Signals NEWSLETTER

NORTH
SERVICE, STRENGTH, QUALITY

Welcome...

to the Winter 2017 edition of *Signals* which provides information relating to loss prevention and other topics of interest to those engaged in the business of operating ships both at sea and on shore.

Our interactive cover page allows you to quickly navigate throughout the publication by selecting an active article.

Many of the articles in *Signals* have previously been published on our website. If you would like to receive weekly updates of North news please sign up to our Horizon E-Mail subscription service at: ***www.nepia.com/horizon***

IN THIS ISSUE

Ships

Look-out to Avoid Collision – this article reminds seafarers of good practice and the importance of not becoming distracted by other tasks when keeping a watch.

Working Alone: Are You Safe? Is Working Alone Risky? – working alone in the engine room may also increase the chances of incidents occurring. The circumstances that led to a fire on board and the tragic death of an engineer are considered.

Security

Be Cyber Aware at Sea – we have recently launched a Cyber Security topic area to raise awareness of cyber risks on board. The first poster in our "Be Cyber Aware at Sea" series accompanies this edition.

People

Managing Outbreaks of TB on Board a Vessel – from time to time infectious disease will be brought on board. Tuberculosis (TB) is one such disease and is very common. This article looks at the countries where TB is most prevalent and the signs and symptoms that the ship's medical officer should look for.

Cargo

Cargo Tank Coatings – in this article Alan Walker of coatings experts Safinah explains the common factors that can affect the integrity and service life of cargo tank coatings.

Ore Export Ban Relaxed – press reports indicate that the Government of Indonesia has relaxed the ore export ban that had previously been in place. The export of materials such as nickel ore and bauxite may resume.

Legal

The Lloyd's Open Form and Side Agreements – there is an increasing trend for Lloyd's Open Form to be accompanied by side agreements. These agreements may affect P&I liability. Members are encouraged to contact the club as soon as discussions regarding side agreements are raised.

"Conditions of Use" – it is a practice for the Master of a ship to sign various agreements which bind the vessel's owners. In many instances, the agreements are presented under time constraints, late at night; and while the Master may not understand the legal content, he may feel that he has no option but to sign. The implications of a recent decision are explored.

Regulation

There are lots of different rules and regulations which come into force, or are amended, as of 1 January 2017. These include the IMSBC Code, the IMDG Code, MARPOL, SOLAS, STCW and IGF code. There is an entirely new code in force – The Polar Code. There are also local regulations to think about. These include changes to the Chinese ECA rules and California emissions rules.

Loss Prevention

Carrying Coffee Beans in Containers – **Break Bulk Cargo** – since the last edition North has published two new loss prevention briefings on the subjects of Break Bulk Cargo and the Carriage of Coffee. These can be read at: ***www.nepia.com/lp-briefings***

Residential Training Course 2017 – the UK residential training course will take place in June this year. Details of how to apply for this popular and regularly oversubscribed course can be found inside.

Winter Edition: *2017* LOSS PREVENTION NEWSLETTER FOR NORTH'S MEMBERS

LOOK-OUT TO AVOID COLLISION

The MAIB has reported on a collision between the cargo vessel *Daroja*, and the bunker vessel *Erin Wood*, off the coast of Scotland. Although there were many different factors contributing to the incident the main cause was poor look-out by single handed watch keepers.

When a watch keeping officer is distracted by other tasks, the risk of collision increases. When a single handed watch keeper becomes distracted by other tasks the risks increase even more.

North's analysis of collisions shows that poor look-out is a very common factor in incidents.

North's LP guide *"Collisions: How to Avoid Them"* contains advice on keeping a look-out. If you are on a North entered vessel you may have a copy you can read when not on watch. Amongst other things it states that the two most vital elements of Rule 5 *Look-out* are:

- You must pay attention to everything – not just looking ahead out of the bridge windows but looking all around the vessel, using all your senses and all personnel and equipment available to you. There must always be someone looking out. If weather or the situation around you causes concern, then more look-outs may be needed and you must call them without hesitation.
- You must use all of that information continuously to assess the situation your vessel is in and the risk of collision.

Single Handed Watch Keeping – Good Practice

The use of a single handed watch keeper on the bridge is common practice. This should only be done in daylight hours. However, it may increase the risk of collision and this means that a risk assessment should take place on every occasion. The Master needs to consider several factors when deciding on single handed watch keeping. The process should be formalised in the company SMS and in Master's standing orders.

Both the Bridge procedures guide and STCW contain guidance on this and some of the factors to be taken into consideration are:

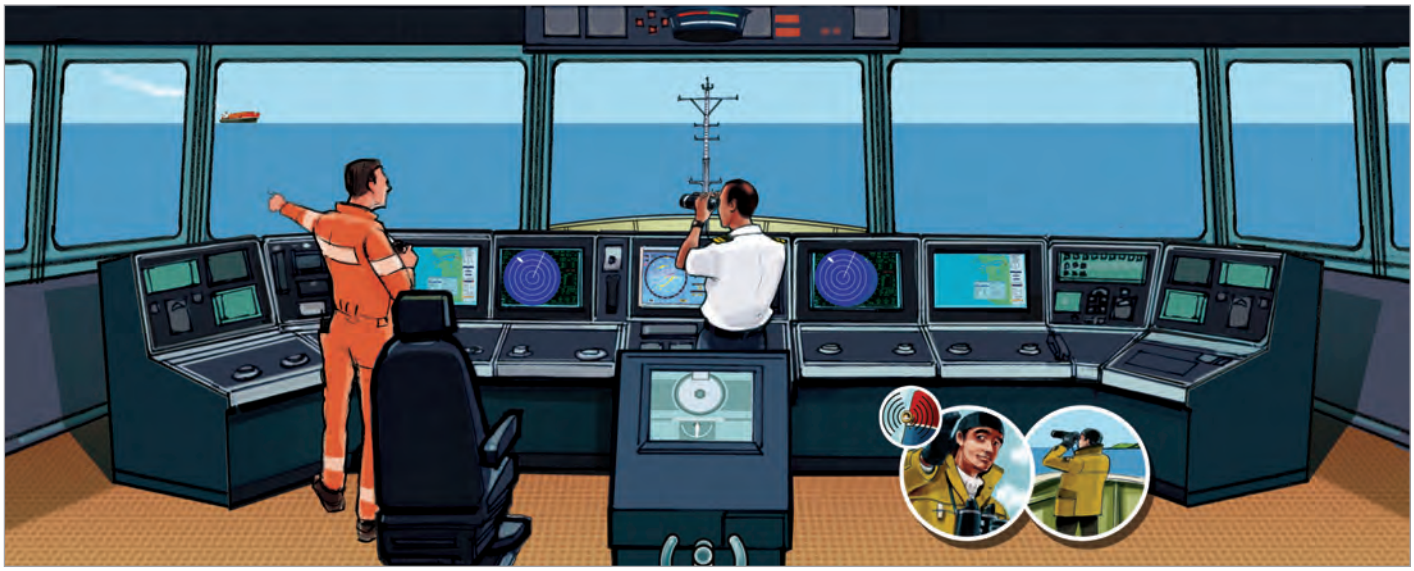
- Visibility.
- Navigating near a TSS.
- Weather Conditions.
- Any reported defects to navigation aids.
- Traffic Density.
- Fitness of the OOW.
- Proximity of navigation hazards.
- The expected workload for the OOW.
- Communications with a backup person.
- The vessel's design with regard to view.
- Vessel characteristics.
- Bridge equipment operational status.

Standing A Watch Alone – Don't Get Distracted

Getting distracted by other work when you are standing a watch increases the risk of collision. Getting distracted when watch keeping alone increases the risk further. Don't get distracted.

- Follow Rule 5 of the IRPCS.
- Ensure all navigational aids such as ECDIS and radars are set up correctly, and used properly.
- Understand the limitations of such equipment.
- Move around the bridge frequently to ensure as far as possible a 360 degrees look-out is maintained.
- All vessels should be continuously assessed for risk of collision.
- Ensure the Bridge Navigation Watch Alarm System (BNWAS) is activated.

Maintain contact with a backup person, that person should be ready for immediate deployment on the bridge.



Safety Look-out

WORKING ALONE: ARE YOU SAFE? IS WORKING ALONE RISKY?

This *Signals* article is based on a recent incident reported in MAIB report – 17/2016. The incident relates to a fire in the engine room on the dredger *Arco Avon* which led to the death of a third engineer. The engineer was singlehandedly attempting to repair a failed fuel pipe when fuel, under pressure in the pipe, ignited. The source of ignition was a portable angle grinder. The Chief Engineer or the officer of the watch had not been informed of the intended repair.

Deciding to carry out a task anywhere on board whilst alone can be risky. Vessel systems and procedures are designed to ensure work can be carried out safely and should be followed.

Some lessons to be learned from this incident:

- **Always report planned work activities.**

  In the MAIB report it was noted that the third engineer did not report to the Chief Engineer or bridge officer of the watch his intended repair plan to the fuel leak before he started.

Actual picture of fire area above – Arco Avon, Crown copyright, 2016

It is essential to prepare for work in the most robust manner. This includes discussing the work with colleagues and carrying out a risk assessment. Any repair which needs urgent action should always be planned with other people involved to ensure that the work is coordinated and safe. Please refer to *COSWP 2015* edition section 20.5.5 for guidance.

- **If a Chief Engineer asks his junior to carry out risky work whilst alone in the engine room should they agree?**

  The *Arco Avon's* Chief Engineer listed routine work and planned maintenance in night standing orders. But this would mean working alone for engineers!

  You should not be afraid to challenge any work issued by seniors and refer them to the company SMS or COSWP. It's safer to do this than risk your life and the life of others.

- **If you join a vessel and the UMS patrol alarm works but has not been used recently should you continue this trend, or start using the patrol alarm?**

  It appears that the UMS patrol alarm was not regularly used on *Arco Avon*.

  The company SMS advised that contact should be made with the bridge every 15 minutes if the patrol alarm was not used. This system does not appear to have been followed on board.

  It is common practise in the merchant navy to carry on as the departing crew left off but their actions may not be correct. The patrol alarm may be the best way to ensure that your absence is noted – this can save vital time after an injury – so it's better to use it when fitted.

  If you don't then contact the bridge before entry, then every 15 minutes, and finally when you leave the engine room!

  Please refer to *COSWP 2015* chapter 20.4.1 and 20.4.2 for guidance.

- **If you are aware of an IMO circular which benefits the safety of your vessel, should you discuss the benefits with your colleagues and staff ashore if it has not been applied on your vessel yet?**

  The IMO circular MSC.1/Circ.1321 was listed in the MAIB report for good reason. This circular recommends a 6 monthly inspection of low pressure fuel system parts is included in the company SMS, but had not been broadcast to the shipping industry at that time. If a loose bracket had been found on the *Arco Avon* then acting on this may have prevented fretting of the fuel pipe and then the fuel leakage.

  If you see good practice on one vessel, you should consider sharing this on your future vessels. Application of this circular on board the *Arco Avon* may have prevented the fuel leak and death of an engineer!

The full report of the incident may be read at: ***www.gov.uk/maib-reports/fire-in-the-engine-room-on-the-suction-dredger-arco-avon-with-loss-of-1-life***

SMS = Safety Management System
COSWP = Code of Safe Working Practices
UMS = Unmanned Machinery Space

BE CYBER AWARE AT SEA

North P&I Club is continuing its drive to highlight the range of cyber threats facing shipowners through the launch of its cyber security topic area and its active support of the **Be Cyber Aware At Sea** campaign.

The **Be Cyber Aware At Sea** campaign is a global maritime and offshore industry initiative to raise awareness of the increasing maritime cyber threats to international shipping, ports and offshore operations. More than 90% of world trade including the global transportation of energy is by sea and our reliance on technology continues to increase, we are now very much immersed in the digital era.

