THE LONDON P&I CLUB

STOP Loss

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Indian Iron Ore Fines:

latest developments

As the Indian monsoon season starts, the shipping industry once again faces the practical challenges associated with the export of iron ore fines from Indian ports during this period (June to September and December to March on the west and east coasts respectively).

A number of high-profile incidents last year such as the *Asian Forest*, the wreck of which remains off India today, demonstrated the very real risk of stability problems and total losses caused by liquefaction of cargoes during the monsoon season. Liquefaction can occur if cargo is loaded with a moisture content which exceeds the transportable moisture limit (TML) and flow moisture point (FMP). In India, this is a particular problem as cargoes are often exposed to monsoon rain en route to load ports and stored in open stockpiles. Consequently, cargoes can have a moisture content which is dangerously high. Although SOLAS and the International Maritime Solid Bulk Cargoes Code clearly require shippers to certify the actual moisture content, TML and FMP, in practice it can be difficult to ensure the reliability and validity of the certificates, particularly where stockpiles are exposed to rain after sampling.

Traditionally, only the shippers have been required to produce such certificates. However, the Indian Ministry of Shipping recently issued new guidelines expanding this requirement. While the guidelines helpfully require cargo to be transported and stored under cover, they state that moisture content, TML and FMP should be "independently assessed by a competent organisation appointed by the owner/charterer under supervision of the P&I Club of the ship" and that after the "data obtained by the independent sampling and assessment organisation has been accepted by the Ship's P&I Club the information needs to be submitted to the surveyor of the Mercantile Marine Department (MMD)."

How these guidelines will be implemented across India remains to be seen. However, it is understood that the MMD may require declarations from the P&I surveyor and Master that they have supervised and are satisfied with the loading operation and that the vessel and cargo are safe for the intended voyage, before permitting the vessel to sail. As such, there is concern that the new requirements, if strictly imposed, may result in the erosion of the shippers' primary responsibility under SOLAS and the IMSBC Code to present a cargo safe for carriage.

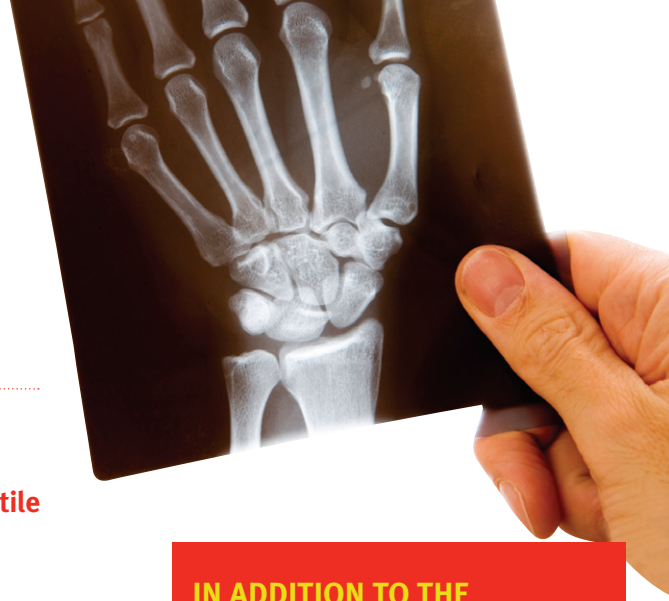
In the meantime, Members are reminded of the importance of appointing local surveyors to check the condition of cargo as a precautionary step and to ensure that they are instructed not to share their results with any third parties without speaking to the Club first.

In this Issue

PERSONAL INJURY CLAIMS

ROTTERDAM RULES

FROM OUR CORRESPONDENT



Personal injury claims

Although personal injury claims are amongst the most common type of P&I claim, they are often less predictable and more volatile than other types. As such, the importance of early and proactive intervention cannot be overstated.

Whilst medical technology remains relatively primitive in some parts of the world, in other places, the technology available is highly sophisticated, offering a much greater chance at successful treatment of any ill or injured personnel. Although this generally results in better treatment, helping to reduce the risk of a significant claim against a shipowner, the cost of providing the treatment can be high. In addition, if there are unforeseen complications during the course of treatment, even an apparently minor injury or illness can give rise to substantial liabilities.

An important part of managing and controlling the costs of medical treatment is the use of the local correspondents or, in certain jurisdictions such as the United States, specialised medical auditors. However, the Association's ability to ensure their involvement relies on prompt notice of any incident which might give rise to a claim.

Members are reminded that early notification of any incident is essential in managing personal injury claims and that the most reliable means of communicating is by telephone, rather than email. No matter how insignificant the incident appears to be at the time, there is no doubt that for these types of claim, it is better to be safe than sorry.

