

# Personal Injury Bulletin

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The Standard



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## Introduction

The club covers members' liability arising from death, personal injury and illness in a number of circumstances. Whilst the majority of the claims received by the club involve crew members, it also covers claims involving passengers and stevedores, personal injury claims arising out of collision and other third parties where the claim arises out of the operation of an entered ship.

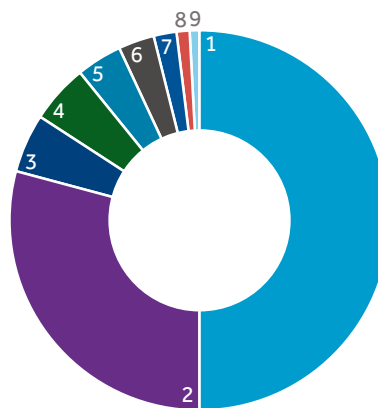
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Personal injury claims account for almost 30% of notifications – the second highest after cargo-related claims.

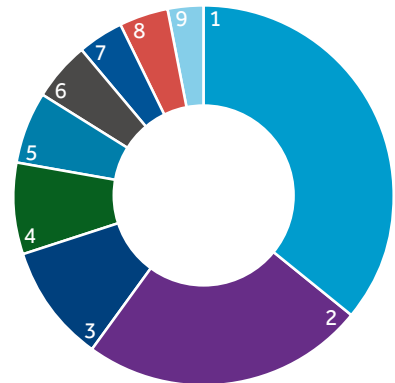
In terms of the total value of claims submitted to the club, this translates to a quarter of the club's total claims cost (capped at \$8m per claim).

**P&I claims by claim type**  
2009–2014 number of claims



1 Cargo	50%
2 Personal injury	29%
3 Fixed and floating objects	5%
4 Other	5%
5 Fines	4%
6 Collision	3%
7 Pollution	2%
8 Damage to hull	2%
9 Wreck	<1%

**P&I claims by claim type**  
2009–2014 value of claims  
(capped at \$8m per claim)



1 Cargo	31%
2 Personal injury	25%
3 Fixed and floating objects	11%
4 Collision	8%
5 Pollution	8%
6 Wreck	5%
7 Damage to hull	4%
8 Fines	4%
9 Other	4%

# Introduction continued

The scope of liability against ship owners in respect of personal injury claims has been steadily expanding. For example, where in 1846 the [Fatal Accident's Act](#) of the UK enabled for the first time dependants to sue for damages for the death of relatives caused by the negligence of ship owners, the [Maritime Labour Convention 2006](#) which came into effect in 2013 extends ship owners' obligations to include repatriation of crew for sickness, injury or death in the event of insolvency of the ship owners.

In this edition, both Rebecca Hamra's and Maria Pittordis' respective articles consider how the boundaries of shipowners' liabilities in respect of personal injury continue to be pushed and tested. Whilst Rebecca considers several hypothetical scenarios set against the context of claims in the USA, Maria shares with us her recent experience in successfully defending an owner's interests against claims arising from an illness caused by Norovirus on a cruise ship before the UK courts.

In tandem with rising global levels of compensation arising from personal injury and occupational diseases, Marco Mastropasqua discusses some recent trends in the Italian courts which indicate that the level of compensation for personal injury at work in Italy is on the rise.

## Contract review

Given the limits of members' liabilities do not remain static, it is important that members review their crew contracts and their collective bargaining system and submit the same to the club for review periodically. The purpose and key features of this exercise are set out in the article by Richard Stevens and Jessica Canbas.

## Managing Claims

When an injury or death at sea occurs, it is also important to consider ways in which the extent of the claim and the attendant costs can be contained.

It is well acknowledged that the level of compensation in personal injury claims in the USA can be considerable. Kirk Lyons' article highlights the importance of ascertaining the proper legal status and regime applicable to a particular claimant and the impact of doing so in respect of the levels of compensation ultimately recoverable by the claimant.

Augustine Liew and Eric Ho share with our readers what may be expected from a Singapore perspective and the steps a prudent shipowner ought to take when faced with a death onboard.

Richard Stevens and Karolos Mavromichalis demystify the extent of club support when handling a crew claim requiring repatriation and deviation of the ship.

These articles serve as a timely reminder to our members of the importance of utilizing the club's expertise in the area of personal injury as well as that of the lawyers who are appointed, where appropriate. A correct choice of lawyer can contain the cost of a personal injury claim.

## Preventive measures and due diligence

The member themselves and the crew have a vital role to play in avoiding costly claims. Most accidents at sea occur due to human error which means that most of these incidents are preventable. Our club's loss prevention programme is particularly directed towards the promotion of safe working practices to avoid personal injuries. One example of the club's initiative in raising such awareness amongst crew is the 'Spot the Hazard' contest, the successful outcome of which is reported by Richard Bell.

Whilst the main focus of this edition is on the people at sea, two other groups of people can help to minimize members' exposure in respect of personal injuries. The first is the club's extensive network of correspondents as discussed in our interview with James Cross. The second is the directors and officers of our own members who, amongst others, owe a duty to ensure that a culture of safety and a safe working environment is and remains in place on their ships. Their duties of course extend to other aspects and Sarah McGurk writes on the importance of director's and officer's liabilities insurance.

My grateful thanks to each of our contributors and I hope you find this special edition an interesting read.

# The fighter, the show-off and the toenail: navigating the murky waters of maintenance and cure in the USA



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A crew member who has been celebrating with friends on shore leave is injured. Does the shipowner have to pay for his medical treatment? This and other scenarios are explored in the context of the shipowner's duty to pay maintenance and cure.

## The scenarios

A crew member has a verbal argument with a steward and kicks a chair in frustration, breaking his foot. Does the shipowner have to pay for his medical treatment? Another crew member has too much to drink while on temporary shore leave and attempts to impress his fellow crew member by trying to jump on a table, resulting in a back injury requiring surgery. Does the shipowner have to pay for the crew member's expensive surgical procedure? Later in the voyage, the chief mate develops a badly infected ingrown toenail. While receiving treatment ashore, his doctor discovers he also has fungal meningitis. Is the shipowner responsible for the crew member's lengthy hospital stay?

These scenarios and the questions they raise are significant, especially if the crew member is a US seafarer and/or the shipowner is based in the USA and its crew members' contracts are governed by US law. General maritime law in the USA requires shipowners to pay subsistence costs and medical expenses to a seafarer who is injured or falls ill while in the service of the ship. This is commonly referred to as the shipowner's duty to pay maintenance and cure. If the shipowner is found to have unreasonably denied maintenance and cure, the shipowner is liable for monetary damages, punitive damages and legal fees.

## What is 'maintenance and cure'?

'Maintenance' is a remedy that provides the seafarer with the value of food and lodging received aboard the ship while he or she recovers from an injury or illness. Today, the rate of maintenance is usually set out in the seafarer's employment contract or collective bargaining agreement (usually ranging from \$10 to \$25 a day).

'Cure' is the reasonable cost of medical treatment related to the seafarer's illness or injury.

The shipowner's duty to pay both maintenance and cure continues until the crew member reaches maximum medical improvement, often referred to as 'MMI'. A seafarer is at MMI when the seafarer's condition is either cured or a doctor has found that the condition cannot be further improved. Thus, the cost of any further treatment that does not improve the seafarer's condition (curative treatment) and is simply for pain relief (palliative treatment) is not recoverable.

