

# SEACURUS BULLETIN

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## RAISING SEAFARER SMILES

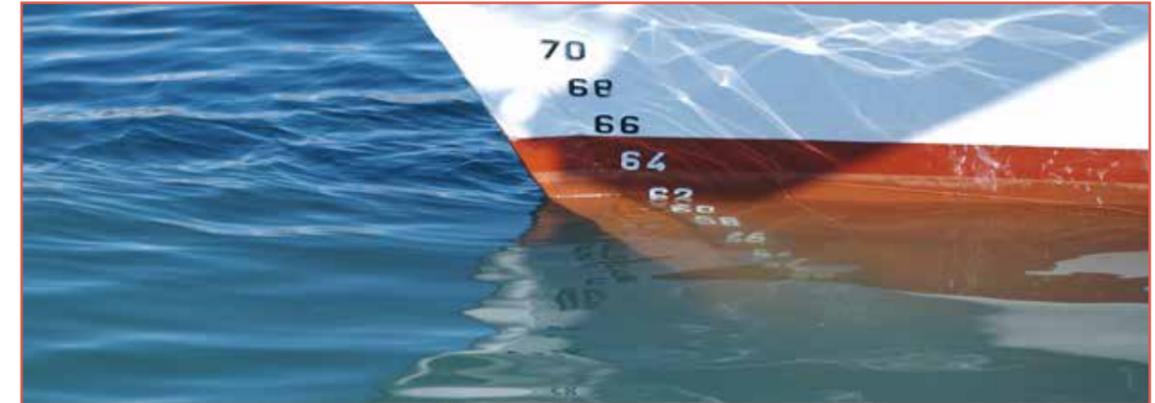
BLIGHT OF ABANDONMENT | FATIGUE WON'T GO AWAY | SAFETY AND SUSTENANCE



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This month we look at issues such as health and fatigue, not only are they the backdrop of safety concerns but they also have a distinct effect on claims. We also look at the new amendments to the MLC, and of what this means for the industry.

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## Welcome

> Welcome once again to the Seacurus Monthly, a round up and analysis of some of the stories which have been affecting shipping and shaping opinions in the past month.

There is something of a seafarer focus this month – and while we look at issues such as health and fatigue, it is to the backdrop of safety concerns and the effect on claims.

Safety and performance mean fewer losses and accidents, it means lower costs and a better reputation for all. The effect of minimising accidents, of mitigating risks is well known and accepted in shipping – why then is it so hard for some companies to get to the harder to reach issues?

It is all well and good to talk about safety, to lay down reams of paperwork which gives the illusion of doing the right thing, but real leadership and positive management take more. To truly drive safe, secure and efficient shipping is about scratching beyond the surface to find the fundamentals beyond and beneath.

With the Maritime Labour Convention (MLC) shaping so much of modern life at sea, it can perhaps be thought that all is well for seafarers. Alas that is not always the case – and the knock on effects hit us all.

While despite talk of the health and happiness of seafarers there are

some serious issues which constantly dog the industry. Inside we look at a damning new study which shows that fatigue is something which seafarers are constantly fighting, with grave consequences for safety.

Some organisations are stepping up their own efforts to drive positive change. The issue of seafarer happiness has become all the vogue of late, and now the Sustainable Shipping Initiative has developed a voluntary seafarers' charter. We ask whether it can deliver real benefits, and if so who for?

We also look at the new amendments to the MLC, and of what this means for the industry. We also examine the new UK Modern Slavery bill, which has shifted focus onto the owners who can make life such misery for crews. With a new port State MLC inspection campaign brewing – there could be some companies caught cold as the inspectors sharpen their pencils.

This is a time of tough market conditions, but while there can be temptations to cut corners, there will only ever be deeper woes ahead. The industry is seeing a spate of claims for unpaid hire – as owners and charterers duke it out.

There are many options for legal recourse - but as some charterers play fast and loose, sometimes even being in the right doesn't help.

Before you leap to the next articles, we would just like to turn attention to the Mission to Seafarers. They are celebrating their 160th anniversary.

Since 1856 the Mission has faithfully served the men and women of the merchant fleet who have dedicated their lives to seafaring; crews who have in turn served their countries during war and through peacetime. We salute them for their unstinting work to make life better for seafarers – something which can benefit us all.

We hope you enjoy this issue, and please feel free to forward to interested colleagues or friends. <

All the best

**Capt. Thomas Brown**  
Managing Director



# SAFETY AND SUSTENANCE

**With the Maritime Labour Convention shaping so much of modern life at sea, it can perhaps be thought that all is well for seafarers. However, when it comes to health onboard, there are many improvements needed, and safety is suffering as a result.**

## THE GOOD LIFE

Health, Wealth and Happiness – these are the three supposed pillars of a good life, and who could argue. Sadly it seems the issue of health at sea is not always a priority.

Despite the Maritime Labour Convention (MLC) making life better for seafarers, the message isn't always getting through when it comes to the health and wellbeing of those at sea.

From food to exercise, and even contagious disease – the lot of seafarers when it comes to health and wellbeing is something that is all too easily and often overlooked. Recent research has revealed that not only are seafarers being poorly fed, but that they are often unable to exercise – and this is a ticking health time-bomb for the industry.

While it can perhaps be tempting to think of such issues as “nice to haves”, they actually have a massive effect on safety – bad diet and a lack of exercise lead to fatigue, and in turn poor performance. People performing badly make bad choices, they have accidents, and this a major problem.

## NUTRITION NADIR

While Napoleon rightly recognised that an army marches on its stomach, it is seemingly overlooked that crews sail on theirs. Meals are vitally important on ships, not just from a nutritional perspective, but also bringing people onboard together.

Food is not just about sustenance – there is a social element too. There is constant criticism that life at sea is now too isolated. That seafarers are too keen to scurry off to their cabins, and no-one interacts any more.

Perhaps then, this is where shipping companies need to urgently reconsider the role of meal times. While the bar is no longer a regular feature and focal point of life, perhaps the saloon needs to regain its standing?

