



Andrew Kirkham joins risk-management department

Andrew Kirkham is the latest highly experienced recruit to join North of England's risk-management department. He is a qualified master mariner 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.

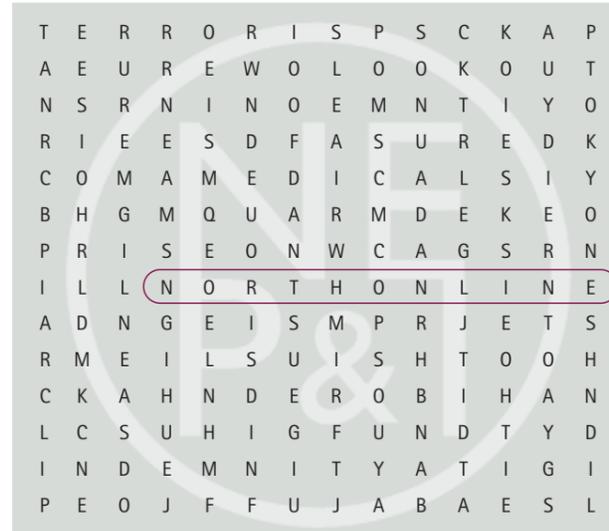
On returning to the UK, Andrew joined South Tyneside College, where as well as teaching senior-level marine students he developed and delivered degree-course modules and short courses for shipboard safety and security. He was also involved in North of England's distance learning and residential courses 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.



Signals Search 5

Find the answers to the questions in the wordsearch below. We have found the first one for you. GOOD LUCK!



Questions

- Where can Members find the Global Legal Navigator facility?
- The measures introduced by which code should help prevent stowaways?
- What is a primary duty of the OOW?
- In which jurisdiction can judges act as mediators?
- From 1st July 2006 ships must carry more of what type of suit?
- What type of letters will the next loss prevention guide deal with?
- What does North of England provide a pre-employment scheme for?
- Which PSC MOU has started an inspection campaign concentrating on fire fighting and life saving procedures?
- What acronym is the US Customs and Border Protection organisation known by?
- What could failing to follow the approved cargo securing manual make a ship?

• Signals Search is open to all readers of Signals.

• Send a photocopy of your completed search, along with your name and, if appropriate, name of ship, position on board, company and address to Denise Huddleston at the Association.

• All correct entries received by the closing date will be entered in a prize draw.

• Closing date Wednesday 28th December 2005.

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 next edition of *Signals*.

Your copy of Signals

Copies of this Signals should contain the following enclosures:

- Loss Prevention Brochure
- "If only" poster – Manual handling. (Members and Entered ships only)
- "Letters of indemnity" questionnaire. (Members only)

Signals Search No.4

Winner: John Chou – Taiwan Maritime Services

Runners-up: Captain G Singh MV "PRABHU PUNI"

Aiken Chua – Harrisons Trading, Malaysia

Ali Behzad – IRISL, Tehran

Sean O'Reilly – P&I Shipping Co, Ireland

Captain Al Shaad MV "AL ABDALI"

Answers to Signals Search 4

- | | |
|----------------|--------------|
| 1 Cargo | 6 Grain |
| 2 Three | 7 LOI |
| 3 WETREP | 8 Sulphur |
| 4 North Online | 9 Crew |
| 5 IAPP | 10 Simulator |

• 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 whatsoever or howsoever arising out of or in connection with the supply (including negligent supply) or use of information (as described above).

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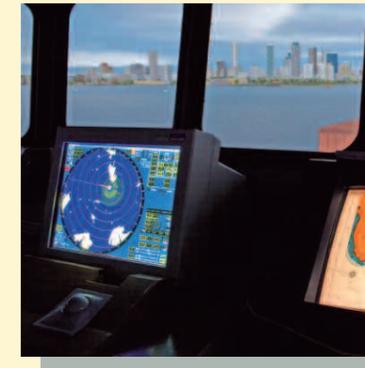
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SIGNALS

the Loss Prevention newsletter for North of England Members

How to be a better watchkeeper

Marine accident investigation reports regularly refer to 'poor watchkeeping', which is a phrase used to describe a failure of the officer of the watch to carry out one or more of their primary duties in maintaining a safe navigational watch. Many accidents could be avoided if all officers in charge of maintaining a safe navigational watch fully understood their primary duties – the first of which is considered in more detail in this issue.



