resource Management (MRM), Protection & Indemnity, Freight Demurrage & Defence and Hull & Machinery. Apart from the introductions, actual case examples were discussed in groups and brief workshops.

The seminar is targeted towards all members, brokers and business partners who want to know more about marine insurance and if more in-depth knowledge is required, The Swedish Club also offers a 5-day Marine Insurance Course in Gothenburg, Sweden.

The MIS ended in a well-deserved dinner at the Trocadero Restaurant in the Metropolitan Hotel.

Congratulations to all MIS participants for your time and engagement.

Payment of hire: once again an intermediate term under English law

THE COMMERCIAL COURT judgement of Popplewell J, earlier this year, in Spar Shipping AS v. Grand China Logistics Holding (Group) Co. Ltd. [2015] rejected Flaux J's controversial approach in The Astra in 2013 and has probably restored the previous position under English law. That is to say, the failure to pay hire is not a condition of the contract and if Owners wish to claim damages, as well as withdraw the vessel from Charterers' service, they will need to show that Charterers' defaults were sufficiently serious as to deprive them substantially of the whole benefit of the charter.

Popplewell J's decision was diametrically opposed to that of Flaux J. Where Flaux J considered the contractual right to terminate as indicative of payment of hire being a condition, Popplewell J drew the opposite conclusion, holding that expressly providing for it, suggested that, in its absence, there could be no such right.

As a later decision of the same court, it is more likely that Popplewell J's decision will be followed in the future; only a decision of a higher court can resolve the matter.

Philippine Seafarers Protection Act signed into law

ON 26 NOVEMBER 2015, the President of the Republic of the Philippines signed into law a bill protecting the seafarers against "ambulance chasing" and "imposition of excessive fees" on contracts entered into by seafarers with their lawyers otherwise known as the "Seafarers Protection Act" (Republic Act No. 10706).

The Act now prohibits any person to engage in ambulance chasing or the act of soliciting, personally or through an agent, from seafarers or their heirs, the pursuit of any claim against their employers for the purpose of recovery of monetary claim or benefit including legal interest arising from accident, illness or death, in exchange for an amount or fee which shall be retained or deducted from the monetary claim or benefit granted to or awarded to the seafarer or their heirs.

When a contract is entered into between a seafarer and/or his heirs and a party representing them on the claim where such representative would be entitled to fees, such fees shall not exceed 10% of the compensation or benefit awarded to the seafarer or his heirs. The act of "ambulance chasing" is punishable by a fine of not less than PHP 50,000 but not more than PHP 100,000 or imprisonment of not less than one year but not more than two years.

The same penalties shall be imposed upon any person who shall be in collusion in the commission of the prohibited act.

The Act took effect on 16 December 2015 although the Secretary of Labor and Employment, in coordination with the Maritime Industry Authority and the Philippine Overseas Employment Administration, were still tasked to promulgate the necessary rules and regulations for the effective implementation of the Act.

This information has been provided by Del Rosario & Del Rosario, The Philippines.

Main Engine Lubricating Oil Outlet diaphragm

IN 2007 THE SWEDISH CLUB PUBLISHED a Member alert, The "Forgotten" Rubber membrane, where we reported about a number of main engine claims caused by water-contaminated lubricants.

The incidents were caused by failure of the lubricating oil outlet diaphragm connecting the main engine crankcase and sump tank. We have recently seen an increasing number of incidents regarding these "forgotten" parts of the machinery, hence the need to address this topic again.

Read more in the Loss Prevention Bulletin published on our website at: www.swedishclub.com / News / Members Alert.

NEWS from Team Piraeus Team Got

Team Piraeus

Hans Filipsson
Area Manager

Hans Filipsson is Area Manager for Team Piraeus, responsible for the markets in Greece, Italy, and the Middle East. The Swedish Club has been present in Piraeus since 1980.

THE SUMMER in Greece was yet another good one, with steady temperatures above 30 degrees. According to data released by the Bank of Greece, tourist arrivals for the first semester of 2015 (January-June) grew by 18.8% compared to the same period in 2014. This development resulted in a EUR 4.171 million turnover in tourism for the period between January and June 2015. Despite the political uncertainty and the financial crisis, the tourism industry continues to grow in Greece.

And so does the shipping industry. Smaller fleets with 1-3 vessels are still facing the negative impact of low freight rates. However the big ones are getting bigger and in total figures Greek shipping is expanding. Greek owners now operate almost 20% of the global fleet. There are more to come.

