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The *Ever Smart* and *Alexandra I* Collision

The UK Supreme Court delivered its judgment on the collision between *Ever Smart* and *Alexandra I*. We look at its impact on bridge teams.

ALSO IN THIS ISSUE

Sound sampling of grain cargoes

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Jewellery in the workplace

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100 The Quayside, Newcastle Upon Tyne NE1 3DU UK
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Contact us at: signals@nepia.com

Insight articles and back issues: Current articles, further information and back issues of Signals are available online at: **www.nepia.com/latest/articles**

North launches new edition of the Mariner's Role in Collecting Evidence Handbook

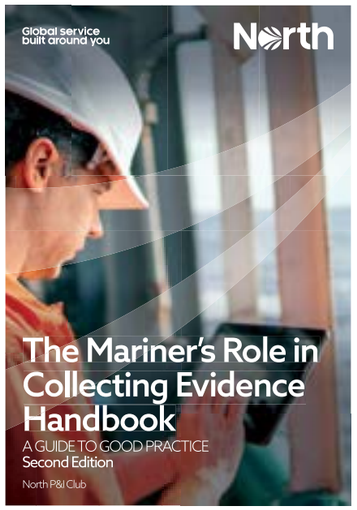
A new edition of the Mariner's Role in Collecting Evidence Handbook is now available along with a brand-new interactive evidence checklist generator app.

The first edition of our industry-renowned loss prevention guide was made available to North Members in 2010. The handbook has now been revised and updated to reflect the use modern electronic forms of evidence – for example those derived from ECDIS – and changes in legislative requirements, such as pollution laws.

Going digital

At North, we are very aware of the need to operate in a sustainable manner, and we are continually looking at how and where we can improve our environmental performance and reduce our carbon footprint.

This is why we have taken the decision to no longer send our Members hard copies of our loss prevention material and this includes the new edition of the Mariner's Role in Collecting Evidence Handbook. Going forward, Members will be provided with electronic versions of our industry-leading loss prevention publications.



FIND OUT MORE

Click here to access our loss prevention guides available for sale in hard copy and e-book format from Witherbys Seamanship.

North Members can download their free copy of the new edition of the Mariner's Role in Collecting Evidence Handbook by logging on to their MyNorth account at **www.nepia.com/login**

Evidence checklist app

The evidence checklists in the handbook have long proven useful to ship operators, seafarers and surveyors when collecting evidence following an incident. To improve this data gathering process, we have created an interactive evidence checklist app.

In addition to having access to the content contained in the new edition of the handbook, users will be able to generate a checklist relevant to the incident in hand. The checklist will be interactive, allowing the checklist to be populated using features such as entry of free text and uploading of documents and images to the user's device. Once the checklist is populated, the user can send the information to their selected recipient, whether it is the shipowner, technical manager or, in the case of a surveyor, their client.

By Alvin Forster
Loss Prevention Executive

FIND OUT MORE

Check our website at: **www.nepia.com** for updates on the release of the app and how to download it.

MIND CALL

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For mental health and emotional wellbeing at sea call our confidential helpline: **+44 191 235 3917**
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Post Repatriation Medical Scheme for Filipino Seafarers
For further details regarding our PRM programmes please contact Lucy Dixon or Abbie Rudd.
Email: **PRM@nepia.com**

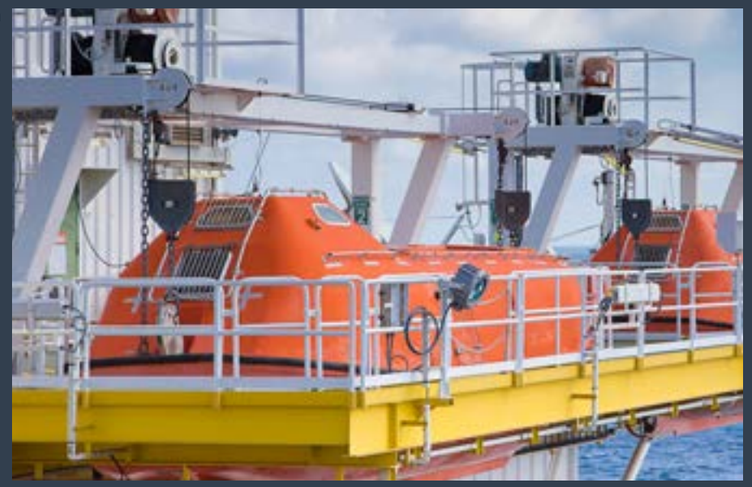
Drill Bits: Abandon Ship!

Next in our 'Drill Bits' series – where we help you get the most out of your drills - we tackle abandon ship drills.

Often an abandon ship drill is treated as an afterthought to another drill. For example, the main focus will be on the fire drill that precedes it, and afterwards the crew simply muster donning a lifejacket and then finish. But knowing what to do and when to do it in the event of an abandon ship situation is a matter of life and death. So why should it not be a full and properly formatted drill of its own?

Just as importantly, accidents during lifeboat drills - mostly involving on-load hook release systems when lowering or recovering the lifeboat – continue to occur.

As with the other drill articles in this series, we give you the 'drill bits' – the different elements of the drill. This is to make sure that the crew are familiar with and confident in their actions during a given drill.



Preparation

Complete a full risk assessment prior to the drill – DRILLS MUST BE SAFE!!

This should include assessing whether the weather, environmental conditions, and situation allow for safe lowering, operation and recovery of the lifeboat(s) by the crew. Use appropriate fall prevention devices and ensure crew are confident in their use. Check operational status and all maintenance is up to date for the relevant emergency equipment.

Split the crew into three small teams and conduct separate training sessions, each led by a responsible officer. Each team should rotate to the next leader once they have completed each training station, so all crew receive the same training to help in carrying out their emergency duties and responsibilities.

Bridge Team

- Location: Bridge
- Group leader: Master

Learning Objectives

- Demonstrate use of GMDSS: remember this equipment isn't just bridge radio equipment!
- Show the team where to locate the search and rescue transponders (SART) and how they work
- Using the test function, show the team the concentric circles on the 3cm radar (if there are no other vessels in the area).
- Show the team the Emergency Position Indicating Radio Beacon (EPIRB), explain how it floats free and how to manually remove it from its position.
- Demonstrate the location and use of the GMDSS handheld radios, point out to the team where to find the spare batteries.
- Explain the content of the contingency plans relating to abandon ship and where they can be found. Check all relevant situations are addressed in the plans and that the contents are accurate.
- Understand record-keeping. Describe how training records should be maintained, remembering that these may prove to be valuable evidence in the event of an incident.

Liferaft Team

- Location: At one of the liferaft muster points
- Group leader: 3rd Mate

Learning Objectives

- Discuss the importance of mustering promptly. The type of vessel and the nature of the incident that leads to an abandon ship situation can have a great bearing on how little time the crew might have in an emergency.
- Run through everyone's responsibilities: remind the team that they have individual responsibilities that they must know how to complete in the event of an abandon ship situation. This may include collecting GMDSS equipment or additional water and food - ensure everyone knows where these are stored.
- Show the team the location of nearest lifejackets and immersions suits – everyone should don an immersion suit and lifejacket to make sure they can do this quickly and correctly.
- Explain to the team how the hydrostatic release unit (HRU) works on the rafts and how to check it is attached correctly.
- Explain the manual launching sequence of the rafts. Show the team how to locate the instructions, reminding them that the SOLAS manual in the messroom is an additional valuable source of information.
- If the raft launching arrangements are davit-type, or the vessel has a marine evacuation system (MES), spend time on how they work and their use.
- Ask the crew on what equipment they will find in the raft when it is inflated. Ensure they know how to use the pyrotechnics and when they should be used.