The duty to pay maintenance and cure is absolute and cannot be removed by a contractual clause. However, the shipowner does have a few defences to defeat a seafarer's claim for maintenance and cure:

1. A knowing failure by the seafarer to disclose a pre-existing condition;
2. That the seafarer's injury or illness was a result of willful misconduct;

# The fighter, the show-off and the toenail: navigating the murky waters of maintenance and cure in the USA continued

3. That the illness or injury was not contracted or did not occur while in the service of the ship; and
4. The seafarer has reached MMI.

Each scenario presented at the start of this article raises many issues that must be addressed swiftly by the shipowner, given that the duty to pay maintenance and cure arises as soon as the injury or illness occurs. More significantly, the threat to shipowners of being held liable for punitive damages for wrongfully failing to pay maintenance and cure is a very real one in the USA, as recent court cases have shown.<sup>1</sup>

### Scenario 1

The scenario involving the seafarer who injures his foot after kicking a chair seems straightforward. The shipowner may assume that no maintenance and cure is owed as the injury is the direct result of the mariner's misconduct. However, the shipowner should still carefully investigate the claim to determine whether the claim for maintenance and cure is legitimate.<sup>2</sup> For example, the crew member may claim that he did not kick the chair but rather tripped over it. Thus, there may be a factual dispute as to whether the injury was, in fact, the result of wilful misconduct.

### Scenario 2

Regarding the crew member injured while attempting to impress his friends, a court would likely find that the crew member is entitled to maintenance and cure. First, the fact that the crew member was on shore leave does not bar him from compensation. A crew member injured during recreational activities should receive maintenance and cure, whether the injury was suffered ashore or on the ship.<sup>3</sup> Furthermore, the crew member most likely did not intend to injure himself when he attempted to jump on the table. A seafarer is entitled to maintenance unless his injury resulted from 'some willful misbehavior or deliberate act of indiscretion'<sup>4</sup>.

Here, there is a real question as to whether a court would find the crew member's action a deliberate act of indiscretion or reckless behaviour.

### Scenario 3

The last scenario involves a crew member who is found to be suffering from an additional illness, fungal meningitis, while receiving maintenance and cure for an unrelated illness, an infected toe. A crew member receiving maintenance and cure for an injury or illness is deemed still in the service of the ship until he is at MMI. Thus, if the crew member is found to have another injury or illness while receiving maintenance and cure, he is entitled to maintenance and cure for the second condition even if unrelated to the original injury or illness.<sup>5</sup>

### Conclusion

As these hypothetical scenarios illustrate, shipowners must be cautious when deciding whether to deny a seafarer maintenance and cure. Investigating the facts surrounding the injury or illness is essential for defeating an unwarranted claim of maintenance and cure, as well as evaluating the risk of damages being awarded if the shipowner decides not to pay. If maintenance and cure is provided, the shipowner should take an aggressive approach to treating the medical condition or injury before any other medical issues can develop. The threat of punitive damages for failing to pay maintenance and cure is real, and shipowners should keep this in mind when weighing the pros and cons of denying a claim. Courts will resolve any doubt in favour of the seafarer. The club is always available to assist when confronting these issues.

1 See, for example, *Atlantic Sounding Co. v Townsend*, 557 U.S. 404, 413 (2009) holding that general maritime law allows for punitive damages for wrongful failure to pay maintenance and cure.

2 See *Morales v Garajak, Inc.*, 829 F.2d 1355, 1360 (5th Cir. 1987).

3 See *Warren v United States*, 340 U.S. 523, 529-30 (1951). Maintenance and cure was owed to a seafarer who, while ashore, had some wine, although not enough to cause intoxication, leaned from a balcony, grabbed hold of a rod and fell when the rod gave way.

4 See *Koistinen v American Export Lines, Inc.*, 194 Misc. 942 (N.Y. City Ct. 1948). Maintenance and cure was owed to a crew member who broke his leg when jumping from a window of a brothel following a dispute over financial arrangements. See also *Bentley v Albatross S.S. Co.*, 203 F.2d 270 (3d Cir. Pa. 1953). In *Bentley*, maintenance and cure was allowed when a crew member was burned by leaning against a hot radiator while intoxicated.

5 See *Messier v Bouchard Transp.*, 688 F.3d 78, 82 (2d Cir. 2012). Maintenance and cure was owed to a crew member who was hospitalised for kidney failure after suffering an unrelated injury to his back while on the ship.

# Identity crisis: why figuring out seaman status in the US should always be a priority



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As shipowners and operators continue to diversify within the USA, they may increasingly find themselves facing claims brought by their employees that raise difficult, but important, issues concerning Jones Act seaman, longshore/harbour worker and dual capacity employer status. The distinction between a seaman and a longshore/harbour worker is critical in the US, in terms of both the legal obligations owed by the employer and the P&I insurance coverages that may apply.

## Introduction

For an injured seaman in the USA, the legal remedies against his employer generally include a Jones Act negligence action, a breach of the warranty of seaworthiness action (where the seaman's employer owns the ship in question), and a claim for maintenance and cure.<sup>1</sup>

In contrast, an injured longshoreman/harbour worker generally cannot sue his employer, and instead receives statutory workers' compensation in the form of average weekly wages and coverage for medical treatment.<sup>2</sup>

There is, however, an important exception to this rule where the longshoreman's/harbour worker's employer also owns the ship on which the injury occurred – commonly referred to as a dual capacity employer. When this happens, the longshoreman/harbour worker may bring a negligence action against his employer for acts or omissions that occurred in the employer's capacity as shipowner.<sup>3</sup>

P&I insurance will typically be called upon to respond to a seaman's Jones Act negligence, unseaworthiness, and maintenance and cure claims. Conversely, workers' compensation cover will be called upon to respond to a longshoreman's/harbour worker's claim for statutory compensation. However, where the

longshoreman/harbour worker also brings a negligence action against his employer, P&I insurance will again be looked at for coverage. Thus, from an insurance standpoint, the earlier these issues and risks are identified by the member and notified to the P&I club, the more effectively the exposure can be properly evaluated and catered for. A brief overview of the distinction between a Jones Act seaman and longshoreman/harbour worker is discussed below.

## Jones Act seamen

The U.S. Supreme Court has enunciated a two-part test to be used in determining whether a maritime employee is a Jones Act seaman. The first part concerns whether the worker contributes to the *function* of a ship and this is generally quite easily satisfied. The second, and more often litigated, part is the worker's *connection to a ship or group of ships*. The connection must be substantial in terms of both its *duration* and its *nature*. For *duration*, the Supreme Court sets a 'rule of thumb': an employee who spends less than roughly 30% of his time in the service of a ship does not qualify. For the *nature* of the connection, the inquiry looks at whether the employee's duties take him to sea. Consequently, courts have focused their inquiries on the unique perils associated with being a seaman.

1 Jones Act seaman status is coveted because of much more expansive legal duties owed by the employer and a lower legal burden of proof to establish breach of those duties.

2 33 U.S.C. section 905(a).

3 33 U.S.C. section 905(b).

4 33 U.S.C. section 901.

5 33 U.S.C. section 905(a).

# Identity crisis: why figuring out seaman status in the US should always be a priority

## continued

The status as a Jones Act seaman or longshoreman/harbour worker is mutually exclusive.

The purpose of the substantial connection test is to separate the sea-based maritime employees who are entitled to Jones Act protection, from those land-based workers who have only a transitory or sporadic connection with a ship in navigation and, therefore, whose employment does not regularly expose them to the perils of the sea.