The Swedish Club has had several reasons for celebrating here in Greece. On 1 October the Club had a Board Meeting in Athens and in the evening we hosted a reception at the Yacht Club, celebrating our 35th anniversary here in Greece. A party that was very well attended by over 200 people, mainly from the Greek market but also Board members and a few others from other countries. Thank you all for making this party a success.

We have also had another local event, which was the MIS (Marine Insurance Seminar). It was held at the Metropolitan hotel between 9 and11 November. It was fully booked at an early stage and we have had a few interesting days together.

We are in the middle of the renewal season and, as always, we have a lot of Hull & Machinery to do before we can actually focus on the upcoming P&I renewals. On the P&I side we have seen 50% growth since February 2013, in terms of GT, and this is a combination of organic growth and new business.

It is a challenging world. It means that we will do more of the same rather than chasing for new business.

Team Gothenburg

Jacob Vierø
Area Manager

Area Manager Jacob Vierø heads Team Gothenburg, which is responsible for the Scandinavian and Northern European markets, as well as North and South America.

IN TERMS OF ACTIVITIES and our local presence, 2015 has been this team's most ambitious year by far. Nothing is more important than spending time talking and listening at forums that include our members and brokers. We aim for dual paths when approaching the markets: the personal meeting where we make the best use of our one-stop-shopping concept to tailor make solutions for individual members, and the event-based meetings where we have the luxury of approaching entire shipping communities with our ideas and products, as well as getting the words of the market as feedback when planning for the Team's future activities.

As I write, we are also planning our event-based activities for next year including at major shipping hubs such as Hamburg, Bremen, Copenhagen, Istanbul and Gothenburg. Besides these traditional strongpoints of the Club, we may add new events and venues so stay tuned.

A pleasant observation is that the vessels insured by Team Gothenburg have had a quite smooth ride on average during 2015. This is a combination of many things of which prudent underwriting and alert claims handling contributes on our own account. Most significantly – of course – is our members approach to their daily operations ashore and at sea.

We want to continue this journey and will further vitalize the good cooperation we have with the Club's loss prevention team and during the upcoming period we will bring our loss prevention techniques and culture to the table at our member meetings and find spots where these renowned Club products will add to the further prevention of casualties.

I would like to remind you that Loss Prevention, The Swedish Club way, is even more than our standard offerings such as MRM and SCORE. There is a wealth of data and knowledge available amongst my colleagues. I am convinced that our Team can contribute to member's projects in reducing claims, so I would welcome your constructive challenges in making shipping even safer by including us.

And while I am at it: The Swedish Club's biggest investment in maritime safety – the free MRM membership – continues to the end of the year and even after the New Year will continue in an almost similar format. MRM can be a game changer for just about any company and this is one area where our members can reach out and receive immediate benefits for being part of the Club. Talk to any of my colleagues and we will help you with membership, or contact The Swedish Club Academy directly.

henburg » Team Asia » Team Norway

Ruizong Wang is Managing Director and Area Manager for Team Asia, serving the Asian market through offices in Hong Kong, set up in 1982 and Tokyo, set up in 1998.

DRY BULK SHIPPING and container shipping markets are very poor. However, the tanker market is doing well particularly chemical tankers. This is the general conclusion we heard during a recent trip to Singapore, Bangkok and Shanghai. We met many shipowners and operators, most of whom operate in the dry bulk sector or container trade. Many shipowners are suffering from the weak freight market and expect negative results in 2015. The common question being asked is when can we expect the freight market to rise? No one has the answer. The general view is that any recovery in the dry bulk market will be in 2017 or beyond.

The general consensus is that 2016 will continue to be a difficult year for dry bulk sector. The freight rate for the container trade is very depressed on most routes. Many container ships are laid-up, including Maersk's 18,000teu triple E class ships. Many more mega container ships are on order. The over-capacity problem will likely continue to persist for some time to come. It may also affect the sentiments on future markets.

Despite the general pessimism there is a positive note in Shanghai. Sinotrans and the CSC Group decided to establish their shipping centre in Shanghai by registering Sino Marine Corporation in Shanghai and held an opening ceremony there. The Group Chairmen Mr Zhao Huxiang made a closing speech in the ceremony. He recognized the general pessimism in the market, but he still held a positive view on the future shipping market. He argued that even China's economy has slowed down but it still has great potential and spaces for development.