See page 3 for full story

Letters of indemnity guide

In the interests of mutuality, P&I clubs need to apply the same principles and standards as the law. Using letters of indemnity may give rise to risks that are uninsured or uninsurable, and to obligations that may be unenforceable or that may not be worth the paper they are written on. However, it is recognised that letters of indemnity may legitimately assist trade on many occasions and that where they are dangerous, the dangers should be identified. North of England is working with lawyer Stephen Mills, who authored the successful loss prevention guide on bills of lading, to produce an accompanying guide on letters of indemnity.

See page 7 for full story

US Sea Carrier Initiative superseded

For many years shipowners have been encouraged to sign the US Sea Carrier Initiative Agreement to prevent illegal drug-trafficking on ships. It is often a term of charterparties that the Agreement be in place, but there is now some uncertainty about the future of the programme. Owners need to beware of what they agree in charterparties and should look to another programme instead – the Customs-Trade Partnership Against Terrorism (C-TPAT).

See page 4 for full story

False certificates of competence

Competent, experienced and motivated seafarers are essential to the safe and effective operation of any ship. Although many ship operators use pre-employment medical programmes to ensure the satisfactory health of potential crew members, when it comes to checking competence they rely only on certificates presented by the seafarer. The Association has seen examples of falsified documentation, which could leave ship operators exposed to potentially enormous costs resulting from incidents caused by inexperienced seafarers.

See page 3 for full story

Unseaworthy container ships

A recent incident has again highlighted the potentially dangerous consequences of not following the Cargo Securing Manual when planning the stowage and securing of containers on deck. The manual provisions are generally based on a maximum permitted metacentric height (GM) for a particular ship. If the GM exceeds this figure, the stowage and securing arrangements should be re-calculated and re-planned. In the event of any incident arising from a collapse of stow or similar, cargo claimants could show that the ship was unseaworthy.

See page 4 for full story

Loss Prevention Brochure

North of England has a long-standing reputation for excellence in loss prevention. It was the first P&I Club to establish a department dedicated to the task of loss prevention and providing Members with good quality information on which to base their own risk management decisions. This commitment is

continuing, but with a change of emphasis towards direct assistance to individual Members, as well as providing general guidance to the Membership as a whole. The new loss prevention brochure that accompanies this edition of Signals describes the range of publications and services provided.



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RISK MANAGEMENT



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 Rescue International (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 – Messrs S M Lazo and MCIS – were approved and agreed to work on the project.

Indeed, MCIS was recently voted 'most outstanding clinic for maritime medicine (nationwide) of 2004' by the Philippine Marketing Excellence Awards Institute, the Asian Institute of Marketing & 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 medical 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 Burdus or David Rearden at the Association.

Stowaways are still with us

With the implementation of the ISPS Code in July 2004 there was some optimism that, whatever else it might do, increased port security would reduce the number of stowaways that are so time-consuming and expensive to deal with.

North of England has been keeping records of all claims involving stowaways for a number of years, including information about the number of stowaways involved in each incident, where they boarded and what the final cost was of getting them removed and repatriated. The club's analysis indicates that the average cost of each stowaway incident has almost doubled since 2001 and that the number of stowaway claims has not declined significantly.



In many ports, whereas all ISPS Code paperwork might be order, actual security may still be below standard and allow stowaways access to ships. Although some ports are striving to improve, in the meantime they provide ample opportunity for potential stowaways to gain access to the port area,

and thus the ships. Unfortunately, those ports with the least amount of security tend to be the ones that have traditionally supplied the greatest number of stowaways. It is not surprising therefore that the ISPS Code has not yet really resolved the problem.

Hardened attitudes, increased costs

The gradual increase in related costs follows ever-hardening attitudes, mostly in Europe and North America, towards stowaways. To disembark and repatriate stowaways requires the co-operation and often the assistance of the local immigration authorities. Even though related expenses are paid for by the shipowner, the Association is finding more and more that the necessary help is not forthcoming. Instead, stowaways must remain on board and the vessel may even incur a fine, which can be substantial.

Worse still, under the ISPS Code, the presence of undocumented individuals on board can be construed as 'clear grounds' of a security breach so that port authorities that take their security obligations more seriously can delay the vessel's clearance for berth while the matter is investigated.

With the passage of time, the ISPS Code might have a positive effect in reducing the number of stowaway incidents. In the meantime Members must not rely on port security as a means of prevention. More than ever, and in line with the ship's own ISPS procedures, it is advisable to take all precautions to try and prevent stowaways boarding and to make sure that any who succeed are removed before sailing.