### Longshoreman/harbour workers

In the event that the employee is not a Jones Act seaman, they will most likely be considered a longshoreman or harbour worker and be covered under the Longshore and Harbor Workers Compensation Act (LHWCA).<sup>4</sup>

This means that the longshoreman/harbour worker receives statutory compensation if injured during the course and scope of his employment due to the negligence of a third-party ship and, therefore, cannot sue his employer but is entitled to bring a lawsuit against that ship's owner to recover damages (section 905(b)). The duties owed by a shipowner under the LHWCA are much more limited than those owed to a Jones Act seaman. There are essentially only three basic duties owed by such shipowners (commonly called the *Scindia* duties):

- (a) To warn of hidden dangers, and turn over control of areas of the ship that are reasonably safe so that an experienced longshoreman/harbour worker employer can carry out operations;
- (b) To exercise reasonable care in areas that remain in the active control of the ship; and
- (c) To intervene in the longshoreman/harbour worker employer's operations if it knows the employer is acting unreasonably in failing to protect its employees (the longshoreman/harbour worker).

### Dual capacity employer

If the longshoreman/harbour worker's employer is also the owner of the ship upon which he is injured, can the injured employee sue his employer in negligence under section 905(b)? The answer is 'it depends'.

The difficulty in answering this question is that while a shipowner is exposed to liability under section 905(b), the LHWCA says that an employer establishing a workers' compensation programme shall have no other liability.<sup>5</sup> To answer this question, therefore, the US courts have generally analysed the allegedly negligent conduct to determine whether that conduct was performed in furtherance of the employer's *longshore/harbour-working operations*, i.e. the employer's role as stevedore, or whether the conduct was performed in the course of the *operation of the ship*, i.e. the employer's role as shipowner.

Where the injury-causing act or omission relates to the operation of the ship, the employee will be permitted to sue his employer under section 905(b) based on breach of the *Scindia* duties.

This is all subject to one last – and sometimes missed – caveat. Section 905(b) of the LHWCA prohibits maritime workers engaged directly by a shipowner as shipbuilders, ship repairers or shipbreakers from bringing a negligence action against their employer.

### Conclusion

What hopefully will be taken away from this overview is the importance of making an employment status determination very early on in the underwriting and then subsequent claims-handling process between a member and its P&I club, in light of the significant difference that status can make in terms of insurance obligations and liability for both the member and the club.



# Norovirus not a 'defect in the ship'



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The recent decision of *Nolan v TUI UK Ltd*<sup>1</sup> heard in the Central County Court marks a landmark decision for the cruise industry in defending personal injury claims arising from outbreaks of Norovirus.

## Introduction

The recent decision demonstrates that there is now recognition by the courts that cruise operators are not liable for such outbreaks if they implement the industry standard when it comes to plans and taking the necessary measures to manage and control the illness.

## Case study

This was a claim by 43 passengers of the cruise ship the *Thompson Spirit* against the performing carrier, TUI UK Limited, for damages in negligence and breach of contract arising from an outbreak of gastroenteritis in the course of a cruise from Ibiza to Newcastle in 2009. The outbreak affected at least 217 people including crew. Some of the claimants claimed damages in respect of personal injury, while others claimed damages for quality complaints. Some of the key arguments by the claimants included the following:

- First, they contended that the outbreak was caused by negligence on the part of the carrier.
- Second, they argued that the carrier had breached an implied term in the contract of carriage, which required the carrier to warn them in advance of 'known, significant, previous, existing or continuing episodes of illness or infection on board'.

- Third, in attempting to establish liability against the carrier, the claimants sought to rely upon a presumption of fault and neglect pursuant to Article 3, para. 3 of the Athens Convention 1974. In doing so, the claimants' counsel submitted that there was contamination to the structural fabric of the ship with Norovirus, based upon the evidence of 18 cases of Norovirus on the immediately previous cruise, and that the contaminated ship amounted to a 'defect in the ship' within the meaning of Article 3, para. 3.
- Fourth, the claimants contended that the failures of the operator to carry out a proper 'deep clean' of the ship between voyages and to warn passengers in advance of the possibility of their contracting the same illness amounted to breaches of the carrier's obligations, which caused injury to the claimants.

Norovirus, sometimes known as the winter vomiting bug in the UK, is the most common cause of viral gastroenteritis in humans. Infection is characterised by nausea, vomiting, diarrhoea, abdominal pain and, in some cases, loss of taste. General lethargy, weakness, muscle aches, headaches and low-grade fevers may occur. The disease is usually self-limiting, and severe illness is rare. Infection is normally person to person, but it can be transmitted by food, water and contaminated surfaces. Although having norovirus can be unpleasant, it is not usually dangerous and most who contract it make a full recovery within two to three days.



# Norovirus not a 'defect in the ship' continued

- 1 *Nolan and others v TUI UK Ltd* [2016] 1 Lloyd's Rep. 211
- 2 One of the main causes of bacterial foodborne disease in many developed countries. Its symptoms are similar to Norovirus, but there are additional features of fever and often blood in stools.
- 3 *Sidhu v British Airways plc* [1997] AC 430, [1997] 1 All ER 193

Article 3, para. 3 of the [Athens Convention 1974](#) states: 'Fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship. In respect of loss of or damage to other luggage, such fault or neglect shall be presumed, unless the contrary is proved, irrespective of the nature of the incident which caused the loss or damage. In all other cases, the burden of proving fault or neglect shall lie with the claimant.'

## Court findings

After hearing evidence from both the ship and eight of the claimant passengers as well as expert witnesses, the court reached a finding of fact that the illness was Norovirus rather than *Campylobacter*,<sup>2</sup> as claimed. Whilst *Campylobacter* does not usually cause outbreaks and is not a common source of illness on cruise ships, it is a bacterial pathogen and its presence would be *prima facie* evidence of a breakdown of the ship's systems, leading to findings of liability. The court further found that the virus that led to the Norovirus outbreak was most likely brought onto the ship by passengers. (At least one passenger reported that his symptoms commenced within hours of joining the ship.) The court further found, based on the oral testimonies and the carrier's records, that the carrier and the crew had in this case fully implemented and complied with the onboard systems for controlling the outbreak even beyond the levels required for the scale of reported illness.

## Defect in the ship?

This case raises interesting issues of law. As the bookings were made in the UK, the [Athens Convention 1974](#) governed the claims for personal injury to passengers for international carriage by sea. As referred to previously, Article 3(3) reverses the normal burden of proof where there is a grounding, fire, collision, stranding, etc. or where the injury is caused by a 'defect in the ship'.

The claimants argued that contamination of the ship with Norovirus from the previous cruise constituted a 'defect in the ship' pursuant to the terms of the [Athens Convention](#). The carrier argued that the presumption of liability applied to marine perils and matters of a navigational nature and not to allegations concerning the implementation of food, hygiene or the hotel department policies and procedures. His Honour Judge Mitchell agreed with the carrier's argument

and took the view that 'defect in the ship' is limited to defects in the structure of the ship. In reaching this conclusion, the judge drew clear distinctions between 'a typical maritime peril' and something that could have happened onshore.

## Other outcomes

Of further interest is the ruling of the court, which followed the decision of the Supreme Court in *Sidhu v British Airways plc*,<sup>3</sup> that the [Athens Convention 1974](#) is the exclusive remedy available to claimants travelling by sea in respect of claims for personal injury. The judge also dismissed the claimants' argument that the Convention permitted them to bring a claim for personal injury suffered on the ship where the fault occurred prior to boarding (contamination from the previous cruise). This is significant for the cruise industry in that, as a matter of law, the fault or neglect argued must occur during the carriage.

The court also held on the facts of this case that there was no duty to warn passengers as there could be no criticism of the handling of the illness on the previous cruise.

## Conclusion

The judgment is the first of its type to be successfully defended at trial in the UK. It is of great importance to the cruise industry in recognising that Norovirus is not caused by the ship and that, even with high levels of implementation of industry procedures, outbreaks of Norovirus do occur. The case has not been appealed and whilst Norovirus claims have shown a decline since July, there are now more claims with claimant solicitors seeking to distinguish *Nolan*. The claimants continue to argue for unspecified bacterial illnesses and hope the cruise line cannot show proper and due implementation of its systems.