Lifeboat Team

- Location: At one of the lifeboat muster points
- Group leader: Chief Officer

Learning Objectives

- Run through individual responsibilities in the event of an abandon ship according to the muster list, stressing the importance of understanding their duties. This should include knowing the location of equipment that need to be gathered prior to mustering.
- Show the team where the nearest lifejackets and immersion suits are.
- If safe to do so and with all fall prevention measures in place, the team should board the boat, donning lifejackets. They should locate a seat, then be asked to put on their seat harness. This can demonstrate how difficult this can be.
- Demonstrate how to operate the cabin lights.
- If fitted, explain how the oxygen and sprinkler systems work.
- Show the team where to locate the lifeboat loose equipment. Explain how it works and what it is for, including the pyrotechnics.
- Show them the emergency steering, how to set it up and its operation.
- Explain how to start the engine, let them try to start it. If possible (and the cooling system allows it), run the engine ahead and astern.
- Explain how the lifeboat lowering mechanism works and where to locate the instructions, reminding the team that the SOLAS manual in the messroom is an additional valuable source of information.

All parties

- Location: At one of the lifeboat muster points
- Group leader: Chief Officer

Learning Objectives

- Muster all the teams together at a safe distance from the lifeboat.
- Describe the launching and recovery process – referencing company standing orders.
- Explain how incidents have happened in the past that led to serious injuries and fatalities.
- Testing of the launching arrangements will depend on the type of system on board your vessel.
- For lifeboats lowered by means of falls, inspections and testing of launching arrangements are to be performed in accordance with SOLAS Ch.III Reg.20. For example, operate the winch brake on the vessel, ensuring no crew on board the lifeboat, lower the boat to the point where the auto-releasing gripes become free. Or follow the test requirements for the lifeboat on the vessel.
- For free-fall lifeboats, simulated launching should be carried out in accordance with the manufacturer's instructions.
- Remember to log all tests and lifeboat launchings.

Debriefing

Drills are about learning and not just a task to satisfy regulatory requirements

Assemble all groups and each group leader should highlight any lessons learned and encourage questions from the team. Don't forget to highlight what went well and give praise where it's due.

It is extremely important to emphasise that individuals must know and fully understand how to conduct their responsibilities in the event of an abandon ship drill. A common Port State Control deficiency is where it is observed that the crew know what it says on the muster but do not know how to carry out their allocated responsibilities properly. No matter how small your responsibility seems, your role is likely to be essential.

By John Southam
Loss Prevention Executive

FIND OUT MORE

Click here for more information on IMO Prevention of accidents involving lifeboats.

Sound sampling of grain cargoes

Samples of grain and oilseed cargoes should be obtained correctly; but drawing these is not as easy as it sounds. Ben Cockshull, an expert Food Scientist at the consultancy CWA International, explains the importance of correct sampling techniques for bulk agricultural cargoes if these samples are to be used later in defending claims against the ship owner.

Ship operators and surveyors are often advised to "take samples" when loading or discharging bulk grain or oilseed cargoes, such as when loading soya bean cargoes in South America or when cargo damage is observed at discharge. But how can we try to make sure these samples are obtained in the best possible manner?

Sampling defined

Sampling refers to the action of obtaining samples that represent an item of interest, such as a grain cargo. These samples may then later be used for analysis, which informs us about properties of the sample material. The sampling and analysis steps should be considered as two distinct and separate events.

The correct and proper collection of samples represents one of the strongest methods for accurately resolving quality disputes and determining causation of cargo damage. When a cargo claim is raised, or a cargo quality issue is anticipated, the next thought should be what kind of samples need to be obtained and how.

Some sampling techniques are best suited to asking questions about the entire quantity of cargo, whilst others lend themselves to asking more specific questions such as the severity and causation of any potential damage.

Ideally, sampling activities should be performed jointly amongst the interested parties; not only will this reduce the costs associated with sampling, but it can also help to reduce any sampling and analytical discrepancies further down the line.

The two main types of sampling activities are spot sampling and representative sampling. It is important to draw a distinction between the two as it can be a common source of confusion.

Spot samples

These samples are obtained from a specific site of interest and only represent the condition of the cargo in that sample. Spot samples are typically sought when trying to determine the cause of a certain type of damage, for example identifying the source of a contaminant or whether cargo damage by wetting was caused by seawater or freshwater ingress. Any findings from a spot sample(s) should not be extrapolated to represent all the cargo onboard a vessel.

When taking spot samples, it is essential to obtain a sample from an unaffected area for comparison.

Representative samples

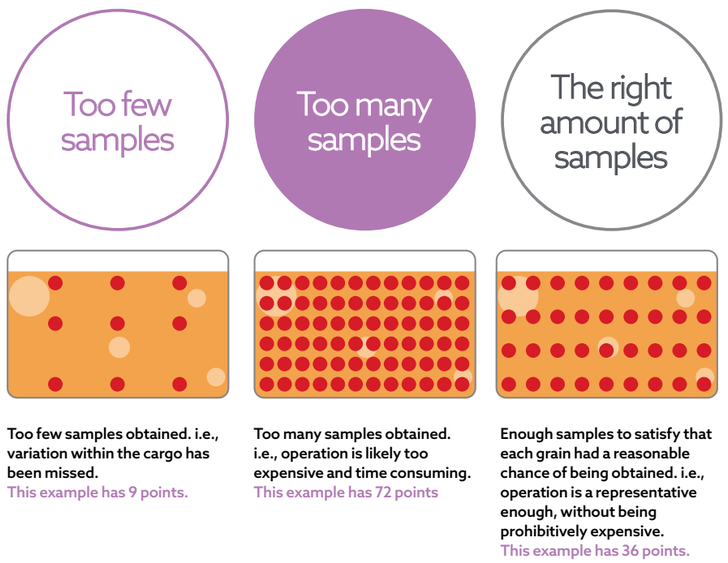
The quality parameters of cargoes loaded on a vessel are rarely uniform throughout the consignment. In the case of bulk agricultural cargoes, variability is often seen in key quality factors such as moisture, protein and/or foreign matter content. This variability can be due to a range of factors such as the growing environment, processing and storage conditions and commodity origin.

To capture and account for this inherent variability, representative samples must be obtained.

Representative sampling procedures have been set out by international trade organisations, such as the Grain and Feed Trade Association (GAFTA) and the Federation of Oils, Seeds and Fats Associations (FOSFA). These procedures aim to capture the variability within the consignment, by sampling at a suitably high frequency. To be representative, these sampling procedures require large numbers of samples, known as incremental samples, to be obtained uniformly and systematically throughout loading or discharge. Sampling protocols will typically stipulate the minimum size of lots and number of incremental samples that need to be obtained per lot. The high number of incremental samples, minimum lot sizes

SAMPLING GRAIN CARGOES

NB. The below is for illustrative purposes only.



Too few samples obtained. i.e., variation within the cargo has been missed.
This example has 9 points.

Too many samples obtained. i.e., operation is likely too expensive and time consuming.
This example has 72 points

Enough samples to satisfy that each grain had a reasonable chance of being obtained. i.e., operation is a representative enough, without being prohibitively expensive.
This example has 36 points.

and sampling during cargo movement help to ensure that the probability of any individual grain or oilseed being sampled is as even across the entire consignment as is practically possible.