Having a pivotal point for social interaction, and a hub which brings people together is vitally important. So there are calls for a re-evaluation of the role of meal times. Life at sea can become an unrelenting struggle and an exercise in flipping the calendar, hoping the days go quickly until it is time for home. It surely doesn't have to be like that?



## BAD GRUB

Nutrition onboard is an important issue, but it is also an emotive one – whether from the purely dietary demands needed to fuel a vessel's workforce, or to the social benefits and bonds which come through people enjoying their dining.

What people sit down to eat really does make a difference. In studies seafarers reported the main issues are in three areas, the standard of ingredients, the skill and training of cooks, and difficulties (or unwillingness) to embrace and respond to cultural dietary requirements or preferences.

Usually the worst vessels experience all three problems, feeding rates are cut and poor quality ingredients are used. In the hands of the best cooks this would be an issue, but where the catering staff lack skills and knowledge, the results can be inedible. Then too is the fact that sometimes crews from certain nations have to endure food which is not the norm for them.

It can be a forgotten problem, but this impacts happiness greatly, and also a crew's ability to work effectively. Good food makes a happy crew - that is the message which keeps coming across loudly.

## SUSTENANCE AND SAFETY

It is widely recognised that poor management of workplace health can lead to work-related ill health and to high levels of sickness absence. Many studies on the effect of workplace health on performance and safety tend to focus on the fact that sick people are often absent from work.

Sickness absence is a key business issue, and a key indicator of how well an organisation is managed. But that is ashore. It is not so easy to transpose or extrapolate these problems at sea, as seafarers are not absent when they are ill.

They are there, still onboard, still likely to be working. They are compelled to still be at work by the nature of shipboard life. This rather skews the data, and can make it appear that workplace health is not an issue. Just because people are present does not actually mean there isn't an issue – and so it is vital that this hidden problem is better understood and responded to.

There should be no excuse to ignore this issue, it should be one of the more straightforward to fix. Improve the nutrition of those onboard and they will have more energy, they will have better concentration and will perform to a higher level. It seems incredible that in many instances companies are cutting corners and are not fuelling their crews well enough.

## TIME TO ACT

Nutrition is only one side of the health equation of course – there is a matter of exercise too. Seafarers do like to work out, and access to facilities or time to enjoy them makes a real difference to seafarer welfare and wellness, but sadly, even with the MLC in place, there are many who do not have the equipment or opportunity.

In a range of recent studies, the importance of gym facilities has been stressed, while there are calls for regulations for newbuilds should include the provision of a gymnasium, and that MLC should be stricter in the requirements with regards to sports equipment.

The costs of improved food and supplies, and of ensuring that crews have time to look after their own bodies, are surely miniscule when compared to the potential losses. Whether accidents or simply lost performance, the ongoing costs can really wrack up.

Eating a proper, nutritious diet offers numerous health benefits that can keep crews mentally and physically well. Proper nutrition means a diet balanced in lean proteins, carbs and fats, and such a regime can bring major benefits.

A diet low in fats, cholesterol and sodium can lower your risk of heart disease. Then there is bone and teeth strength – lost time onboard ship for dental problems is significant, and a healthy diet can do much to alleviate the problems.

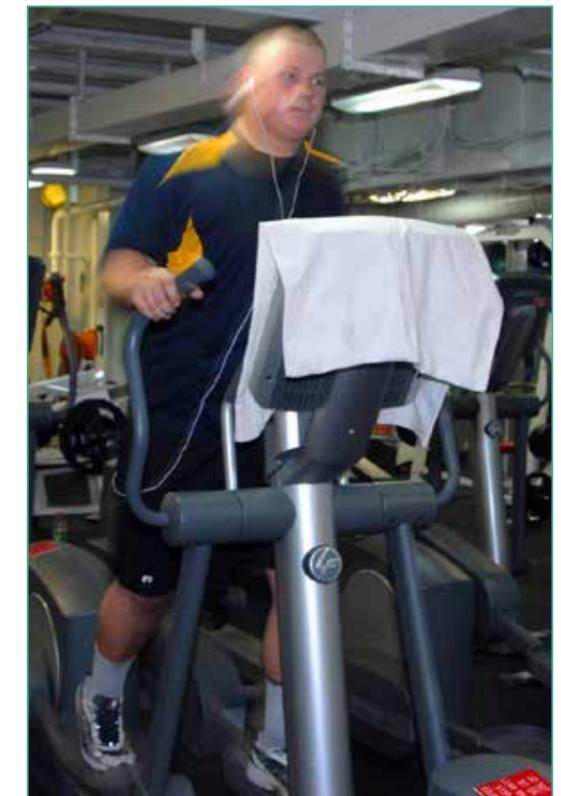
## HEALTH BENEFITS

There are issues which are an ongoing concern at sea. A healthy diet brings increased energy levels and helps prevent blood sugar fluctuations. Proper nutrition increases blood flow to the brain, which in turn allows for better, clearer thinking – this is vital in the pressure of daily operational life.

Then there is the subject of weight. Obesity is a major concern for seafarers, and for the industry too – so we have to act now. Shedding excess pounds reduces your risk of obesity-related conditions such as type-2 diabetes, clogged arteries and thyroid dysfunction.

Seafarers are becoming increasingly overweight, and this will become an ever more serious problem in the years ahead. Being on a ship is becoming more sedentary, but when things go wrong, there is a need to be fit, healthy and able to respond. Is this the case with expanding waist lines and storing up long term health issues?

Sadly, as ever, there is very little sign of how progress can be instigated. Above the MLC baseline, it is still unusual for companies to really dig deeply into health and performance – and that means problems can simply fester. It seems vital that the industry acts now, and companies should be encouraged to look after their most important asset, their people.



# FATIGUE WON'T GO AWAY

*Despite talk of the health and happiness of seafarers there are some serious issues which constantly dog the industry. A new study has shown that fatigue is something which seafarers are constantly fighting, with grave consequences for safety.*

## DISTURBING FINDINGS

A three year project undertaken by Warsash Maritime Academy with partners in Denmark and China has recently revealed more worrying flaws in the way fatigue is manifest and managed at sea.