**Maria Pittordis and her team at Hill Dickinson, London, represented the carrier.**



# Deviation expenses for landing sick, injured or deceased people



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A ship may deviate from a contracted voyage for a number of reasons, one being to land sick, injured or deceased people. Such deviations can sometimes have consequences under the relevant charterparty and bills of lading (if laden). Deviations can also have ramifications in respect of a member's P&I cover.



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## Overview

A deviation may be justified in circumstances where the charterparty or bill of lading includes a 'liberty' clause. However, these clauses are typically limited in scope and a deviation that is deemed unjustified or unlawful can have unfortunate consequences both under the charterparty and the bills of lading (if the ship is laden).

As for the member's P&I cover, The Standard Club's [rule 3.13.3\(2\)](#) states that liabilities arising out of a deviation from the contractually agreed voyage which may deprive the member of the right to rely on defences or rights of limitation otherwise available will be excluded, unless the managers have agreed that cover may continue unprejudiced.

It is therefore vital that before deviating from the contracted voyage, the member first informs their usual club contact for confirmation that their P&I cover will remain intact. Whilst each deviation will need to be considered based on its own particular facts, as a guiding principle, a minor deviation from the geographically contracted voyage to a nearby port to save life, or to land persons saved at sea, will be permissible from a club cover perspective.

## Club cover

The Standard Club's rule 3.4 caters for situations where a member suffers losses through having to divert the ship in a number of specified circumstances. These include deviation:

- a) in order to obtain treatment for injured or sick persons on board (not crew);
- b) for the purpose of saving life at sea; or
- c) for the purpose of landing stowaways or deceased persons.

When it comes to diverting a ship for obtaining treatment for injured or sick crew members, the equivalent to rule 3.4 is set out in rule 3.1.6.

## Persons in distress

The Standard Club rules are in line with international legislation, which requires ships to provide support to persons in distress. The [International Convention on Salvage 1989 \(ICS\)](#) obliges masters to render assistance (life salvage) to any person in danger of being lost at sea, unless doing so would seriously endanger the ship or persons thereon. The terms of the ICS are incorporated into English law through the [Merchant Shipping Act 1995](#), which makes a master's failure to render such assistance a criminal offence. English common law has also for a long time recognised deviation, for the purposes of saving life at sea,

# Deviation expenses for landing sick, injured or deceased people continued

as a justifiable deviation and thus it will not amount to a breach of contract.

Furthermore, the 1974 *International Convention for the Safety of Life at Sea* (SOLAS), Chapter V, Regulation 33 states that the master is bound to proceed with all speed to the assistance of persons or ships in distress.

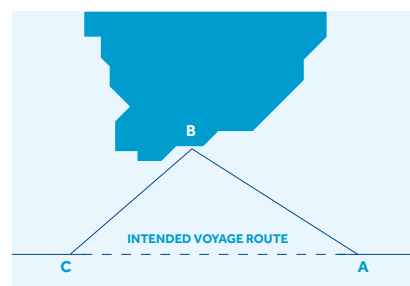
In such situations, deviation is permitted and club cover will not necessarily be prejudiced and may even allow the member to recover the expenses associated with such deviation.

## Recoverable expenses

Club cover for deviation will only usually include the *net* expenses incurred during or directly resulting from such deviation. These usually include: bunkers; stores and provisions; wages; additional insurance; agency fees; local pilot and transportation costs; and port charges. However, the club cover provided does not extend to lost hire or freight.

Such costs are calculated *pro rata* and relate to the period until the ship is back on course, in a position no less favourable than if the deviation had not occurred.

The following diagram can illustrate the point:



If we assume that the ship is proceeding according to the above intended voyage from A to C, but has to deviate to unscheduled port B to land a sick, ill or deceased crew member, the member will incur unexpected port costs and other expenses (as identified above) compared to the original intended voyage. Such costs will be covered by the club unless the member took the opportunity to carry out additional business at port B, such as loading/discharging cargo or to buy bunkers. This would also be the case for any deviation under rule 3.4.

The club would also cover the net additional running costs for the time spent travelling from point A to B, as well as from point B to C. However, the distance made good (via the initial intended route directly from point A to C) will be deducted as this would have been incurred in any event.

While the club will cover these additional running costs, it will not pay for any loss of profit or loss of income incurred if, for example, the ship is placed off hire or if freight is withheld. Some charterparty clauses may also allow for deductions from hire to be made due to a diversion to land a sick, injured or deceased crew member. This is of course subject to a member being able to rely on any of the aforementioned liberty clauses or applicable rules permitting deviations to save life at sea, a question to be determined according to the law of the contract of carriage.

Finally, it should be noted that any costs that would have been incurred in any event (e.g. pilotage and port dues at a scheduled port of call from which a crew member is repatriated) are operational expenses and thus for the member's account.

The Standard Club's rule 3.4 states that the club will cover:

*'...Port and other charges solely incurred for the purpose of landing stowaways or refugees, or others saved at sea, or landing or securing the necessary treatment for an injured or sick person, other than crew, including the net loss to the member in respect of fuel, insurance, wages, stores and provisions incurred for such purpose...'*

# Overview and new trends in the Italian compensation regime for accidents at work and occupational diseases



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This article looks at the compensation regime in Italy in respect of accidents at work and occupational diseases, and considers the widening of exposure to members following recent trends in the decisions of the Italian courts.

Our outline of the legal framework and benefits in respect of work accidents and occupational diseases does not include claims, benefits and potential exposure to the member arising from asbestos-related diseases, which is beyond the scope of this article.

## Introduction

The Italian Constitution guarantees to all workers the right to a safe and healthy working environment. In accordance with this constitutional guarantee, the Italian government imposes the obligation upon all employers in Italy to insure their workers who are involved in hazardous activities against the risk of accidents in the workplace or diseases caused by work activities. This includes seafarers.

IPSEMA<sup>1</sup> (the Seafarers National Social Insurers) merged with INAIL<sup>2</sup> (Italian Workers' Compensation Authority) in 2010. Today, INAIL, as the nationally appointed social insurers, is responsible for providing compulsory insurance on behalf of all Italian crew members and shore staff against accidents at work and occupational diseases.

## The legal framework and benefits

The current system of compensation in favour of workers provides for a public insurance scheme covering work-related accidents and occupational diseases.<sup>3</sup>

Pursuant to this scheme, seafarers enjoy comprehensive protection, ranging from the prevention of

incidents in the workplace to health and economic benefits, medical treatments, rehabilitation and reintegration into social and working life following a work-related accident or injury.

## Compensation for permanent injury

In the event a crew is injured at work, he is entitled to payment from INAIL either as a *lump sum*, if the degree of permanent disability is assessed at between 6% and 15%, or an *annuity*, by monthly accruals, if the degree of disability is between 16% and 100%. The annuity level is in proportion to the percentage of permanent disability and the level of the crew's salary. No compensation is payable by INAIL in the event that the degree of permanent disability is assessed to be less than 6%.

As a matter of Italian law, the value of a permanent disability differs for the purposes of:

- a) compensation payable pursuant to the INAIL insurance scheme; and
- b) third-party liability claims which are pursued in the Italian courts against the wrongdoer or the employer.

