Andrew Kirkham joins risk-management department

Andrew Kirkham joins the latest highly experienced recruit to join North of England’s risk-management department. He is a qualified shipman and chartered shipbroker, and recently completed a LLM law degree.

After 14 years at sea, Andrew worked as a port agent and then as a marine superintendent for a liner shipping company, where his role included developing and auditing health, safety and environmental management systems for a large fleet of container ships. He subsequently spent several years as operations manager for a container-ship consortium in Mombasa, Kenya.

On returning to the UK, Andrew joined South Tyneside College, where as well as teaching senior-level marine students he developed and delivered degree-course modules and short courses for shipboard safety and security. He was also involved in North of England’s distance learning and residential courses in P&I insurance and loss prevention, which are run in conjunction with the college—and will continue to be so in his new role.

Andrew’s combination of practical and academic experience will be very useful in complementing North of England’s existing loss-prevention support services to Members.

Questions

1. Where can Members find the Global Legal Navigator facility?
2. What type of letters will the next loss prevention guide deal with?
3. From 1st July 2006 ships must carry more of what type of suit?
4. Marine accident investigation reports regularly...
Pre-employment medical scheme: an update

The third anniversary of North of England’s enhanced pre-employment medical scheme for Filipino seafarers is an ideal opportunity to remind Members of the scheme.

Working with consultancy Medical Resourc Interrupt (MRI) in the UK, the Association devised specific programmes for comprehensive pre-employment medical screening on a fixed-price basis. After much research, two clinics based in Manila – Mieco S M Lao and MCSs – were approved and agreed to work on the project.

Indeed, MCSs was recently voted ‘Best outstanding clinic for maritime medicine (Philippines)’ of 2004 by the Philippine Marketing Excellence Awards Institute, the Asian Institute of Maritime & Entrepreneurship and Sales & Marketing magazine.

North of England continues to work with MRI and the two clinics in Manila. Members currently participating consider the scheme to be very cost-effective, with significantly reduced incidents of expensive medical repatriations and permanent disability claims.

As part of the Association’s continued commitment to health screening issues, a new scheme will soon be launched that will provide advice to Members on pre-employment screening anywhere in the world. Guidelines in three parts – for the prudent selection of clinics, model examinations and pre-printed real and sample forms for use by Members’ selected clinics – will be available on North of England’s intranet website for Members.

Full details of the pre-employment medical scheme for Filipino seafarers and the new initiative can be obtained by contacting Judith Bandus or David Reardon at the Association.

New safety poster on manual handling

The latest poster in North of England’s hard-hitting safety series provides the consequences of not taking precautions when lifting a load. Manual handling can include lifting, putting down, pushing, or carrying a load. Any of these operations can cause musculo-skeletal injuries if not carried out properly.

The poster depicts a crewmember suffering an injury from lifting a box on his own. If only he had carried out a risk assessment and taken the appropriate measures – such as asking for another crew member to assist and following a proper lifting technique – he would not have been injured.

The UK Maritime and Coastguard Agency (MCA) publishes the Code of Safe Working Practices for manual handling. If only... If only one had read it!

Keeping a safe navigational watch

Poor watchkeeping is a constantly recurring factor in published marine accident investigation reports. Reading those reports reveals that poor watchkeeping is a prime cause for a large number of marine accidents and that port authorities that take their security obligations more seriously can delay the vessel’s entry.

As well as reasonable health checks for all officers in charge of a navigational watch at sea (ODW), it is essential to all seafarers to have their original certificates and seaman’s books with them. The poster depicts a crewmember suffering an injury from lifting a box on his own. If only he had carried out a risk assessment and taken the appropriate measures – such as asking for another crew member to assist and following a proper lifting technique – he would not have been injured.

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Is your container ship seaworthy?

A recent incident involving the collapse of a number of containers stowed on the deck of a container ship entered in the Association in May has highlighted the potential dangers of not following approved stowage and securing procedures.