State-owned enterprise reforms and "one belt, one road" initiatives will create tremendous economic activity and a demand for shipping. The event also witnessed the signing of 12 newbuilding contracts between the shipping companies under Sino Marine Corporation and three Chinese shipyards, including bulker/log carriers, container ships and product tankers. Unconfirmed news suggests that the headquarters of the recently merged shipping giant COSCO/China Shipping Group, will be located in Shanghai.

China's central government announced a couple of years ago that Shanghai will be developed to become an international finance, economic and shipping centre. It appears this is gradually taking place.

Team Norway is responsible for the Club's activities in Norway and Eastern Europe. In addition, the Team handles all the Club's energy, offshore service and construction risk lines. It is headed by Area Manager Tore Forsmo.

THE OFFSHORE SERVICE and the energy segments have been thoroughly commented on in previous "News from Norway" articles. The bearish predictions made earlier this year have so far been fairly accurate and at the moment very few believe that we will see an upswing in oil prices and thus a correlated activity upswing in the next 12 to 18 months as well.

Within these two particular segments underwriters have had to, and will continue to, deal with the reduction in insured values, lay-up rates with no loss of hire cover, a continuous competitive insurance market and currencies such as the Norwegian krone and Brazilian real deteriorating against the US dollar and Euro, by up to 25% over a one-year period. All this happening at the same time has constituted a perfect storm of sorts.

Predictions are that around 25% of all Norwegian OSVs will be laid up within the next few months and although very few shipowners have actually folded until now, chances are we'll also see OSV owners going bankrupt in future.

From the perspective of Team Norway this means, in all likelihood, a conservative approach to both new and renewed business, as well as an even stronger focus on segments and product lines that are currently underrepresented in our portfolio. More traditional shipping such as tank, RoRo and LNG are at the moment performing well and the same goes for the more specialized niche areas within these segments. This will be high on our attention list going forward.

Team Norway moved to new offices on 1 September this year, increasing the office space but still in the Tjuvholmen area of Oslo. A small housewarming reception was held at the new premises in October, with guests from both brokers as well as shipowners enjoying the friendly atmosphere.

Our traditional lunch seminars in Bergen and Oslo were also held in October focusing on our loss prevention services, lay-up and reactivation risks, as well as contractual risks in charterparties seen from the owner's point of view. Both seminars were well received and attended.

With Victor Bogesjö now aboard Team Norway from 1 September, our claims capabilities and service levels have been further strengthened. This gives the team a unique opportunity to position itself for potential business within our entire product sphere and in all the relevant segments.

MOAS:
A global search and re

MOAS, or Migrant Offshore Aid Station, is the search and rescue NGO (Non-governmental Organization) that has used the M.Y. Phoenix to save almost 12,000 lives from the Mediterranean since the summer of 2014, where it was the first private rescue mission of its kind.

It has been 42 years since the sturdy M.Y. Phoenix was built, but it has only been two years since she was transformed into the state-of-the-art lifesaver she is today.

"Most of the people we save are quick to fall asleep on the deck, covered in the warm blankets we give them. It's the first real bit of sleep they can enjoy after living in fear for weeks at the mercy of ruthless smugglers," says MOAS director Martin Xuereb.

Who are the people that MOAS saves?

MOAS is at sea to save anybody in distress. The bulk of the people in need are would-be migrants who are refugees escaping violence, persecution and hardship.

In Europe they cross the Mediterranean fleeing from places as far off as Eritrea, Somalia, and Syria. In South East Asia refugees are lured out to sea by promises of a better life only to find themselves trapped, kidnapped, abused and forced to pay smugglers for their freedom.

The use of the ocean to escape poverty, war, famine and hardship is not new, nor will it go away.

Andaman Sea

MOAS is now taking the M.Y. Phoenix to the Andaman Sea in South East Asia for the winter months where it plans to expand its lifesaving mission to another dangerous migrant crossing.

"Through this action, MOAS will be shedding light on another aspect of this pressing global phenomenon in an area where there is no known NGO rescue presence at sea," says Christopher Catrambone, the entrepreneur and philanthropist who set up MOAS together with his wife.

According to UNHCR, crossings in the Andaman Sea have risen by 34 per cent in the first six months of this year and departures are expected to resume when the weather improves.

The M.Y. Phoenix.

PHOTOS: **MOAS.EU/Jason Florio**

scue mission

Christian Peregin
Press Officer
Migrant Offshore Aid Station

Christian Peregin is the press officer for Migrant Offshore Aid Station. A former journalist, Mr Peregin now works as a freelance PR consultant. He has worked for MOAS since 2014 and has helped the organization reach millions of people by providing embedded opportunities for top journalists to be able to witness and narrate the humanitarian crisis facing some of the world's seas.

