



Out of line on ship deviations

CLUB members are being exposed to the threat of major liabilities as a result of minor deviations from cargo voyages.

In some parts of the world it seems to be fairly widespread practice for owners to deviate into local ports to change crews, embark repair gangs, take on stores, or perform other tasks. Some members routinely declare such deviations to underwriters and pay the necessary additional premiums. But there have been a number of deviations recently which have not been declared. Although none of these has yet resulted in an adverse outcome, the consequences of such action can be extremely serious.

It is well-understood that, without express authorisation, such deviations are in breach of bills of lading and charter parties. It is often mistakenly assumed, however, that delays will be so minor as to be unnoticed or overlooked by cargo owners and charterers. Likewise, it is often wrongly assumed that, if cargo interests claim for breach of contract,

their loss will be minimal. What isn't appreciated is the fact that the law generally regards this type of breach as so serious that it results in the loss of the carrier's contractual defences and limits of liability.

If, for example, a vessel sinks with its cargo during even a brief deviation purely for the convenience of the shipowner, the ship will be liable in full for

A SMALL gas carrier entered with the club recently sank off the coast of South Korea. The cause of the sinking is still under investigation, but the ship's volatile cargo of butadiene has been disposed of successfully. The tanks containing the gas were towed by Chinese salvors to a position off the coast of Shanghai and there detonated in a controlled explosion.



any cargo claims resulting from the negligence of its employees. Chances are that, in such a case, the member would not be covered by its club at all, and would have to face the claim uninsured.

The club can arrange market cover for loss of contractual defences resulting from deviation. The cost of this depends on the value of the cargo.

Not all deviations represent a breach of the contract of carriage. But members are advised to check with the club in cases where they are unsure of their legal position.

The consequences of making the wrong judgement about what represents a contractual deviation can be financially disastrous.

The effect of security

THE attention of the club has been drawn to a highly unusual procedure involving the giving of letters of undertaking in Venezuela.

In a recent incident, a small harbour tug sank at La Ceiba, Venezuela, while in the process of helping a 23,000 gt bulk carrier to berth. The tug was one of two being used to help in the berthing manoeuvre at the port, where vessels are required to berth stern-first to facilitate their easy departure.

During the berthing manoeuvre, the tug working aft of the vessel sank onto its



port side. The bulk carrier was thereafter successfully berthed and proceeded to load a cargo of coal.

A crane was then brought in to recover the sunken tug, but this proved to be woefully inadequate, and subsequently collapsed, as can be seen from the photograph here. The tug and the crane were eventually

recovered, and the club then put up a letter of undertaking to allow the bulk carrier to sail.

Two months later, the vessel returned to the same port in Venezuela and was seized by the owner of the tug, despite the fact that the club letter guaranteed payment on the usual terms.

Asbestosis down under

ASBESTOSIS is an international problem for underwriters of liability insurance.

The club has recently reached an out-of-court settlement in the sum of \$110,000 with a 78-year-old seaman employed as a donkeyman on board an Australian-flag vessel between 1971 and 1976.

The seaman was suffering from mesothelioma,

allegedly contracted as a result of inhaling asbestos dust and fibre while working on board the member's vessel.

Enquiries were made regarding ex-crew members of the vessel, but it transpired that most had died or were not traceable. One former crew member was found, however, who was able to confirm the allegations made by the plaintiff regarding the conditions on board the vessel at the time in question. Investigations showed that

the plaintiff had been employed on various ships owned by the member from 1952 until his retirement in 1978. He had also worked on the ships of other companies for ten years before that, but was unwilling to proceed against them. Senior counsel advised that the owner had no defence to the claim.

The case illustrates the dilemma for insurers. Cause of action runs from the time the plaintiff becomes aware of mesothelioma, for which the normal latency period is between 20 and 30 years.

Santos sugar stoned



Chemical analysis subsequently showed that the hardening of the sugar was due to the cargo having a high moisture content prior to loading at Santos.