<sup>1</sup> *L'Istituto di previdenza per il settore marittimo*

<sup>2</sup> *Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro*

<sup>3</sup> The governing legal provisions are set out in Presidential Decree 30 June 1965 no. 1124, as amended by Legislative Decree 28 February 2000 no. 38

# Overview and new trends in the Italian compensation regime for accidents at work and occupational diseases continued

The Italian Civil Code distinguishes between *patrimonial* damages and *non-patrimonial* damages in awarding damage for injury or occupational illness. Patrimonial damages relate to financial losses (e.g. medical treatment, loss of income), whilst non-patrimonial damages refer to personal injury suffered, which could be either of a physiological (e.g. permanent or temporary disability) or psychological (e.g. stress and anxiety) nature.

Age and degree of permanent disability	INAIL criteria	2014 <i>Tabelle di Milano</i> criteria	Difference
40 years old 6%	€3,966.39	from € 9,699.00 to €14,549.00	144.5% 266.8%
40 years old 9%	€7,065.13	from €18,517.00 to €27,776.00	162.0% 293.1%
40 years old 15%	€18,592.45	from €42,600.00 to €61,344.00	129.1% 229.9%

The table above illustrates the differences in compensation payable pursuant to the INAIL scheme and the likely sums recoverable pursuant to a claim for third-party liability before the Italian courts arising from a permanent disability at work. The most widespread criteria applied by the Italian courts are found in the *Tabelle di Milano* issued by the Tribunal of Milan.

According to Italian law, a crew member who suffers permanent disability equal to or greater than a 6% degree is entitled to receive compensation directly from the social insurers pursuant to the INAIL scheme.

However, and as illustrated above, the compensation payable pursuant to the INAIL scheme is limited. There remains a sizeable difference between the compensation that a worker receives pursuant to the INAIL criteria and the amount he would be entitled to receive following a successful claim in court, applying the general principles of Italian tort law.

The employer remains directly liable in law to compensate its crew in respect of the difference between these two sums (the differential damages) and other additional damages not covered by the social insurers scheme. In any case, part of such additional damages are subject to proof by the claimant.

## Right of recovery by the Italian social insurers

Social insurers have a right of recovery or a right to seek an indemnity:

- (i) against the employer, whenever the employer has been held liable for a crime subject to the action of a Public Prosecutor.<sup>4</sup> Indeed, the commencement of criminal proceedings is strictly unnecessary to facilitate such a recovery. A civil court has the competence to recognise the criminal liability of the employer for an injury suffered by the seafarer without prior commencement of criminal proceedings for this purpose. In such cases, the social insurers may recover against the employer all benefits paid out to the crew member by bringing a so-called *azione di regresso* (action of recourse); and
- (ii) against third parties, according to general rule laid down in Article 1916 of the Italian Civil Code, which provides for the so-called *azione di surroga* (action of subrogation).

<sup>4</sup> Pursuant to Article 11 of Presidential Decree 30 June 1965 no. 1124

### **New trends in the Italian courts**

Recent developments in the Italian courts may lead to a substantial increase in the exposure of members who are employers for liabilities arising from injury, illness or death of their crew.

First, the imbalance between the INAIL criteria and the third-party liability criteria used by the courts in compensating personal injuries suffered by a crew member is expected to increase in favour of the crew member. Whilst the INAIL compensation scheme tends to be fixed over the years and is not subject to increments save to reflect currency fluctuations, the third-party liability compensation scheme tends to be revised every two to three years, hence the increasing divergence between the two regimes. The quantum of patrimonial and non-patrimonial damages in the case of occupational diseases and injury is also set to increase.

Second, it is now easier for social insurers to protect lapsing time-bars in respect of a claim for indemnity by the social insurers against the employers for benefits paid out by the social insurers in the first instance. The usual three-year time bar commences from the date of a final and non-appealable order of a criminal court, or from the due date for payment by the employer of the indemnity set down by the social insurers. The Italian courts have recently ruled that the three-year time bar may now be interrupted by INAIL simply by issuance of a written demand to the employer, preserving INAIL's right to bring a recovery against the employer for the said sum.

Finally, a recent ruling of the Italian Supreme Court rendered in January 2016 has limited the scope against which the employers may claim a set-off against benefits already paid out by the social insurers when computing an award of damages payable by the employers. Clearly, this precedent favours the workers and increases a member's potential exposure in respect of the differential damages.

### **Conclusion**

Due to the significant and increasing difference in compensation levels between the INAIL criteria and the third-party liability criteria, workers are expected to be more inclined to claim against their employers in respect of the difference in compensation between the two regimes. At the same time, employers may expect to be subject to more frequent claims initiated by the social insurers. It may not be easy to defend or limit the exposure of employers to such actions in the majority of circumstances. With a view to limiting the attendant legal costs and delays in defending such claims before the Italian courts, we suggest that members attempt to properly settle such claims in advance.



# Crew death: an overview from a Singapore perspective



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It is always tragic when a crew member dies at sea. Whilst understanding the emotional impact on the crew and family of the deceased, a guide as to what can be expected in the due process may assist members to cope during this difficult time. We consider below the subject of crew deaths on board a vessel which is in Singapore or due to call at Singapore in the course of or at the end of her voyage.

## What should the shipowner do?

- (i) As soon as possible, preserve all evidence, documents and information relating to the deceased and the death to facilitate investigations into the deceased's death, particularly the cause of death. The master/shipowner should, *inter alia*:
  - photograph the position and condition of the deceased's body when found (including any injuries and/or marks on the deceased's body) and the area where the body was found;
  - retain the deceased's personal belongings, and any documents/ items relating to the deceased (including email messages) and/or the death, taking care to leave them where they are, if feasible, but to secure them and the place of incident; and
  - properly preserve the deceased's body.
- (ii) As soon as practicable, report the deceased's death to the shipowner and a Singapore police officer (where applicable).<sup>1</sup> Also notify the Immigration & Checkpoints Authority of Singapore.
- (iii) Notify the Port Health Office of the Singapore National Environment Agency not less than four hours and not more than 12 hours before arrival.<sup>2</sup>
- (iv) If the vessel is Singapore-registered and the death occurred outside Singapore<sup>3</sup> or if the deceased is a Singapore citizen<sup>4</sup>, report the death as soon as practicable but within 30 days after the death to the Director of Marine of the Maritime and Port Authority of Singapore (MPA).<sup>5</sup> In the former case, as soon as practicable, but not more than three days after the death, also notify such persons (if any) named by the deceased to be next-of-kin of the death.<sup>6</sup>
- (v) Additionally, if the vessel is Singapore-registered:
  - report the death to the Director of Marine of the MPA within 24 hours.<sup>7</sup>
  - probe the nature and cause of the death, and submit an inquiry report<sup>8</sup> to the MPA.
  - the deceased's employer or principal should notify<sup>9</sup> the Singapore Commissioner For Labour and their P&I club in writing of the death, not later than 10 days after the date of the incident.<sup>10</sup>
- (vi) Take charge of all of the deceased's property left on board the vessel and make an entry in the official log book signed by the master and another crew member of a list of such property.<sup>11</sup>
- (vii) Appoint lawyers to protect their interests, where deemed necessary.

1 Section 5(1) of the Singapore Coroners Act (CA). See also the Second Schedule of the CA, which sets out the statutory circumstances of 'reportable deaths'.