If sampling were to occur at a lower frequency than specified in the sampling protocols, it is likely that variability within the consignment would be missed. On the other hand, if sampling were performed at a higher rate than the sampling protocols stipulate, then the sampling procedure would likely be prohibitively costly and/or labour intensive.

If the relevant representative sampling protocol is not followed, then accurate conclusions cannot be made from the subsequent analysis of laboratory samples.

Sampling at the higher frequencies required by representative sampling protocols can be very labour intensive. CWA recommend that sampling is performed in accordance with the applicable sampling protocol by a competent third-party company or cargo superintendent that has been accredited by the relevant international trade organisation (e.g. GAFTA or FOSFA). Hiring an accredited company helps to ensure the relevant experience, knowledge and manpower is available.

Representative samples are usually best obtained when the cargo is moving during loading or discharge, known as dynamic sampling. Some instances, however, may require sampling to be performed when the cargo is stationary, known as static sampling. Whilst samples obtained during static sampling are more representative than a spot sample, since they involve multiple incremental samples being obtained from a stationary pile, the sample material will only represent those parts of the cargo accessed i.e., the upper 1m of a pile of maize. Dynamic and static sampling will typically require different sampling protocols.

What to do once the samples have been obtained?

After all incremental samples have been obtained it is important that they are properly homogenised and reduced to form laboratory samples for each individual lot and for all lots cumulatively.

A common method to achieve this with minimal equipment is 'coning and quartering'. The laboratory samples can later be sent for analysis and the results, if sampled correctly, should accurately reflect the condition of the cargo that the sample is said to represent.

Once the laboratory samples, or any spot samples, have been produced they should be packaged and stored according to the requirements of the relevant sampling protocol. CWA recommend that samples are immediately:

- double bagged in thick, clean and dry plastic bags
- closed with a numbered seal
- properly labelled

In general, the minimum details included on the label should be:

- vessel name
- quantity represented/description
- sample date
- commodity
- lot identifier (if relevant)
- location or point of sampling
- name of the person who obtained the sample

A sampling report, signed by all parties, should be produced which includes the seal numbers and how they were distributed. Generally, samples of bulk agricultural cargoes should be stored in a cool, dark, and dry place.

In summary, the timely and proactive collection of the correct samples can significantly aid an effective response and investigation into cargo claims, both during the early stages of the case and through to any potential legal proceedings.

By Ben Cockshull
CWA

FIND OUT MORE

Carrying grain and oilseed cargoes? See our loss prevention material:

Carriage of Grain Cargoes - Briefing

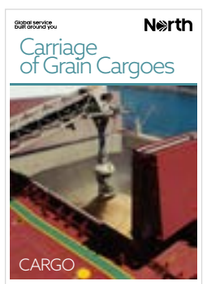
Soya Beans Cargo Damage Claims in China - Briefing

Carriage of Seed Cake and Other Residues of Processed Oily Vegetables - Briefing

Cargo Care Checklist: Grain

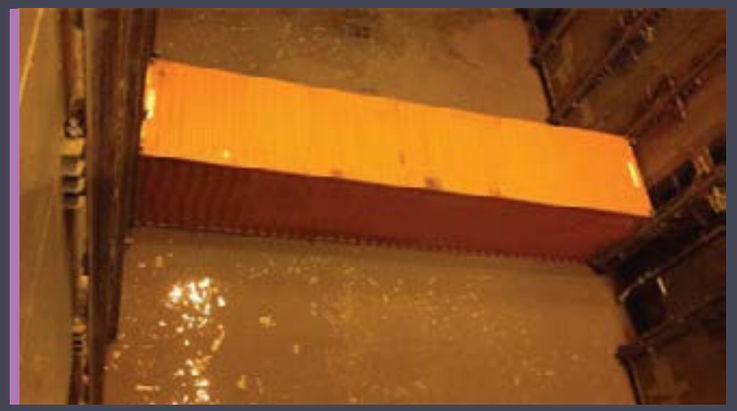
Cargo Care Checklist – Seed Cake

CWA International is a specialist consultancy providing clients involved with international trade, shipping, insurance and reinsurance, and their legal counterparts with expert knowledge and advice on a wide range of commodities including food and other agricultural products, metals, minerals, oils, gases and chemicals.: www.cwa.international



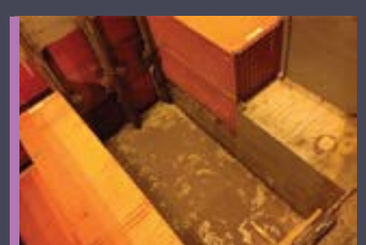
Loose lids and cargo claims

Conducting tank entries is a high-risk activity that requires proper planning to ensure it is carried out safely. One aspect of the operation that is easily overlooked is ensuring that manhole covers are properly closed and secured upon completion.



We see from the numerous claims we receive that hold flooding from inadequately secured manhole covers is a too-regular occurrence, particularly those involving ballast tanks.

On container vessels, bulk carriers and general cargo ships, the manhole covers for fuel and ballast tanks are the only barrier that prevents the contents migrating directly from the tank into the cargo space. If they are not sealed and secured properly it is likely to result in hold flooding or, in the case of bunkers - contamination, which leads to cargo damage claims against the shipowner.



Due to this risk of hold flooding, great care needs to be taken to ensure that they are properly secured following each time they are opened.

Avoiding mistaken identification

When preparing a tank entry, check the manhole cover locations on the vessel's drawings to ensure the correct cover is opened and subsequently closed.

Stencilling the tank ID on the manhole cover and on the adjacent deck helps prevent the wrong manhole cover from being opened. It also ensures that the same cover is fitted to the manhole upon completion.

Preparation is the key

While waiting for tanks to be ventilated, there is a good opportunity to prepare for refitting the covers on completion of the tank entry. If any issues are identified they can be rectified in good time, rather than rushing to put the tank back into service after the inspection.

Think about:

- Cleaning the sealing faces on the deck penetration and the lid
- Inspecting the gaskets and replacing if necessary - it may be prudent to replace the gaskets after each opening
- Replacing any broken studs, rounded nuts, or missing washers
- Cleaning and greasing threads

Refit the lids

The task of re-fitting manhole lids should be supervised by a responsible officer who should satisfy themselves that all the lids have been placed back into their correct location, fitted with the correct good quality gaskets and that the securing nuts are suitably tightened.

To avoid any covers being overlooked, a record should be made of all covers that have been removed. This can be used as a checklist during the re-fitting of the covers.

The officer should also remind the crew of the correct bolting technique to ensure the lid is tightened evenly. Failure to do this can result in a leak, even if a new gasket is used and the sealing faces are clean.

Bringing the tank back into service

Additional precautions should be taken the first time the tank is used after being brought back into service. This includes:

- Checking bilge levels and that bilge alarms are operational prior to filling the tank
- Conducting a visual inspection of all the manhole covers on the tank to ensure all covers are creating a correct seal and there are no leaks

Following dry docking or repairs by shore workers, the same checks should be made. Do not rely on others to make these checks.

It is also recommended to carry out regular checks on all manhole covers to identify any early signs of leakage and take preventative action.

By David Patterson
Loss Prevention Executive

Engine failure highlights dangers of delegating maintenance

The United Kingdom Marine Accident Investigation Branch (MAIB) have released their report into the catastrophic main engine failure on the ro-ro vessel *Finlandia Seaways*, bringing attention to the importance of assuring the quality of work by third party contractors.