So how does MOAS work?

MOAS patrols major migrant shipping lanes, where it seeks to support the work being done by coastguards, navies and the commercial sector.

Using Remote Piloted Aircraft with thermal and night imaging, the crew monitors the area to locate migrant vessels in distress.

When a migrant vessel is spotted by the crew, or one of MOAS's aerial assets, the crew immediately provides information to the appropriate official Rescue Coordination Centre to help ascertain the vessel's condition and the migrants' needs. MOAS is also there to respond to specific requests for assistance by the Rescue Coordination Centres.

MOAS assists as directed, providing everything from food, water and life jackets to emergency treatment.

The M.Y. Phoenix is also equipped with an onboard clinic so once refugees are brought on board, they can be given first aid and treated for any injuries or illnesses. Refugees saved by MOAS have often been found suffering from dehydration, asphyxiation, fuel burns, exhaustion and other conditions.

In the Mediterranean, where MOAS is currently planning to deploy another ship to replace the M.Y. Phoenix, the NGO worked closely with Rome's Maritime Rescue Coordination Centre, which is responsible for directing the best placed assets to any vessels in distress. The MRCC would then direct MOAS to a port of disembarkation where the refugees could be processed accordingly.

Who pays for MOAS?

The initial 2014 mission, fully-funded by the founders, was conducted over two months in which more than 3,000 people were saved.

Thanks to a number of donations, MOAS was able to stay at sea in 2015 for five months.

MOAS is a registered foundation based in Malta and also enjoys charitable status in the US, Germany, Italy and the UK. To make the project sustainable, MOAS accepts financial donations on www.moas.eu/donate

From Ocean Going Liners to Little Yellow Boats

PHOTO: **The Swedish Sea Rescue Society**

The first crew on the rescue boat 'Postkodlotteriet' on Samos. From left Fredrik Forsman, Mattias Wengelin and Victor Bogesjö.

PHOTO: **Malin Hoelstad, SvD**

Victor Bogesjö and his team were involved in a number of rescues during their two weeks at Samos.

"On one memorable occasion we rescued 46 people from capsized vessels"

Many people are unaware that for all its high profile activities on the world stage, The Swedish Club has a long term commitment to the Swedish Sea Rescue Society. The Society is responsible for 70 per cent of all sea rescues in Sweden: Lars Rhodin, Managing Director of The Swedish Club has been member of the Board since 2008 and the Club regularly supports and hosts the activities of the charity.

This commitment extends to encouraging those who wish to contribute their time and expertise to support charity, as Victor Bogesjö found. An Oslo based Senior Marine Claims Executive in the Club, Victor has been volunteering with the Swedish Sea Rescue Society for 14 years. Up until now he has mainly been involved in the range of incidents you would expect from coastal traffic such as engine failure, vessel groundings, and mishaps to small craft.

This summer however, he offered hands-on support for a special initiative between the Swedish Sea Rescue Society and Schibsted Sverige aimed at saving lives in the Mediterranean, and found himself manning one of two 'Gula Båtarna' – yellow rescue boats – off the coast of Samos, Greece.

"During the two weeks I spent on Samos, we were involved in a number of rescues," explained Victor. "The passage from Turkey to the island is a well-used route – seemingly safe and short, but in fact a perilous crossing for those unprepared and in unsuitable craft. On one memorable occasion we rescued 46 people from capsized vessels and on another we helped save 36 people trapped on steep inaccessible cliffs."

While a very challenging experience, Victor takes satisfaction from the fact that the operations had gone smoothly and to plan. "We are hoping that donations will continue to come in so that the operation can run for the six months planned," he said.

After two weeks leave from the Club Victor is now back in Oslo, supporting the work of the Swedish Sea Rescue Society from dry land.