Ships are becoming increasingly sophisticated and the cyber threat at sea poses significant security, safety and financial risks to shipping and offshore operations.

The **Be Cyber Aware At Sea** campaign, supported by The CSO Alliance and JWL International as well as North P&I, encourages the sharing of research data, best practice cyber guidelines and educational articles to help all stakeholders understand the challenges and threats that the digital era brings to shipping and offshore operations.

The first poster in the series entitled *"Do Not Feed the Phish"* is enclosed.

What is Phishing?

The fraudulent practice of sending E-Mails purporting to be from reputable companies in order to induce individuals to reveal personal information, such as passwords and credit card numbers.

Spear phishing is a related practice where E-Mails appear to be from a known source that are targeted at specific individuals.

Find out more about cyber security at out new Cyber Security Webpage: ***www.nepia.com/cyber-security/***

MANAGING OUTBREAKS OF TB ON BOARD A VESSEL

Preventing Outbreaks

The World Health Organization estimates that up to one third of the world's population are currently infected with either active Tuberculosis (TB) or more commonly Latent Tuberculosis Infection (LTBI) where those infected are non-contagious carriers of the disease without any active symptoms. Around 10% of those with LTBI will go on to develop active TB at some point in their lives.

The WHO reported that in 2015:

- TB was among the top 10 causes of death worldwide last year.
- 10.4 million people fell ill from TB.
- 1.8 million people died from TB.

TB or LTBI is present throughout the world however they have a significant prevalence across developing nations in Africa, Central and South East Asia. Some of the most notable countries affected by TB are India, Pakistan, Nigeria, China and South Africa. Screening crewmembers through a skin test (TST) or blood test (IGRA) as part of the employer's pre-employment medical examination (PEME) is key to the prevention of outbreaks on board a vessel. Annual screening should also be considered for those frequenting high risk areas.

Managing Cases of Active TB on Board

It is important that a ships designated medic or medical officer is aware of the early signs and symptoms of TB.

Common symptoms of active TB are:

- Cough with sputum and blood at times.
- Chest pains.
- Weakness.
- Weight loss.
- Fever.
- Night sweats.

Any crew presenting symptoms of active TB, particularly a productive cough lasting for more than two weeks, should be isolated and provided with an N95 rated face mask to prevent further possible spread of infection. The crew member should be disembarked at the next appropriate port to receive a chest x-ray and treatment with anti-biotics. If active TB (contagious) is confirmed, then it is important to have all crew who have been exposed to the infection (which will likely be most in the confined nature of a vessel) tested for TB to prevent further spread. This process should then be repeated 8-10 weeks after the initial test as subsequent infections may not produce a positive result immediately.

Repatriation of Crewmembers Diagnosed with Active TB

Generally, treatment for TB is swift and effective, one exception to this however is in the occurrence of a multi-drug resistant (MDR) TB which can be very difficult to treat and involve extended treatment regimens of 6-12 months in many cases.

Patients will often be asymptomatic after 14 days of treatment with antibiotics and will be well enough to return home unassisted.

Airlines are understandably cautious about accepting passengers recently diagnosed with active TB and all will usually request a certificate from the treating doctor confirming that a passenger is not contagious.

For a passenger to be considered non-contagious they must meet all of the below criteria;

- A minimum of 14 days appropriate treatment with antibiotics.
- To be asymptomatic.
- Have three negative sputum smear tests confirmed on separate days.

Many airlines will also require the submission of a Medif (medical clearance form) for authorisation prior to travel. It is important to check the requirements for each respective airline or employ the services of a specialist medical assistance operator to do this to avoid refused boarding or in a worst case scenario spread of the infection on board and the potential litigation associated with this.

Useful Sources

WHO – Global TB Report

www.who.int/tb/publications/latent-tuberculosis-infection/en/

www.who.int/tb/publications/2008/9789241547505/en/

We would like to thank Maritime Repatriations for this article:
operations@maritimerepatriations.com

www.maritimerepatriations.com

CARGO TANK COATINGS

In this article Alan Walker, Marine Market Sector Manager at coatings experts Safinah explores the measures that may be taken by Members to minimise problems related to cargo tank coatings.

Alan Walker

One of the many activities that Safinah becomes involved with is surveying specific areas on marine vessels. Typically, around one third of our work relates to cargo coating disputes, see Figure 1 below.

There are a number of common factors running through these disputes which should be considered when investing in a new build or purchasing second hand.

Factors That Influence the Life of Cargo Tank Coatings

The factors that have the most influence on the life of cargo coatings are tabulated. Figure 2 below shows that most of these factors can be influenced by ship owners.

Design

Members can influence vessel **design** and should consider the following:

- Using stainless steel ladders.
- Fitting a stainless steel plate under the suction strum; an area that tends to be prone to damage, abrasion and cavitation corrosion.
- Fitting stainless steel lugs for scaffold attachment at new building to avoid contact damage, masking damage and provide the optimum scaffold height for painting.
- Consider deck heaters rather than stainless steel heating coils:
  - Reduced damage during fitting.
  - Easier maintenance.
  - Reduced electrochemical potential in the tanks (stainless steel act as a cathode to mild steel).
- Paint all stainless steel in the tanks (heating coils, ladders etc.) to reduce the electrochemical reactivity.

Coating Technology

Using the appropriate **coating technology** is critical for cargo tanks as incorrect product types will almost inevitably lead to premature coating breakdown. Members should be aware of the available technologies or consult with third party experts as to which is the most suitable for the intended cargo(s).

There are a number of available technologies with each having advantages and disadvantages:

- Pure epoxy – generally best suited for CPP cargos. Generally, have more restrictions on aggressive cargos such as methanol.
- Zinc silicate – recommended for neutral cargoes such as dedicated methanol carriage. Cannot tolerate acidic or alkaline cargos.
- Phenolic epoxy – suitable for carriage of a wide range of cargos including methanol.
- Bimodal epoxy – the most recent technology introduced by some of the paint suppliers offering reduced cargo absorption and ability to carry a wide range of cargoes including methanol. This coating does however require post curing.

