THE LONDON P&I CLUB

STOP Loss

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Corrections to Satellite Derived Positions

Ship inspections conducted by The London P&I Club occasionally identify ways in which passage planning onboard can be improved. For example, an issue highlighted by a recent inspection is that not all navigating officers are aware that a significant correction may need to be applied to a Global Position System (GPS) position before it can be plotted on charts which are not referenced to the World Geodetic System 1984 Datum (WGS84).

Any geographical position on a navigational chart, expressed in latitude and longitude, is referenced to a "geodetic datum". A geodetic datum is a reference system for specifying positions on the Earth's surface. However, as there are several locally developed geodetic datums around the world, a specific point on the Earth can have substantially different latitude and longitude coordinates, depending on the datum to which the particular chart is referenced. As such, two charts of the same area which are referenced to different datums may show different latitude and longitude coordinates for the same real world feature, such as a shoal or a lighthouse.

The GPS receiver should normally be set to display positions referenced to WGS84 and this setting should be checked on the individual GPS receivers. However, mariners must be aware that on many charts still in use, a correction has to be applied to a satellite derived position referenced to WGS84 before the position is plotted on the chart. Navigating officers should always check the charts for information about corrections that need to be applied to satellite derived positions when preparing a passage plan and alert the navigators to any existing corrections which are required before positions are plotted on the individual charts.

The need to remind Members of this issue is also emphasised by an incident in which a ship grounded as a result of total reliance on GPS, coupled with a failure to recognise that a significant correction had to be applied to GPS positions before they were plotted on the chart. During a coastal passage, a containership ran aground after a navigating officer commenced a significant alteration of course about half a mile before he reached the intended alter course position. Investigations suggested that the officer was using no means other than GPS to navigate and, even though the ship was on a regular schedule, was wholly unaware that a significant correction had to be applied before GPS positions could be plotted onto many of the charts used in the service. A more detailed passage plan would have alerted the inexperienced officer to the danger and required him to cross-check his position by more than one method.

A general introduction to this topic is provided in the UK Maritime and Coastguard Agency's Marine Guidance Note (MGN) 379, which can be downloaded from http://www.mcga.gov.uk/c4mca/mgn379.pdf

Plotting of Satellite Derived Positions on charts not referenced to WGS 84

In this Issue

The risks of unintentional drug smuggling

Recent reports have highlighted the difficulties Owners can face in dealing with the discovery or suspicion of drug smuggling onboard their ships.

In one instance, which illustrates the sort of dilemma which can arise, the ship had left a Colombian port when the Master noticed that the underwater survey DVD showed the rudder lower pintle inspection door was missing. While the Owners looked at arrangements for a further survey either en route to or at the disport, one of the issues which had to be reviewed on their behalf involved the consequences if the investigation confirmed the presence of drugs. On one hand, it was possible to obtain confirmation from the authorities at Gibraltar that the ship would not be detained. However, there was no such commitment from the authorities at the Croatian discharge port. Although experience suggested that they would simply interview the crew, the risk of more drastic action by the authorities could not be ruled out.

One country where recent cases have demonstrated the potential severity of the consequences is Venezuela, where the discovery of drugs has resulted in ships being detained for extended periods or even confiscated. As mentioned in *StopLoss 44,* insurance against the risk of seizure arising from drug-smuggling is available through the Lloyd's market, covering both loss of hire and the loss of the ship. However, the seriousness of the situation in Venezuela is reflected by war risk underwriters adding it to a list of areas presenting an enhanced risk in June 2009.

Nor is it only ships which are at risk. In May this year, the Master and Chief Officer of the *Astro Saturn* received eight-year prison sentences in connection with drugs found in the personal possessions of two stowaways in the rudder trunk. Accordingly, Venezuela may be considered a place where onboard procedures and careful vigilance aimed at detecting drug trafficking are extremely important. And Venezuela is not, of course, alone. The risk to ships and crew exists elsewhere in South America and in other parts of the world, as illustrated by the *Coral Sea* case in Greece in 2007.

In contrast, there are areas of lower risk, particularly in countries which have entered into Memoranda of Understanding with BIMCO (www.bimco.org). The authorities in these 15 countries and BIMCO Members have agreed to co-operate in measures to combat drug smuggling, including publication of a list of personnel in each country for Owners to contact if they are concerned that there may be drugs on their ship. Whilst not expressly stated in the Memoranda, it is to be hoped that these authorities would refrain from penalising Owners and their crew for alerting them to the possible presence of drugs in order to promote co-operation within the industry.

In view of the potentially severe consequences when drugs are found or suspected to be onboard a ship, Members should contact the Club as soon as any such concerns arise.

Uncollected cargo

A practical solution under the Rotterdam Rules

Reports of limited availability of containers have been a feature of the industry press recently, with some carriers expressing the view that the situation could continue for the next two years.

One factor contributing to the situation, over which carriers have little control, is uncollected cargo potentially taking containers out of circulation for extended periods. Although a long-standing feature of the trade, the economic downturn has seen increased levels of uncollected cargo, with receivers and freight forwarders experiencing financial problems. Often, under the terms of a terminal user agreement, it is the carriers who find themselves liable for the costs of storing and preserving the cargo.

Although it is usually possible for carriers to sell uncollected cargo and off-set the proceeds against storage costs, it can be difficult to enforce these rights locally. As such, the inclusion of protective clauses in the bill of lading is a sensible precaution to improve the carrier's position. For example, such a clause might state that the carrier is entitled to dispose of the goods if they are not collected within a specified period of time. It is equally important that carriers provide clear instructions to agents to monitor the situation and notify them if the goods remain uncollected after the time specified in the bill of lading. Failure to act promptly could undermine the practical benefit of such a right as the longer the goods are stored, the higher the charges will be, with the consequence that they may exceed the value of the cargo, particularly in the context of perishable goods.

