

# BEACON

## HAZARDOUS CARGOES

TIME TO GET SMART / 16  
TRAINING THE NEXT  
GENERATION / 18



Douglas Jacobsohn  
CEO

## CONSOLIDATION

Another busy renewal season is behind us. Over the last year, combined volume growth for owners and charterers was 20%, which makes Skuld a 100 mill. GT club.

As this growth is more than expected, 2010 is a year of consolidation. Our focus on quality tonnage through selective underwriting and a healthy balance sheet will continue.

### STAYING DYNAMIC

Running Skuld effectively in times of growth requires effective systems. Still, as it is vital that we stay dynamic and flexible, our crusade against bureaucracy continues.

Skuld is taking an innovative approach to its business by drawing up ambitious long-term plans for the future, which is also reflected in our successful leadership training. Our latest innovation is the launch of Skuld Offshore Underwriting Services that acts as agent for three Lloyd's syndicates in London. This venture also includes establishing a representative office in Aberdeen.

### HAZARDOUS CARGOES

Cargo claims currently account for 42% of Skuld's total claims costs. A part of these costs relate to carriage of hazardous cargoes that pose potential threats to the environment, the crew or the vessel itself. On pages four to eleven, our case handlers take a look at some of these cargoes and the claims that follow.

Enjoy your reading.

DOUGLAS JACOBSON

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## FASTER, CHEAPER AND UNUSED

In March 2009, the London Maritime Arbitrators Association (LMAA) introduced a new 'condensed' arbitration procedure for intermediate value claims of between USD 100,000 and USD 400,000.



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## HAZARDOUS CARGOES

Forty-two percent of Skuld claims are cargo-based, including those relating to hazardous loads. With flammable, infectious, explosive or corrosive shipments, Skuld-entered vessels and their crews sail with potential danger every day of the year. In this feature, we take a look at the IMDG Code governing safe transit of hazardous consignments and examples of cargoes and cases that illustrate the threat.



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## TRAINING THE NEXT GENERATION

A vessel's crew is as important as the ship itself. It can be an owner's pride or a source of disaster.

# HAZARDOUS CARGOES

Ammonium nitrate-based fertilisers can become an explosion risk if handled incorrectly.

ESSES

FORTY-TWO PERCENT OF SKULD CLAIMS ARE CARGO-BASED, INCLUDING THOSE RELATING TO **HAZARDOUS LOADS**. WITH FLAMMABLE, INFECTIOUS, EXPLOSIVE OR CORROSIVE SHIPMENTS, SKULD-ENTERED VESSELS AND THEIR CREWS SAIL WITH POTENTIAL DANGER EVERY DAY OF THE YEAR. IN THIS FEATURE, WE TAKE A LOOK AT THE **IMDG CODE** GOVERNING SAFE TRANSIT OF HAZARDOUS CONSIGNMENTS AND EXAMPLES OF **CARGOES AND CASES** THAT ILLUSTRATE THE THREAT.

## THE IMDG CODE

# REGULATING CARRIAGE OF DANGEROUS GOODS

The purpose of the International Maritime Dangerous Goods (IMDG) Code is set out in the preamble of the 2008 edition as follows: *Carriage of dangerous goods by sea is regulated in order reasonably to prevent injury to persons or damage to ships and their cargoes. Carriage of marine pollutants is primarily regulated to prevent harm to the marine environment. The objective of the IMDG Code is to enhance the safe carriage of dangerous goods while facilitating the free unrestricted movement of such goods.*

The need to regulate carriage by sea of dangerous cargoes was recognised by the 1929 International Conference on Safety of Life at Sea (SOLAS) and the present classification was adopted by IMO in 1965. The Code has been modified over the years, but until 2003 had only recommendatory status through a footnote in Chapter VII of SOLAS.

In 1973, the need to minimise negligent or accidental release of marine pollutants from cargoes to the environment was recognised and provisions to prevent this crafted into Chapter III of the International Convention for the Prevention of Pollution from Ships (MARPOL). In 1985, these regulations were implemented via the IMDG Code.

The IMDG Code is updated on a two-year basis by the Maritime Security Council (MSC) – a body under the IMO umbrella – based on recommendations from experts on new products and their impact on the environment and humans. The shipper of dangerous cargoes is responsible for the proper identification, labelling and packaging of the goods.