Paint suppliers and the Shipyards have their own best interest at heart not that of the Ship Owner. Profit in the case of paint suppliers and ease to apply for the Shipyards.

These may not match the technology best suited to the operational needs of the Member. Guidelines and training are available.

Product Selection

The larger marine paint companies generally all have a product offer for each technology. This leads to the situation where too often Ship Owners and Shipyards decide the product mainly on its price.

This can be a short term saving; product selection should be based on:

- Ship owners previous experience of what works.
- Product track record.
- Independent expert advice.
- Warranties.

Fig.1

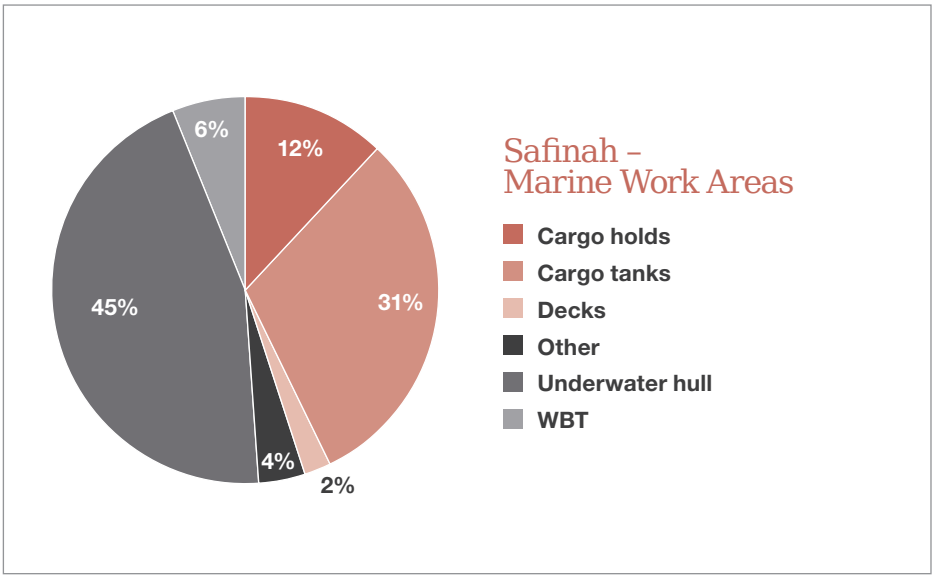


Fig. 2

Coating Factors	Owner Influence
Design	✓
Coating Technology	✓
Product Selection	✓
Project Management	✓
Chemistry – e.g. formulation	✗
Operation	✓

CARGO TANK COATINGS (CONTINUED)

Project Management

Once the correct technology and product(s) are selected what can go wrong? See Figure 3.

Eighty percent of cargo tank coating failures are due to poor surface preparation and/or application.

Experienced **project management** is very important to ensure the selected coating technology and products are applied correctly and in accordance with the paint makers' application guidelines:

- Quality of materials such as grit.
- Surface preparation standards.
- Scaffold installation and removal.
- Inter-coat preparation of surfaces.
- Correct dry film thicknesses.
- Correct over coating intervals.
- Curing times.
- Heated post cure if applicable.

The Paint Makers technical service representative will advise on much of this, but under pressure from both the Paint Maker and the Shipyard may not always act in the best interests of the Ship Owner. An experienced Project Manager employed by the Owners is the safest way of ensuring the project is successfully completed.

Remember: the cost of a Project Manager will be $30,000 to $50,000 for the entire coating application versus the cost of a tank lining failure that can be >$1 million to fix.

Example/case study:
Two 8 years old sister ships

See Figure 4.

Operation

Ship owners and operators should know the restrictions applicable to the cargo tank linings on their vessel.

- Unrestricted cargoes.
- Restrictions on certain cargo types e.g. a maximum moisture content of carriage time.
- Cargo sequencing.
- Permitted tank cleaning processes.

Cargo resistance guidance and training should be provided by the paint companies as part of the "sales package".

Independent experts can also provide additional advice, support and training.

All deviations from approved cargos, e.g. cargo type, carriage duration, the paint suppliers' guidelines should be fully documented to avoid later disputes between Parties (e.g. between Owner and Charterer).

Fig. 3

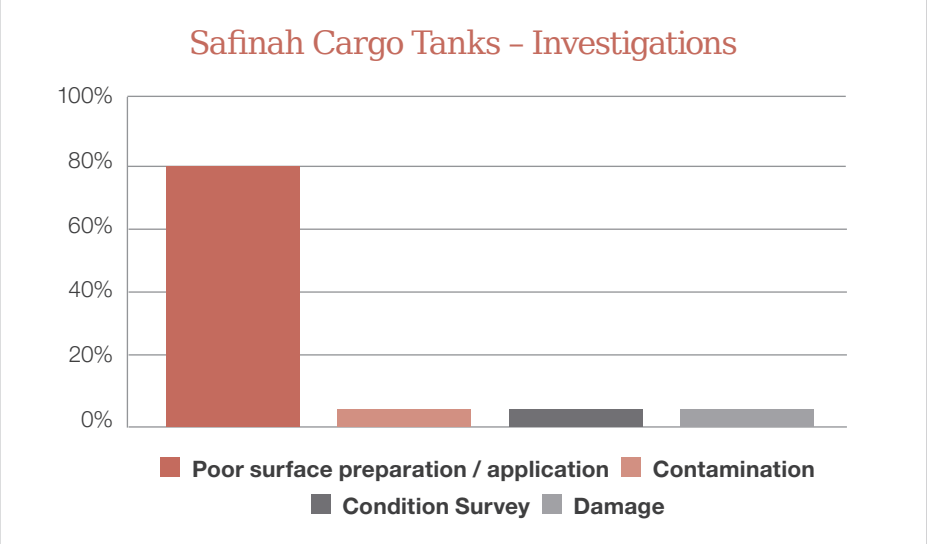
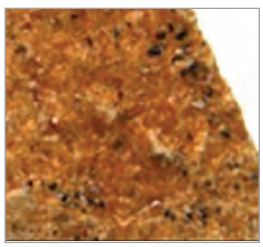


Fig. 4

What Was the Same and What Was Different?

