

New STCW training CD launched

Most of us take the safety signs that we see around our workplace every day for granted, but when we enter a new environment those signs have the potential to save us from injury or even death.

For this reason, an understanding of safety signs is one of the first requirements listed in the Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Code 95.



Seafarers joining a ship must receive suitable familiarisation training before they are allowed to undertake any shipboard duties.

An understanding of the common safety signs found on a ship was, therefore, chosen as one of the topics for the Association's first training module intended specifically for use as part of a Member's onboard familiarisation training programme. The package, produced in both CD and video format, will assist Members to meet their obligations under Chapter VI of the STCW Code and section 6.3 of the ISM Code.

Most of the STCW familiarisation requirements, such as understanding man-overboard procedures and the use of watertight doors, have already been highlighted in the Association's recent MAST poster series. However, a number of Members have requested additional training material to support that which is available from commercial sources. The CD and video contain a simple but important message and can be watched by individuals or groups. In either case, the audience is encouraged to think about the different types of signs and alarm signals in use on board their own ships.

A series of posters providing information about the various types of signs and symbols was launched with the last issue of Signals to accompany the CD. The second poster in the series accompanies this issue and illustrates the use of warning signs. These are the familiar signs showing a hazard on a black triangle on a yellow background. The remaining posters in the series will illustrate mandatory signs and other types of permanent signs regularly found on board ship.

The Association's Loss Prevention Department is always striving to improve the service it offers, so Members or seafarers can use the leaflet accompanying the CD to provide feedback about the training module or make suggestions about future topics. It can also be used to order special packs containing a full set of the posters and a CD or video.

The copy of this edition of Signals sent to all Members and entered ships includes a CD for use during the onboard familiarisation training required by STCW 95. The CD is formatted to run on shipboard computers, but if that is not possible, Members can use the accompanying leaflet to order a free copy of a VHS video that contains the same material.

Members of the Association can also order additional copies of the CD and poster at £15 per set. Non-Members can obtain copies at £25 per set.

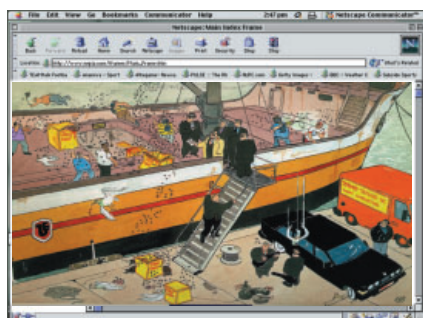


Loss prevention on-line

Extensive details of the Association's loss prevention initiatives, publications and training courses can be found in the dedicated loss prevention section of the Association's website at www.nepia.com

The section includes details of forthcoming training courses and seminars, as well as reports on recent events. The growing range of loss prevention guide books, posters, videos and other support material is regularly updated along with the order form. Many of the posters and other cartoons can be downloaded or set as screen-savers. Back issues of *Signals* as well as *Signals Specials* and *Signals Experiences* are available. The search facility and indexes assist with research.

In addition to other sources of information on the site, the news and press release sections of the site provide the latest information on important topical issues.



INSIDE:

Page 2
Asbestos

Page 3
Due Diligence

Page 4
Clean Bills

Page 5
Oily water Separators

Page 6
Crossing Situations

Page 7
Working with ISM

Philippines – crewing developments



THE REVISED POEA CONTRACT

After two years of objections, temporary restraining orders and negotiations, the revised Philippine Overseas Employment Administration (POEA) contract, setting standard terms and conditions for the employment of Filipino seafarers, was finally declared effective from 6 June 2002.

Terms and conditions provided in the contract are minimum requirements acceptable to the POEA for the employment of Filipino seafarers, although clauses in union contracts may differ as they are negotiated independently with the POEA. In setting the revised standards, the POEA has more clearly defined employers' obligations for work and non-work related illnesses and tried to clarify the clauses relating to forum and jurisdiction.

A copy of the revised contract should be available from Members' own manning agents, or alternatively from the Association's personal injury department.

ENHANCED PRE-EMPLOYMENT MEDICAL SCHEME

The Association and its Members have been increasingly concerned about the number of

medical repatriation incidents which have been potentially life threatening for the seafarers concerned and in some cases, dangerous for their colleagues working alongside.

In most of these cases, the medical condition could have been detected if the seafarer had undergone a thorough pre-employment medical examination. Therefore, in response to the requests of Members, the Club has implemented an enhanced pre-employment medical scheme in the Philippines. Two reputable clinics are taking part in the pilot project which could, if successful, be expanded in the Philippines and extended to other major crew supply areas. An enhanced test structure for three age bands has been devised with the assistance of UK based Medical Rescue International, who will also conduct annual audits of clinics involved in the programme to ensure consistent levels of professionalism and service are maintained.