The “Martha” project follows on from the Horizon Project which used a simulator to show how fatigue begins to develop and the effect on performance, notably during periods of 6 on- 6 off watchkeeping.

Martha used a different approach – as simulators cannot ever truly capture what it is to work at sea, with its many different kinds of challenges. This project instead used 1,000 volunteer officers engaged in real voyages over many months to study the effects of long term fatigue, in a variety of different ship types and voyage patterns.

Each officer kept a detailed work and rest diary, and also used wearable technology to show what was really happening. The wrist worn “Actigraphs” recorded activity and kept an accurate, uncorrupted view of what the officer had been doing.

## MORE DATA

Questionnaires and interviews were also used to generate more data which gave the researchers a better view and understanding of the nature and consequences of fatigue.

This was not about mere sleeplessness, it showed that over long periods of watchkeeping and irregular sleep patterns over 6-7 month voyages, the officers appeared to “drain the batteries” of the body in a way that may cause long-term health problems.

There are obvious safety concerns. While the symptoms of fatigue might have become better known – behavioural changes, forgetfulness, fretfulness and irritability being just some of these - the research has provided more useful information on the causes.

Martha highlights that manning levels or watchkeeping patterns need to be examined as a first step, while the contribution of design, diet and the shipboard working environment also need to be explored.

## NOT JUST SHIPS

There has long been something of an inferiority complex when shipping compares itself to the aviation industry. A sense that when it comes to aircraft everything is somehow managed better, but alas it seems that is not always the case – and fatigue is rearing its head again with airline pilots being pushed to the limit.

A new expose of the airline Flydubai has revealed, in a cache of leaked documents, the impact on flight safety that demanding too much of pilots has been making. With air crews complaining about fatigue and potentially dangerous schedules, it seems that even aviation needs to get its house in order too.

The Guardian newspaper revealed that in 413 Flydubai flights over a two-month period more than 40 reports showed pilots describing their concerns about fatigue. In some cases they complain about being urged to work overtime – when they have warned it could be unsafe to do so.

Flydubai naturally claims that its first priority is safety. However documents seen by the Guardian suggest some pilots feel they are being pushed too hard and are struggling to recover from punishing day and night flight schedules. These are reports that have obvious parallels in shipping, and should be of huge concern.

## WHAT HAPPENS AT SEA?

The result of fatigue is impaired performance and diminished alertness. A common symptom of fatigue is a change in the level of risk that a person accepts, or a tendency to accept lower levels of performance and not correct errors.

Obviously these could have a significant impact on shipboard operations and personal safety. This is serious, as seafarers often work hours that would not be tolerated in any other mode of transport.

According to Clyde and Co, safety at sea is seriously compromised by fatigue, with often catastrophic consequences. Research also shows how the problems are exacerbated by false record keeping and lack of enforcement of the regulations.



Lawyers believe that fatigue is causative in far more marine casualties than recorded. Pre-MLC, flag State hours of rest regulations had been open to varied interpretation. So ship owners and operators have been able to skirt the issue, now though the minimum standard is more universal and it is clear these regulations apply to all seafarers (not just watchkeepers), including the Master.

## CARGO CLAIMS

Clyde and Co, writing about the effects of fatigue on legal cases, recently stressed an obligation on the carrier to exercise due diligence before and at the commencement of the voyage, to properly man, equip and supply the vessel and to make it seaworthy.

The majority of cargoes are carried pursuant to contracts of carriage that contain within them a Hague Rules type regime and hence, there are certain requirements which need to be satisfied. Clyde and Co states, “It could be argued that if a ship cannot maintain its commercial schedule and remain safe, with the master and ship’s officers and crew having received adequate rest to avoid the onset of fatigue setting in, then that ship should be considered to be undermanned irrespective of what the minimum manning certificate may say”.

Additionally they add, it could be argued that a master, officer, or crew member that is fatigued could be considered to be incompetent (temporarily), in that their mental and physical capacity to perform their duties is impaired. Therefore, the carrier could be viewed to

have failed to exercise due diligence before and at the commencement of the voyage to properly man the vessel in breach of The Hague/Hague Visby Rules.

## CAUSATIVE EFFECTS

This is not simply about cargo claims. Where a casualty has arisen due to the action or inaction of the ship’s master, an officer or a crew member and that individual can be said to be fatigued, then it is arguable that the effects of fatigue could be considered to be causative.

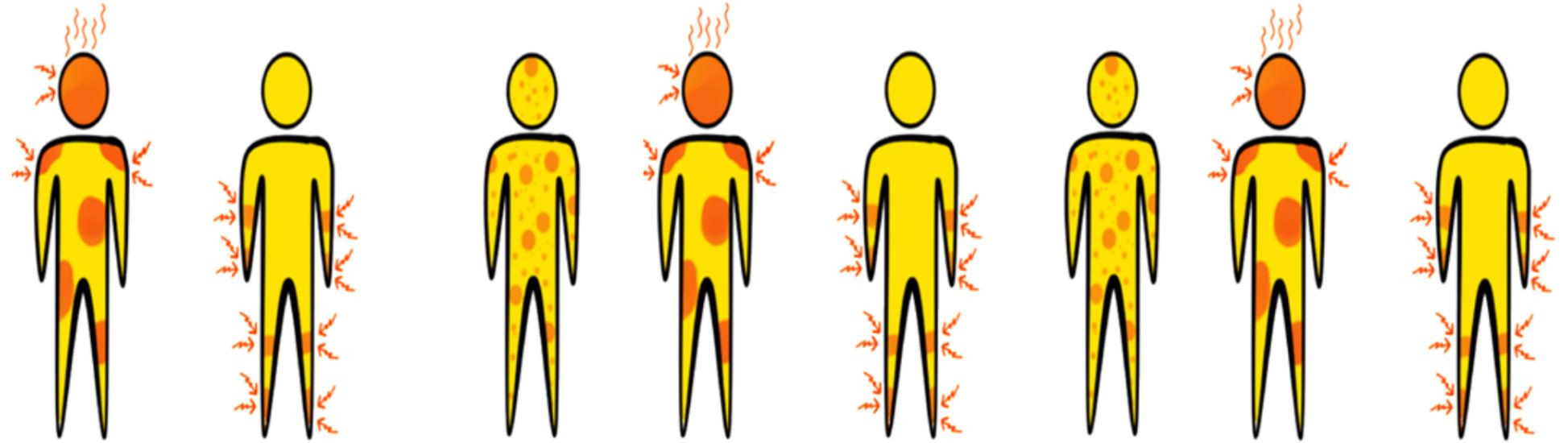
In such an event and where cargo interests are seeking to recover their losses against the carrier, it stands to reason that the hours of rest records of the ships complement are documents that should be sought and inspected as a matter of course. Records that all too often appear to be fabricated.