	Ship A	Ship B
		
Design	**Yes**	**Yes**
Coating technology	**Yes**	**Yes**
Product selection	**Yes**	**Yes**
Operation	**Yes**	**Yes**
Surface preparation and application	**No**	**No**
Surface Preparation and Application		
Surface profile (recommended 75 microns)	**40 microns**	**75 microns**
Dry Film Thickness (DFT – recommended 300 microns)	**400-550 microns**	**270-450 microns**
Cleaning after blasting	**Grit contamination**	**Clean**
Under surfaces of paint flake samples taken during survey		
Results	**Blistering Poor adhesion Catastrophic failure**	**Good condition after 8 years**

The Expected Lifetime for a Cargo Tank Coating

Chemical	8 – 10* years
Products	10 – 15* years
(Water ballast tanks	15 years plus)

*Depending on cargo type and sequencing

It all depends on the influencing **factors** mentioned and *Getting Them Right*.

Coating breakdown and corrosion starts on Day 1 although it may not be apparent in early years.

Maintenance and Repairs

By the crew:

This is often done for cosmetic reasons, prior to the visit of cargo vetting agents.

Good lasting repair is difficult due to:

- Inadequate surface preparation.
- Insufficient time to apply the correct coating specification and allow the coating to cure.
- Limited access.

Breakdown can be expected within 12 to 18 months.

Typical crew repairs to a tank top after 6 months service

Anything more than minor touch ups by the crew in cargo tanks are generally a waste of time and serve to hide defects rather than effectively repair and stop corrosion.

Partial Repairs at Dry Dock e.g. Re-blast and Recoat Tank Tops

Limited value:

- The Shipyard will not treat a repair in the same way as a full re-blast and recoat.
- There will be no guarantee from the paint company.
- Less quality control from the Owner, the Shipyard and the paint company.

Summary

- Members can influence most of the factors that influence the performance of cargo tank coatings.
  - At new building; ensure the correct technology and coating is selected.
  - Buying a second hand chemical tanker; invest in a professional cargo coating survey. An experienced cargo tank coating surveyor can detect early signs of trouble ahead.
- Poor surface preparation and coating application is the major cause of premature coating breakdown and corrosion.
  - Invest in good project management during coating application.
- Cargo tanks that have significant coating breakdown and corrosion almost always require major refurbishment in order to safely carry higher value, pure cargoes.

INDONESIA – ORE EXPORT BAN RELAXED

Press reports indicate the Government of Indonesia has relaxed the ore export ban that had previously been in place. The export of materials such as nickel ore and bauxite may resume.

Risk of Liquefaction

Ores exported from Indonesia may be subject to the risk of liquefaction. Members will no doubt recall that several vessels carrying nickel ore from Indonesia have been lost.

The club is also aware of some liquefaction issues with bauxite cargoes.

Club Circulars

Members who are fixed to load nickel ore are reminded of the club circulars in respect of the safe carriage of nickel ore and mandatory notification requirements.

In addition Members may also be interested in our Loss Prevention material on the subject which can be found on our website.

It is currently unclear how quickly miners can respond to the relaxation of the ban and what permits will be necessary for export. Members should ensure that export documentation is closely scrutinised.

We will report further when details become available.

www.nepia.com/news/circulars/

www.nepia.com/lp-publications/

LLOYD'S OPEN FORM AND SIDE AGREEMENTS

The Lloyd's Open Form (LOF) salvage agreement is a well-recognised and well established emergency response contract.

The use of LOF is widely accepted in the industry and the Club will always support Members signing LOF in emergency situations. For about 20 years the Special Compensation P&I Clause (SCOPIC) has been used in conjunction with LOF. The use of SCOPIC is supported by all International Group Clubs.

There is an increasing trend for Owners and their hull and machinery (H&M) underwriters to enter into arrangements (known variously as "side letters", "pre-settlement agreements" and "side agreements") which run parallel to LOF and SCOPIC, with a view to managing the H&M underwriters and Owner's exposure to LOF Article 13 costs. In certain cases, these side agreements have either direct or indirect effects on the operation of the SCOPIC clause and therefore, have a bearing on P&I insurance.

Members should always have contracts which may affect P&I liability approved by the Managers. Members are also reminded that whilst the Club supports incorporation of the SCOPIC clause, they should consult the Club whenever an LOF side agreement is being proposed.

The Club will be able to assess the implications of the side agreement upon SCOPIC and explain to Members whether it includes anything that might affect P&I cover. Members are encouraged to contact the Club as soon as discussions regarding side agreements are raised in order that the Club may give its input at an early stage.

If you would like advice on anything contained in this article, contact Matthew Moore on +44 191 232 5221 or ***matthew.moore@nepia.com***

"CONDITIONS OF USE": BEWARE OF LOSING THE RIGHT TO LIMIT: PRIVY COUNCIL CONFIRMS PARTIES CAN CONTRACT OUT OF THE 1976 LIMITATION CONVENTION

It is a common practice for the Master of a ship to sign various agreements which bind the vessel's owners. In many instances, the agreements are presented under time constraints, late at night; and while the Master may not understand the legal content, he may feel that he has no option but to sign. It would then come as a nasty surprise if the ship-owner was to discover later that the Master had unwittingly waived the owner's statutory right to limit liability for damages.

P&I Rule 22(1) sets out that Members must not contractually agree to prejudice their right to limit liability and provides that the Club is only bound to indemnify a Member up to the amount to which he would otherwise be able to limit his liability. Signing a contract which waives the right to limit liability could therefore leave a ship-owner in a difficult position, with exposures well in excess of his insurance cover and an unlimited bill for damages.