Main Engine Damage Study
– update 2015

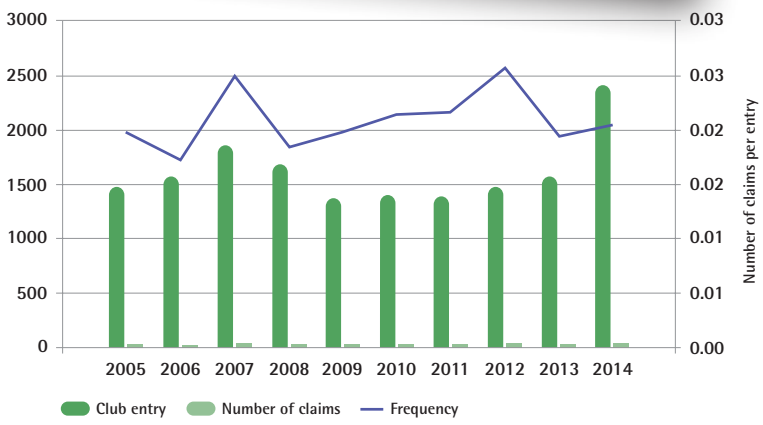
Anders Hultman
Loss Prevention Coordinator

The Club presented the findings from a seven-year study of main engine damage (2005-2011) in 2012. A new report sets out the results of a follow-up study, spanning the three year period 2012-2014. The fundamental aim of this study is to reduce the frequency/severity of main engine damage.
The report in full can be found on our website at: www.swedishclub.com / Media/Loss Prevention/Publications

Main engine claims account for 46% of total machinery claims costs with an average claim cost of USD 545,000. The frequency trend for main engine claims is stable at 2% of the vessels entered with the Club experiencing main engine damage.

Bearing failures are the most expensive main engine claim category with an average cost of nearly USD 1.6 million per claim. The cost for bearing failures is high due to consequential damage to crankshafts, etc.

Inferior maintenance and/or repair are by far the most frequent cause of damage, whilst lubrication failure is the most expensive immediate cause of damage for vessels entered in the Club.



Cause of damage

- Contaminated lubrication oil
- Experts not in attendance at major overhauls
- Using contaminated bunkers
- Purifiers not operated as per manufacturers' instructions
- Engine components not overhauled as per manufacturers' instructions
- Crew with insufficient experience/training

Recurring issues

- Insufficient planning
- Insufficient experience/training
- Non-compliance with company procedures
- Procedures which are unclear, not comprehensive enough or have not been implemented
- Not having experts attending major overhauls
- Not having adequate follow-up methods after maintenance work

Monthly **SAFETY SCENARIOS** from the Club

The Club's Loss Prevention department issues a Safety Scenario every month as an initiative for helping members in their efforts of complying with the safety regulations the International Safety Management Code (ISM Code) and the Safe Working Practices for Merchant Seamen.

Alternative scenarios will be uploaded on the Club's extranet SCOL (Swedish Club OnLine). The Scenarios are easy to download and to enter written conclusions for feedback to the shore-based organisation.

Main engine failure caused serious damage

The vessel was in ballast condition and inbound to port. It was night-time and the pilot boarded. Two tugs were connected – one on the bow and one on the stern. Before the pilot boarded, the engine had been tested and the pre-arrival checks had been completed.

On this vessel the Chief Engineer was normally on the bridge during manoeuvring. At the pilot brief, the pilot was given the pilot card and he informed the master that the plan was to berth on the starboard side. To be able to do this the vessel was required to carry out a 180° turn to port. The master lined up the vessel and started to turn when suddenly the main engine failed to respond. The master ordered slow astern but there was no response. Several repeated orders, from slow astern to full astern, were commanded from the bridge telegraph but with no response.

The main engine is a medium speed four-stroke engine driving a fixed pitch propeller through a gearbox controlled via a Woodward governor, and reversing is carried out by the main gearbox. Control is carried out via the electronic bridge control.

At this time the Chief Engineer was operating the engine telegraph and he attempted to transfer control to the engine control room. At the same time the pilot requested the two assisting tugs to turn the vessel away from danger. However, this failed. Just in front of the vessel were a tug and a moored barge, which the vessel hit at a speed of five knots.

The tug was seriously damaged and sank rapidly. Vessel A suffered significant damage to the bulbous bow and the forepeak was filled with water. After an investigation by the superintendent it was found that one of the solenoid valves had failed.

These are responsible for regulating and stopping the air signal to the governor that controls the main engine speed. Due to this failure the engine could not be stopped or the gearbox set astern.

12 issues to discuss

1. What were the immediate causes of this accident?
2. Is there a chain of error?
3. Is there a risk that this kind of accident could happen on our vessel?
4. How often do we inspect our solenoid valves?
5. Is this job included in our PMS?
6. Is the job interval sufficient?
7. How could this accident have been prevented?
8. What sections of our SMS would have been breached, if any?
9. Is our SMS sufficient to prevent this kind of accident?
10. If procedures were breached, why do you think this was the case?
11. What do you think is the root cause of this accident?
12. Do we have a risk assessment onboard that addresses these risks?