Lawyers will look hard to find the errors, omissions or downright lies hidden in the hours of rest records. The records will be compared with other documents such as log books and even e-mail chronology, to confirm that the hours of rest records are accurate.

While to date Clyde and Co recognise there are no reported judgments to form a precedent backing up an argument that a ship is unseaworthy as a result of seafarer fatigue, it seems that the arguments are logical and persuasive. Where such evidence to emerge then it would seemingly sway outcomes towards the cargo interests. Yet another reason for ship owners to ensure that crews are sufficiently rested.

# KEEPING SEAFARERS SAFE FROM INFECTION

The issue of seafarer health is a complex one, and there are many dangers to which crews are regularly exposed. The global nature and scale of the industry means that seafarers are often in the frontline of any health scare – and while the Ebola Virus was one such problem, now there is the Zika Virus to consider – while the longstanding issue of AIDS has not gone away.



## STAYING SAFE

A new guide and video has been produced which aims to ensure that seafarers are “Staying Safe” when it comes to the threat posed by the Zika Virus – and the spread of infected mosquitoes.

Produced by Videotel, the video explains the dangers of the virus and how to help prevent its spread and is being provided free to all mariners worldwide to increase awareness of the vitally important prevention measures that can keep seafarers, their colleagues and families safe.

The World Health Organization (WHO) declared the Zika virus a public health emergency earlier this year. Given the global nature of the maritime industry, it is imperative that seafarers take precautions to prevent further spread of the disease. The prevalence of the Zika virus in such areas as Brazil has heightened concerns with the approaching Olympic Games in Rio de Janeiro next month.

*“Zika Virus – Staying Safe” is a 13-minute training video which includes information about the nature of the Zika virus, how to avoid becoming infected, and the role of a pest management plan on vessels to avoid passive transportation of virus-infected mosquitoes on ships.*

## UNDERSTANDING ZIKA

The Zika Virus is something of a silent problem – especially as many people infected will not show symptoms. Indeed, unlike many other tropical viruses, Zika is a relatively mild disease and its symptoms may not be obvious, even to those infected.

However, its transmission can have serious consequences for seafarers and their families back home. The risk of seafarers contracting the Zika virus and taking it back to their home countries represents a serious global health issue, and measures to prevent infection and spread of the virus should be implemented.

The training course stresses the fact that prevention is the best way of dealing with the virus, and so vessels must ensure that they are ready and able to respond. This includes implementing a precautionary plan to protect the crew as much as possible.

Controlling Zika exposure in essence revolves around mitigating the likelihood of being bitten by mosquitoes – and so much of the guidance is on how to avoid the vessel becoming a breeding ground for mosquitoes, and of the ways in which crews can avoid being bitten.

Download the free resource at: <http://landing.kvh.com/zikasafety>

## AIDS HASN'T GONE AWAY

While the likes of Ebola and Zika are relatively new problems, the International Transport Workers Federation (ITF) has been stressing a longer standing health issue that of HIV/AIDS. Seafarers are one of the populations worst hit by HIV/AIDS, and according to research appear less likely than other occupational groups to voluntarily receive HIV testing, and more likely to engage in high-risk behaviours.

In one survey, 53% of participants reported contact with commercial sex workers and 73% reported that they never used condoms. Other research also suggests that seafarers have lower levels of knowledge about HIV transmission and risk factors than the general population. This is of course highly concerning.

In order to try and assist seafarers, the union has released a new wellbeing app, to provide easily access up-to-date information and guidance about HIV/AIDS on their mobile devices. The free app is available for both Android and iOS devices. It provides the basic facts on HIV/AIDS – how it is transmitted, what the symptoms are, how you can prevent being infected and what treatment is available.

## FIGHTING STIGMA

The app gives examples of workers who have challenged the stigma around the disease, and sets out what international and national rights a HIV-positive worker has. Additionally, it separates the facts from the fiction about the disease, with 12 ‘myth busters’.

For example, many people believe that a person with HIV can no longer work. The app explains that this is false – that an HIV positive person is as qualified as anyone else for any type of employment. Being infected with the virus does not alter one’s capacity to function as well as everyone else.

ITF maritime co-ordinator Jacqueline Smith said: “Seafarers – like many transport workers – are particularly vulnerable to HIV/AIDS. We hope this app will help them understand more about the disease and be able to find information quickly and easily, whether they’re at sea, in port or at home. We want to help seafarers keep themselves and their families safe.”

Download the free ITF wellbeing app at: <http://www.itfseafarers.org/seafarer-apps.cfm>

# BLIGHT OF ABANDONMENT

The Maritime Labour Convention has been going through change of late and so too has the law. A new Modern Slavery bill has shifted focus onto the owners who can make life such misery for crews. There is also a new port State inspection campaign brewing – so are we delivering for seafarers?

## MLC AMENDS

Two years after the approval at the 103rd International Labor Conference (ILC), the Amendments to the Code of the Maritime Labour Convention (MLC, 2006), adopted in 2014, were confirmed last month and will enter into force on January 18, 2017.