New safety poster on manual handling

The latest poster in North of England's hard-hitting 'If only...' series shows 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*



Merchant Seamen, which contains a useful practical guide on how to assess and carry out manual handling operations.

A copy of the new 'If only...' poster accompanies this issue of *Signals*.

An electronic copy of the *Code of Safe Working Practices for Merchant Seamen (COSWP)* can be downloaded from the MCA's website:

www.mcga.gov.uk/c4mca/mcga-guidance-regulation.htm

Ensure your crewmembers really are competent

Like the majority of ship operators, the Association firmly believes that a good crew is essential to effective operation of ships. A well-trained, experienced and motivated crewmember is less likely to cause personal injury to himself or others and more likely to be effective at watchkeeping and maintenance.

Many Members already use pre-employment medical programmes to ensure the satisfactory health of potential crewmembers. However, when checking competence, owners or their manning agents will often rely only on the certificates and seaman's books they are presented with.

False documentation

In an ideal world such evidence should be sufficient. Unfortunately the Association has seen a number of examples where documentation appears genuine at first sight but, on closer inspection, has clearly been falsified.

The possible costs of having an inexperienced seafarer on board are enormous. For example, not checking on a cargo properly can cause loss of the entire consignment and a navigational error can result in a collision or grounding.

As well as reasonable health checks for all crewmembers, Members should be absolutely certain that those crewmembers are also properly qualified and experienced for their employment. The possible consequences of not doing so are not worth risking.

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 phrase used to describe a failure of officers of the watch to carry out one or more of their primary duties in maintaining a safe navigational watch.

It follows that many accidents might be avoided if all officers in charge of a navigational watch at sea (OOW) considered how well they actually understand their duties in maintaining a safe navigational watch.

The duties of the OOW in maintaining a safe navigational watch can be divided into three main functions

- watchkeeping
- navigation
- global maritime distress and safety system.

Each of these main functions will be reviewed over the next three issues of *Signals*, starting with watchkeeping.

Watchkeeping 1 – Proper lookout

Maintaining a proper lookout at all times is the primary duty of the OOW and is a mandatory requirement under rule 5 of the International Regulations for Preventing Collisions at Sea (COLREGS). This involves maintaining a continuous state of all-round vigilance, especially by sight and hearing. The ability to carry out this primary duty must not be impaired by fatigue or workload.

Watchkeeping 2 – Collision avoidance

Collision avoidance must be carried out by applying the COLREGS. The COLREGS are written on the basis

Port State control – concentrating on safety

Members need to be aware that there is a growing trend for port State control regimes to find deficiencies relating to ships' safety and environmental policies.

For example, the Paris MOU regime is proposing a concentrated inspection campaign on the ISM Code in 2007, which will mark the end of the first five-year cycle of the Code.

The Tokyo MOU has already started carrying out a three-month concentrated inspection campaign of all ship types that will last until 30 November 2005. Inspectors will look at maintenance and operation procedures for fire-fighting, life-saving, global maritime distress and safety systems, navigation and pollution-prevention systems as well as crew familiarity with drills and emergency duties.

US detentions increase

Similarly, reports from US Coast Guard (USCG) port State control inspections show an increasing number of detentions for deficiencies related to the ISM Code safety management system (SMS). These include the following.

- 'Objective' evidence that engine room maintenance is not in accordance with the SMS.
- The SMS did not identify all equipment and technical systems in use. The omission of procedures from the SMS could lead to a hazardous situation.
- No documentary evidence to show that planned maintenance was being carried out according to the schedule stated in the SMS.
- Operating plans and instructions not in the onboard working language.
- 'Objective' evidence from an examination of the SMS indicating a serious lack of effective implementation.

of vessels 'in sight' or 'not in sight' of one another. **Looking by eye** is therefore the primary aid to collision avoidance.

Watchkeeping 3 – Surveillance of the ship

General surveillance of the ship is part of maintaining a continuous state of vigilance and could include monitoring how well the helmsman or autopilot is maintaining the ship's course, a general watch over crew working on deck and any additional measures such as those required by the ISPS Code ship security plan (SSP).

Watchkeeping 4 – Navigation equipment

Periodic checks of the navigational equipment in use should include basic practices of good watchkeeping, such as taking compass errors and comparing compasses regularly, running and monitoring the echo sounder and course recorder, and being aware of the limitations and checking

- Examination of the SMS reveals a lack of implementation of environmental procedures.

Deficiencies such as these could result in a ship being detained until an external ISM audit has been arranged and carried out.