Under the Rotterdam Rules (RR), it is worth noting that Article 48 may also be of assistance to carriers. If cargo remains uncollected within a specified period or within a reasonable time, Article 48 enables carriers, upon giving notice to the consignee, controlling party or shipper, not only to store cargo at any suitable place or dispose of goods in accordance with local law or custom, but also to unpack the goods from the containers. Whilst this leaves the cargo vulnerable to pilferage, Article 48 importantly states that the carrier will not be liable for loss of or damage to goods, while they remain undelivered unless the claimant can prove that the loss or damage resulted from the carrier's failure to take reasonable steps to preserve the goods, and that the carrier

should have known that the loss or damage would result from its failure to do so.

The ability to unpack containers should help liner operators to recover containers promptly to avoid further depletion of available stock and may offer a more expedient solution than the sale of cargo. After that point, any further storage charges incurred will be solely in relation to the cargo which may, to some extent, assist in shifting responsibility for dealing with the problem onto the terminal.

P&I cover in such cases is far from straight-froward and Members are encouraged to involve the Club at an early stage. However, whenever and wherever they may apply, the provisions of the RR may offer operators greater ability to manage such situations and to reduce their exposure to storage costs.

Personal injury claims

A recent judgment in the Philippines has held that a pre-existing illness is not compensable where a seafarer dies after his contract of employment comes to an end. The judgment – from the Supreme Court – affirmed a Court of Appeals judgment, reversing an earlier decision from the National Labour Relations Commission (NLRC).

Within one month of commencing sea-service, the seafarer had become unwell and was found to be suffering from various illnesses, including advanced HIV. He was repatriated one month later and unfortunately passed away about two years later.

The seafarer's pre-employment PEME had not included an HIV test, and it appeared that he had concealed his condition from Owners. Although positive HIV test results predating the seafarer's employment were produced, they did not identify the seafarer by name. The NLRC therefore decided the Owners had not been able to prove that the seafarer's HIV was pre-existing and that his employment had in any event aggravated his condition. The Owners appealed successfully to the Court of Appeals which found that a PEME simply certifies that someone was fit to work, but is not an exhaustive investigation into their real state of health. The Court further held that the seafarer had failed to disclose his true state of health, and that no connection had been established between his working conditions and his illness.

The dependants appealed to the Supreme Court which upheld the Court of Appeals' judgment.

Environmental risk management

A recent press release from the United States is a strong reminder of the very substantial penalties that can be imposed in cases involving breaches of the MARPOL regulations, as well as the US authorities' use of crewmembers in support of such actions.

The press release covered prosecutions arising from an alleged deliberate pollution incident by crew onboard a recently constructed bulk carrier which called at a US port. USCG investigations were triggered after a crewmember passed a note to the Customs and Border Protection inspector upon the ship's arrival in the United States. The note alleged that the chief engineer had directed the dumping of waste oil overboard through a bypass hose that circumvented the Oily Water Separator (OWS). Under the terms of the settlement reported in this case, penalties totalling US$4m were paid by the vessel owner, in addition to which they were made subject to the terms of an Enhanced Environmental Compliance Program. It was not reported whether the crewmembers received a proportion of the fine on this occasion.

The risk of such criminal proceedings is not confined to the US, although the financial consequences remain higher there than elsewhere. As such, Members are cautioned to remain alert to the risk of criminal prosecution in connection with the overboard discharge of pollutants and to be aware that the starting point for such prosecutions is sometimes an allegation by engine room crewmembers.

Both awareness and regulation of environmental risks are increasing, as demonstrated by the development of the ISO14000 over the last decade and the more recent amendment to the ISM Code, requiring a risk assessment of identified environmental hazards. Against this background, Members are encouraged to ensure that environmental compliance is incorporated in their ISM Safety Management System (SMS). Corporate and individual responsibilities should be properly defined, and senior management should emphasise that non-compliance will be taken seriously. The effectiveness of shore and onboard training in environmental compliance and equipment operation should be assessed, and annual audits throughout the company can be helpful to verify environmental compliance, preferably unannounced.

In addition, Members are encouraged to implement practical onboard measures to avoid deliberate breaches of the company's environmental policy. Obvious precautions include: ensuring that operation of relevant machinery, such as the OWS, is properly authorised and supervised by senior engineer officers; locking the OWS overboard discharge valve in the closed position when not in use, with the keys being kept in the custody of the chief engineer; and keeping flexible hoses and flanges which could be used to bypass the oily water separator in a secure location. Uniquely-numbered tags may also be fitted on pipe flanges to prevent unauthorised bypassing.

Members are also referred to the Club's circulars of 9 June and 21 October 2005 for additional information on this subject.

Customs declarations in Argentina

The Club has seen recent signs of an increase in the number of customs fines imposed on ships arriving at Argentinean ports.

In particular, the authorities appear to be taking an extremely strict approach to the content of the ship's "store list" which is required to be lodged as part of the customs clearance process. Failure to provide such declarations – or the presence of any inaccuracies in the information provided – can lead to heavy fines, as well as seizure of the undeclared goods in some cases.

By way of illustration, Members should be aware that there have been a number of recent cases in which the authorities considered that undeclared cargo gear, including the ship's grabs and spare ropes, amounted to an infringement of customs regulations. Accordingly, the recommendation is that very careful attention should be given to the accurate completion of customs declarations, and that a duplicate of the "store list", duly signed by the customs official, is retained onboard the ship for production at a later stage in case it is needed.

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