The now confirmed amendments aim to ensure better protection for seafarers and their families in the case of abandonment, death and long-term disability. Ratifying Members had been given until mid-July to formally express any disagreements with the 2014 Amendments. There was wide support for the new provisions, ILO said, though two governments stated they shall not be bound by the amendments, unless and until they subsequently notify their acceptance.

When they come into force, in January 2017, the 2014 Amendments will require that a financial security system be in place to ensure that shipowners ensure compensation to seafarers and their families in the event of abandonment, death or long-term disability of seafarers due to an occupational injury, illness or hazard.

Mandatory certificates and other evidentiary documents will be required to be carried on board to establish that the financial security system is in place to protect the seafarers working on board.

## WHAT IT MEANS

Standard A2.5.2 - Financial security contains new requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.

It requires each State to ensure a financial security system is in place for ships flying its flag, and sets out the requirements of such a system, including that it must provide the abandoned seafarer with direct access to

the system, sufficient coverage and expedited financial assistance.

While Standards A4.2.1 and A4.2.2- Shipowners' liability and Treatment of contractual claims specifies new requirements of the financial security system to assure compensation to seafarers in the case of death or long-term disability due to an occupational injury, illness or hazard.

### The Amendments require that:

- Seafarers receive prior notification if a shipowner's financial security (such as workers' compensation insurance) is to be cancelled or terminated (new paragraph 9 of A4.2.1);
- Insurers notify the competent authority if the financial security of an employer is cancelled or terminated (new paragraph 10 of A4.2.1);
- Shipowners carry and post in a conspicuous place on-board a ship a certificate, or other documentary evidence, of their financial security, and that this evidence be in English or accompanied by an English translation (new paragraphs 11 and 14 of A4.2.1);
- Financial securities not cease before the end of their period of validity unless the financial security provider has given prior notification of at least 30 days to the competent authority (new paragraph 12 of A4.2.1);
- Effective arrangements are in place to receive, deal with and impartially settle contractual claims for compensation related to Standard A4.2.1 through expeditious and fair procedures (new paragraph 3 of A4.2.2); and the system of financial security under Standard A4.2.1 may be in the form of a social security scheme or insurance or fund or other similar arrangements (new paragraph 2 of A4.2.2).

You can access the full text of the amends here: <http://goo.gl/dzoSur>

## INSPECTION CAMPAIGN

With changes to MLC arriving, the Paris Memorandum of Understanding (MoU) on Port State Control has also announced that it will run a Concentrated Inspection Campaign (CIC) to verify that the minimum standards for working and living conditions have been implemented on board.

This inspection campaign will be held for a period of three months, commencing from 1 September 2016 and ending 30 November 2016. The ship's procedures and measures that are in place with respect to MLC,2006 will be checked in detail for compliance with the requirements during a regular Port State Control inspection. It is expected that the Paris MoU will carry out approximately 4,500 inspections during the CIC.

Port State Control Officers (PSCOs) will use a list of 12 selected questions to ensure that the required certificates and documentation are present, in particular those related to the seafarers on board. Additionally there are questions aimed at verification of records of the inspections of the accommodation, food and catering, and whether a safety committee has been established.

When deficiencies are found, actions by the port State may vary from recording a deficiency and instructing the master to rectify it within a certain period of time to detaining the ship until serious deficiencies have been rectified. In the case of detention, publication in the monthly detention lists of the Paris MoU web sites will take place.

## SHOCK TO THE SYSTEM

The port State campaign comes at a very interesting and challenging time. It is considered by many that slavery is a matter for history – or at the very least only applies to terrible despotic shipowners running substandard fleets. Surely it could not affect the modern oil and gas industry. Or could it?

Recently an offshore supply vessel, the "MV Malaviya Seven", and her sister ship, the "Malaviya Twenty", both owned by GOL Offshore, were detained in the UK after it was alleged that Indian crew members on board the "Malaviya Seven" had not been paid.

The RMT union claimed that 15 Indian crew members on the Mumbai-registered vessel have not been paid for

nearly two months, with some having been without pay for longer. The Malaviya Seven was contracted by BP between June 1 and June 15.

Speaking in the House of Commons Ian Mearns the Member of Parliament (MP) for Gateshead raised the issue, and spoke of the ongoing job losses, alleged visa abuses and low pay in the offshore supply vessel (OSV). He expressed further concern of cases with non-EEA crew living on board in contravention of transit visa requirements and the Maritime Labour Convention (MLC); and called on the Government to enforce visa and employment law and the MLC in the OSV sector as a matter of urgency.

## MODERN SLAVERY

Lawyers Ince and Co recently wrote on the matter, stating that such a case highlight the need for all companies to take adequate steps to ensure that they are not unwittingly participating in modern slavery as defined by the Modern Slavery Act 2015 (MSA).

Act consolidates existing slavery and human trafficking offences whilst increasing the maximum penalties for such offences. Under the Act, a person commits an offence if it holds another person in slavery or servitude, or requires or forces another person to perform compulsory labour. There is also a further offence where a person "arranges or facilitates the travel of another person" with a view to that person being exploited.

Under Part 6 of the Act, commercial organisations caught by the Act must prepare a slavery and human trafficking statement detailing the steps taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains and in any part of its own business. Alternatively, a statement can be filed stating that no steps have been taken.

It is early days for the Act and many issues of interpretation of the Act remain outstanding before the full extent of its reach and impact is known. However, contractors and shipowners need to be aware that there are potentially far reaching consequences of failure to adequately assess the risk of slavery occurring in their supply chains, or indeed their business, including possible detention or forfeiture of their vessels or vessels that are involved in providing offshore services to them.



## HIRE STATE OF CONSCIOUSNESS

**Tough market conditions are leading to a spate of claims for unpaid hire – as owners and charterers duke it out. There are many options for legal recourse, but sometimes even being in the right doesn't help.**

### THE BAD TIMES ROLL

Even an idle flick through the trade press reveals a worrying trend of hire disputes, arrests of vessels and all kinds of commercial fallings out. It seems shipping is bumping along the bottom of a tough market trough.