IN ADDITION TO THE CONTACT DETAILS IN THE CLUB'S RULE BOOK, EMERGENCY TELEPHONE NUMBERS ARE AVAILABLE ON WALLET-SIZED CARDS ISSUED TO ALL MEMBERS.

TELEPHONE CONTACT REMAINS THE BEST MEANS OF CONTACT IN SITUATIONS REQUIRING URGENT ATTENTION AND FURTHER COPIES OF THE CARDS ARE AVAILABLE ON REQUEST.

Onboard safety

Despite the development of comprehensive guidance for entry into enclosed spaces, including the need to carry out a pre-entry risk assessment, a recent case again highlighted that these procedures are not always followed.

In this instance, the failure to follow the proper process led to the death of a crew member in a ship's hold.

The ship had loaded a cargo of petcoke which had a tendency to self-heat. As a result, the chief officer complied with the Bulk Cargo Code (now the International Maritime Solid Bulk Cargoes Code) and refrained from ventilating the cargo during the course of the voyage. On arrival at the discharge port, the agents boarded the vessel and asked for a sample of the cargo.

The Chief Officer agreed to provide samples, but knew that safe entry would only be possible with the assistance of breathing apparatus. Unfortunately, whilst the mate was preparing the equipment, for reasons unknown, a seaman entered the hold without permission and unaided. He was overcome by exposure to the high levels of carbon monoxide and died before he could be rescued. This incident demonstrates the different levels of awareness and knowledge amongst crew members on board the same vessel.

It emphasises the need to promote an appropriate "safety culture" onboard and to educate all crew members on the reasons why entry into enclosed spaces must be closely controlled.

Such policies are supported by the Club's ship inspection programme which focuses, in part, on onboard safety management issues. During an inspection, the ship's staff are reminded of the value of monthly safety meetings and realistic safety drills, such as those emphasising the need to comply with entry into enclosed space procedures.

As evidenced by the case mentioned here, an absence of formal risk assessments of potentially hazardous tasks is highlighted occasionally during ship inspections. Members should be aware that such risk assessments are mandatory from 1 July 2010 under IMO resolution MSC273(85), which amends the ISM Code.

The original language of the ISM Code alluded to, but stopped short of making risk assessments a formal requirement of the Code. However, the revised Code introduces a mandatory requirement for risk assessments of all identified risks to the ship, personnel and the environment and appropriate safeguards for the avoidance or mitigation of each of the identified risks. The ship inspection programme will continue to assist Members by reminding ship's staff that formal risk assessments are now mandatory under the amended ISM Code.

Responsibility under the Rotterdam Rules: Receipt to Delivery

By Fionna Gavin, Partner at Ince & Co.

The Rotterdam Rules (RR) have received widespread attention from the industry, although it is not yet known when they will come into force. Nevertheless, owners and charterers entering into long term charters now may wish to prepare for the possibility that future shipments under those charterparties will be compulsorily subject to the RR.

One of the areas where the RR materially differ from existing cargo liability regimes is the period of the carrier's responsibility. Under the Hague and Hague Visby regimes, the carrier's responsibility for the goods starts when the goods are loaded and ends at discharge from ship. Beyond this period, the carrier can exclude loss or damage to the cargo, even if occurring prior to delivery to the end receiver. Under Article 12 of the RR, the carrier's period of responsibility starts from the time the carrier, or another party performing the contract of carriage, "receives" the goods at the load port and ends when the goods are "delivered" to the receiver. As a result, the carrier will remain on risk whilst the cargo is stored ashore pending final delivery.

Owners are an attractive target, given the relative ease with which claimants can obtain security, and the RR makes them jointly and severally liable with other parties in the transport chain. However, in practice, owners may have limited or no ability to vet shore-side parties in order to assess their competence and financial stability. Nevertheless, owners are likely to have to deal with claims in respect of post-discharge damage in the first instance and then pursue a recovery action against the party responsible. As the RR have no express provision for claiming contributions from other parties, in the absence of a contract containing a law and jurisdiction clause, owners' recovery action will be governed by local law and determined by local courts.

Where the transport document (or bill of lading) is only for sea-carriage, owners can expressly define the time of receipt as the beginning of loading and the time of delivery as the completion of discharge. However, owners and charterers may prefer to address responsibility for cargo loss or damage occurring either between receipt and loading or between discharge and delivery in the charterparty. Provided that all the charterparties in a chain include a clause allocating responsibility to Charterers, the claim should simply be passed down the line, similar to ICA claims, until it reaches the party who has a commercial and contractual relationship with the shore-side party who may therefore find it easier to hold them accountable for the damage in question.