Circulars have been sent to all Members, and copies are available on the Association's website at www.nepia.com. If more information is required, please contact Judith Burdus at the Club.

Athens Convention draft protocol

The Legal Committee of the International Maritime Organisation (IMO) has now prepared a draft protocol to amend the Athens Convention 1974, the consequences of which could be immense upon affected carriers. It is expected that the conference to consider the draft will be convened in October this year.

Liability for the sea carriage of passengers is presently governed by the Athens Convention 1974, the Convention came into force in April 1987, but there have been a further two Protocols in 1976 and 1990.

Presently, Article 3 of the convention holds the carrier liable for damage suffered as a result of death or personal injury to a passenger if the incident occurred in the course of carriage and was due to the fault and neglect of the carrier or their servants or agents acting within the scope of their employment.

Article 7 of the convention limits the carrier's liability to 46,666 Special Drawing Rights (SDR), although this was increased to 175,000 SDR under the 1990 Protocol. Some countries have also increased the level of limitation within their domestic law.

However, there remain a number of concerns about the convention, in particular with regard to the maximum limit of liability, which although adequate in 1974, many believe is now woefully insufficient.

The main changes contained in the protocol include:

- Imposition of strict liability (liability without fault).
- Increased limit for personal injury and death, possibly up to SDR 500,000 per carriage per passenger.
- Compulsory insurance with direct action against insurers.

Members should remember however that the protocol has not yet been accepted. The International Group has made a submission detailing its concerns regarding the proposals and the unacceptable burden that they place upon shipowners.

Members with queries regarding the Athens Convention, current signatory states and their limitation levels should contact the personal injury department at the club.



Handling Asbestos

The House of Lords has overturned the decision reported in issue 47 of Signals by the English Court of Appeal that, unless a claimant could demonstrate by which individual employer they had been exposed to the particular asbestoses fibre which caused the specific condition of mesothelioma, he would not be able to recover against any of the potential defendants.

On the grounds of public policy, the House of Lords decided that a lower causation threshold should be used. Provided the claimant can show that his exposure to asbestos with two or more employers materially increased the risk that he would develop the mesothelioma, which is a rare form of lung cancer, this will be treated as proof that each defendant materially contributed to the illness.

The UK Government M Notice 1428 dated 1990 gives comprehensive guidance on health hazards and precautions when dealing with asbestos on UK registered ships, which is relevant to all vessels. A copy can be obtained from the MCA website, mcagency.org.uk/msn

This merchant shipping notice describes the main types of raw asbestos, uses of asbestos in processed form aboard ships and general health hazards. It explains the responsibility of the employer to assess exposure to risk on board ship and available controls to minimise such exposure as well as further precautions to be taken when maintenance

work or emergency repairs are being carried out which are liable to create asbestos dust. Advice is also given on precautions to be taken when asbestos is carried as cargo.

GOOD PRACTICES

There are certain requirements upon employers for UK registered ships, that we believe are good practices to be adopted by all Members.

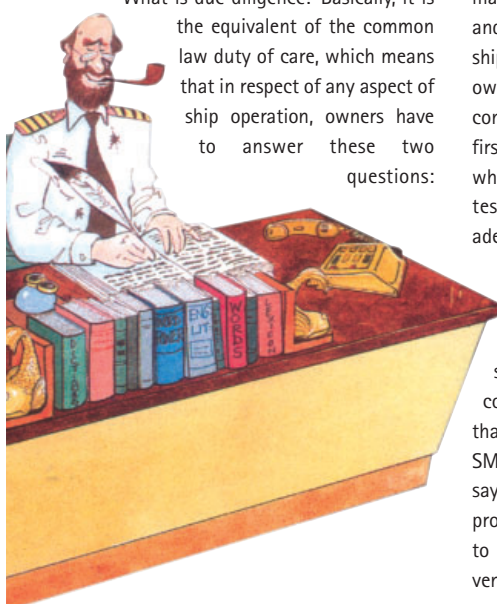
- Use of asbestos to be banned on ships.
- When ships are being repaired or overhauled, asbestos should be removed by approved contractors and in accordance with relevant legislation and regulations, where it presents a risk to health. It should not be undertaken by ships own crew.
- The employer is to carry out an assessment on the risk of exposure to airborne asbestos dust. A permanent record of this assessment to be kept on board.
- A crewmember who might be working in the vicinity of asbestos is to be informed of its presence by the master and told to report any defects immediately.
- A series of steps are required to be taken if any asbestos on board is found to be in a defective condition or where maintenance work or emergency repairs are carried out.