Stories abound at the moment of owners and charterers entering into an unedifying financial dance. As an illustration, Scorpio Bulkers last month announced that some \$191.2 million of hire remains unpaid. We are talking big bucks here.

Even when arbitration does find in favour of owners, there are charterers who are seemingly turning their back on judgments – and deciding to simply ignore or dishonour the agreement and awards.

One such case that is cause for concern is that of Michharry & Company Nigeria Ltd, a major Nigerian oil and gas contractor based in Lagos State. They are reportedly refusing to honour a recent London arbitration awards and High Court Judgements relating to approximately USD \$3.5m in unpaid vessel hire fees.

### DISHONOURABLE DISCHARGE

The Michharry case revolves around judgements on unpaid hire against vessels supplied under hire to Michharry for its Mobil offshore contract during 2014-15 season by the Bahamas-based ship-owning company OIS International Limited. The mutually agreed charter contract was subject to English Law with any arbitration in London.

The seeming decision by Michharry to withhold payment is sending waves through the entire Nigerian maritime scene. A spokesperson for OIS International was even prompted to ask whether Chief Michael Edematie-Ikuku, Michharry Chairman & CEO, understands the damage that dishonouring a London High Court debt does to Nigeria's reputation amongst UK investors.

Such a disrespect for London arbitration awards and English High Court Judgements by a major Nigerian player will be very concerning for UK investors. OIS International Ltd obtained a final and unappealable Arbitration Awards totalling the principal sum of USD \$3,484,612.73, plus interest and costs in respect of four final partial London arbitration awards.

These awards were converted into High Court Judgements but OIS International Ltd has confirmed that the awards and judgements have not been settled and Michharry has not given any indication that they are prepared to honour any of the verdicts against them.

### INCREASE IN CLAIMS

It is to this concerning backdrop that a recent release by the Shipowners Club, recognises that present market conditions have led to an increase in claims related to unpaid hire. Something they believe owners should be more aware of and alive to, while understanding the possible remedies available.

To recover unpaid hire, Shipowners Club states that the first hurdle is to know just how owners are contracting with. The advice stresses that owners should carry out thorough due diligence during pre-contract negotiations, to prevent incurring time and expense caused by chasing Charterers for unpaid hire.

Even if you know who you are dealing with, that won't always prevent Charterers defaulting on their hire payments. In tough times it can be that owners are a little too keen to embrace the limited contracts available. Indeed, it can often be the case that an owners' bargaining power in pre-contract negotiations will be restricted.

Still, knowledge is power – and owners should always look to be sure that they know as much as possible about just who it is they are dealing with and of the likelihood that the charter will end happily, or not.

### HOW HARD TO SQUEEZE

If the worst does happen and the charterers default, owners are left with a tough decision. They must decide if the unpaid hire claim is validly disputed or if the Charterers are just delaying payment, for example, because they have cash flow issues.

When are we getting paid will be the first question, closely followed when the money doesn't materialise with, "why is the money not coming?" All too often in these tight markets charterers are simply looking to stave off over commitment, and so are holding back payments.

Owners again have a very tough call to make – just how quick and hard do they squeeze the charterers. Too much pressure and the charterers may go out of business, too little and the owner may slip down the pecking order of other creditors.

This is a game of both poker faces, diplomacy and brinkmanship - and with the stakes high, there are a few options which are open to owners to pursue in the case of non-payment.

### WHAT IF THE WORST HAPPENS?

According to the Shipowners Club advice, there are in essence five options for the owner looking to get paid or to secure some recompense. From the Seacurus perspective, we would add an all-important first stage – that of our CharterSEACURE cover. This offers shipowners and their shareholders certainty with respect to their long term charter income through one of the world's leading credit insurers. You can find more details at <http://www.marinecreditinsurance.com/>

Back to the options open to owners who are not covered – well, there is the option to try and suspend performance of their obligations under the charterparty. This can be a good form of motivation for charterers needing to satisfy their own commitments.

Owners can potentially withdraw the vessel if the charterparty allows for it. Then there is also the option for a possessory lien to be placed over the cargo or equipment onboard. One step up from this is to arrest the ship or bunkers – but obviously this is a complex situation – and subject to issues of jurisdiction.

Where all other options fail, then commencing legal proceedings to try and recover unpaid hire is an option – but the danger is of whether an award or judgement is actually likely to be settled. If the charterer decides to dishonour the award, then that is a whole new ball game.

# RAISING SEAFARER SMILES

**The issue of seafarer happiness has become all the vogue of late, and now the Sustainable Shipping Initiative has developed a new voluntary charter which features the needs and wants of seafarers at its core. Will it deliver real benefits though, and if so who for?**

## UNDERSTANDING REALITY

The shipping industry often talks about seafarers – the realities of life at sea, the fears that we aren't bringing enough new talent into the industry, and the struggle to keep those already working. To understand the challenges, the Sustainable Shipping Initiative (SSI) recently launched a survey to explore quality of life and living conditions on board vessels.

The survey highlighted that seafarers often experience stress while at sea, both in their day-to-day work as well as the emotional challenges of being away from their families for long periods of time. Seafarers, like anyone else, require suitable living spaces for relaxation and rest, with means of appropriate social distraction and access to positive and empathetic support while on board. The need for a proper work schedule and adequate shore leave when in port were also highlighted in the findings.

SSI felt that often it comes down to one fundamental issue...are seafarers happy? Happy, satisfied, well fed, fit and engaged seafarers are less likely to have accidents, and perform better. Happiness may seem a simple concept, but it's actually quite a complex issue – perhaps one of the most profound we face as an industry.

The SSI seafarers charter, they hope will ensure that crews are fed, rewarded, engaged and supported effectively. These are issues which they believe will have a major impact on the sustainability of shipping.

## SEAFARER MAGNA CARTA

The "Seafarers on-board Charter" represents best practice that can be adopted by ship owners, operators and managers to demonstrate they recognise the value of the seafarer to the enterprise, and in addition to the mandatory requirements of the MLC they are also embracing the voluntary aspects within the Code.