Need for continual management system review

Members should thus continually review their safety and environmental policies and the effective implementation of their safety management systems to ensure they reflect current best practice and future trends.

For example, now that MARPOL Annex VI has entered into force, procedures to control the sulphur content of fuel oil should be included in the safety management system. Likewise any procedures regarding on-board security measures in the safety management system should cross-reference with the requirements of the ISPS Code ship security plan.

Ship operators need to show evidence of a continuing commitment to safety management beyond initial implementation. Port State control inspectors will be increasingly looking for evidence of a management review process that is seen to take effective action in response to issues raised by procedures such as audit reporting, accident reporting and reporting of non-compliances and non-conformities.

Further information about the USCG, Paris MOU and Tokyo MOU Port State Control programmes can be found on their respective websites: www.uscg.mil/hq/g-m/pscweb www.parismou.org and www.tokyo-mou.org

for the standard errors when using bridge navigation equipment.

Watchkeeping 5 – Bridge team management

Full attention must be given to the duty of keeping a proper lookout. At any time when the OOW feels that this ability is compromised they must call additional crew to the bridge or if in doubt call the master. A helmsman should not be called upon to carry out the duty of lookout in addition to steering the ship.

The OOW should always be aware of the master's and company's standing orders regarding the OOW acting as sole lookout.

Members and seafarers wanting further information should refer to the *Bridge Procedures Guide* published by the International Chamber of Shipping and *STCW 95 chapter VIII* published by the IMO.





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 has again 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 flag State-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 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 specifications were based on a uniform stowage of standard (8'6" high) containers, whereas a combination of standard and high cube (9'6" high) containers were loaded.

Excessive metacentric height

It was found the ship had a metacentric height (GM) of 2.4 metres, apparently a fairly usual condition for the vessel. However, as in most manuals, the specified stowage plans and securing arrangements were based on a maximum GM – in this case 0.8 metres.

The manual specifically stated: *'If a GM value greater than 0.8 metres cannot be avoided, a reduction in stack masses 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 re-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 break any limitation 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.

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 the discharge port, as well as the governing law applicable to the bill of lading.

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 scheme under which carriers and owners of ships calling at ports in the US agree to apply various security measures to prevent drug smuggling. In the event illegal drugs are found, penalties that would normally be applied may be reduced or mitigated.

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 2006. In the meantime CBP has removed the on-line application form from its website, such that it is in effect no longer possible to join CIP. Members should thus not agree to any clauses in charterparties 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 stopping drug smuggling is 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_enforcement/ctpat/

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

Carrier's 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 carriage. A commonly worded clause would state *'cargo shipped on deck at shipper's/charterer's risk, carrier not responsible for loss or damage to deck cargo howsoever caused'*, or something similar.

However, in some jurisdictions, such a clause may not be sufficient to exclude the carrier's responsibility for damage or loss to deck cargo

Avoid stamping out bill of lading defences

Many standard form bills of lading, such as Congenbill and Conlinebill, feature words such as *'weight, measure, quality, quantity, condition, contents 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 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 *'said to weigh, etc'* provisions. Most commonly this happens when masters either add an additional signature or the ship's stamp alongside the description of the goods in the bill of lading.

Even in jurisdictions which give force to the *'said to weigh, 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.



Masters are generally not under an obligation to place an additional stamp or signature next to the description of goods on the face of the bill of lading and should politely refuse to do so if they receive such a request from a shipper or vessel's agent. If shippers or agents insist on such a signature or stamp being included, masters are advised to contact the local correspondent, which can usually establish whether or not masters are entitled to refuse such a request under local law.

Members requiring access to North Online to view the Global Legal Navigator should contact Nigel Bradshaw at the Association for a confirmation slip: nigel.bradshaw@nepia.com

The judge as mediator in China

'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 shipyard arrested 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 Chinese judicial practice, which involves resolving civil disputes and concluding related cases by convening a settlement meeting presided over by a judge. It is distinguished from common settlement negotiations by the presence of the judge.

Article 9 of *Civil Procedure Law of PRC* stipulates that: *'In civil proceedings, the People's Court shall conduct mediation in accordance with the principle of voluntariness and legitimacy; a court decision shall be made promptly when mediation has failed'*. The principle of voluntariness means parties are at liberty to decide at any stage of their settlement negotiations whether or not to accept the presence of a judge as a mediator.