P&I Claims Analysis – update 2015

In our coming P&I Claims reports you will find a number of measures you can adopt to prevent casualties from occurring.

For detailed information about specific claims, statistics, interesting topics and suggested preventive measures, please refer to the publications soon available on our website.

Joakim Enström
Loss Prevention Officer

To make these studies and analysis conclusive, we limited the types of vessels to bulk carriers, container vessels and tankers, which represent 80% of our insured vessels.

For the same reason, we have restricted the number of claim categories in order to be representative of the Club's overall claims experience. The chosen claim categories include cargo, illness, and injury, which represent the highest frequency of claims. Other categories, such as pollution and other P&I claims, (including wreck removal liabilities) on average, show a much higher severity. Fortunately, these claims are infrequent and their scarcity makes it difficult to establish a trend or pattern. They are often connected to a catastrophic navigational claim, such as a collision, contact or grounding.

Another important decisive factor as to whether, or not, a "like-for-like" comparison between the vessel and claim types can be made, is whether the vessels' trading patterns and number of crew on board are similar. For bulkers, containers and tankers we can make this comparison.

Costs have risen over the past ten years, with this rise mainly affecting the frequency of claims above USD 5,000 after the deductible. For claims below USD 5,000 there is actually a drop in frequency. We also believe that more intense trade with less time on board to prepare for critical operations has resulted in a higher number of crew-related incidents.

Cargo

Apart from catastrophic claims, the most expensive cargo claims are contamination. This means that cargo was contaminated, or not in a proper condition when loaded, usually caused by an inherent vice or water leaking through cargo hatches.

Bulk carriers

Most common claim types are Wet damage, Shortage & Contamination. Concerns on bulk carriers:

- Leaky hatch covers (coamings/rubber seals)
- Heat damage
- Contamination (cargo hold cleaning)
- Shortage (common, depending on cargo and geography)
- Maintenance of sounding and vent pipes
- Liquefaction
- Inherent vice
- Flooding of cargo holds (manhole covers for ballast and bunker tanks not secured correctly after yard visit).

Container vessels

Most common claim types are Physical damage & Wet damage. Concerns on container vessels:

- Not securing containers according to the cargo manual
- Charterer's loading plan differs from the vessel's cargo plan
- Cargo manifest is not correct and does not include all International Maritime Dangerous Goods (IMDG) cargo
- Reefer containers need to be monitored during the voyage because small changes in temperature can ruin cargo
- Crew ignoring bilge alarms in cargo holds
- Bilge alarms not maintained and tested properly
- Not avoiding heavy weather
- Excessive speed in heavy weather.

Oil Tankers

Most common claim types are Shortage and Contamination. Concerns on chemical/product tanker:

- Gaskets on tank hatches in poor condition
- Incorrect cargo cleaning
- Failure to close valves after tank cleaning operations causing cargo contamination
- Improper draining of old cargo
- Improper loading plan addressing which valves and lines to be used
- Poor sampling procedures
- Not following charterer's instructions
- Not maintaining required cargo temperatures
- Incorrect soundings
- Contamination of palm, vegetable, and coconut oils, as these have little value once contaminated and lead to expensive claims

Injury

We have observed that slips and falls are the biggest concern over all three types of vessel. These are mainly caused by:

- Equipment on deck
- Poor lighting
- Catwalks and grating damaged during loading and unloading.

Illness

The most common illness on board all three types of vessel is cardiovascular disease, which is also the most costly. It is mainly caused by:

- Obesity
- Poor diet
- Smoking
- Physical inactivity.

If we look at all the claims that we have reviewed we get the following overall causes:

- Lack of training, both regarding company procedures and practical skills
- Taking unnecessary risks
- Lack of experience
- Complacency
- Ignoring best practices and approved procedures
- Lack of belief in safety and over confidence in one's own ability
- Generic company procedures, which are not suitable for the vessel's trade and operation
- Lack of communication between crew members
- Poor communication between crew and office staff
- Not acknowledging cultural differences between nationalities, company and professions
- Not being assertive when spotting mistakes being made.

The team representing The Swedish Club at the NSB Cup was from left: Magnus Gustafsson, Martyn Hughes and Tilmann Kauffeld.