Although there was no significant cargo damage, the ensuing investigation noted the stowage of the containers was not according to the latest approved Cargo Securing Manual – such that the ship was potentially unseaworthy.

Top-heavy container stow

The main problem was that the stow in the vicinity of the collapse included containers that were heavier than allowed in the manual. Only empty containers should have been loaded on top of the top tiers, whereas all top-tier containers were full.

Furthermore, significantly heavier containers had been loaded on top of lighter ones, which was again specifically prohibited by the manual. Additionally, the manual’s stowage plans were based on a uniform stowage of standard (40’ high) containers, whereas a combination of standard and high-cube (40’ high) containers were loaded.

Excessive metacentric height

It was found the ship had a metacentric height (GM) of 3.4 metres, approximately a fairly usual condition for the vessel. However, as in most cases, the specified stowage plans and securing arrangements were based on a maximum GM – in this case 2.8 metres.

The manual specifically stated: ‘If a GM value greater than 0.8 metres cannot be avoided, a reduction in stack weights or stack heights or the shifting of masses to lower tiers in the stack should be effected’. This had not been done and there was no indication that the stowage and securing requirements had ever been calculated on the basis of a higher GM than that allowed in the manual.

Liability limits compromised

By permitting the ship to trade on a regular basis with a GM exceeding the maximum in the Cargo Securing Manual – yet still using the manual as the basis for container stowage and planning – the owner was arguably trading imprudently.

In the event of any major incident arising from a collapse of stow or similar cargo interests and the authorities might be able to bring key limitations the owner sought to establish. Furthermore, if there were injuries or fatalities or serious environmental damage, the owner and its manager might well find themselves the subject of civil and criminal prosecutions. In these circumstances, the Association’s ability to assist the Member might be prejudiced.

Potential unseaworthiness claim

The Association has previously advised about the dangers of allowing deck container stowage arrangements that breach the Cargo Securing Manual. Any master who allows this risks the safety of the crew, ship and cargo and may also breach the seaworthiness obligations of the Hague or Hague-Visby Rules.

Members are thus advised to ensure that the stowage and securing of deck containers fully complies with the requirements of the approved Cargo Securing Manual.

US Sea Carrier Initiative Agreement superseded

The Association has been approached by a number of Members seeking advice on the US Sea Carrier Initiative Agreement. Several have been presented with charterparty clauses that require them to sign up to the Agreement but have then found they are unable to do so.

The Sea Carrier Initiative Agreement is a contract under which carriers and owners of cargoising at ports in the US agree to apply various security measures to prevent drug smuggling. In the event drugs are found, penalties that would normally be applied may be reduced or not imposed.

The Agreement, which is now known as the Carrier Initiative Programme (CIP), is presently under review by US Customs and Border Protection (CBP) and its future may not be determined until early in 2004. In the meantime CBP has removed the on-line application from its website, such that it is in effect no longer possible to join CIP. Members should thus not agree to any clauses in charterparty or other contracts that require them to do so.

It is possible that CIP will be rolled into another programme called Customs-Trade Partnership Against Terrorism (C-TPAT). This is designed to encourage companies to assess and strengthen their own security measures to protect the US against the risk of terrorist activity from ships and cargoes. CBP recommends all carriers apply for membership of C-TPAT even if they are not involved in drug smuggling as their primary concern.

More information can be found on the US Customs and Border Protection website and it is possible to apply for membership in C-TPAT at www.cbp.gov/xp/cgov/import/commercial_enfo/renew/certid/apply.

Members requiring additional information should contact Mark Robinson at the Association.

Carriers’ defences for deck cargoes

Members may be asked to allow a cargo to be stowed on deck in return for a clause on the face of the bill of lading to reflect the shipper’s or charterer’s responsibility for loss or damage to deck cargo during a voyage. For example, it has recently been held in Libya that if the carrier is to avoid liability, the signature of the charterer or shipper must be included with the clause in the bill of lading or a separate written acceptance of liability must be produced.