Benefits of judge as a mediator

Parties in settlement negotiations 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 negotiating table. They can also help to clarify the relevant legal issues and analyse the liabilities based on the ascertained facts, thus helping the negotiations move forward.

For example, one party may make a reasonable argument based on the relevant law but the other party may unreasonably refuse to admit that point. The judge can then intervene and affirm the reasonable argument made by one party. The judge may also express a personal opinion on any ambiguous provisions of law or disputed facts. As the judge's opinions may have considerable influence on the court's future judgment if there is a hearing, the parties should be aware of the prospects for their case and may decide to make an appropriate concession on a specific point.

Settlement is thus more likely to be achieved and the dispute can be resolved more efficiently and economically. This explains why mediation by the court is now often the preferred way of concluding a civil case in China.



The need for persuasion

The mechanism of appointing a judge as mediator can be applied in other ways. Sometimes one party seeks settlement negotiations but the opposing party is determined to have a court hearing. The first party may therefore lobby the judge to persuade the opposing party to sit at the negotiating table – the other side is usually more willing to listen to a judge. This does not contravene the principle of voluntariness as the 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 exert has much to do with the parties' lawyers. In addition to setting out reasonable grounds for mediation, lawyers need to have good relationships with judges and be prepared to make the effort to persuade them to get involved. Lawyers may also persuade judges to present the merits of 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.



VISIT: WWW.NEPIA.COM

The *Industry News* section of the Association's website provides information about a wide variety of current issues and changing legislation. Many of the items include downloadable documents and links to the original sources. *Industry News* pages have recently been updated to enable users to find information more easily and to search for topics. Members' staff are encouraged to visit the pages regularly to help keep up-to-date.

Members can access *Industry News* from the direct link on the left-hand side of the Association's website at www.nepia.com



ACCESS TO SHIPS

Under routine circumstances the access control to a ship required by its ISPS Code ship-security plan should not conflict with the safety of the ship. However, there are times when strict access control may not be in the best interests of the safety of the ship or the crew on board.

For example, it may not be desirable to delay the boarding of pilots coming to assist with the navigation of the ship or shore-based fire fighters or paramedics responding to emergency calls. For

guidance on how to deal with such situations, the IMO has published MSC Circular 1156 to provide guidance on the access of public authorities, emergency response services and pilots.

Members can download a copy of the circular from the IMO website:

www.imo.org/includes/blastDataOnly.asp/data_id%3D12573/1156.pdf

CHANGES TO IMDG CODE BECOME MANDATORY

A significant number of amendments to the IMDG Code will enter force in January 2006, including the following.

- A new chapter 1.4 addressing the security of dangerous goods in transport by sea.
- A replacement chapter 4.3 on the use of bulk containers.
- New parts to chapter 5.3 concerning the marking of containers under fumigation with 'fumigation warning signs'.

- A new chapter 6.9 on the design, construction, inspection and testing of bulk containers.
- Amendments to the dangerous goods list.

The IMO has encouraged voluntary compliance with these amendments since January 2005, but they will become mandatory from 1 January 2006.

Full details of the amendments are given in *IMO Resolution MSC.157(78)* available from IMO.

US BALLAST WATER MANAGEMENT ACT 2005

Ballast-water performance standards require that ships reduce the concentration of viable organisms discharged from their ballast tanks to a mandatory level. The US Government has approved the Ballast Water Management Act 2005 that, if enacted, will require a ballast-water performance standard which is 100 times more

stringent than those already specified in the IMO ballast water convention: one viable organism per 10m³ rather than 10 viable organisms per 1m³.

The proposed dates for entry into force are similar to those for the IMO convention, with the first phase commencing in 2009.

MARPOL AND SOLAS AMENDMENTS

In the next 18 months extensive amendments will be incorporated into both the MARPOL and SOLAS Conventions. Numerous and wide-ranging amendments to SOLAS are expected to enter into force on 1 July 2006, ranging from new definitions to increased numbers of required immersion suits.

On 1 January 2007 complete rewrites of MARPOL annexes I and II are expected to enter into force,

with requirements including new forms of IOPP certificates and access to shore-based computerised damage stability calculations.

Members are advised to check the *Industry News* pages of the Association's website regularly for details.

CHANGES PROPOSED TO THE SUA CONVENTION

A diplomatic conference is taking place at IMO in London in October 2005 to discuss proposed amendments to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention). The main purpose of the convention is to ensure appropriate action is taken against persons committing unlawful acts against ships, and it obliges governments either to extradite or prosecute alleged offenders.