2 MPA Port Marine Circular No. 11 of 2014 dated 25 September 2014.

3 Regulation 4 of the Merchant Shipping (Returns of Births and Deaths) Regulations (MSR).

4 Regulation 5 of the MSR.

5 Regulation 6 of the MSR.

6 Regulation 4 of the MSR.

- 7 Regulation 7 of Merchant Shipping (Maritime Labour Convention) (Health and Safety Protection and Accident Prevention) Regulations 2014. The report shall be made in the form set out in the Schedule of the Regulation. See also the MPA Shipping Circular No. 4 of 2013 dated 8 March 2013.
- 8 Regulation 9 of the MSR. The inquiry report should contain the particulars specified in the Third Schedule of the MSR or so many of those particulars as the master may reasonably be able to obtain having regard to the circumstances of the death.
- 9 The notice of accident shall be in accordance with such form and be given in such manner as set out at the website <http://www.mom.gov.sg/iReport>. Regulation 3(4) of the Work Injury Compensation Regulations (WICR).
- 10 This is on the basis that the death may give rise to a claim for compensation under the WICA: Regulation 3(1) of the WICR and section 12(1) of the WICA.
- 11 See Regulation 4 of the Merchant Shipping (Property of Deceased Seamen) Regulations in the case of a Singapore-registered vessel.
- 12 Section 24 of the CA sets out the Jurisdiction of Coroner to hold an inquiry.
- 13 See section 25 of the CA, which sets out the coroner's duty to hold an inquiry and the matters that the coroner will have regard to in deciding whether to hold an inquiry.
- 14 Section 27(1) of the CA.
- 15 Section 27(2) of the CA.
- 16 Sections 3(1) and 17(1) of the WICA.
- 17 See section 7 and the Third Schedule of the WICA.
- 18 Section 3(5)(b) of the WICA.

### What will happen at Singapore?

Upon the vessel's arrival at Singapore, the vessel's agent and a doctor engaged by the agent will board the vessel for the doctor to confirm the deceased's death. After the doctor has completed their checks, the replacement crew (if any) and the lawyers (if any appointed by the shipowners) may board the vessel. The Singapore coast guard officers (SPF) will also board the vessel to carry out their investigations (which must be permitted to be carried out without interference).

Lawyers will board the vessel to, amongst other things, investigate into and interview the crew members in relation to the death, although such investigations can only be done after the SPF has completed its investigations and assisted the master if advice is needed.

The deceased's body will be landed and brought to the mortuary by the SPF, where the deceased's next-of-kin (NOK) is usually permitted to view the body before the autopsy is undertaken.

After the initial interview, the SPF may request any crew to visit its office for a further interview. The vessel will not be allowed to leave port unless agreed by the SPF. The shipowner may be required to make the crew available for further investigation whenever required before the SPF will agree to allow the vessel to leave port. In this regard, it is prudent to ensure that the undertaking is limited to when the crew remains in the shipowner's employment.

### Coroner's inquiry where the coroner has jurisdiction<sup>12</sup>

A criminal prosecution may be brought if the SPF suspects a crime has been committed. In that event, a coroner's inquiry is unlikely to be held.<sup>13</sup> If no criminal prosecution is envisaged, a coroner's inquiry may be held to inquire into the cause of and circumstances connected with the

death.<sup>14</sup> The coroner will not determine any question of criminal, civil or disciplinary liability.<sup>15</sup> If the coroner is unable to arrive at a conclusion as to the cause of death, he may return an open verdict, in which event the case can be reopened in the future if more evidence surfaces. The shipowner's lawyer will usually attend these proceedings to assist the coroner in their findings and to ensure that any inaccurate and prejudicial evidence is corrected so as not to adversely affect the shipowner's interests in exposure to civil liability. It is in the discretion of the coroner whether or not to permit this participation, although the coroner will so permit in most cases.

### Death compensation

In Singapore, the next of kin may seek compensation (i) if the vessel is Singapore-registered, under the Work Injury Compensation Act (WICA); or (ii) by bringing a civil suit in court. Compensation will be payable under the WICA so long as the death is caused by an accident arising out of and in the course of the employment (even if the shipowner was not at fault).<sup>16</sup>

The compensation amount payable is prescribed in the WICA.<sup>17</sup> On the other hand, the next of kin will need to prove, *inter alia*, that the shipowner's fault (such as negligence and/or breach of the employment contract) caused their loss/damage in order to succeed in a civil suit. However, the compensation recoverable in a civil suit may be potentially higher than that payable pursuant to the WICA regime.

Compensation will not be payable under the WICA if the death results from suicide.<sup>18</sup> Whether compensation is payable under the employment contract in the case of suicide will depend on the terms of the employment contract and/or any applicable collective bargaining agreement. Any contracts seeking to exclude compensation in the case of suicide will need to be drafted clearly to this effect.

# Improving hazard awareness



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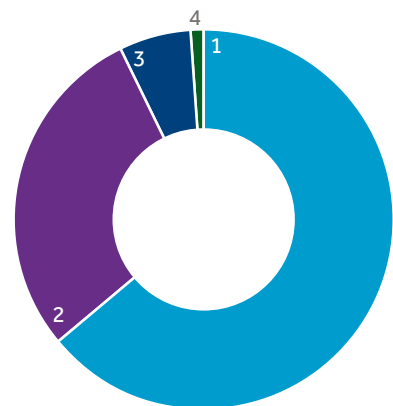
The winners of the Standard Club and the International Chamber of Shipping 'Spot the Hazard' competition were announced on the competition website ([www.hazard-competition.com](http://www.hazard-competition.com)) in December 2015. We consider this competition a successful example of how large maritime organisations can interact with seafarers to advance the cause of safety at sea and we would like to thank each seafarer who took the time to enter the competition.

## The results

In total, the competition attracted participation from 590 seafarers, representing 78 companies and who collectively submitted 1,300 posters. The most popular poster submitted was the 'Safety in Galley'. It was also the poster with the highest scores achieved, with over 90% of entrants achieving either a score of nine or the maximum 10, despite the fact that only 6% of entrants were from the catering department. Although the majority of entrants were from the deck (64%), only 12% of entrants scored top marks on this poster. In contrast, the engine room had 50% of its respondents achieving the maximum score even though only 29% of responses were from the engineering department. This supports our perception that most seafarers have some cross-departmental knowledge and are aware of the important hazards.

Of all the hazards within the five posters, the hazard that was most often mistaken or overlooked was a bridge hazard, namely, the 'over-scaled Electronic Chart Display and Information System (ECDIS) display'. This was not particularly surprising and is consistent with our observation that the levels of ECDIS proficiency amongst crew varies. Members should refer to our recent Standard Safety special edition on ECDIS, which is available on our [website](#), for more information.