Possible clauses

"If the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009, or any national law giving effect to the terms thereof, shall be compulsorily applicable to any bill of lading or other transport document issued pursuant to this Charterparty then, provided always that the said cause or event or circumstance causing or contributing to such loss, damage or delay is not a matter for which Owners are otherwise responsible pursuant to the terms of this Charterparty, the Charterers shall be responsible for loss, damage or delay to the goods carried under such bill of lading or other transport document if the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place before the loading of the goods and/or after discharge of the goods from the Vessel.

The Charterers hereby agree to indemnify the Owners in respect of any loss, damage or liability they may incur as a result of such loss, damage or delay to the goods."

Alternatively, on the assumption it is agreed that the Hague or Hague Visby regimes will apply under the Charterparty, Owners might wish to expressly exclude responsibility for all liabilities arising under transport documents subject to the Rotterdam Rules, to the extent such liability exceeds that which Owners would be liable under the Hague Visby Rules. If this is agreed, the matter might be dealt with by a clause such as the following:

"If the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009, or any national law giving effect to the terms thereof, shall be compulsorily applicable to any bill of lading or other transport document issued pursuant to this Charterparty the Charterers hereby agree to indemnify the Owners in respect of any loss, damage or liability the Owners may incur under such transport document to the extent such loss, damage or liability exceeds that which Owners would have incurred if the said transport document was subject to the International Convention on the Unification of Certain Rules of Law Relating to Bills of Lading as signed at Brussels on 25 August 1924 as amended by the Brussels Protocol 1968."

These clauses are merely suggestions and Members should contact the Club or Ince & Co for more detailed advice if they are considering incorporating them into charters.

from our Correspondent

A series of interviews looking at the work of London P&I Club correspondents.

Andrew & Ruth Cave

Cave & Cía. Ltda, Valparaíso, Chile

Tell us about your background and the company you work for.

Our company was founded in 1970 by our father, Gordon Cave, who was from Dundee in Scotland. He had originally come to Chile as a child with his parents who were missionaries. After the Second World War, the family re-located to Britain, and his parents later returned to Chile. He followed them when he was 21. He started working with a local shipping agency, and then went on to found his own company. In 1978, he started a formal company with his wife as his business partner. The three of us, Andrew, David and Ruth, became partners in the 1980s. When our father died in 1991, David worked in the office and Andrew finished university to join the company permanently in 1992. Ruth joined us in 2000.

The company today is about 25 people strong overall and our main office is in Valparaíso, but we cover the entire Chilean coast, as well as Easter Island and the Antarctic. So we've been a family company all along and have always been correspondents, not agents, surveyors or brokers. We have always been dedicated to P&I work. This year is our 40th anniversary so we are planning various events to celebrate this special occasion.

Tell us about the port where you work and the sort of P&I work you see.

Valparaíso is the first and oldest port in Chile – over 450 years old. Today, it mainly handles cruise ships, container ships, reefer ships and PCCs, but no bulkers or tankers. It's a very busy port and has heavy competition from San Antonio which handles bulk cargos as well as containers etc. Covering the whole Chilean coast, most of our work involves container cargo although we have occasional pollution, stowaway and bulk carrier shortage cases. The second main category of work is personal injury – both crew and longshoremen.

Do owners face any common or particular claims or problems there?

There is very much a 'let's fix it' mentality in Chile and things are usually pretty straightforward. We have very good contacts with the local agents, customs, claimants and the port authorities. About five years ago, there was a run of misdelivery claims in Chile, as original bills of lading were not available. However, the system has now changed and the problem resolved. The cargo claims for in-bound cargos are all subject to the Hamburg Rules, and that is something that is specific to here. Amongst other things, this means that the burden of proof is on the owner from the start, rather than the claimant.

Are there signs of any new patterns or trends in the claims you deal with?

There are two main trends we are seeing on the cargo side. One is that we are seeing claims for very modest amounts. Whereas in the past we used to see claims no lower than $2,000, we're now getting claims for $200 to $300. The other trend is that claimants are expecting higher levels of settlement.

How has the recent earthquake affected you and the business?

We were very lucky. Fortunately, the office building withstood the earthquake very well so the office itself was fine. A few things had been knocked off desks and all we lost was a couple of computer screens and a couple pieces of furniture, but nothing that couldn't be put straight or tidied up. We were quickly back in business. The homes of the families from our team were fortunately in good shape.

The Port of Talcahuano sustained serious damage and it will take a couple of years before it is fully back up and running. Some ports in Concepción Bay are either fully or partly operational, and there was some damage to containers awaiting loading, along with damage to some of the cargo-handling equipment. There was more damage at San Antonio with cranes out of operation and damage to containers and cargos. Ships have been re-routed to Valparaíso and other ports for discharging and loading. We are handling two cases as a result with claims worth about $40 million.

Tell us about your work for the London P&I Club.

We have worked for them since we opened in 1970. It's always been very easy and pleasant working with the London P&I Club and we have always had a very friendly relationship with them.

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