Due Diligence Demonstrated

Until now, many owners have heard the words 'due diligence' with a degree of fear and trepidation. All defences to cargo claims under the Hague and Hague Visby regimes and, often questions as to whether the owner will be able to recover general average contributions from cargo, start with the consideration as to whether the owner has exercised due diligence. Frequently, owners are sure that they have, but have been unable to prove it.

With the application of the ISM Code now extending to all commercial vessels over 500 tonnes, owners should now be able to answer the question, "Can I prove that I have exercised due diligence?" with a resounding "YES".

What is due diligence? Basically, it is the equivalent of the common law duty of care, which means that in respect of any aspect of ship operation, owners have to answer these two questions:



- Did the owner, master and crew do what skilled and prudent owners, masters or crew should reasonably have done, and,
- If so, was it done with reasonable skill, care and competence?

The following three part formula is a good summary of the ISM Code:

1. Write down what you do,
2. Do what you have written down,
3. Produce documentary evidence to prove what you have done.

The Safety Management System (SMS) required by the ISM Code is a device whereby owners and their masters can consider all aspects of ship operation and formulate statements of good procedure for all shipboard and onshore operations. This gives the owner and the master the opportunity not only to consider what should be done, in order to satisfy the first test above, but also how it should be done and what the results should be, to satisfy the second test above. Provided the master and crew adequately record their activities, the requirements of both due diligence and of the ISM Code should have been met.

If an owner is able to show that his safety management system is adequate and comprehensive, that it is followed by the crew and that the crew record what they do to follow the SMS, the owner can face the world with a smile and say, "Yes, I have exercised due diligence and I can prove it!" This will, as a natural consequence, lead to a safer, more efficient and more profitable venture for all concerned.

GPS Vulnerability

Maintained by the US Department of Defence, and controlled from American soil, Global Positioning Systems (GPS) were designed to enhance the effectiveness of US and allied military forces. GPS is now integrated into many commercial and scientific applications worldwide, and one beneficiary has been marine transportation. Adopted on almost all vessels, GPS is a quick and reliable means of fixing a ship's position and an aid to navigation.

Yet over-dependency on GPS should be avoided:

1. For security reasons, the US military could introduce deliberate errors into the GPS data-read out. Civilian use of GPS could be seriously jeopardised, yet military applications, with the appropriate key, would continue to function.
2. In the wheelhouse where two such GPS receivers are installed, positions are compared as one "independent reference" to its neighbour. This overlooks the fact that the signals by which the readings are determined may carry errors. Practical

mistakes are also made when the incorrect chart datum is used and GPS data is plotted incorrectly.

Members are reminded of the importance of maintaining traditional skills in navigation and collision avoidance on board their vessel. A shipowner's dual obligations to exercise due diligence to make their vessel seaworthy and to load, carry and care for cargo between ports are crucial ingredients in many contracts of carriage. This would include a requirement that the master and bridge officer are suitably trained and qualified to navigate the ship safely.

If the management systems on board a vessel, including training and familiarisation, do not adequately address the safe navigation of the vessel, then "errors in navigation" may not afford an owner a total defence to cargo claims.

For the latest GPS information, including Galileo being developed in Europe visit their website <http://www.gpsworld.com>

Brazil: new fines for shortlandings



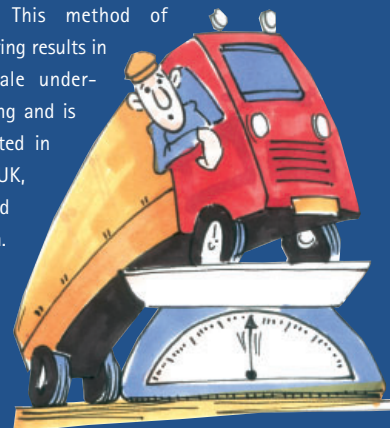
The Association understands that heavy penalties will be applied to gross weight differences on cargo discharged in Brazil as a result of changes by the customs authorities. A maximum difference of 5% will be allowed between the gross weight declared on the shippers' documentation and the official weight as registered by the customs scales at the discharge port. For ocean shipments, the fine will be Brazilian dollars 5,000 per percentage point above the 5% allowance.

Members should urge shippers to check the precise gross weight carefully at their premises before dispatching cargoes for loading. The Association is monitoring implementation of the new tariffs through the local correspondents and will report further developments in due course.

Short weighbridge, long trucks

Owners of ships carrying bulk cargoes into Tanzania frequently experience claims for alleged shortage of cargo, and Members carrying a bulk cargo to Dar es Salam should notify the Association immediately so the correspondent can be instructed to take necessary steps and appoint surveyors in order to protect the owners' position.