The Cape Bari case: This case involved a collision between the vessel and the Appellant's, (BORCO), sea berth while under pilot navigation. Prior to entering the terminal, the Master of the *Cape Bari* signed a document which set out the *"Conditions of Use"* of the berth. Such contracts are standard in the trade and are often compulsory. Shortly afterwards, the vessel collided with a sea berth while under the navigation of a local pilot, causing damages alleged to be around US$22 million.

The Owners argued that they were entitled to limit their liability to US$16.9 million plus interest under the 1976 Convention on Limitation of Liability for Maritime Claims (the 1976 Convention), which was incorporated into Bahamian Law. However, BORCO argued that by signing the Conditions of Use, the Master had, on behalf of the Owners, contracted out of the right to limit liability under the 1976 Convention. In making this argument, BORCO relied specifically on Clause 4 of the Conditions of Use, which provided that the Owners would be responsible for *"any and all loss or damage"* caused by the vessel's use of the terminal facilities.

Following a series of decisions in the Bahamas, the matter was referred on appeal to the Privy Council, which held as follows:

1. It is possible to contract out of or waive the right to limit liability under the 1976 Convention. There is nothing in the words of the 1976 Convention which makes this impermissible.
2. However, for a party to be held to have abandoned or contracted out of valuable rights arising by operation of law, the provision relied upon must make it clear that that is what is intended. When construing whether the words of a contract seek to waive a statutory right, the starting point is that the statutory right in question is treated as being known and understood by the parties to apply and is treated as being written into the contract. That remains the position unless there is a provision in the contract which clearly and unequivocally excludes that right such that the two cannot be read together and the statutory right must therefore be excluded. The more valuable the right, the clearer the language will need to be.
3. It may be possible to exclude the right to limit without express reference to the statute, but the right must be clearly excluded, whether expressly or by necessary implication.

In this instance, it was found that the wording of Clause 4 of the *Conditions of Use* did not clearly exclude the Owners' right to limit liability. On a true construction of the Clause, if the Owners were found liable to BORCO, the latter would simply be entitled to an indemnity up to the maximum recoverable under the 1976 Convention.

Practical Guidance

1. The *Cape Bari* case has now confirmed that it is possible to contract out of the valuable right to limit under the 1976 Convention. However, in order to do so, an indemnity agreement (or indemnity provisions in an agreement) would need to exclude this right clearly and unequivocally, such that there is no doubt as to the reasonable observer that the owner agreed to waive the right to limit.
2. This decision will prompt many terminals and similar facilities to amend their contracts of use to include express waivers of the right to limit liability.
3. The key take-away for ship-owners (as well as charterers, managers and operators of vessels) is that vigilance must be exercised when entering into contracts. Such parties must take care to have proper infrastructure and safeguards in place to avoid an agent contracting blindly on their behalf.

For example:

a. No matter how urgent, the Master should always refer contracts back to the owner's or vessel operator's legal team for review before signing.

b. If that is not possible, the Master should be guided to execute agreements with the qualification of *"receipt only and without authority to bind the Owners or the Vessel"*. This latter step is not fool-proof but, in certain circumstances, may serve to avoid binding owners to unwanted contracts.

4. Additional "Contractual Liability" cover (up to an agreed limit and on payment of an additional premium) can be arranged by the Association to provide cover for additional exposure incurred in situations where limitation is waived. Please contact the Underwriting Department if you wish to discuss this further.

If you would like advice on anything contained in this article, contact the Contract Review Team on +44 191 232 5221 or *ContractReviewTeam@nepia.com*

This article substantially reproduces Reed Smith Client Alert 16-233 and we are most grateful for Mark O'Neil and Anushka Karunaratne, both of Reed Smith, for bringing this matter to our attention.

IMO RECOMMENDS PRACTICAL APPROACH TO STCW AMENDMENTS

Due to the high number of applications for the STCW 2010 Manila amendments, the IMO issued **MSC.1/Circ.1560** on the 5 December 2016.

The amendments are aimed at ensuring that certification is authentic and not fraudulent which requires various checks to be undertaken and a database of all issued endorsements to be maintained by flag.

The IMO urges all parties including those issuing the certificates to ensure all seafarers have their required certificates and endorsements by the 1 January 2017.

However, it recognises that Port State Control inspectors could find that some seafarers on board vessels may not yet hold the required certification and endorsements.

In this case it recommends that they use a pragmatic and practical approach until 1 July 2017.

Port State Control Inspectors should also ensure that the flag state, ship owners, and the individual seafarer are informed of the issue when found.

The documentary evidence required by seafarers to show compliance 2010 Manila amendments includes:

- Revalidation of safety certification for example CPSC, Fire Fighting and Sea Survival.
- Vessel specific training.
- Training specific to rank.
- Flag State issued endorsements for each seafarer.

The endorsement by Flag State shows that the seafarer's certificate of competency is in accordance with the new STCW requirements.

POLAR CODE – COMING INTO FORCE

Members are reminded that the IMO Polar Code came into force on 1 January 2017.

The code was published to promote safety and reduce the environmental threat from vessels operating in Polar regions.

The code therefore includes new regulations covering many subjects including vessel design and construction, on board equipment, training standards and operational procedures.

Read our Industry News item here: ***www.nepia.com/insights/industry-news/polar-code-coming-into-force/***

IMDG AMENDMENTS VOLUNTARY FROM I JANUARY 2017

The amendments will be mandatory from the 1 January 2018. Ship operators intending to carry packaged dangerous goods are encouraged to consider adopting the changes from as early as 1 January 2017.

There are a significant amount of changes to the code, and as such the IMO have fully revised volumes 1 and 2 of the code. The supplement volume will remain the same as the 2014 edition.