A big "thank you" to our friends in Buxtehude

THE EXCITEMENT began when the invitations arrived to take part in the 24th NSB Cup to be held on 11 September 2015.

A team was soon formed to represent TSC at the event. After a brief discussion about goals, objectives and strategy, it was decided to follow the Olympic spirit: "the important thing is not winning but taking part". So we joined a remarkably well-organised day of great sports and even greater sportsmanship, maintaining old friendships and making new friends, enjoying good food, a lot of cheering and fun, fun, fun. In total, close to 130 athletes participated from both NSB and a variety of its service providers, suppliers and business contacts.

After the day's sports, mainly in disciplines most of us had not seen since our days at school, if at all, we were warmly welcomed "Ashore in Buxtehude" with around 300 other guests. Under the motto "Let's go maritime" we were taken on a truly memorable NSB cruise. We enjoyed the delicious fish and chips and Labskaus that was served, as well as the first class entertainment taking us on a musical journey around the world.

The TSC team was not amongst the prizewinners; we were, however, very well rewarded with a fantastic day out of the office. Thank you, NSB.

From left: George Agathokleous of British Bulkers and Hans Filipsson, Area Manager in Team Piraeus.

Some of the Greek members of The Swedish Club Board gathered for the evening. From left: Michael Bodouroglou (Allseas Marine S.A.), John Coustas (Danaos Shipping), Demetri Dragazis (Latsco (London) Ltd), Lars Rhodin (The Swedish Club) and Diamantis Manos (Costamare Shipping Company).

The Swedish Club celebrates its 35th anniversary in Greece

THE SWEDISH CLUB OFFICE in Piraeus was established already in 1980. In maritime circles, there is a longstanding relationship between Sweden and Greece. During the 70's Greek shipowners bought secondhand vessels from Sweden. They also had a few newbuildings at Swedish shipyards and it was also during this decade when the Club decided to go International.

Today Greek shipowners represent about 25% of our entire portfolio and five Greek shipowners are represented on our Board. There is a strong commitment between our Greek Members and our Club.

Following our Board meeting on 1 October, we celebrated the 35 years in Greece with a reception at the Yacht Club of Greece, where just over 200 people attended. It was a good mix of members and other business partners. Thanks to everyone who attended and to all of you who have supported The Swedish Club over the years.

From left: Erik Lund at The Swedish Club Norway, Anders Mjaaland at Bergvall Marine and Lars Rhodin at The Swedish Club.

From left: Morten Lund Mathisen at Wikborg Rein, Marcus Lindfors at The Swedish Club Norway together with Herman Steen at Wikborg Rein.

Housewarming party in Oslo, 22 October

SOME 50 GUESTS from the local marine insurance market joined The Swedish Club at a housewarming party, celebrating the move to new office premises at Tjuvholmen, Oslo.

The Club has been present with a local office in the Norwegian market since 2010. The new visiting address is Dyna Brygge 9, Tjuvholmen, which is beautifully located right on the seaside of the Oslo Fjord.

From left: Jan Gunnar Berg at Willis, Tord Nilsson at The Swedish Club, Tom Midttun at NorthEdge and Tore Forsmo at The Swedish Club Norway.

Ms Fay Presto wowed the audience with some magic tricks.

Opening of the Club's new office in London

BROKERS AND MEMBERS joined The Swedish Club on 22 September to celebrate the opening of the Club's new office in London. The event was held at the prestigious Royal Automobile Club in Pall Mall and attracted almost 100 guests from all areas of the maritime insurance industry.

The new London office was set up earlier this month, and is situated at New London House, 6 London Street. Headed by Lars Nilsson, its aim is to forge closer links between the Club and this important maritime centre.

The evening was given a touch of magic by the presence of award winning magician, Miss Fay Presto. She wowed her audience with a stunning range of close up magic tricks and left many doubting their own eyes.

Lars Rhodin then welcomed everyone to the event. He recounted an entertaining tale concerning relations between Sweden and the UK, and highlighted the many and varied characters set loose on England's soil by the Swedes. The formal part of the evening then concluded with a brief message from Lars Nilsson promising to meet everyone in the London market on a regular basis.

Managing Director Lars Rhodin welcomed the guests to the event.

Lars Nilsson concluded the evening with the promise to meet everyone in the London market on a regular basis.

Lunch Seminars in Norway

THERE WAS A GOOD turn out by the market when the Club's Oslo office hosted its traditional lunch seminars in Bergen and Oslo on 27 and 29 October respectively.