The scenario

In 2018, the Lithuanian-flagged ro-ro cargo vessel *Finlandia Seaways* was on a regular voyage from Zeebrugge to Rosyth when one of the main engine's connecting rods broke. Internal rotating components were thrown through the side of the crankcase into the engine room, and a short but intense fire occurred.

Within 20 minutes the crew had mustered, closed down the machinery spaces and activated the carbon dioxide fixed firefighting system.

The vessel's third engineer, who was on duty at the time, suffered serious smoke-related lung, kidney, and eye injuries during his escape from the engine room. He was recovered by a coastguard helicopter and transferred to hospital for medical care, making a successful recovery.

Investigation findings

It was found that a fracture of the connecting rod small end (where the connecting rod attaches to the piston) had led to the sudden and catastrophic failure of the main engine.

To ascertain the causal factors that resulted in the failure, the investigation looked at the engine maintenance arrangements and component history. The affected connecting rod's small end had completed just over 90,000 running hours, which was 10,000 hours fewer than the recommended limit set by the engine manufacturer - signifying premature failure.

Minor routine maintenance was carried out by ship's crew, but major overhauls were contracted out to a third-party ship repair company. The investigation found that the way the contracted third-party replaced the piston pin bearing bushes on the connecting rods introduced stress raisers that significantly increased the likelihood of crack initiation and fatigue failure. This was despite the contractor's formal work procedure being similar to the correct method stated by the engine manufacturer. Quite simply, the contractor didn't follow their own procedure and the small ends had been damaged during the piston pin bush removal and fitting process.

> A shipowner should exercise due diligence when selecting contractors to carry out maintenance and when verifying the quality of the work undertaken

When the investigators visited the contractor's workshop, it was found that because they were not accredited by the engine manufacturer, they did not have access to all of the manufacturer's piston pin bush removal and installation tools and procedures. The investigation also noted weaknesses in the company's quality management system, in particular the failure to provide documentation on when and by whom servicing was carried out.

Delegating maintenance

There are many good reasons why a shipowner will outsource major overhauls of machinery and equipment. But as this investigation report shows, it is vital that they satisfy themselves that their appointed contractor is suitably qualified to carry out the work, that they carry out the work correctly, and that they have suitable quality management systems in place to record when and by whom the work was carried out.

Under Article III of the Hague / Hague Visby Rules which are commonly incorporated into the contracts of carriage (e.g. bills of lading) a shipowner has a duty to exercise due diligence to make the ship seaworthy at the beginning of the voyage. This duty cannot be delegated.

This means that if a third-party contractor does not carry out the work correctly, and their error/ omissions makes the vessel unseaworthy, it will be the shipowner rather than the third-party contractor that will be potentially responsible for any resulting losses suffered by the owners of the cargo.

If a shipowner fails to exercise due diligence to make the ship seaworthy at the beginning of the voyage, and the unseaworthiness is proved to be causative to the loss, then the shipowner will no longer be entitled to rely upon the defences that are contained in Article IV of the Hague / Hague Visby Rules to avoid liability. It will also prevent the shipowner from claiming General Average (GA) contributions from the owners of the cargo / bunkers.

In order to bring a successful claim and/or avoid liability to contribute in GA, the owners of the cargo or bunkers would first have to prove that the vessel was unseaworthy and that the unseaworthiness was causative to the loss suffered – which with a machinery breakdown is likely to be relatively straightforward.

After it has been established that the vessel was unseaworthy, the shipowner will then have the legal burden of proving that there was no actionable fault on their behalf – i.e. that there was no want of due diligence to make the vessel seaworthy – in order to avoid liability for the claim, or to recover the GA contributions that are due from the owners of the cargo or bunkers. As all the relevant evidence on causation and due diligence will be in the hands of the shipowner, the evidential burden will be upon the shipowner to produce it.

With any claim, evidence is key. A shipowner's position is therefore much stronger when they can a) demonstrate that they exercised due diligence in employing a suitable contractor; and b) demonstrate that the quality management systems in place adequately records when and by whom the work was carried out as well as preventing any defective work slipping through the net.

By Alvin Forster
Loss Prevention Executive

David Berkeley
Senior Executive (Claims)

FIND OUT MORE

Click here to read the Finlandia Seaways MAIB Report

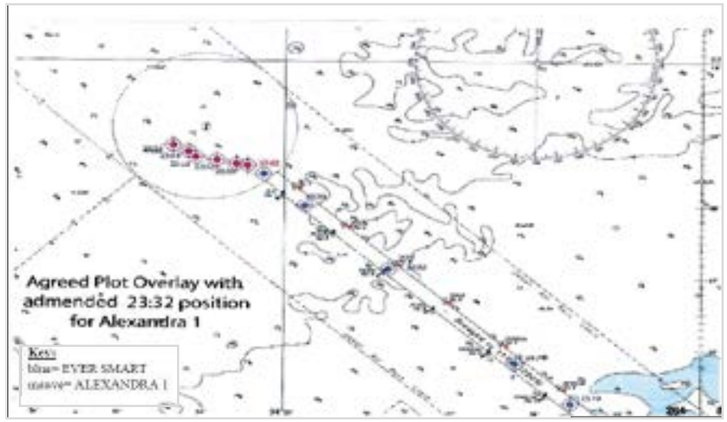
The *Ever Smart* and *Alexandra I* Collision: What does it mean?

In February 2021, the UK Supreme Court handed down its judgment on the collision between *Ever Smart* and *Alexandra I*. This was the first appeal in a collision to reach the highest court in almost 50 years.

Much has been written about the judgment, David Berkeley looks at what it may mean for your bridge team.

What happened?

- On 11 February 2015, the container ship *Ever Smart* collided with the tanker *Alexandra I*.
- The collision happened at the pilot boarding area, just outside the channel to Jebel Ali.
- The channel to Jebel Ali is a narrow channel as per Rule 9 of the International Regulations for the Prevention of Collision at Sea (COLREGS).
- *Ever Smart* was outbound and proceeding along the channel.
- *Alexandra I* was at the pilot boarding area waiting to pick up the pilot who was disembarking from *Ever Smart*.



Credit: The "Alexandra 1" and "Ever Smart" [2021] UKSC 6

The collision between *Ever Smart* and *Alexandra I* highlights the importance of maintaining a proper lookout by sight, hearing and all available means to make a full appraisal of the situation and in turn the risk of collision.

What was the initial outcome?

Liability for the collision was first determined by the English Admiralty Court in 2017. In 2018, the decision was upheld by the Court of Appeal.

Before deciding who was to blame for the collision, the Admiralty Court first considered the relationship between the crossing rules (Rules 15 to 17 of the COLREGS) and the narrow channels rule (Rule 9 of the COLREGS).

The Admiralty Court determined that the crossing rules cannot apply where one vessel is navigating along a narrow channel and another vessel is navigating towards the channel with a view to entering it. The Admiralty Court also accepted that as *Alexandra I* was not on a steady course the crossing rules would not apply.

Who was to blame for the collision?