Changes of particular interest include:

- 8 new UN numbers (UN3527 to UN3534) will be introduced. These cover items such as polyester resin kits, polymersizing substances, and engines and machinery.
- Engines used to be covered by UN3166 and this number included vehicles. This UN number now only covers vehicles. Engines and machinery will change to UN3528 to UN3530.
- Vehicles are still not subject to the provisions of the code if the conditions noted in the revised special provision 961 are met.
- There is a new class 9 label included; this is to cover lithium metal and lithium ion cells. This is largely due to the recent issues with mobile phone batteries that have been reported as catching fire. North of England reported on this particular matter in October, the article can be viewed here: ***www.nepia.com/insights/industry-news/lithium-ion-batteries/***
- There are a large number of new packing instructions added or amended.

NEW YEAR – NEW REGULATIONS

The 1 January is traditionally a day when new legislation and amendments to existing regulations come into force. The year 2017 is no different. New regulations that may affect your operations include:

International Maritime Solid Bulk Cargoes Code (IMSBC Code) (MSC.393(95))

Amendments 03-15, which have been in place on a voluntary basis since 1 January 2016, became mandatory on 1 January 2017. These include updates to existing individual schedules for solid bulk cargoes, 19 new cargo schedules and references to recent SOLAS amendments, along with updated information from the IMDG Code.

International Maritime Dangerous Goods Code (IMDG Code) (MSC.406(96))

The amendments to the IMDG Code are voluntary from 1 January 2017 and will be mandatory from the 1 January 2018. Ship operators intending to carry packaged dangerous goods are encouraged to consider adopting the changes from as early as 1 January 2017. There are a significant amount of changes to the code, and as such the IMO have fully revised volumes 1 and 2 of the code. The supplement volume will remain the same as the 2014 edition.

International Code for Ships Operating in Polar Waters (Polar Code)

The Polar Code entered into force on 1 January 2017 and aims to promote safety and reduce the environmental threat from vessels operating in Polar Regions. The code therefore includes new regulations covering many subjects including vessel design and construction, on board equipment, training standards and operational procedures.

The introduction of the Polar Code will also result in a number of related amendments to MARPOL and SOLAS. These will also take effect on 1 January 2017.

International Convention for the Prevention of Pollution from Ships (MARPOL) Annex I

Regulation 12 – Tanks for Oil Residues (Sludge) (MEPC.266(68)) – the amendments apply to all new vessels (>400 GT) as of 1 January.

Existing ships >400 GT must comply no later than the first renewal survey carried out on or after 1 January 2017.

The oil residue (sludge) tanks must have no discharge connections to the bilge system, oily bilge water holding tank(s), tank top or oily water separators with the following two exceptions:

- Tanks may be fitted with drains (with manually operated self-closing valves and arrangements for subsequent visual monitoring of the settled water) that lead to an oily bilge water holding tank or bilge well or they may be fitted with an alternative arrangement, provided that this arrangement does not connect directly to the bilge piping system.
- The sludge tank discharge piping and bilge-water piping may be connected to a common discharge connection provided it does not allow for the transfer of sludge to the bilge system.

International Convention for the Safety of Life At Sea (SOLAS)

- Chapter II-1, Part G, Regulation 56 – Ships using low-flashpoint fuels (MSC 392(95)).
- Chapter II-1, Part G, Regulation 57 – Requirements for ships using low-flashpoint fuels (MSC 392(95)).
- Chapter II-2, Part B, Regulation 4 – Probability of ignition (MSC.392(95)).
- Chapter II-2, Part C, Regulation 11 – Structural Integrity (MSC.392(95)) – clarifying the provisions related to the secondary means of venting cargo tanks in order to ensure adequate safety against over- and under-pressure in the event of a cargo tank isolation valve being damaged or inadvertently closed.
- Chapter II-2, Part G, Regulation 20 – Protection of Vehicle, Special Category and Ro-Ro Spaces (MSC.392(95)) – relating to performance of ventilation.
- Chapter XIV – Safety Measures for Ships Operating in Polar Regions (MSC.386(94)).

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)

The 1 January 2017 marks the end of the five year transitional period of introducing the STCW Manila 2010 amendments.

- STCW Manila 2010 – Code – Chapter I – Guidance regarding Definitions and Clarifications (STCW.6/Circ.11).
- STCW Manila 2010 – Code – Chapter V – Guidance regarding Special Training Requirements for Personnel on Certain Types of Ships (STCW.6/Circ.11).
- STCW Manila 2010 – Code – Chapter V – Standards regarding Special Training Requirements for Personnel on Certain Types of Ship (MSC.397(95)).
- STCW Manila 2010 – Convention – Chapter I – General Provisions (MSC.396(95)).
- STCW Manila 2010 – Convention – Chapter V – Special Training Requirements for Personnel on Certain Types of Ship (MSC.396(95)).

International Code of Safety for Ships using Gases or other Low-flashpoint Fuels (IGF Code)

This is a mandatory code for ships fuelled by gases or other low-flashpoint fuels. It contains mandatory provisions for the arrangement, installation, control and monitoring of machinery, equipment and systems using low-flashpoint fuels, focusing initially on LNG.

China Emission Control Areas

Three emission control areas in China were created to reduce the levels of ship-generated air pollution and focus on the sulphur content of fuels.

The three areas are the Pearl River Delta, the Yangtze River Delta and Bohai Sea. From 1 January 2017 vessels at berth in a **core** port within an emission control area should use fuel with a maximum sulphur content of 0.5% – except one hour after arrival and one hour before departure.

Happy New Year!

Read our Industry News item here: ***www.nepia.com/insights/industry-news/china-emission-control-areas-starupdatestar/***

FIXED AND FLOATING OBJECT DAMAGE CASE STUDY – REEF DAMAGE (ANSWERS TO QUESTIONS)

A1. Coral reef damaged by a vessel.

A2. FFO liabilities are normally indemnified by P&I insurers unless the vessel is insured under the Nordic Plan, in which case, FFO liabilities are for H&M provided the damage is to a man-made object. Damage to natural objects, including coral is always for P&I.

U.S. SANCTIONS AGAINST SUDAN TO BE LIFTED

On 13 January 2017 President Obama issued an Executive Order (EO) which will permanently revoke the sanctions against Sudan on 12 July 2017, provided that Sudan has sustained certain positive actions achieved in the last six months.