Sugar originating from Santos may be left exposed to the elements for long periods of time, subject to deterioration as a result of moisture. Meanwhile, the problem for the master of the vessel is that he can do little more than visually inspect the bags as they pass over the ship's rail.

THE club's recent experience with shipments of bagged sugar originating from Santos in Brazil has been anything but sweet. When it was called in to investigate reports of damage sustained by a cargo of white sugar shipped from Santos to Aqaba, Jordan, the trail led clearly back to Brazil.

Prior to loading in Santos, the vessel's holds were inspected by the shippers of the sugar and were found to be clean and dry. On arrival at Aqaba, however, it was noted that the cargo in 3,000 bags was badly caked/stoned. There was, though, no suggestion that the shipowner had failed in any way to care for the cargo.

Problems with bagged sugar at Santos tend to occur at the end of the season - towards the end of the calendar year - due in part to the bags being stored one on top of the other for some time. In this way, the bags at the bottom become heavily compressed. The situation is exacerbated by the fact that storage is often in open-sided sheds, with the cargo exposed to potential damage by rainwater.

Members loading sugar at Santos are advised to take samples during pre-shipment surveys, and to contact the club managers if they are in doubt about how to proceed.

Pollution update

THE Maritime Safety Agency in Tokyo has issued amendments to the law relating to the prevention of marine pollution in Japan.

The MSA has introduced a release system for foreign-flag vessels in cases of violation of the law following marine pollution and maritime disasters.

The changes mean that foreign-flag vessels which violate the law can now be released quickly, once they have provided a suitable bond or acceptable letter of guarantee. The law has also been amended to exclude imprisonment as a form of punishment for pollution offences, and the maximum fine has been increased to ten million yen.

- Some good news on pollution, meanwhile, comes from the US. Markos Zampelis, master of the *Mare Queen*, has been commended by the US Coast Guard for his quick and decisive action after his vessel was in collision with the *Morrerro* in March this year at Houston. The coast-guard says Capt Zampelis's decision to gravitate cargo from his vessel was "in keeping with OPA 90, and an example to all of what responsible action should be."

Spanner in the works

A NUMBER of instances of cargo being damaged by ballast water overflowing from double-bottom tanks via unfastened manhole covers have come to the attention of the club managers in recent months.



Check your checklist !

It seems that one of the main reasons that manhole covers remain unfastened is the absence of a properly implemented safety system. And, too often, it comes down to not having a spanner handy to do the job properly.

A spanner is used to unfasten the nuts on the manhole cover, and is then taken back to the engineroom, or the bosun's store, or wherever. This stems from a desire - commendable in itself - not to leave spanners lying around on the double bottom tank plating while the

space is being inspected or while repairs of some sort are being undertaken.

When it is time to replace the cover, the person sent to retrieve the spanner gets distracted, and forgets about his task. The end result is that the manhole cover gets replaced, and the nuts tightened by hand. The cover then appears to be secure, but leaks nevertheless occur when the tank is next ballasted and the head raised above the tanktop, or when ballast starts surging in the tank.

Members are reminded that the removal/replacement of manhole covers comes under the auspices of tank entry procedures. Check lists should be available on board all ships, and members are urged to make sure that these lists are closely observed on all their vessels. Failure to do so may result in costly claims for the club.

Bulky problems

THE club was recently involved in a dispute in connection with a bulk cargo damaged as a result of seawater ingress during the ocean passage.

The cargo was loaded in China, during periods of rain. The shippers assured the master that all wet cargo was being removed and that only sound cargo was being loaded. Unfortunately, most of the cargo was loaded in a damp condition, but this was not apparent on observation.

During the ocean voyage, a small amount of seawater did leak into the cargo. As a result of the damp condition of the cargo, the cargo receivers were able to mount an argument to suggest that there had been extensive seawater ingress.

Members are reminded that, even where there is a suspicion that wet cargo is being loaded, mates' receipts and bills of lading should be claused.

Alternatively, the club correspondent should be called in for advice.

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