Amendments are being considered that would respond to concerns about the risk of terrorism to maritime navigation. The amendments will complement the ISPS Code by providing a legal basis for the arrest, detention and extradition of terrorists. Among the amendments being considered are some that would allow ships suspected of being involved in terrorist activities to be boarded. However, there are concerns as to how this might affect the principles of freedom of navigation.

US NON-TANK-VESSEL RESPONSE PLANS

The Coast Guard and Marine Transportation Act of 2004 (CGMTA) came into effect in the US on 9 August 2005. Section 701 of this Act amended OPA 90 to require owners or operators of any non-tank vessels of 400 GT or more that carry oil of 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 24 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.

Tall ships visit Newcastle

The Tall Ships Races take place every summer in Europe with more than 100 sailing 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 marvellous spectacle for the 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 sightseers. The Association hosted a number of events during the visit, including a reception on the *Alexander von Humboldt* – one of the larger ships in the race – operated by the German Sail Training Association.



Tall Ships, Newcastle

International fleet review

British sovereigns 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*, a ro-ro vessel operated for the UK Strategic Sealift Service by Foreland Shipping Ltd, a Member of the Association.



"Hurst Point" Portsmouth

Members' workshops

North of England staff – including Tony Baker from the risk-management department, Iain Beange and James Moran from the P&I department and Emma Liddell 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-liquid cargoes. Future visits are being prepared to Members in Greece, Hong Kong and Norway.



Singapore

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 sale transactions will comply with long-established principles and standards, people sometimes find those principles and standards difficult – if not impossible – to apply or achieve in each and every transaction. In their hour of need they often look to letters of indemnity (LOI).

In recognition of the widespread use of LOI in international trade and shipping in conjunction with – and sometimes in substitution for – bills of lading, Stephen Mills and the Association are now preparing an accompanying guide entitled *Letters of Indemnity – A Guide to Good Practice*.

New guide available in 2006

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 traders.

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 unenforceable or that may not be worth the paper they are written on.

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

QUESTIONNAIRE – STRICTLY PRIVATE & CONFIDENTIAL

Please fill in your completed questionnaire directly to the Author, Stephen Mills. Any information will be treated as confidential.

Author: Stephen Mills
 Telephone: +44 (0)191 261 2444
 Fax: +44 (0)191 261 2444

Responsible Mills Selection
 2 Collocation Dates
 Maximum open time
 600 1/2

Please tick the square boxes where applicable:

1. Are you:
 Shipowner
 Operator
 Charterer
 Other If so, specify: _____

2. If applicable, please state the number of vessels operated by your firm:
 1-4 5-10 11-20 21-30 31-40 41-50 51-60 61-70 71-80 81-90 91-100 101-150 151-200 201-300 301-400 401-500 501-600 601-700 701-800 801-900 901-1000 1000+

3. If applicable, please state which category you predominantly carry:
 1. Dry bulk 2. Liquid bulk 3. Containers 4. Other (specify: _____)

4. How do you rate your level of indemnity in relation to, or arising out of, any of the following?

	Never	Rarely	Sometimes	Frequently	Always
a. Including on the bill an incorrect description of the goods.	<input type="checkbox"/>				
b. Varying, modifying or incorrectly stating the quantity of the goods.	<input type="checkbox"/>				
c. Varying, modifying or incorrectly stating the quality of the goods.	<input type="checkbox"/>				
d. Mis-describing the cargo.	<input type="checkbox"/>				
e. Mis-describing the date of shipment.	<input type="checkbox"/>				
f. Mis-describing the date of issue of the bill of lading.	<input type="checkbox"/>				
g. Making the cargo.	<input type="checkbox"/>				
h. Overweight, handling or stowage not in liquid cargo.	<input type="checkbox"/>				
i. Altering bills of lading.	<input type="checkbox"/>				
j. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
k. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
l. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
m. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
n. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
o. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
p. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
q. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
r. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
s. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
t. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
u. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
v. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
w. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
x. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
y. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				
z. Issuing bills of lading for cargo not on board.	<input type="checkbox"/>				

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Letters of indemnity questionnaire

Publication of the new *Letters of Indemnity* guide is intended to respond to the daily needs and problems of the shipping industry relating to LOIs. The Association would thus welcome the assistance of Members in identifying these needs and problems.

Members will find enclosed with this edition of *Signals* an anonymous questionnaire designed to help identify the most important or useful areas that should be covered by the new guide.

Members are asked to help the author by completing the questionnaire and returning it before 11th November 2005.