## Competition participants by department

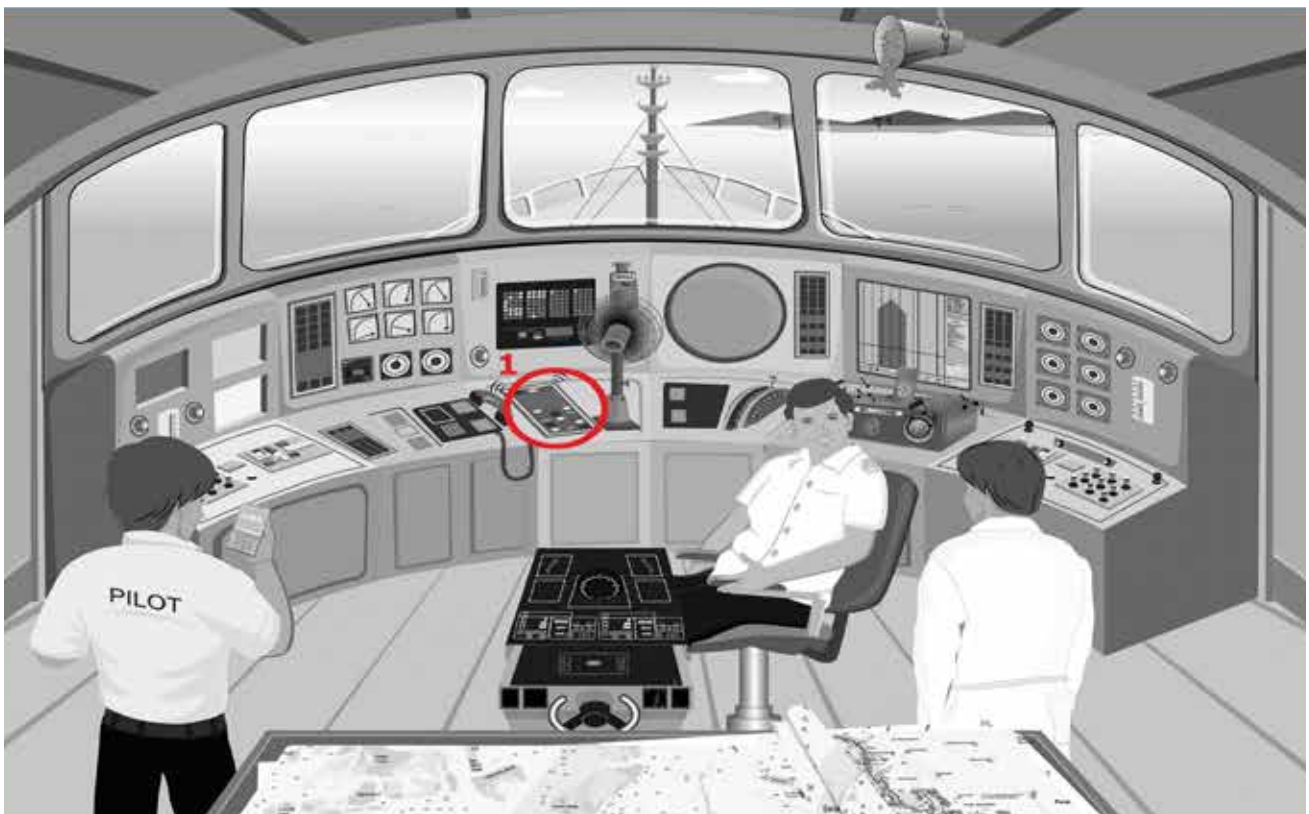


1 Deck	64%
2 Engineering	29%
3 Catering / Supply	6%
4 Miscellaneous	1%

The competition required seafarers to identify a series of hazards embedded in five posters which depicted everyday scenes on board a ship. Entrants were also required to come up with a unique idea to improve safety on board.



## The Bridge



Engine Room



Galley



The Deck



Terminal

The pictures above each show typical scenes on board ship. Ten hazards have been added to the scenes, for example the one circled on The Bridge. On the standard club [website](#) you will find links to each of the five posters with the hazards highlighted and an explanation of why awareness of each hazard is important for the safety of ship operations.

# Club review of crew contracts



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The majority of crew personal injury and illness claims arise pursuant to the applicable crew contract of employment. This sets out the terms and conditions of a crew member's service on board a ship and their relationship with their employer, which will often be a crew management company.

The crew member's individual contract of employment usually incorporates the terms and conditions of a named collective bargaining agreement (CBA).<sup>1</sup>

## Why the need for a club review?

The club's rules require that the managers of the club review and approve the applicable contract of employment and CBA to ensure that the member's legal liabilities fall within the scope of club cover.<sup>2</sup> Further, the International Group of P&I Associations' Pooling Agreement 2015 obliges the club to review and approve these contracts.<sup>3</sup>

The club's review assists the member to identify any unreasonable obligations which may be open-ended in nature or fail to comply with the industry norms or applicable local law. For example, where a particular employment contract provides for unusually generous compensation in the event of death, injury or illness, the review provides an opportunity for the member to have these compensation levels approved in advance by the managers of the club so that its additional exposure pursuant to the contract can be taken into account in the assessment of P&I premium.

## Scope of cover

Pursuant to rule 3.1 of the club's rules, the club reimburses the member in respect of its liabilities arising from crew illness, injury, disability or death, subject to the terms of the crew employment contract and the rules of the club.

Accordingly, in reviewing a crew contract, particular attention should be given to the type and scope of compensation/benefits payable under standard P&I cover. This typically includes:

- medical treatment;
- sick wages;
- disability compensation;
- death compensation;
- repatriation;
- compensation for damage to or loss of personal effects; and
- compensation for termination of employment.

Members should always ensure that their obligations pursuant to a crew contract are appropriate and in line with the accepted standards and practice of the industry and the wider applicable law. To that end, the International Transport Workers' Federation (ITF) publishes a 'model' crew contract, which specifies entitlements such as pay, working hours and compensation. As this is an 'industry-standard' document, the club will always review any crew contract with this model in mind.

Outlined on pages 19 and 20 are just a few common issues that members should consider when negotiating/agreeing crew contracts.

- 1 A CBA is a labour contract typically agreed between the employer and one or more trade unions for a group of workers.
- 2 Club rule 2.3 provides: *'...Where such liabilities would not have arisen but for the terms of any contract or indemnity, the contract or indemnity must either correspond to any specific requirements set out in rule 3 [Risks Covered] or rule 5 [Excluded Losses], or have been approved by the managers...'*
- 3 Clause 3.5(a)(ii) of the Pooling Agreement materially states: *'...The terms of that contract of employment or services have been approved by an Association...'*

### Levels of compensation

In addition to a review as to the scope of compensation/benefits payable pursuant to the contract of employment or CBA, the club's contract review will give attention to the levels of agreed compensation payable.

The levels of compensation often differ depending on the contract utilised, and it will be for the member to decide upon the applicable level of compensation when negotiating the contract. Members should be aware of compensation levels that appear excessively high or low – the latter being particularly open to challenge in local courts.

The club recommends that members remain mindful of the compensation figures set out in the current ITF 'model' agreement and ensure that annual increments in compensation are reasonable. For information, the 2016 ITF figures set out in the IBF ITF-IMEC International CBA 2015-2017<sup>4</sup> are illustrated in the table below.<sup>5</sup>

### Duration of compensation

The period during which contractual benefits/compensation are and remain payable should be carefully specified in the contract of employment. In cases of extended illness or disability following an injury, the benefits payable, which may be by way of sick pay and

medical treatment, should have a definable cut-off point, for example, upon a determination as to the degree of permanent disability or after a prescribed number of days has elapsed.

Incidentally, most standard ITF contracts entitle seafarers to compensation as a consequence of illness or injury during the period set out in their contract of employment. Further, references to benefits being payable where there is no connection with the entered ship should be appropriately amended. For example, compensation payable during periods of holiday should be noted.

Additionally, careful consideration should be given to any provision that allows for compensation to be payable when an incident or illness occurs whilst the crew member is between contracts. The club's cover is confined to liabilities incurred in relation to and in connection with the operation and management of an entered ship.<sup>6</sup> Accordingly, an injury or illness sustained outside a crew member's course of employment may not be 'in connection with' the entered ship, as required by the club rules, and will then fall to the member/ employer's account. There is of course an exception in respect of travel to and from the ship, and this is also reflected in the ITF model agreement.

### 2016

Degree of Disability Percentage (%)	Rate of Compensation, \$		
	Ratings	Junior Officers	Senior Officers
100	98,848	131,797	164,745
75	74,136	98,848	123,559
60	59,308	79,708	98,848
50	49,424	65,899	82,373
40	39,539	52,719	65,899
30	29,655	39,539	49,424
20	19,770	26,359	32,950
10	9,885	13,180	16,475

4 International Bargaining Forum – International Transport Workers' Federation – International Maritime Employer's Council Collective Bargaining Agreement 2015-2017

5 IBF ITF-IMEC International CBA 2015-2017 <http://www.itfseafarers.org/files/seealsodocs/44443/IBF%20ITF-IMEC%20International%20CBA%202015-2017%20.pdf> accessed on 16 March 2016

6 As per Club rule 2.1

# Club review of crew contracts continued

## Other illness and injuries

The club recommends that the contract of employment plainly delineates the circumstances when compensation is payable. In particular, there should be no ambiguity in the contract of employment as to whether compensation is payable in the event of a non-work related condition or self-inflicted injuries. If, in fact, the contract of employment intends to exclude compensation arising from such conditions, this should be clearly stated to avoid potential unnecessary expensive and protracted litigation.