The IMDG Code currently lists the following classes of dangerous goods in no particular order of danger:

- Class 1: Explosives**
- Class 2: Gases**
- Class 3: Flammable liquids**
- Class 4: Flammable solids; substances liable to spontaneous combustion; substances which, in contact with water, emit flammable gases**
- Class 5: Oxidising substances and organic peroxides**
- Class 6: Toxic and infectious substances**
- Class 7: Radioactive material**
- Class 8: Corrosive substances**
- Class 9: Miscellaneous dangerous substances and articles**

Special regulations for carriage of nuclear material is found in the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (INF Code).



Safe carriage and unrestricted movement of dangerous goods is the IMDG Code's goal.

PHOTO: © I-IMAGES.NO

### CLASS 9 MISCELLANEOUS DANGERS

Items falling under class 9 include hazardous cargoes not covered under classes 1 to 8. It's a kind of 'catch-everything-else' category, which includes a wide range of cargoes from air bag inflators and zinc ditonite to genetically modified micro-organisms, magnetic materials and rare earths.

For example, a recent cargo carried by a member consisted of magnetic material embedded in billets of rare earths. Although magnetic material can realign a ship's compass and have a detrimental impact on other sensitive equipment or electronic instruments carried as cargo, it is not 'dangerous' by itself. Rare earths, however, are a class 9 cargo due to their harmful environmental effect. The general term 'rare earth' covers a collection of mineral sands, including scandium, yttrium and lanthanoids.

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[www.imo.org](http://www.imo.org)



## SULPHUR CARGOES

# A COSTLY AFFAIR

The message sends a shiver down my spine. A vessel less than one year old has suffered serious hull damage after carriage of sulphur granular.

A brand new bulk carrier entered by a charterer member carried a cargo of sulphur granular from the Black Sea to South America. After discharging one hold, the ballast system was found to be heavily corroded with serious pitting evident on the tank top and the bulkheads. Other holds were in a similarly corroded state.

If members were responsible for the damage the Charterer's Liability to Hull (CLH) cover would come into play. What is an adequate reservation for such a claim?

### ADDING UP POTENTIAL COSTS

Serious hull damage to a vessel less than one year old, repairs to the ballast system, temporary repairs to make the vessel seaworthy, possible dry docking, lost time in reaching a repair yard in ballast and time used for repairs would all add up to...millions of dollars!

Both of the relevant charter parties (time and voyage) called for all disputes to be referred to arbitration in London. This meant the usual dilemma – should we appoint local surveyors and experts who might be called to London to give evidence or send an English expert to South America right away? The exposure of a possible claim warranted the cost to send an expert from England and provide him with assistance from a local surveyor. Owners made a similar decision and voyage charterers appointed a local surveyor.

### ALL PARTIES WORKING TOGETHER

Fortunately all three parties – owners, time charterers and voyage charterers – agreed to cooperate fully in the first and most important stage of any dispute resolution process; namely the fact finding. Consequently, samples of cargo, ballast water and corroded material were collected and jointly labelled for future analysis, the voyage charterers produced details and certificates for the cargo and the master produced documents from the vessel upon request, without involvement from local courts. All documents were given on a 'without prejudice' basis.

### WHAT COULD POSSIBLY HAVE GONE WRONG?

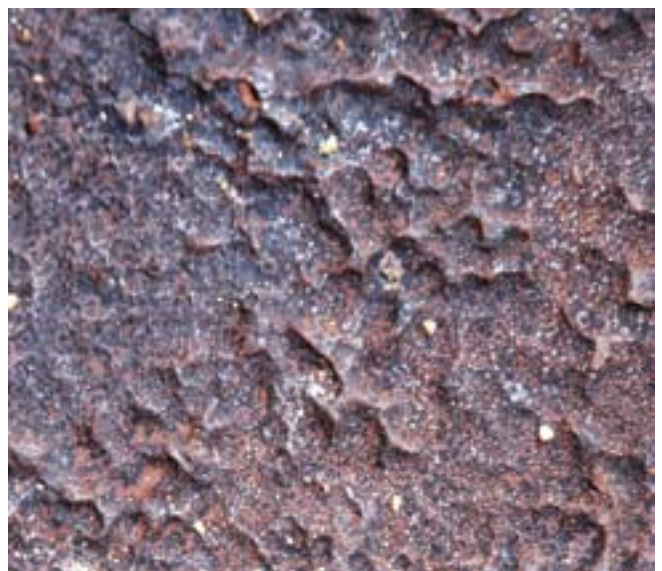
The vessel had carried a similar cargo from a Black Sea port to a Mediterranean port on a previous voyage without incident. So what happened this time?