In conjunction with the new EO, the Office of Foreign Asset Control (OFAC) has issued a general license immediately authorising all transactions which were prohibited by the Sudanese Sanctions Regulations (SSR).

A copy of the U.S. Government's Executive Order can be accessed here: ***www.whitehouse.gov/the-press-office/2017/01/13/executive-order-recognizing-positive-actions-government-sudan-and***

The U.S. Treasury Department fact sheet can be accessed here: ***www.treasury.gov/resource-center/sanctions/Programs/Documents/sudan_fact_sheet.pdf***

Details of the sanctions relief, the remaining Darfur related sanctions and cautionary notes are set out in the Freehill Hagan & Mahar LLP client alert and can be accessed here: ***www.nepia.com/media/585816/SUDAN-SANCTION.PDF***

CALIFORNIA AIR RESOURCES BOARD ADVISORY 2017

In December 2007, the Air Resources Board (ARB) approved the "Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port" Regulation, commonly referred to as the "At-Berth Regulation" (ABR).

The purpose of the ABR is to reduce diesel particulate matter (PM) and nitrogen oxide (NOx) emissions generated from the operation of ships diesel auxiliary engines.

The ABR applies to container and refrigerated cargo ship fleets whose vessels cumulatively make twenty-five or more visits annually and passenger-ship fleets whose vessels cumulatively make five or more visits annually to the ports of Los Angeles, Long Beach, Oakland, San Diego, San Francisco and Hueneme.

The ABR enables visiting vessels two possible options to reduce at-berth emissions from auxiliary diesel engines, these are:

1. Reduced on board power generation option. Turn off auxiliary engines and connect the vessel to some other source of power, most likely land/grid-based shore-power.
2. Equivalent emission reduction option. Use alternative control technology that achieves equivalent emission reductions.

However, the ARB understands that certain scenarios may exist where vessels cannot fully comply with the ABR and provide six examples where a degree of flexibility may be granted on a case by case basis, these are:

1. The vessel visiting the port is equipped to receive shore power, but the terminal's shore power berth is not able to provide shore power.
2. A vessel makes a commissioning visit to a terminal, and during the visit, the auxiliary engines operate longer than three hours.
3. A vessel uses shore power, but fails to meet the three/five-hour time limit for connecting or disconnecting shore power.
4. Vessels are using an approved alternative control technology to comply with the At-Berth Regulation.
5. Fleet participates in testing an alternative control technology with an ARB-approved test plan.
6. A fleet meets the percent reduction requirements for visits, power, or emissions, averaged on an annual basis.

The advisory requires fleets complying under the reduced on board power generation option to satisfy the following two criteria from 1 January 2017:

1. Visits – at least 70 percent of a fleet's visits to a port must satisfy the following limit on engine operation. For each visit, the auxiliary engines on the vessel cannot operate for more than three hours during the entire time the vessel is at-berth (e.g. a shore power visit).
2. Power Reductions – the fleet's total on board auxiliary engine power generation must be reduced by at least 70 percent from the fleet's baseline power generation.

Fleets that comply under the Equivalent Emission Reduction Option pathway must reduce NOx and PM by 70% or more through use of an ARB-approved technology.

CARRYING COFFEE BEANS IN CONTAINERS

Following North's recent success in appealing on behalf of Members CSAV against a UK High Court decision relating to the carriage of coffee cargoes, we have published a new Loss Prevention Briefing: *"Carrying Coffee Beans in Containers"*.

The case highlighted the various challenges in carrying bagged coffee cargoes, particularly in dry standard containers. The briefing provides loss prevention advice to aid carriers in fulfilling their obligations when carrying bagged coffee cargoes in containers, particularly if considering offering a cargo consolidation service for shippers (i.e. LCL/FCL terms).

The Court of Appeal overturned a decision of the High Court which if it had been allowed to stand, would have resulted in shipowners facing a significant increase in exposure to claims relating to hygroscopic cargos, which include rice, coffee and other grains. Unable to rely on the defence of "inherent vice" save in very limited circumstances and subject to an enhanced definition of "a sound system", shipowners' liability would have increased to the level approaching that of a cargo insurer.

The briefing can be downloaded from our website at: ***www.nepia.com/lp-briefings***

BREAK-BULK CARGOES

A new Loss Prevention Briefing on the *Carriage of Break-Bulk Cargoes* has been produced. The briefing addresses the factors which should be considered during the planning, loading, stowage and securing of break-bulk cargoes in order to help avoid cargo damage claims.

The properties and characteristics of some commonly carried cargoes are discussed along with a number of routinely observed lashing deficiencies.

The briefing can be downloaded here:
www.nepia.com/lp-briefings

RESIDENTIAL TRAINING COURSE – 2017

Registration for North's highly successful, annual residential training course in P&I insurance is now open.

This year celebrates the 25th anniversary of the course. Part I of the course will be hosted at our head office on the banks of the River Tyne before relocating to the nearby historic Lumley Castle for Part II.

The course will run from 9-16 June 2017. For more information on course topics and to download a brochure, visit:
www.nepia.com/rtc

FIXED AND FLOATING OBJECT DAMAGE CASE STUDY – REEF DAMAGE

Questions

1. What is shown in the picture?
2. Who pays for the damage?

Answers can be found on page 10.

To obtain hard copies of North's guides, please download the loss prevention order form from our website:
www.nepia.com/lp-publications

Your Copy of *Signals*

Copies of this issue of *Signals* should contain the following enclosure:

- Be Cyber Aware At Sea – Poster 1 – *"Do Not Feed the Phish"*

Disclaimer

NORTH
SERVICE, STRENGTH, QUALITY

'Signals' is published by:

The North of England P&I Association Limited
The Quayside
Newcastle upon Tyne
NE1 3DU UK
Telephone: +44 191 2325221
Facsimile: +44 191 2610540
E-Mail: loss.prevention@nepia.com
www.nepia.com