## 'Most favourable' medical report clause

Some crew contracts provide for compensation to be payable on the basis of the 'most favourable' medical report. In essence, this allows a seafarer to 'pick and choose' a medical report that puts their condition at the highest level and that would provide for higher levels of compensation. If this was not the intention behind the clause, then this should be substituted

for one that states that if there is any disagreement between medical practitioners instructed by the parties (for example, by the crew member and the employer), the matter should be referred to an independent third doctor for determination, and their view is to be binding on both parties. An example of such a clause is as follows:

*'If a doctor appointed by or on behalf of the seafarer disagrees with the assessment [of the company doctor], a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.'*

## Conclusion

Claims arising from crew contracts of employment may not always be straightforward and can result in substantial liabilities to our members. The club remains on hand to assist members with any enquiry they may have in respect of their contractual obligations to their crew.



# Why would I need directors' & officers' liability insurance?



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Many people fail to realise that their personal property may be at risk from their conduct in a professional capacity. This article intends to give some examples of the nature of claims and the possible effect on the individuals to which a directors' & officers' (D&O) policy would respond.

## Introduction

Broadly speaking, an officer or director of a company may be held personally liable for any decision, act or omission made in their professional capacity within the company. In this article, 'company' refers to any corporate body; be it a non-profit entity such as a trade association, regulator or voluntary organisation, or a privately owned, family-run or publicly listed entity. The claims can be made by any one or more of a number of potential plaintiffs such as: shareholders, investors or owners, trustees-in-bankruptcy, police or public prosecutors, tax authorities, or even the company's peers or competitors. Claims need not necessarily be limited to judicial actions. A threat of legal action or of a raid on premises to seize computers or documents will likely necessitate immediate defensive action and legal costs to protect the company's position or prevent further intrusion.

While most corporate bodies are protected through public limited liability and other insurances, the individuals within a company are often left unprotected, particularly where they have acted without proper authority or breached any part of the Companies Act or similar legislation. The risk is particularly apparent where a company trades in overseas territories.

Depending on the allegations involved, a company may be relieved of its obligation to indemnify directors or officers, at least until the allegation is proven to be false or the individuals are exonerated. Under such circumstances, the directors may be left to personally fund their own legal costs to defend a claim that arises from their conduct in a professional capacity. It is further likely that, in order to give their client the maximum possible opportunity of a successful defence, their lawyer is unlikely to want to join in with other defendants, especially where each party implicated is intent on passing blame to the others, resulting in multiple directors defending themselves individually. Costs can quickly escalate.

## How does D&O cover differ from P&I cover?

To many readers of this article, this might not seem to be a significant risk. Your company, be it a shipowning company, a charterer or a ship manager, will most likely buy third-party liability protection and indemnity (P&I) insurance. Therefore, it may be easy to assume that all claims and costs incurred, even those arising as a result of actions taken by directors and officers of the company, will fall within the scope of P&I cover.



**The  
Standard  
Syndicate**

# Why would I need directors' & officers' liability insurance? continued

Actually, this may not always be the case. There are many cases where the management team of a shipping company were alleged to have been responsible for losses caused to others. Suits have been brought for loss of life, loss of profits, unfair trade practices or making personal profit at the expense of the company itself. While the majority of claims are covered by P&I or asset (e.g. hull, cargo) insurances, allegations against individual directors may not be, if the alleged wrongdoing relates to activities within the office.

In certain jurisdictions, where multiple plaintiffs are affected, claims can involve a class action or representative actions. This is particularly true in the USA, Canada and Australia. Once again, defence costs can be significant, often running to hundreds of thousands of dollars.

As shipowners seek fresh capital from wider and more diverse sources in the current difficult economic climate, raising public debt or issuing public stock may lead to further exposure to potential liability.



## Case studies

We have seen a class action lawsuit being instigated against a US-listed cargo carrier, resulting from the issuance of materially false statements to the Securities and Exchange Commission (SEC). The ensuing \$500m asset write-down and the default of loan covenants following the financial correction were disastrous for the company's share price.

In other cases, shareholders have challenged the acquisition of vessels by a company on the basis that these transactions were allegedly the result of self-dealing by directors of the company and that the company entered these transactions on unfair terms.

Not uncommon also are claims by shareholders against directors in respect of alleged excessive payments of directors' fees and other remunerations.

## D&O cover from The Standard Syndicate

The Standard Syndicate uses the same service philosophy as The Standard Club, with success built upon its in-depth knowledge of members' operations. The club management and underwriters visit new and existing members, and interact closely with them throughout the course of their membership, often over many years, and not only in the time of a casualty. In doing so, they ensure, wherever possible, that any claim situation is resolved efficiently and amicably to return the member to normal operations as quickly as possible.

The Standard Syndicate's D&O cover can be tailored for individual, specific, needs. We would welcome an opportunity to discuss this cover further with you.

Normal commercial exclusions will apply.

# Staff spotlight



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The Standard Club is supported by a global network of 650 correspondents located in over 130 countries. Our staff spotlight this week turns to James Cross, who manages the relationships with them.

### What is your current role?

Since April 2015, I have been working as a consultant for Charles Taylor with responsibility for managing the relationships with our correspondents. In my previous role as the Claims Services Director, I managed the club correspondents for more than 15 years.

### What is a club correspondent?

The correspondent is the eyes and ears of the club, and is the club's local, on-the-ground, problem-solver. He must foster and maintain good relationships with all the relevant people in his home port and must keep the club informed of any significant local developments. The club would not be able to provide a prompt and efficient service to its members without the local knowledge and expertise of its correspondents and their ability to work out practical and timely solutions to the benefit of the club and its members. The Standard Club therefore sets great store in maintaining a close relationship and regular ongoing dialogue with its correspondents in every corner of the globe.

### How is the club-correspondent relationship maintained?

Because the club and its network of correspondents rely upon each other, the relationship is a personal one, based on loyalty and trust. Regular meetings are held with many of the 600 correspondents listed in our rule book, either to maintain this relationship or discuss a specific case.

Whilst it is sometimes necessary to change the correspondents listed and bring new companies on board, often the relationships have been maintained for many years, especially when a correspondent continues to provide a high level of service.

### How do you think the industry has changed since you started working in it?



My involvement with our correspondents goes back more than 15 years. Back then, shipowners and clubs had become insistent on a better and more instant service. The transfer and flow of information quickly had only just started to take off with email. I can recall that many of my colleagues only checked their email inboxes three times during the day. Compare that to today's proliferation of email volumes in need of a quick response. Having an international network in different time zones certainly helps to ensure a timely response to incidents.

### What is it that sets The Standard Club apart from its competitors?

That's easy – our strong focus on service excellence, which is facilitated by our correspondent network. However, it is also important to mention our emphasis on innovation and our commitment to establishing new products to match the many challenges facing the membership, whilst maintaining our belief in the traditional values of mutuality.



**Web alerts** The Standard Club issues a variety of publications and web alerts on topical issues and club updates. Keep up-to-date by visiting the News section on our website [www.standard-club.com](http://www.standard-club.com)

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