The main reason for the problems appears to be poor practice in operating the port weighbridge. There are a variety of methods worldwide by which local receivers can engineer an apparent shortage by misusing a weighbridge. An additional problem in Dar es Salam is created by the fact that the weighbridge is 11 metres long whilst many of the vehicles used in discharge are 15 metres long. The usual practice is to weigh the front of the truck, then the back and add the two together to arrive at the assumed total weight of the truck. The tare weight is determined at the beginning and the end of each shift, and the gross weights are determined each time the truck passes out of the port with cargo. This method of measuring results in the scale underweighing and is prohibited in the UK, US and Canada.



The Price of a Clean Bill

Cargo interests too often ask that bills of lading be issued clean although the cargo does not justify it, but in turn offer a letter of indemnity. This is a practice that the Association actively discourages. Where the bill of lading should be claused but is issued clean, the member's P&I cover may be prejudiced. The letter of indemnity itself is unlikely

to be enforceable, amounting to a fraud on the bank paying under the letter of credit.

Offers of such letters of indemnity in return for clean bills of lading should, therefore, be resisted. Unfortunately, the Member's room for manoeuvre is often restricted because the charterparty itself contains a provision which states that owners will

agree to issue clean bills of lading in return for a letter of indemnity. If owners refuse to comply where there is such a clause in the charterparty, for example by insisting that only claused bills of lading should be issued, then they will put themselves in breach of contract and expose themselves to claims for any losses that charterers might suffer as a result.

Members should of course, understand the crucial importance of clean bills of lading only being issued for clean cargoes. If a cargo is not clean, either the bill of lading should be claused accordingly or the cargo should be rejected and replaced with cargo that is clean.

This latter course of action should certainly be taken if the charterparty specifically requires clean bills to be issued.

So far as is realistically and commercially possible, members should avoid accepting charterparty clauses that require them to issue a clean bill of lading that is not justified by the condition of the cargo in exchange for an indemnity from the cargo interest. They should also be vigilant that such clauses are not slipped into the charterparty unnoticed.



Happy Day decision overturned

The decision of the High Court in the *Happy Day* in February 2001, which stated that the notice of readiness (NOR) had been tendered prematurely and was, therefore, invalid, was extremely unpopular with owners and was generally felt to be uncommercial.

The Court of Appeal has now overturned this decision and found that the charterers waived their right to rely on the invalidity of the NOR. The charterers, therefore, effectively accepted that the NOR was valid from the time of commencement of discharge, and that laytime began to count the specified number of hours after commencement of discharge in accordance with the provisions of the charter.

More generally, the Court of Appeal decided that waiver would normally be found to have occurred where:

- (a) NOR is served on charterers or receivers as required under the charter prior to arrival of the vessel;
- (b) The vessel subsequently arrives and is, or is accepted to be, ready to discharge to the knowledge of the charterers; and
- (c) Discharge subsequently commences to the order of the charterers or receivers without either having given any intimation of rejection or reservation in respect of the invalid NOR previously served or any indication that a further valid NOR is required before laytime commences.

(c) Discharge subsequently commences to the order of the charterers or receivers without either having given any intimation of rejection or reservation in respect of the invalid NOR previously served or any indication that a further valid NOR is required before laytime commences.

NOTE OF CAUTION

Whilst the above decision is welcome, Members should be aware that the Court of Appeal did confirm that if a NOR is invalid, it will not, in principal, trigger the laytime provisions of the charter. The court's decision centred on the finding of waiver by charterers. The question of waiver is generally a question of fact, and it is possible that,

in certain circumstances, the requirement of waiver would not be made out and laytime would not run at all.

Accordingly, if there is any doubt about the validity of the NOR, Members are urged to ensure that the NOR is re-tendered when and where appropriate, albeit marked to indicate that it is tendered without prejudice to the validity of any earlier NOR.

In order to avoid questions of waiver all together, Members should also consider providing in the charter that laytime will commence a specified number of hours after tender of NOR or when loading/discharging commences, whichever ever occurs first.



US Waters Warning

The US Coast Guard (USCG) and other law enforcement personnel are scrutinising the use and functionality of oily water separation systems more carefully than ever before, and the authorities have made it clear that they will seek jail sentences for masters and chief engineers of ships committing pollution offences, US attorneys Fowler Rodriguez & Chalos have warned the Association.

So far, Coast Guard investigators and prosecutors appear to have concentrated their efforts on the use of flexible hoses and flanges to effect illegal overboard discharges. Even if no pollution has occurred, the mere "discovery" of a flexible hose in



the engine room is enough to result in a grand jury investigation leading to possible prosecution for alleged illegal by-passing of the oil water separation system and/or presentation of an oil record book containing "false entries."

The USCG has now established an oily water separation system task force (OWSSTF) to examine a wide range of issues related to oily water separation equipment and its use on vessels in US waters.