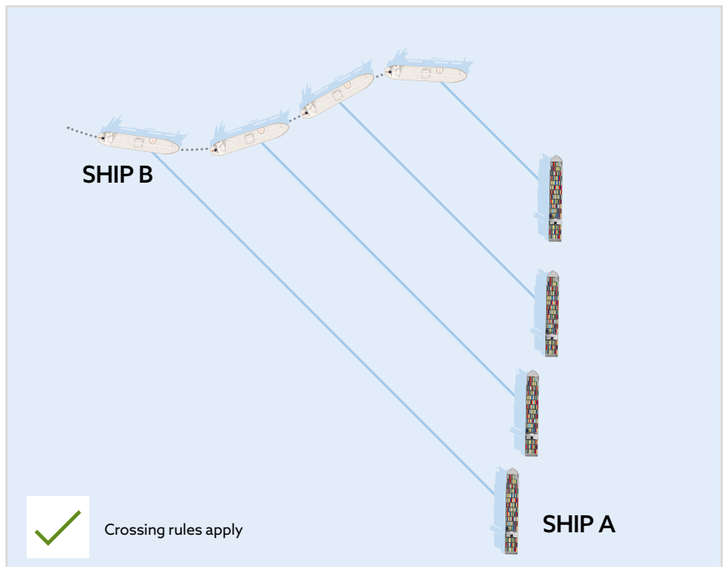
After deciding that the crossing rules did not apply, and that *Alexandra* I did not have to keep out of the way of *Ever Smart*, the Admiralty Court considered the faults of both vessels:

Faults of *Ever Smart*		Faults of *Alexandra I*	
(i)	breaching the narrow channel rule by failing to keep to the starboard side of the channel	(i)	failing to keep a good lookout – the vessel misheard a VHF conversation which resulted in not turning to starboard towards the channel and instead caused it to head so as to cross the approaches to the channel.
(ii)	keeping a defective lookout and making assumptions on scanty information		
(ii)	proceeding at an excessive speed		

The Admiralty Court said that although there was very little difference in the contributions of both vessels in causing the collision, the unsafe speed of *Ever Smart* caused far more damage. *Ever Smart's* faults were found to be far greater, and liability for the collision was apportioned with *Ever Smart* bearing 80 percent of the blame, and *Alexandra I* bearing 20% of the blame.

The Court of Appeal agreed with the Admiralty Court and upheld the conclusion that a) the narrow channels rule applied to the exclusion of the crossing rules and b) that *Alexandra I* needed to be on a steady course for the crossing rules to apply.

DIAGRAM 1



What happened at the Supreme Court?

The appeal to the Supreme Court asked two important questions about the crossing rules and their relationship with the narrow channels rule.

Does the give-way vessel have to be on a steady course for the crossing rules to apply?

No. The Supreme Court said that if two vessels, both moving over the ground, are crossing so as to involve risk of collision, then the give-way vessel does not have to be on a steady course for the crossing rule to apply. As long as it is **reasonably apparent to those navigating the two vessels that they are approaching each other on a steady bearing, then they are crossing so as to involve risk of collision.** *See Diagram 1.*

The Supreme Court also thought about whether the stand-on vessel had to be on a steady course for the crossing rules to apply. Again, the Supreme Court answered 'No'. But once the risk of collision exists and the crossing rules are engaged, then it must then keep its course and speed in accordance with Rule 17(a). This means that there is no requirement for the stand-on vessel to already be on a steady course or speed before the crossing rules apply.

The Supreme Court also said that the need to "keep her course and speed" does not mean the stand-on vessel must maintain its precise heading, course or speed, if, at the time the crossing rules are engaged, they are visibly conducting a nautical manoeuvre that requires adjustment to its heading, course or speed. An example of this may be creating a lee to pick up a pilot. Such a manoeuvre does not relieve the give-way vessel of its duty to keep clear.

Subject to the application the narrow channels rules, the Supreme Court held that the crossing rules applied and that *Alexandra I*, as the give-way vessel, had to keep well clear of *Ever Smart*.

The *Ever Smart* and *Alexandra I* Collision: What does it mean? (cont.)

Do the crossing rules apply when an outbound vessel is following a narrow channel, and has another vessel on a crossing course approaching the same narrow channel with the intention of and in preparation of entering it?

No. The Supreme Court said that the crossing rules are not overridden by the narrow channels rule just because the approaching vessel is intending and preparing to enter the narrow channel.

The crossing rules are only overridden by the narrow channel rules in very limited situations. These are:

- Where two vessels are approaching one another in a narrow channel and are heading in opposite directions, both vessels should keep to the starboard side of the channel, even if they appear visually to be on crossing courses (e.g. a bend in channel).
- When the approaching vessel is adjusting its course and speed to enter the narrow channel on the starboard side and is on its final approach.

Other than these two situations, if two vessels, both moving over the ground, are on a steady bearing and are crossing so as to involve risk of collision, then the crossing rules will apply.

PRACTICAL IMPACT OF THE JUDGMENT

Two things bridge teams must now know:

1. **Vessels do not need to be on a steady course for the crossing rules to apply.**
   As long as they are approaching each other on a steady bearing, then they are crossing so as to involve risk of collision.

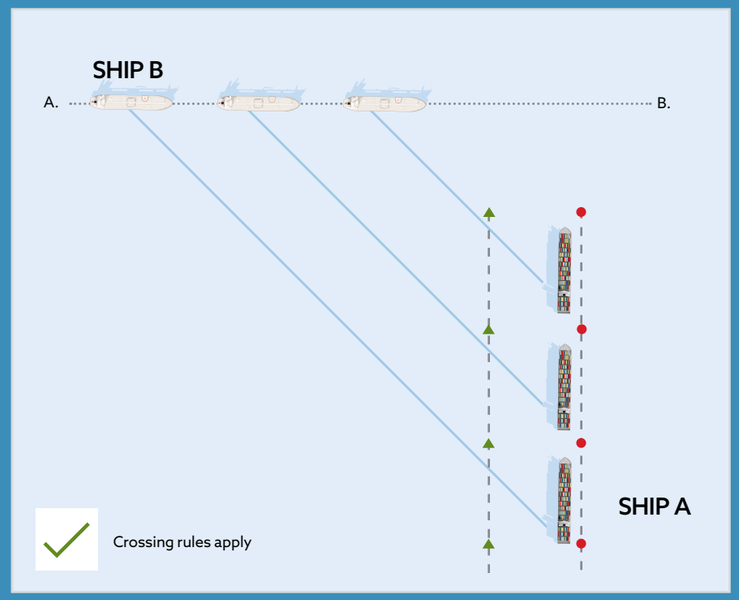
2. **The crossing rules are not overridden by the narrow channels rule just because the approaching vessel is preparing to enter the narrow channel.**
   The crossing rules are only overridden when the approaching vessel is preparing to enter and is adjusting its course to enter the narrow channel on the starboard side and is on its final approach.

The Three Situations

The Supreme Court identified three situations that are likely to take place outside of the entrance to a narrow channel:

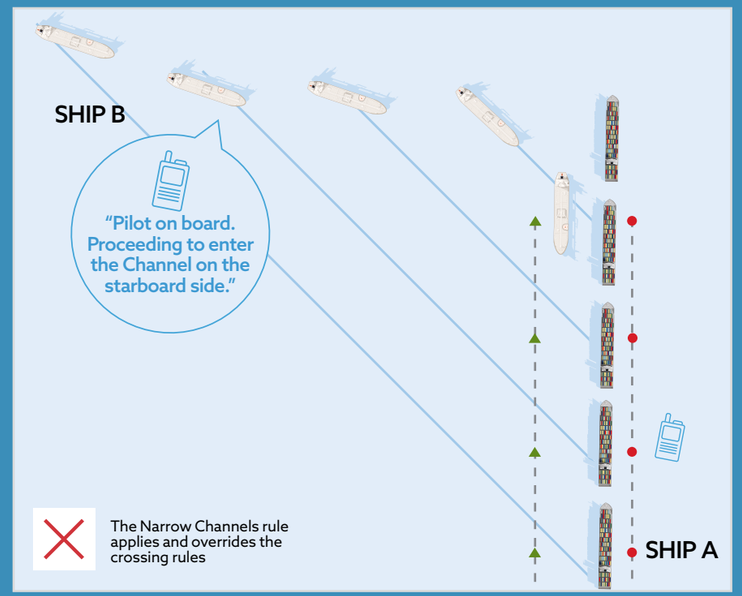
1. Vessels approaching the entrance of the channel, heading across it, on a route that starts and finishes at points outside the narrow channel : **The crossing rules apply.**
   See Diagram 2.