As can be seen from the article on the next page, written by one of the

attending experts, a number of factors could have caused or contributed to the problem. At the time of writing, analysis of the various samples has not been completed and any speculation on the final liability is a waste of time.

We might well end up in a situation where a number of factors have contributed without a clear predominant cause. This is the type of situation that fuels lengthy and very costly litigation, but if the positive cooperation between the parties continues we have every hope that a pragmatic and cost-efficient solution will be found.

**“THE BALLAST SYSTEM WAS FOUND TO BE HEAVILY CORRODED”**



Corrosion damage to tank top caused by wet sulphur. Note the characteristic steep-sided pit formations.

## CARRIAGE OF SULPHUR

# DON'T LET CORROSION GET A HOLD



As most sulphur cargoes are loaded wet the risk of corrosion increases considerably.

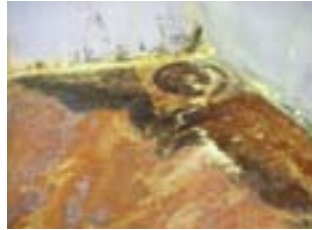
Sulphur is a very important feedstock material for the world's chemical industry. It is largely generated as a by-product in hydrocarbon processing and mostly used to produce sulphuric acid, which in turn is used extensively in fertiliser production. Annually, tens of millions of tons are carried on board ships.

### **CORROSION HAZARD**

Sulphur is loaded in granular or prilled forms, but also as crushed lumps or coarsely grained material. IMO, in its IMSBC Code (formerly the BC Code), classifies the solid granular/prilled forms as harmless group C and crushed lumps/coarse-grained sulphur as hazardous

class 4.1 under UN1350. Regardless of form, when sulphur is wet, it has potential to cause serious corrosion damage to steel. IMO therefore requires that sulphur should only be loaded after adequate protection against corrosion is in place.

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Sulphur can be aggressively corrosive if not properly managed (photos from case described on page seven).

In the 1970s and 80s, there were numerous incidents of corrosion damage to holds on board ships after loading sulphur. Research confirms that completely dry sulphur does not react with steel, but wet sulphur can cause serious damage. The simple fact is that sulphur plus moisture plus mild steel equals corrosion. The mechanism of oxidation is electrochemical in nature and important characteristics are:

- The reaction is promoted under anaerobic conditions and exhibits autocatalytic behaviour, i.e. once started further corrosion is accelerated
- Corrosion proceeds irrespective of the medium's pH, although its fastest rate is at pH neutral
- Temperature promotes reaction and the corrosion rate roughly doubles for each 10°C rise
- Presence of the chloride ion promotes corrosion

Sulphur contains low residual quantities of acids (mainly sulphuric). This presents potential for acid-induced corrosion although this is not believed to be significant unless conditions are fairly acidic (pH 2 or less), which are uncommon for sulphur cargoes.

Most sulphur cargoes are loaded wet and therefore present risk of corrosion. This is because the product is usually stored in large outdoor piles but also, in many ports, it is standard practice during loading to spray with fresh water to reduce dust formation. On board, water and fine sulphur dust therefore gradually filter towards the tank top to present a potent corrosive system to steel unless protective measures are in place. The fundamental principle for protection against corrosion relies on the presence of a completely uninterrupted physical barrier between steel and sulphur. This prevents direct contact with steel and hence corrosion.

#### PROTECT YOUR VESSEL

The following measures are necessary to protect against sulphur-induced corrosion:

- Clean holds to 'grain clean' standard. Not only can presence of previous cargo residues affect the protective coat that needs to be applied, but shippers also guarantee very high purity specification for sulphur and holds should be clean. Finish cleaning by rinsing thoroughly with fresh water to remove chloride salts.

- As paintwork protects against corrosion, damaged areas should be repaired.

- Add a protective coating to your hold. Lime wash is the most common method to protect against corrosion. It mitigates against and slows down corrosion, but does not completely eliminate the risk of it occurring. Lime wash serves two specific functions:
  - It presents a physical barrier between sulphur and hold structures. As the emulsion dries, the lime (calcium hydroxide) reacts in air (carbon dioxide) to form a layer of opaque white calcium carbonate. This is significantly harder than lime and constitutes the actual protective coat. Lime wash must always be given ample time to dry as wet lime does not protect against corrosion. The coat should last 30 days at least, before acid neutralisation reduces its effectiveness.
  - The alkaline nature of the lime acts to neutralise acid present in the sulphur.