Fowler Rodriguez & Chalos state that following the terrorist attacks last year, the USCG has undertaken a comprehensive programme of boarding foreign flag vessels calling at US ports and significantly increased their scrutiny of such vessels and their records and logs. Rightly or wrong, this has led to a rash of vessel and crew detentions, as well as criminal charges against owners, operators, managers, officers and crew.

Included in this list has been "an exorbitant number of investigations" of alleged MARPOL and other environmental offences. Outside US waters, the US has no jurisdiction over unauthorised discharge by foreign flag vessels, but the authorities energetically investigate and prosecute false oil record book entries, obstruction of justice and witness tampering.

FINES, PRISON OR BOTH

The firm warns that the US courts have a broad array of sanctions that they can apply to owners, operators, managers, officers and, in many circumstances, individual crew members found guilty of criminal charges, both under specific shipping related laws, such as the *Act to Prevention Pollution from Ships* (APPS), and the general criminal code. For example, violations of APPS can lead to fines of up to \$250,000 and up to 10 years imprisonment for an individual and \$500,000 for a corporation, whilst the vessel may be arrested and sold to satisfy any fine or penalty imposed.

RECOMMENDATIONS TO AVOID AND RESPOND TO INSPECTIONS AND INVESTIGATIONS BY US AUTHORITIES:

1. Everyone involved with the ship must obey all international and US regulations.
2. All flanges must be removed from any flexible hoses on board to avoid suspicion.
3. Any flanges at or near the oily-water separating equipment and overboard discharge valves should be blanked off.
4. All entries in the oil record book must be truthful and comply with MARPOL requirements.
5. All shipboard personnel must be truthful during port state inspections.
6. Owners/operators must not attempt to influence officers and/or crew other than to insist they are honest with the authorities.
7. If there is a shipboard inspection or indication of criminal proceedings, contact the Association immediately.

Alternatively: Engage legal assistance, including criminal counsel as soon as possible to assess the situation and provide advice and assistance.



MORE DETAILS OF RELEVANT LAWS

The Act to Prevent Pollution from Ships (APPS)

This could involve fines of up to \$250,000 and up to 10 years imprisonment for an individual and \$500,000 for a corporation, whilst the vessel may be arrested and sold to satisfy any fine or penalty imposed. The vessel involved may be detained where there is reasonable cause to believe the vessel or owner, etc may be subject to a fine or civil penalty for a MARPOL violation under APPS.

The Clean Water Act

This prohibits the unpermitted discharge of any pollutant by any person into navigable waters off the US. Failure to report is punishable by up to five years imprisonment.

The Rivers and Harbours Act

Any discharge of refuse of any kind is prohibited and the courts have taken the view that refuse can extend to oil or petroleum.

The False Statements Act

Providing a false statement to the US government is illegal. This includes falsifying a vessel's oil record book.

CRIMINAL LAW

Responsible corporate officer doctrine

Criminal liability for violations can be imposed on corporate officers in a position to know about and prevent a violation.

Perjury/providing false information to government representatives

Severe penalties are provided for giving false information to a government representative and also providing false testimony under oath to a grand jury. This can lead to serious criminal consequences.

Witness tampering

US authorities vigorously investigate and prosecute suspected tampering with witnesses in connection with pollution investigations and conviction can lead to up to ten years imprisonment.

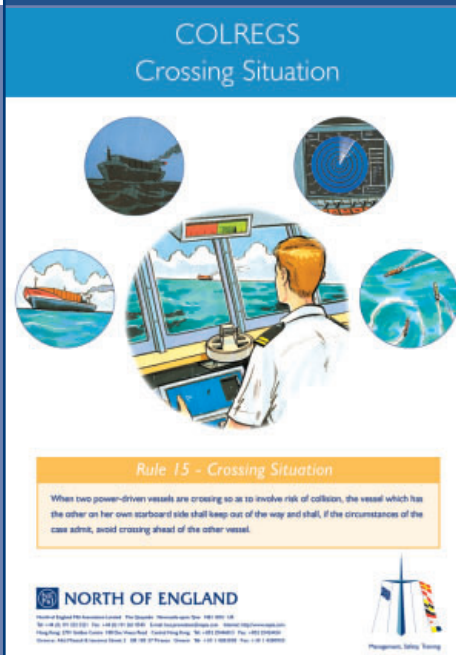
Conspiracy

If two or more persons conspire to commit an offence against the US, each shall be fined or imprisoned for up to five years or both.

Crossing Situations and Collisions

The latest poster in the 'COLREGS' series, which accompanies this issue of *Signals* addresses Rule 15 – crossing situations.

The crossing situation must command pride of place at the top of the "reasons for a collision" league table if one ever existed. A significant number of collision cases that the club handles arise as a consequence of crossing situations.



On that basis should we suppose the crossing situation is a complex problem for a ship's officer to deal with? A quick glance at Rule 15 doesn't suggest this is the case. The rule says all it has to say in three lines of text, and it is the shorter rules in the COLREGS.