DIAGRAM 2:



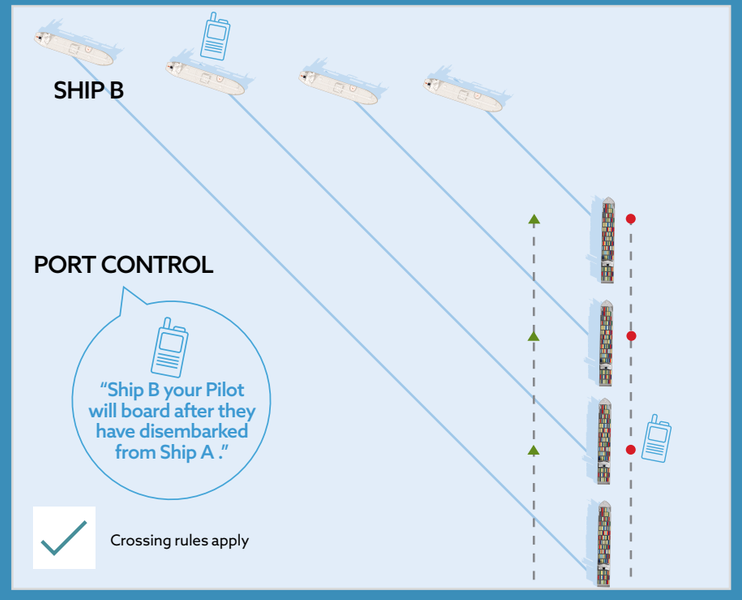
2. Vessels that are about to enter, and are on their final approach to the entrance of the narrow channel, and are adjusting their course to arrive on the starboard side of the channel: **The narrow channels rule applies and overrides the crossing rules.**
   See Diagram 3.

DIAGRAM 3:



3. Vessels that are preparing to enter a narrow channel but are waiting to enter rather than entering straight away: **The crossing rules apply.**
   See Diagram 4.

DIAGRAM 4:



Does this change who was to blame for the collision?

As the Supreme Court answered 'no' to both questions, the appeal was allowed and apportionment for the collision will now be reviewed by the Admiralty Court.

Don't overlook the lookout

The Supreme Court has made clear how the crossing rules and narrow channels rule apply, but what about lookout?

It is often overlooked, but the main reason that *Ever Smart* and *Alexandra I* collided was not because the bridge teams were unsure whether the crossing rules or narrow channels rule applied; but because of the poor lookouts being kept by both vessels.

Ever Smart had not sighted *Alexandra I* visually until moments before the collision and had not determined if risk of collision existed; and *Alexandra I* had misheard a VHF conversation which led it to cross the channel.

The collision between *Ever Smart* and *Alexandra I* highlights the importance of maintaining a proper lookout by sight, hearing and all available means to make a full appraisal of the situation and in turn the risk of collision.

By David Berkeley
Senior Executive (Claims)

FIND OUT MORE

Click here to read the judgment.

Call for clarity on the enforcement of the sulphur cap

In terms of safety, the introduction of the IMO 0.50% sulphur cap on marine fuels has largely been a success.

Predictions of vessels losing propulsion in busy shipping lanes or suffering loss of electrical power were, thankfully, proved incorrect. By and large, the industry – in particular ships' crews – have managed the transition very well.

It hasn't all been plain sailing, however. The backend of 2019 saw concerns being raised on the poor stability characteristics of some of the new very-low-sulphur fuel oil (VLSFO) products and the risk of incompatibility between stems, which did indeed become realised to a certain extent throughout 2020. There were some operational issues that were perhaps not as well foreseen, such as increased liner wear of engines attributed to the poor matching of cylinder lubricating oil with the fuel in use combined with too infrequent scavenge inspections.

These have all had some sort of impact on us at North, resulting in claims and, more prominently, disputes amongst shipowners, charterers and fuel suppliers.

However, what has kept us busiest are the reports of potential marginal non-compliance, which sounds innocuous to say the least.

The problem scenario

The vessel requests compliant bunkers to be delivered. The party ordering the bunkers (either the owner or time charterer) specifies compliant fuel to be supplied to the vessel.

Upon completion of bunkering, the supplier issues a bunker delivery note (BDN) which declares the fuel to be compliant (0.50% S or less). The receiving vessel then sends a representative sample drawn during bunkering to an independent laboratory where it is tested against ISO 8217 listed parameters for commercial purposes.

Several days later, the test result returns a sulphur content between 0.51% and 0.53%, therefore indicating non-compliance with the limit specified in MARPOL Annex VI.

What happens next? Are the bunkers off-spec, non-compliant or both? Can the fuel be used? Who should be notified?

Will the vessel be targeted by the authorities and what action will they take? Should it be debunkered?

This is where confusion reigns, leading to commercial disputes and, in some cases, de-bunkering.

Are the bunkers off-specification?

According to existing industry guidance issued by organisations such as IBIA and CIMAC, if the receiving vessel's own sample returns a result of 0.53% or less, they cannot bring a claim against the supplier.

The rationale behind this 0.53% cut-off mark is 'single-test reproducibility', which raises its head frequently in this issue. In very simple terms, it is an allowance applied to a lab test result that recognises the limitations on accuracy of a single test.

If the vessel's sample test result is over 0.53%, a claim against the supplier may be initiated. The supplier's retained sample is usually contractually binding and therefore tested. If that test returns a result of 0.51% or more (single-test reproducibility is not applied in this stage – just to confuse matters!), it is deemed off-spec for commercial purposes.

However, these are only guidelines and a supplier may have different terms in their bunker contract.

The situation becomes more complex in situations where the time charterer provides the bunkers under the terms of the charterparty. While the supplier will consider their sample to be the binding commercial sample between them and the fuel purchaser, this is unlikely to be the binding sample under the charterparty, which is usually that drawn by the vessel. This could lead to situations where the time charterer is liable to the shipowner but is unlikely to be able to recover losses from the supplier.

Are the bunkers non-compliant?

If the receiving vessel's own sample returns a result greater than 0.50%, it does not automatically mean that the bunkers are non-compliant with MARPOL.

Non-compliance can only be confirmed by testing any of the MARPOL delivered sample, the MARPOL in-use sample or the MARPOL onboard sample.

Commercial samples - such as the vessel's own sample - should not be considered evidence of definitive non-compliance. However, very few administrations have confirmed this explicitly, and experience suggests that some port state control functions are taking a contrary view.

There are also reports of port state control officers in some countries not applying the single-test reproducibility tolerance to in-use samples during their inspections. It is not mandatory for port state authorities to apply this tolerance when testing the fuel in use, but the IMO are promoting its early adoption. Again, the lack of a consistent approach by port states around the world causes confusion for calling vessels.