## BEYOND THE BASICS

Alastair Fischbacher, chief executive of the Sustainable Shipping Initiative, said of the new onboard charter. That as seafarers face vastly different challenges to most employees it is even more important to ensure their safety, working rights and potential for progression.

He feels that addressing these issues are key to making the shipping industry sustainable. Fischbacher added, "Not only is this the right thing to do for the seafarers themselves, but it also enables the shipping industry to better market itself as an industry with attractive career opportunities".

Seafarers now have the right, at a minimum, to a basic safe and secure workplace, fair terms of employment and relatively decent living conditions. This includes elements from minimum age, employment agreements and hours of work or rest, to payment of wages, paid annual leave and repatriation at the end of a contract.

While this progress is to be applauded, there is certainly more that can be done to raise standards on a global basis beyond the minimum of the MLC mandatory requirements.

Seafarer welfare is one of the six core areas of the SSI's Vision, which is to create a truly sustainable shipping industry by 2040. A key tenet of this is to move shipping, 'beyond the basics' that is the fundamental premise of the SSI seafarers' charter.

*The SSI Charter elements cover:*

### 1. Accommodation:

Signatories to the charter would strive to enhance habitability through indoor Environmental Quality Factors, such as light, heat, moisture, noise, vibration, air quality and colours to promote rest and relaxation.

### 2. Recreational and social activities:

Including providing and equipping recreational spaces that encourage social activities on board vessels; providing a welfare fund to each vessel to be spent as decided by the seafarers; encouraging a cohesive onboard community through regular social activities; ensuring that port agents provide information on available shore facilities when requested by the Master; and encouraging shore leave wherever practical and possible in port and at anchor.

### 3. Communication and support:

Providing internet connectivity to seafarers; conducting seafarer satisfaction surveys to monitor developments, capturing concerns, as well as progress, and responding to feedback with actions as appropriate; they should also consider the opportunity of engaging and aligning themselves with a charity such as the Sailors' Society that promotes seafarer well-being.

### 4. Food and catering:

Ensuring that potable water is of suitable quality, is fit to drink and is tested regularly.

### 5. Management and policy:

Signatories must ensure that there are equal opportunities for seafarers and shore staff; encourage a harmonious workplace on board vessels led by senior officers; encourage and value the retention of seafarers; and review manning procedures to encourage industry best practice as far as is practical.

## MORE PRODUCTIVE

The SSI strongly believes that those who adopt the standard will have a more productive business, more efficient operations, and will generate more commercial benefits and profitability.

According to the group, there is a connection between crew experience, crew satisfaction and efficient operations – they have seen that forward-thinking companies put a great deal of effort into developing and retaining crews, and benefit as a result.

In the sustainability stakes, managing to hold onto people is vital. Both for a company, but so too in the

wider industry perspective. SSI hopes that companies who embrace the Charter will be seen as the best employers, and will have the best people working for them.

Such an approach is the hallmark of sustainability. Using basic regulations as a foundation to build upon and to become better – this creates a continuous and natural culture of welfare that is truly sustainable. SSI believes the shipping industry as a whole needs to go further, building a profile and reputation as an industry of opportunity that people aspire to be a part of and thrive within.

# MONTHLY NEWS ROUND-UP

SOME OF THE OTHER STORIES WHICH HAVE  
CAUGHT OUR EYE THIS PAST MONTH.

**Global Security View:** Global risk and consultancy firm Control Risks has released an infographic reporting on maritime security incidents globally. The chart reveals a drop in attacks, down 24% in 2016, compared with the same period in 2015. According to Control Risks, there has been a decline in cases in South-east Asia. Low levels of criminal activity continue across the Horn of Africa and a decline was also registered in South and Central America. Despite this, 96% of all maritime security incidents globally were related to piracy and armed robbery, showing that this threat in particular continues to be a key concern in all regions except Europe. <https://goo.gl/rmyWkL>

**ECDIS Must Be Used:** Ship groundings could be avoided through the use of ECDIS, a report into the grounding of 1997-built cruise ship “Hamburg” infers. The DNV GL-classed and Bahamas registered ship grounded on New Rocks shoal in the Sound of Mull, near Tobermory in Scotland, on 11 May 2015. This resulted in damage to the port propeller, shaft and rudder such that they were unserviceable, and led to the prosecution of the ship’s master. <http://goo.gl/my5Ygz>

**Shipowners Acting on Noise:** As ship-owners must ensure their vessels meet strict noise regulations, Tokai University initiated two projects intended to help engineers reduce and control noise on board during operation. The latest regulation – International Maritime Organization (IMO) noise level code on board ships, which became mandatory for new ships on July 1st, 2014 – is to protect seafarers against hearing loss, improve comfort levels and make aware the need to communicate with colleagues and hear alarms. All ship-owners have to meet these regulations for vessels with a gross tonnage of 1,600 and over. <http://goo.gl/gtc7U1>

**Clay on Human Error:** Clay Maitland, has been speaking on what he feels is the biggest problem we face and what all past accidents have revealed, is ‘human error’ and the training of the officers of the ships involved. Each one of the latest casualties involved an error by navigation, an error by the bridge team or the captain. In cases such as the “El Faro” and “Sewol”, how do we lose all those lives? We still find that judgements and training are the most important things. Sometimes very well trained officers make remarkable mistakes and we see a large number of the accidents and therefore the increasing issue of regulatory burden. <http://goo.gl/QZpCuv>

**Air Pollution Killer:** A boom in shipping is aggravating air pollution in China and other nations in East Asia, causing thousands of deaths a year in a region with eight of the world’s 10 biggest container ports, scientists said. Ship traffic has more than doubled off East Asia since 2005 and some pollution from the fuel oil of ships wafts inland, they said. The Chinese-led study estimated that sulfur dioxide, which generates acid rain, and other pollution from ships caused an estimated 24,000 premature deaths a year in East Asia, mainly from heart and lung diseases and cancer. <http://goo.gl/J2Ek8H>