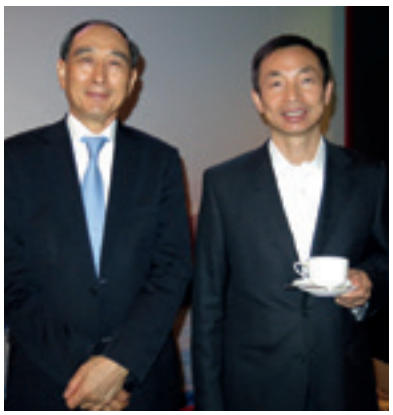
In addition to the Club's state of affairs and presentation about its MRM loss prevention program, talks were given by the classification society 'DNV GL' concerning technical issues with lay-ups (currently affecting the offshore/energy markets), and by the law firm Thommessen regarding contractual issues related to the offshore and energy market, specifically about early termination of contracts, delays and change of works.

We look forward to warmly welcoming everyone to next year's events.

Bergen, 27 October.

Oslo, 29 October.

Seminar in Shanghai, 18 November 2015



From left: Ruizong Wang, Area Manager at The Swedish Club Hong Kong office together with Weng Yi of China Shipping Group, who is also a member of The Swedish Club board.

A SEMINAR that covered subjects regarding dispute resolutions, especially relevant in today's shipping market. It was a well-attended seminar with around 100 participants, who also got the opportunity to meet and discuss with our claims handling team members.

Staff News

GOTHENBURG

Marina Smyth Samsjö
Marina has been appointed Marketing Communications Manager in the Club's Marketing Communications department as from 10 September 2015. Marina holds a BSc in Business Economics and Administration with special focus on Marketing. She has previously worked building global and regional brands at SCA and as a consultant.

TEAM PIRAEUS

Dimitra Chourdaki
Dimitra has recently completed a claims traineeship with the Club's Team in Gothenburg and has now accepted permanent employment as Claims Executive in Team Piraeus. She holds an LLB from the University of Athens including studies in Maritime and Transportation Law in Stockholm. She also has an LLM in Maritime Law from the Scandinavian Institute of Maritime Law in Oslo.

TEAM ASIA

Shirley Wu
Shirley joined the Club's Hong Kong office on 1 September as Claims Manager, P&I and FD&D. She previously worked for Holman Fenwick Willan in Hong Kong and specialised in shipping and commercial litigation. She has been admitted into practice as a solicitor in England, Wales and Hong Kong.

Nancy Kam
Nancy joined the Club's Hong Kong office on 12 October as Claims Manager FD&D and P&I. She holds degrees in Economics as well as in Law from UK and Hong Kong universities. She is a solicitor admitted to practice in Hong Kong. The last five years she has worked for Gard Hong Kong Ltd with FD&D and P&I claims.

Club Calendar 2016

31 March	Board Meeting	Singapore
20 April	Club Lunch	Piraeus
21 April	Club Dinner	Istanbul
26 April	Club Seminar	Hamburg
27 April	Club Seminar	Bremen
9-13 May	Marine Insurance Course	Gothenburg
15-17 June	AGM events	Gothenburg

For further upcoming events, please refer to www.swedishclub.com

❶ How
much of the world's surface is covered by ocean?

1 50%
X 60%
2 70%

❷ Which
of the following are not for sailing in?

1 a barque
X a brigantine
2 a landau

❸ How
many Academy Awards did the motion picture Titanic win?

1 3
X 7
2 11

Mail your answer to quiz@swedishclub.com

The first right answer will be awarded a Club give-away.

Winner of Club Quiz 2-2015

Winner of Club Quiz in Triton No 2-2015 is Ülkem Gürdeniz, OMNI, Istanbul, Turkey who has been awarded a Club giveaway.

The right answers to Club Quiz No 2-2015 are:

1: 1 or 2 *(Square knot or Reef knot)*
2: X *(1744 was the Baltic Exchange established)*
3: X *(229 meters is the maximum length overall of a Kamsarmax)*

SVERIGES ÅNGFARTYGS ASSURANS FÖRENING
The Swedish Club
Est. 1872

The Swedish Club is a mutual marine insurance company, owned and controlled by its members. The Club writes Protection & Indemnity, Freight, Demurrage & Defence, Charterers' Liability, Hull & Machinery, War risks, Loss of Hire insurance and any additional insurance required by shipowners. The Club also writes Hull & Machinery, War risks and Loss of Hire for Mobile offshore units and FPSO's.

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