Vessels trading to the United States will of course switch to 0.10% max sulphur fuel before entering the North American emission control area (ECA). But this does not eliminate the risk of contravening MARPOL. US lawyers have indicated that any vessel proceeding towards the United States with fuel on board with a sulphur content greater than 0.50% may be in violation of the carriage ban, regardless of whether it is to be consumed.

Who should be notified?

In general, shipowners have been advised to follow the notification process in MEPC.321(74) 2019 GUIDELINES FOR PORT STATE CONTROL UNDER MARPOL ANNEX VI:

"In addition, if the BDN shows compliant fuel, but the master has independent test results of the fuel oil sample taken by the ship during the bunkering which indicates non-compliance, the master may have documented that through a Notification to the ship's flag Administration with copies to the competent authority of the relevant port of destination, the Administration under whose jurisdiction the bunker deliverer is located and to the bunker deliverer."

However, as the document's title suggests, this is the IMO guidance for port state control. There is no published guidance to shipowners. And, by stating that "the master may..." this would imply that the notification process is merely voluntary and there is no obligation to notify the referenced parties.

Marginally off-spec bunkers are causing lengthy disputes and, in some cases, de-bunkering

There is also uncertainty on what is meant by "indicates non-compliance"? Is the IMO's intention that the notification process applies when the ship's sample test result exceeds 0.50%, or is it 0.53% to allow for single-test reproducibility?

Providing clarity on the notification process could remove a massive amount of doubt.

Will the vessel be targeted by PSC?

It is important not to disincentivise reporting of potentially non-compliant fuel as the IMO GISIS module - which allows flag states to report on behalf of shipowners - relies on these reports to identify suppliers that provide non-compliant fuel.

It stands to reason that if PSC target a vessel for inspection following the submission of a voluntary notification, it is likely to disincentivise reporting.

How port state authorities around the world are acting upon these notifications is not yet known; and as COVID-19 impacts their current inspection protocols, we may not be seeing an accurate picture on how this will be dealt with in a post-pandemic world.

However, the European Maritime Safety Agency (EMSA) Inspection Guidance states clearly that EU ports will target a vessel for inspection if they submit a voluntary notification of potential non-compliance.

A call for clarity and consistency

Marginally off-spec bunkers are causing lengthy disputes and, in some cases, de-bunkering. Considering the carbon footprint of the de-bunkering process, these developments could be considered as being at odds with established industry environmental goals.

Shipowners need to be confident that the rules are clear and that there is a consistent approach to the enforcement of the rules around the world.

By Alvin Forster
Loss Prevention Executive

FIND OUT MORE

We have a wealth of information on the IMO 2020 sulphur cap including articles, news and resources.

Click here for more information.

Biofuels enter the sustainable fuel mix

Achieving the IMO's goals on greenhouse gas emissions will require a shift in how vessels are fuelled and propelled. Amongst the options available to shipowners on meeting the IMO targets, lower-carbon fuels are likely to be a popular option – one of which is biofuels.

Switching to biofuels could be an attractive proposition to some shipowners. The conversion to biofuels – whether a blend or 'drop-in' (replacement) fuel – is relatively simple. Ships' engines and transfer and storage systems will require minimal modifications from using traditional marine fossil fuels. The lack of availability and higher costs have been identified as barriers to adoption, but there could be positive shifts in this area too.

North has already received enquiries from shipowners who are considering using biofuels, indicating interest is growing and the shipping industry is keen to know more. We spoke to Bart Hellings and Johannes Schurmann from biofuel provider **GoodFuels** based in the Netherlands for expert insight.

How do biofuels compare with fossil fuels?

Just like fossil fuels there are multiple types of biofuels and they can also differ on sulphur, density, and viscosity parameters. The heaviest marine biofuel which GoodFuels supply is MR1-100 which compares to RMD-80. Different biofuels which are closer to other product categories are also available.

> The industry needs to ensure that sustainable, high quality biofuels are supplied globally

How does ISO 8217:2017 cater for the latest biofuels?

It's important to remember that ISO 8217 is a fossil fuel standard; and while it could be used as a guideline, there are missing parameters that are relevant to biofuels and others which are no longer relevant.

Are biofuels susceptible to microbial growth and what about their shelf life?

They normally contain less than 0.05% (v/v) water which is very low. Microbial growth normally occurs when water is added to the fuel by condensation or poor housekeeping on the ship. This risk is reduced by storing in a clean fuel tank and preventing water ingress. Special additives have been developed if microbial activity is a concern and specific operational procedures will be required.

Some biofuels undergo processes where oxygen is eliminated and are perhaps even more resistant to microbial growth in terms of quality and have at least the same shelf life of fossil fuels.

How is quality of the biofuel assured?

Poor quality biofuels can be very diverse in their content and characteristics. GoodFuels have found that the following helps with the overall quality:

- Large portfolio of quality, long-term and stable supply partners
- Use of special additives
- Proven recipes based on five years of continuous testing which results in consistent quality – especially for higher blends

How is biofuel conformity proven?

A certificate of analysis (CoA) will confirm that specifications have been met and a sustainability certificate will verify the fuel is produced from sustainable feedstocks.

The last year has shown there is higher risk of stability and compatibility issues with VLSFOs – how do biofuels compare?

Tried and tested biofuels do not appear to cause customers any more issues than fossil fuels. The issues experienced with VLSFOs have not been reported with their marine biofuels.

Are there any special tank cleaning requirements?

There are no reported problems regarding stability and compatibility when leftover fossil fuels remain in the tank. However, thorough cleaning of fuel tanks prior to use of biofuels will prevent operational problems caused by fossil fuel sediment entering the fuel system.

What do the engine makers say?

GoodFuels has carried out extensive testing of biofuels with the top five original equipment makers (OEMs). They are now very supportive of GoodFuels' biofuels and additional OEMs are ratifying our products on a constant basis.

What is the future of biofuels?

Advanced marine biofuels are a fast-growing alternative fuel in the marine sector. July 2020 was a record month with biofuels representing 10% of all Rotterdam HFO volumes. We expect growth to continue for this low-sulphur 'drop-in' fuel which can be used in existing engines.

The shipping industry needs to keep its guard up. Shipowners and fuel purchasers should ensure that they are supplied only with sustainably sourced, high quality and stable products. GoodFuels can only vouch for the quality of their own products and regularly see bad quality biofuels from other suppliers with less stringent quality controls.

Poor quality-controlled biofuels can create operational issues and potential damage to main engines and generators. High repair costs not to mention the delays to cargo, commercial off-hire and lengthy disputes with charterers are all concerns. In rare cases de-bunkering may be required too.

How does NOx, calorific value and fuel consumption compare to fossil fuels?

The effect on NOx is still uncertain, but testing is underway together with clients, OEMs and classification societies. Calorific value can be lower than fossil fuels and therefore the fuel consumption may be slightly higher.

The IMO currently only considers GHG emissions from a tank-to-wake (TTW) perspective, where the potential for CO_2 reductions from using biofuels is modest. Do you support the view that emissions should be considered from a well-to-wake (WTW) perspective?

The GHG reduction of our biofuels is calculated on a well to wake (WTW) basis as specified in the Renewable Energy Directive by the European Commission. However, the IMO presently calculate emissions for the Energy Efficiency Design Index (EEDI) and Energy Efficiency Existing Ship Index (EEXI) on a TTW basis. The EEDI encourages more efficient use of the same unit of energy. Fuels presently used in shipping contain carbon atoms, so the exhaust gas emissions give an indication of efficiency by comparing work done to CO_2 emissions produced after combustion.