So why is it so often misinterpreted or misapplied? The rule applies to power driven vessels in sight of one another whose paths are crossing so as to

result in a close quarters situation and/or risk of collision. The vessel which has the other on her own starboard side is required to keep out of the way and in so doing the ship's officer is advised to avoid crossing ahead, if the circumstances of the case admit.

It is as simple as that; one vessel keeps out of the way whilst the other stands on. Advice on what to do if you are on either vessel can be found elsewhere in the rules and is the subject of other posters in this series.

Often we are faced with collisions where the vessel required to keep out of the way fails to do so. We would like to say this happens only in congested waters where the presence of multiple vessels complicates navigational situations but, alas, it is not the case. Often collisions involving a crossing situation happen in the open ocean with no other vessels in sight.

From our experience the best advice has to be, "be decisive". When a collision situation is developing and involves a crossing situation with another vessel, establish as early as possible which of the two vessels you are i.e. give way or stand on.

- If yours is the give way vessel, take early and substantial action to best avoid the collision situation developing further.
- If you are the stand on vessel, any action you take should be in accordance with Rule 17 and you should continue to monitor the actions of the give way vessel until she is finally passed and clear.

A poor or inadequate lookout is causative of many collisions but indecision appears to underpin the reasons for many others which occur. To take no action in a crossing situation involving risk of collision attracts the greatest amount of criticism from the Judges and for good reason. *Be decisive!*

New ship security measures

The International Maritime Organization (IMO) is due to adopt new regulations on ship and port security at a conference on maritime security in December 2002. Amongst the proposed measures are amendments to Chapter XI of the *SOLAS Convention* that will introduce a new International Ship and Port Facility Security Code (ISPS Code). This code includes a mandatory requirement for operators of ships over 500 GT trading internationally to introduce ship security plans and appoint suitably trained company and ship security officers.



Persons in Distress at Sea Update

There has been a lot of activity and positive discussion about the problems of persons in distress and migrants at sea amongst interested states, organisations such as the International Maritime Organisation (IMO) and United Nations High Commissioner for Refugees (UNHCR), and the shipping industry since the publication of the Special edition of *Signals* on the subject last year. We hope to be able to report a positive and practical outcome from these discussions in the future.

In the meantime, some worrying anecdotal reports have been circulating about ships deliberately ignoring sea-borne asylum seekers in distress (see *Fairplay* June 20, 2002) and, in one case, criticism by charterers of a master who did go to the assistance of persons in distress for the delay caused.

It is important to remember that a master has an obligation to go to the assistance of persons in distress. All ship owners, operators and others involved in ships and shipping should reassure masters that they will be given full support when they carry out their obligations.



Signal Experiences Expanded

For a number of years, each *Signals* newsletter has included *Signal Experiences* – brief, anonymous case studies that are drawn from a large variety of sources, including the Association's own claim files. The two *Signal Experiences* accompanying this issue are the first of a revised format that not only examines an incident and identifies any lessons that can be learned as before, but also now looks at the relevance of some of the relevant rules and regulations.

Copies of previous *Signal Experiences* can be found on the loss prevention pages of the Association's website at www.nepia.com

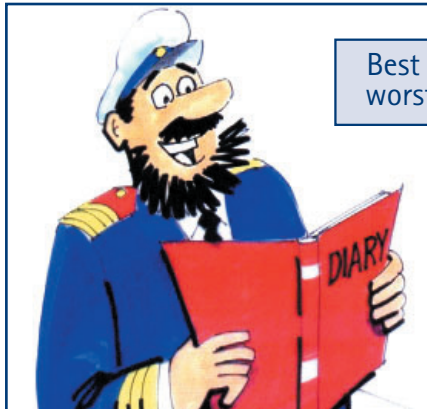


Working with ISM

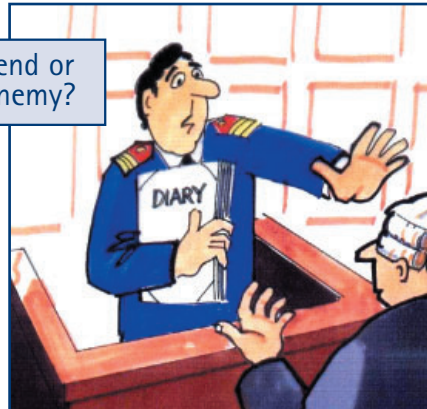
During September the head of loss prevention at the Association Phil Anderson, accompanied by P&I senior executive Tricia Forrest and Attorney Rune Dybedal of the FD&D department, ran a series of mini seminars and workshops for Members in Norway on the practical application of the ISM Code. Phil will conduct similar programmes for Members in Greece and in the Arabian Gulf during October and November.