Members are thus recommended to check the law relating to deck cargo liability in the country of discharge port, as well as the governing law applicable to the bill of lading.

Avoid stamping out bill of lading defences

Many standard form bills of lading, such as Congenbroil and Coninbill, feature words such as ‘weight, measure, state of quality, condition and value unknown on the face of the bill. By issuing bills with these words, shipowners give no warranty as to the correctness of the description of the goods and they protect themselves as far as possible against fictitious or ‘paper’ shortage claims and disputes as to, for example, the quality of the cargo shipped.

If there is a claim, the burden of proving the actual quantity or quality of the goods shipped will be placed on the receiver of the cargo. However, Members will be familiar with the fact that these words are often ignored by local courts at the discharge port. Indeed, those who use the Global Legal Navigator facility on North Online – North of England’s free intranet service for Members – will see this is one of the standard questions that correspondents are asked to advise on.

Danger of signature or stamp

It is possible, however, for Members to deprive themselves accidentally of the potential benefit of the ‘void to weight, etc’ provisions. Most commonly this happens when masters either add an additional signature or the ship’s stamp the wording on the description of the goods in the bill of lading.

Even in jurisdictions which give force to the ‘void to weight, etc’ provisions, the inclusion of an additional stamp or signature alongside the description is treated as a specific confirmation of or agreement to the quantity or quality of the goods set out in the bill of lading. The result of this is that the shipowner is bound by the figures or description appearing in the bill of lading and may therefore be liable for claims for which it might otherwise have a defence.

Mediation by the court is a Chinese judicial practice that allows civil disputes to be resolved by convening a settlement meeting presided over by a judge. The Association is grateful to Zou Zongcui of Wang Jing & Co, Tianjin Office, for writing the following article on the subject.

In a recent dispute over a ship-repair contract in China, the owner achieved a reasonable settlement shortly after the ship arrest the vessel. This quick resolution was the result of the intervention of a judge acting as a mediator in the settlement negotiations, which illustrated one of the characteristics of Chinese judicial practice, namely mediation by the court.

Such mediation by the court is an established practice whether or not to accept the presence of the judge as mediator in China.

Benefits of judge as a mediator

Parties in negotiation settlements are supposed to argue about the facts and provisions of law to back up their own claims and to encourage the opposing party to make concessions. However, negotiations often turn into a heated dispute or become bogged down by a side issue, both of which can halt progress. As a consequence, a lot of time may be wasted with no constructive outcome.

However, the presence of a judge at the settlement negotiations may provide a solution. Judges can moderate the atmosphere at the negotiation table. They can also help to clarify the relevant legal issues and analyze the liabilities based on the ascertained facts, thus helping the negotiations move forward.

In mediation, the judge has a function as mediators and how much effort they are willing to put into the negotiations whether or not to accept the presence of the judge as a mediator in China.

The judge as mediator in China

The need for persuasion

The mechanism of appointing a judge as mediator can be applied in other ways. Sometimes one party seeks to exert pressure by not ratifying the opposing party’s actions at the negotiating table. The other side is usually more willing to listen and to a judge. This does not contravene the principle of voluntary, as a judge cannot force a mediation on an unwilling party.

On the other hand, whether judges are willing to function as mediators and how much effort they are willing to put into the negotiations will depend on their case in a favourable light in the negotiations. The pros and cons of mediation by the court are currently the subject of heated discussion. Legislators are also deliberating upon its improvement in the ongoing process of Chinese judicial reform, which will no doubt lead to more effective ways for settlement of civil and commercial disputes in China in the future.
Tall ships visit Newcastle

The Tall Ship Races take place every summer in Europe with more than 500 ships from more than 30 countries worldwide participating. In July 2005, Newcastle was one of the ports of call in the races for the first time since 1993. This provided a maritime focus for three days the ships remained on the River Tyne, berthed adjacent North of England’s head office, and were visited by tens of thousands of spectators. The Association hosted a number of events during the visit, including a reception on the Alexander von Humboldt – one of the largest ships in the race – operated by the German Sail Training Association.