On a long-term basis, the IMO has targeted a 50% reduction of GHG emissions between 2008 and 2050. This needs a different measurement approach. Hydrogen and ammonia are examples of fuels without a carbon atom. But the current production process means that more than 99% are produced using fossil fuels like methane. Therefore, zero CO_2 emissions does not guarantee a carbon free production process. The WTW approach looks at the process right back to the well and makes it much fairer.

We understand that the IMO are working to incorporate the WTW approach in their "Reduction of GHG Emissions." At GoodFuels we believe it's only a matter of time before adjustments are made to the current emission calculation method.

By Mark Smith
Loss Prevention Executive

FIND OUT MORE

Find out more about GoodFuels at: **https://goodfuels.com/**

Read more about the changing landscape of fuels in our article **'Fuels of the Future'**

See our special area **'Navigating Decarbonisation'**

GoodFuels

Voyage Charter Variation: Mind the Gap!

London Arbitration 3/21 is a reminder to ensure an addendum to add a port of discharge to a voyage charter expressly covers all additional time and expense involved in performance to avoid being left out of pocket.

As happens from time to time, a cargo is shipped under a voyage charter in anticipation that it will be discharged at an agreed sole port, although circumstances thereafter arise which necessitate discharging the cargo at one or more alternative ports in other countries.

In such a scenario, unlike under a time charter which is often inherently more flexible, the voyage charter can no longer be performed as envisaged based on what was expressly agreed. The parties then commonly need to agree to a new contract or, alternatively, to vary the existing one.

In this case, the local authorities would not allow the corn cargo to be discharged, as it did not meet local import specifications. The parties in the event arranged and performed the remainder of the contract on the basis that discharge of the cargo would be undertaken at two different ports.

The need for two different ports of discharge arose because some of the cargo was also rejected as deficient at the second port, with the result that the remaining cargo inevitably had to be discharged elsewhere, involving a further period of steaming and time in port for the vessel at the final port.

Long after arrangements were made and performance began, the parties drew up an addendum to address how to treat the demurrage accrued at the first and the second ports of discharge and the compensation to be paid for the time and expense involved for the further performance thereafter.

There was no express inclusion of a right to be paid for the additional bunkers consumed between the second and the third ports of discharge.

When a dispute broke out between the parties, this left the shipowner having to rely upon the implication of a term to claim any further compensation.

As it happened, owners and charterers also failed to agree expressly to a freight supplement, or otherwise, as compensation for the voyage between the first and the second ports of discharge, and the demurrage agreed for those two ports did not encompass the voyage between the two.

The tribunal was not minded to help the shipowner, who had agreed various figures in the addendum as compensation, to recover additional compensation for the deviation bunkers consumed. This, they reasoned, was because having agreed the addendum, there was no further scope to imply a term.

Accordingly, the take away from this case is to be mindful to avoid any gap existing in an addendum agreed, given the further performance contemplated, to ensure adequate express rights to compensation for both the time and the expense of further sea voyages and port calls.

By Jim Leighton
Consultant (FD&D)

BIMCO publishes 'Just in Time Arrival Clause for Voyage Charter Parties 2021'

The maritime industry increasingly seeks sustainable shipping practices which optimise the use of resources while controlling costs and reasonably minimising emissions. BIMCO, in collaboration with North, has answered the call to help further support this ideal by publishing its 'Just in Time Arrival Clause 2021'.

The problem

Voyage charterparties generally require owners to prosecute voyages with due or utmost despatch and without deviation. In practice, this frequently leads to a costly consumption of bunkers to arrive at the destination expeditiously, only to find the vessel spends significant periods of time at the port awaiting its turn to berth.

This is an unhappy scenario for everyone. Owners will have the high cost of the bunkers consumed on the voyage and additional running costs at port. Charterers will likely end up paying demurrage. And the port's facilities and resources are burdened, while carbon emissions concentrate in the local area from the queue.

The solution

BIMCO's 'Just in Time Arrival Clause 2021' envisages the sharing of information between all parties to enable the vessel to berth immediately on its arrival, or with minimal waiting time. It allows the owners and charterers to adjust the vessel's speed to meet this goal, while including a mechanism to apportion fairly the cost of the extra voyage time against the savings in fuel consumption. Importantly, it also promotes vessel and port utilisation, while minimising emissions.

Given the ongoing focus on sustainability and demand for voyage optimisation and emission reduction, we anticipate seeing this 'win-win' clause as a regular feature of voyage charterparties going forward and would encourage both owners and charterers to give it careful consideration.

By Steven Cockburn
Deputy Global Director (FD&D)

FIND OUT MORE

Click here for more information

Jewellery in the workplace – don't get caught up

How an apparently simple and straightforward incident can have potentially life-changing consequences

The ever-changing maritime industry, and indeed world we live in, presents new challenges, and introduces new risks to the health and safety of seafarers. As such, ship operators are always looking at new ways to keep their crew safe and healthy. But sometimes it can be forgotten that even the most basic and simple incidents continue to cause significant harm.

Crew injuries involving the snagging, entrapment, or entanglement in equipment is certainly not a new occurrence, but it continues to occur.

A typical scenario – ring any bells?

A crew member was working on board a vessel when he slipped and, as he fell, caught his wedding ring on part of the ship's structure injuring his finger. From what might have been a simple, albeit potentially painful, slip which may have caused the seafarer to feel sore for a few days, turned into a far more significant injury.

Severe damage was suffered both internally and externally to the finger. Fortunately, swift action and the location of the vessel at the time meant that the seafarer was able to undergo surgery and receive further medical attention without delay.

If it dangles, it can tangle

While in this instance it was a wedding ring that was caught and led to the injury, it is all too easy to imagine the damage that other jewellery, such as chains or bracelets, could have if they were to catch on the vessel or moving machinery. The consequences could be far more damaging and potentially fatal.

It's well-known that jewellery can become entangled or snagged. Think about where you are working and what you are doing – do you really need to be wearing it?

With all the challenges facing shipowners at this moment, it is easy for the simple things to be taken for granted. But, as this brief case study shows, sometimes the simplest incident can be prevented by the simplest actions.

By Ross Waddell
Claims Executive (P&I)

UK seafarers: have you got your GHIC?

The European Health Insurance Card (EHIC) allows any seafarer who is resident in a country of the European Economic Area or Switzerland to receive medical treatment in another Member State free of charge or at a reduced rate. But what happens to UK seafarers following Brexit?

Following the UKs departure from the European Union (EU), it has been agreed that EHIC can still be used until the expiry of the card. After this, UK nationals must apply for a Global Health Insurance Card (GHIC), which will provide similar benefits to the EHIC.

The cards will cover the cost of healthcare that is normally covered by a statutory healthcare system in the country where the treatment is obtained. Shipowners can benefit from reduced treatment costs if their crew (if eligible) carry their EHIC and GHIC cards on board during their period of employment.

Some shipowners have included a term within the crew member's contract of employment that a seafarer who is entitled to a EHIC or GHIC is obliged to carry such a card. It is in the interest of all eligible seafarers to carry the relevant card.

By Lucy Dixon
Senior Executive (Claims)

FIND OUT MORE

GHIC for UK seafarers: **www.gov.uk/global-health-insurance-card**

EHIC for EEA seafarers: **https://ec.europa.eu/social/main.jsp?catId=559**

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- ✓ ITOPF reports

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