Each seminar/workshop is tailored for the individual Member, but there is a general theme running throughout. The aim is to move away from the academic theory behind ISM and bring it alive by exploring some of the practical implications of ISM implementation. The topics addressed include:

- Due diligence to make the vessel seaworthy in light of ISM
- Evidence and audit trails
- Criminal prosecutions and corporate manslaughter
- The role of the Designated Person
- Policing the system
- The importance of reporting hazardous occurrences and near misses



Best friend or worst enemy?



The Association hopes to offer similar seminars and workshops to members in other geographical areas during the coming few months.

LEGAL SIGNPOSTS

Two cases from the High Court in London this year provide a thread through each session and guidance

is drawn from them. Although neither case involves any question of non-compliance with ISM, the judges explored issues relating to the operation of safety management systems and other practices which are relevant within the context of ISM.

The first case involves the 1998 total loss of the car carrier *Eurasian Dream* and its cargo which was considered by The Honourable Mr Justice Cresswell in the Queens Bench Division of the Commercial Court on 7 February 2002. The second case involves the 1997 grounding and subsequent salvage of the product tanker *Torepo*, decided by The Admiralty Judge, The Honourable Mr Justice Steel in the Admiralty Court on 18 July 2002.

In fact, neither vessel was obliged to be ISM certificated at the time the incidents occurred. But in the case of the *Eurasian Dream*, the managers had put on board ISM manuals which were in use in other parts of the managed fleet, and in the case of the *Torepo*, the Company was at an advanced stage of preparation and in the process of verification ahead of certification.

The main issue under consideration in both cases was whether the respective carriers had exercised

Highlighted were:

The recruiting policy – the master was not only on his first trip on that particular ship but it was also his first trip on car carriers and his first trip with that company.

An almost total lack of any familiarisation or training provided to the master or any other members of the crew – particularly with regard to fire fighting.

The large number of irrelevant and voluminous manuals which had been put on board – many of which did not apply to car carriers at all. Not one provided specific advice or guidance on fighting fires on the *Eurasian Dream*, the provision and maintenance of important items of safety equipment.

In contrast, although the claimants in the *Torepo* case made some serious, but general allegations about management of the ship, Mr Justice Steel concluded that they had failed to establish that the casualty was occasioned by causative unseaworthiness – consequently the claim failed.

The witnesses and the evidence showed a company, a ship and a master and crew who were working hard to implement good safety management systems. The claimants' allegations were found to be without substance. It cannot be denied that the *Torepo* did run aground – but this was due to an unfortunate set of circumstances and isolated incidents which occurred on the bridge immediately before the incident.

THE LESSONS

No one should realistically expect that ISM will in some way eliminate all accidents – what is important is that everyone tries their best to prevent incidents from arising in the first place. If something does happen, then it should be used as a learning opportunity to 'fine tune' the system and reduce the risk of a recurrence.

The important lesson conveyed to the participants in the seminars and workshops is that ISM – properly implemented – will be the best friend a ship operator could ever have. On the other hand, if a ship operator pays nothing more than lip service to ISM, or merely dumps a load of manuals on board the vessels, it will be the worst enemy he could ever imagine!

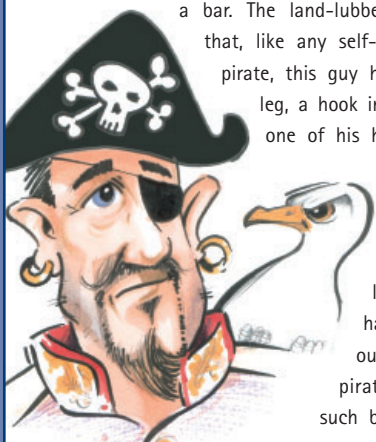


Visits to Members

Bill Douglas and Tony Baker from the underwriting and loss prevention departments of the Association were joined by Alan Lo from the Hong Kong office during a recent trip to Singapore, Hong Kong and China. They made a series of presentations at members' offices, covering topical issues such as

ship security and the impact of the recent *Eurasian Dream* judgement on the implementation of the ISM Code (discussed in the above article). The presentations were well received and generated lively discussion amongst the participants.

Dangers of new technology



A pirate was talking to a "land-lubber" in a bar. The land-lubber noticed that, like any self-respecting pirate, this guy had a peg leg, a hook in place of one of his hands and a patch over one eye. The land-lubber just had to find out how the pirate got in such bad shape.

He asked the pirate, "How did you lose your leg?" The pirate responded, "I lost me leg in a battle off the coast of Jamaica!" His new acquaintance was still curious so he asked, "What about your hand. Did you lose it at the same time?" "No," answered the pirate. "I lost it to the sharks off the Florida Keys." Finally, the land-lubber asked, "I notice you also have an eye patch. How did you lose your eye?" The pirate answered, "I was sleeping on a beach when a seagull flew over and discharged right in me eye." The land-lubber asked, "How could a little seagull dung make you lose your eye?" The pirate snapped, "It was the day after I got me hook!"