International fleet review

British savemills have reviewed their naval fleet off Portsmouth periodically for hundreds of years. The latest review was in July 2005 where Her Majesty Queen Elizabeth II reviewed international warships, and auxiliaries, tall ships and merchant vessels. Among the ships reviewed was Hurst Point, an ex-vessel operated for the UK Strategic Sealift Service by Fortalnd Shipping Ltd, a Member of the Association.

Loss Prevention and letters of indemnity

In 1998 North of England published a loss prevention guide on bills of lading and, following popular demand and ever-changing laws, a second edition was published in 2005. The aim of the Bills of Lading – A Guide to Good Practice, authored by international maritime lawyer Stephen Mills, is to assist ship’s officers, operators and managers, as well as those advising them, on the problems and practical issues surrounding the everyday use of bills of lading. It also lays down the legal principles and standards against which the use of bills were judged. As such the guide continues to be well received.

However, the cry of many involved in international trade is that the ‘real world’ is a different place. While the law expects the documentary aspects of international sales transactions will comply with long-established principles and standards, often times find those principles and standards difficult – if not impossible – to apply or achieve in such and every transaction. In their hour of need and/or uninsurable, and to obligations that may be not well received.

The coast guard and Marine Transportation Act of 2004 (COTA) came into effect in the US on 9 August 2005. Section 701 of this Act amended ORF 49 to require owners or operators of any non-tank vessels of 400 GT or more who carry any kind as a fuel for main propulsion, including bunkers, to prepare and submit to the US Coast Guard (USCG) a non-tank vessel response plan (NT-VRP) for each vessel.

The regulations have not as yet been finalised, but the USCG advised on 26 June 2005 it will not enforce NT-VRP requirements until governing legislation was in place, expected to be late 2005 or early 2006. Non-tank vessels may therefore operate to the US without an approved NT-VRP but the plan must be in place by the eventual issue date of the legislation.

Members are advised to check with their US representatives and with the Industry News pages of the Association’s website for further updates to these requirements.

US NON-TANK-VESSEL RESPONSE PLANS

The new guide, which is scheduled for distribution to all Members with the January 2006 edition of Signals, will provide commentary on the common types of LOI, the reasons they are used, the pitfalls and risks and some of the legal issues that arise out of their use. It will also discuss the impact of LOI on insurance cover and documentary credit arrangements, and look at the matter not only from the point of view of shipowners but also of charterers, operators and commodity owners.

As with Bills of Lading, the new Letters of Indemnity guide will look at both theory and practice and be supplemented by legal cross-references. It will also examine a typical LOI and explain its terms and their purpose.

In the interests of mutuality, P&I clubs need to apply the same principles and standards as the law. The publication of this guide is not intended to condone or ratify the use of LOIs by Members, or to suggest that they or their continued use will be viewed with any greater enthusiasm by P&I clubs in the future. Using LOIs may give rise to risks that are uninsured and/or uninsurable, and to obligations that may be unforeseen or threaten that may not be covered by the LOIs they are written on.

However, it is recognised that LOIs may legitimate assist trade on many occasions that, although are dangerous, the dangers should be identified. The Association hopes that publication of this guide will prove useful and be welcomed.

Northern fleet staff – including Tony Baker from the risk-management department, Iain Brangre and James Moran from the P&I department and Emma Lidell from the Hong Kong office – have visited Members in Singapore and Manila in the Philippines. They gave presentations and workshops on topics that included gathering evidence after admiralty incidents, the latest international pollution-control requirements and dealing with legal and commercial problems arising from the carriage of bulk-liguid cargoes. Future visits are being prepared to Members in Grenos, Hong Kong and Norway.

About the guide

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