**VGM Concerns Grow:** As SOLAS VGM requirements begin to shape box movements, one of the more common concerns is how to comply in terms of how cargo will be weighed in the physical world. Specifically, what access to scales will companies have, where are they located and how they will access them in a timely and accurate manner? Another concern revolves around Standard Operating Procedures for transmitting container-specific VGM information. What is the best method for sending VGM data, manually or electronically, and in the case of the latter, how they will get that done? The last concern revolves around cost. <http://goo.gl/YG8sYn>

**P&I Club on Insurance Act:** P&I Club members have been reminded of the International Group’s position on the Insurance Act 2015. Whilst being drafted, it was recognised the Act might not be required in sophisticated markets with the marine insurance sector named as one such market. Therefore, in the interests of consistency across the International Group, the Rules with effect from 20th February 2016 have been amended to reflect the decision to contract out of certain parts of the Act. This affects the Club’s non-pooled plain language liability insurance policies (i.e. Yacht, Dive Boat, Small Passenger & Fishing), that they will not contract out. <http://goo.gl/u5NIJG>

**Global Trade Reviewed:** Gard has been discussing the growth seen in 2015 of total Group entered tonnage. This increased from 1,047 billion GT as at August 2014 to 1,088 billion GT as at August 2015, says annual review of International Group P&I Clubs (IGP&I) published by Gard. The global order book has fallen 12% by vessel numbers and 8% by GT since the beginning of 2016. World fleet growth over the past year has remained broadly static and, according to Clarksons in 2015, it was just under 4%, down from the highs of between 7% and 9% annual growth in the 2000s. New building deliveries over the past year show a marked reduction. <http://goo.gl/nLFqqG>

**Extended Ballast Compliance:** The U.S. Coast Guard revised the Alternate Management Systems (AMS) Program for BW treatment systems by further extending the current five year “extended compliance date” for ships fitted with an AMS. An installed AMS can be used for additional five years from the “extended compliance date” provided the AMS is installed prior to the expiration of the vessel’s extended compliance date. Since the publication of the new policy, the Coast Guard has granted nearly 6,000 extensions, surpassing the number of all previous extensions by over 200 percent. <http://goo.gl/Jo8zsF>

**Understanding Claims and Losses:** The Swedish Club has launched its latest publication, Claims at a Glance, which provides an insight into the full range of claims the Club has handled over the last five years. Claims at a Glance investigates the causes of a wide range of incidents and makes practical recommendations on how to prevent them. It makes full use of Interactive Root Cause Analysis to analyse the root cause of a variety of claims. Costly cargo claims are often due to catastrophic circumstances such as total losses, fires or navigational claims, states the report. The top three most expensive categories are inherent vice, collision and grounding. <http://goo.gl/3lf8Pz>

**Shipmanagers Fight for Relevance:** “Shipmanagers are more relevant than ever right now,” argues the head of the world’s largest shipmanagement company. Clive Richardson, CEO of V.Group, while notes there’s a focus among owners today on controlling vessel opex and avoiding operational delays, so that vessels earn maximum charter fees in what he describes as “thin trading conditions”. “However,” Richardson adds, “increasingly, owners want solutions that help them manage their assets not just a technical management solution.” Richardson’s company’s philosophy maintains that being part of a client’s extended enterprise is the right approach. <http://goo.gl/Hhjt3>

**Intertanko Goes Social:** Intertanko has issued ‘Social Media Guidance for Seafarers’ to help seafarers avoid its many pitfalls. Specifically, it covers the possible ramifications of social media posts which could be detrimental to an employer’s corporate image. It offers several golden rules for social media use: Never publish inaccurate information. If you are unsure of the accuracy do not publish. Ensure it is clear any statements are your own and do not represent the company. Avoid violating privacy. Only post what you would say in person or public. Never use social media as a platform to harm, intimidate, insult, threaten, defame or embarrass others. <http://goo.gl/Mpp4rt>

**Shipping Cycles Still Exist:** Shipping cycles are here to stay, even with the adoption of ever more analytical technology, a survey carried on this site has overwhelmingly shown. A MarPoll survey currently shows 89% of respondents so far disagree with the viewpoint that the shift in technology will bring an end to shipping cycles. The topic has raised the heckles of a number of respondents. “Greed invariably conquers logic,” one respondent commented. “This might only come about when humans are completely removed from the system. As long as humans make decisions, the industry will be subject to emotions and therefore cycles” it was claimed. <http://goo.gl/8jGlDo>

**New Shipbuilding Data Archive:** ClassNK has established the “ClassNK Archive Center” (NKAC), the maritime industry’s first onshore digital archive centre that fully complies with IMO Goal-based ship construction standards (GBS) and the Industry Standard, which now are in force. IMO GBS are broad, over-arching safety and environmental standards that ships are required to meet during their operational lifetime. The new SOLAS regulation II-1/3-10 made GBS applicable to bulk carriers and oil tankers of 150m in length and above for which the building contract is placed on or after 1 July 2016. <http://goo.gl/s2l30G>

**New Enclosed Space Rule:** A new regulation aimed at protecting seafarers who enter enclosed spaces, by requiring ships to carry portable atmosphere testing equipment on board, enters into force on July 1, 2016. The new regulation XI-1/7 Atmosphere testing instrument for enclosed spaces in SOLAS, requires ships to carry an appropriate portable atmosphere testing instrument or instruments, capable, as a minimum, of measuring concentrations of oxygen, flammable gases or vapours, hydrogen sulphide and carbon monoxide, prior to entry into enclosed spaces. <http://goo.gl/yNSjnR>

**Port State Making Progress:** Paris MoU reports that 2015 shows a large decrease in the refusal of access (“bans”) within the region: 11 bans compared to 20 in 2014. The detention percentage has remained stable at 3.33 percent. The number of deficiencies has decreased 10 percent related to 2014. The number of inspections carried out was 17,858, slightly less than 2014 (18,430). Over a three-year period of time, most cases of refusal of access involve ships which have been banned for multiple detentions (45). Five ships have been banned a second time. A significant number (12) were banned for failing to call at an indicated repair yard. <http://goo.gl/CZlMOT>

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