Signals swot 13

Quiz Winner

Maria Stylianidou

HSBC Limasol

Runners-up

Captain K Emmanuel - Kyklades Maritime Corp

Mr Douglas Henderson - MV "Arklow Day"

Mr John Chou - Taiwan Maritime Services

Mr Luciano Sintuzzi - Kane Radonicich Holme

Mr Brian Baker - United Marine Dredging

well done!!!!!!

Signals Swot Quiz

Welcome to Signals Swot number 14. We invite you to pit your wits against "Bosun Bo" and become a *Signals Swotter!*

This is not a general knowledge quiz but rather the answers to all the questions are to be found within this particular issue of Signals.

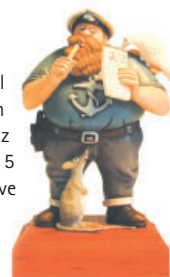
- The quiz is open to all readers of Signals.
- The quiz comprises 10 multiple choice questions - simply tick the correct answer ✓

- Send a photocopy of your answers, along with your name and, if appropriate, name of ship, position on board, company and address to the Editor of Signals at the Association.
- All correct entries received by the closing date will be entered in a prize draw.
- Closing date 13 December 2002.

PRIZES!

The first correct entry drawn will receive a 'Winners Plate' along with a limited edition statuette of our quiz master "Bosun Bo". The next 5 correct entries drawn will each receive a statuette.

Details of the winner and runners-up will appear in the following edition of Signals.



signalswot

Good luck to all you Signals Swotters!!

1 What is the subject of COLREGS Rule 15?

Crossing situations.....

Overtaking.....

Keeping a good lookout.....

2 When did the revised POEA finally come into effect?

20th February 2002.....

1st July 2002.....

6th June 2002.....

3 What is the name of the Associations series of confidential case studies issued with each edition of Signals?

Signals Messups.....

Signal Experiences.....

Signal Halyard.....

4 Which of the following recent legal cases is unlikely to have a significant effect on interpreting the implications of an effective SMS?

Eurasian Dream.....

Happy Day.....

Torepo.....

5 What is the possible new financial limit for personal injury and death under the draft protocol being prepared by IMO which is intended to amend the Athens Convention?

250,000 SDR.....

500,000 SDR.....

750,000 SDR.....

6 What is the correct address for the Associations website?

www.north.com.....

www.pandi.com.....

www.nepia.com.....

7 What is the subject of the STCW training CD which the Association has just produced?

Safety signs and signals.....

Abandon ship procedures.....

Hours of work regulations.....

8 What tolerance will the Brazilian Customs allow on cargo outturns before imposing a fine?

0.5%.....

1.0%.....

5.0%.....

9 If a charterparty includes a clause requiring clean bills of lading to be issued - what should the master do if cargo is presented for loading which is not in apparent good order and condition?

Refuse to load the cargo.....

Accept a letter of indemnity.....

Clause the mates receipts.....

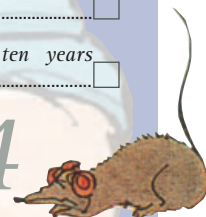
10 What punishment is potentially available against an individual under APPS?

US\$5,000 fine.....

One year imprisonment + US\$50,000 fine.....

US\$250,000 + ten years imprisonment.....

14



• In this publication all references to the masculine gender are for convenience only and are also intended as a reference to the female gender. Unless the contrary is indicated, all articles are written with reference to English Law. However it should be noted that the content of this publication does not constitute legal advice and should not be construed as such. Members with appropriate cover should contact the Association's FD&D dept. for legal advice on particular matters.

• The purpose of the Association's loss prevention facility is to provide a source of information which is additional to that available to the maritime industry from regulatory, advisory, and consultative organisations. Whilst care is taken to ensure the accuracy of any information made available (whether orally or in writing and whether in the nature of guidance, advice, or direction) no warranty of accuracy is given and users of that information are expected to satisfy themselves that the information is relevant and suitable for the purposes to which it is applied. In no circumstances whatsoever shall the Association be liable to any person whatsoever for any loss or damage whensoever or howsoever arising out of or in connection with the supply (including negligent supply) or use of information (as described above).

'Signals' is published by
North of England P&I Association Limited
The Quayside Newcastle upon Tyne
NE1 3DU UK Tel: +44 (0) 191 232 5221
Fax: +44 (0) 191 261 0540
Telex: NEPIA G 53634/537316
Email: loss.prevention@nepia.com
Website: www.nepia.com