- During voyages, bilges should be pumped regularly to prevent risk of acidic water accumulating on tank tops. When sulphur has been discharged it is important that all residues are completely removed from cargo spaces, including the bilge system.

#### FLAMMABILITY

Crushed or coarsely grained sulphur declared under the UN1350 schedule presents a certain fire and dust explosion risk, but we refer in this respect to the IMSBC Code.

#### References

1. IMSBC Code 2009, pp 271-2.
2. IMSBC Code 2009, pp 273-4.

*This article is abridged.*

*For the full version, please see [www.skuld.com/publications/Beacon](http://www.skuld.com/publications/Beacon)*

**“SULPHUR  
PLUS  
MOISTURE  
PLUS MILD  
STEEL  
EQUALS  
CORROSION”**

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## HANDLING HIDDEN HAZARDS

# THE DANGER OF FERTILISER

As certain fertilisers are classified as dangerous goods, their storage, transport and handling need to reflect the potential hazard.

The increase of marine and environmental pollution awareness has made countries and the industry more conscious of the potential hazards that transport by sea of dangerous or noxious cargo represents. This has resulted in the adoption of advanced and standardised guidelines regulating the carriage of marine pollutants and dangerous cargoes in order to promote maritime safety.

These substances, materials and articles are regulated by the International Maritime Dangerous Goods (IMDG) Code, 2008 edition and the International Maritime Solid Bulk Cargoes (IMSBC) Code, 2009 edition. The IMDG Code exposes the basic principles of dangerous cargoes, introduces recommendations for individual substances, materials and articles, as well as recommendations for good operational practice, including advice on terminology, packing, labelling, stowage, segregation and handling, and emergency response. The IMSBC Code's purpose is to facilitate the safe stowage and shipment of solid bulk cargoes. As a consequence of recent implementation of safety principles and rules covering transport by sea of potentially hazardous cargoes, a great number of goods have been categorised as hazardous.

### HANDLE WITH CARE

It is known that some cargoes may change their characteristics and behaviour when exposed to certain conditions and become potential risks for shipowners, governments and the environment if safety or loss-prevention measures are not taken.

For instance, cargoes such as fertilisers that contain ammonium nitrate can be dangerous when handled incorrectly. The elements within this type of fertiliser have properties that when exposed to particular conditions, for example contamination or heat, become an explosion risk in case of fire.

In addition, these substances are capable of self-heating, although this seldom occurs at ambient temperature because self-heating is not an inherent property of these types of fertilisers. The fertiliser's components may also act as an oxidising agent, especially in a fire, or initiate a self-sustaining decomposition (SSD), sometimes called "cigar burning".

The transport of ammonium nitrate materials that can self-heat sufficiently to initiate decomposition is prohibited. The decomposition process is generally accompanied by toxic gases, such as ammonia, hydrogen chloride and nitric acid vapours.



Safety measures for transporting ammonium nitrate-based fertilisers are outlined in the IMDG and IMSBC Codes.

### SAFETY MEASURES

The hazards that fertilisers containing ammonium nitrate represent require safety measures that cannot be summarised in a few lines. However, the standard recommendations are outlined by the IMDG and IMSBC Codes.

The properties intrinsic to this type of fertiliser require the implementation of specific safety measures for packing, stowage and segregation of incompatible substances, as well as classification, description and labelling. The principle is that harmful substances or dangerous goods must be

properly stowed and secured to minimise the hazards that their transport represents to the marine environment and the safety of both the ship and its crew.

Precautionary measures are some of the requirements recommended by the IMDG and IMSBC Codes. By following these guidelines, shipowners avoid hazards and ensure that onboard safety and environmental security are not compromised.

READ MORE

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## DEFINING HAZARDOUS CARGO

# SEED CAKE – CAN IT BE LOADED?

Our member, the vessel owners, contacted us due to the planned loading of potentially hazardous cargo.

The charterers had nominated a cargo of seed cake, also traded as golden dried distillers grain (GDDG) or brewer's grain pellets to be loaded at New Orleans. Such cargo may self-heat slowly and, if wet, ignite spontaneously. The vessel was not classed to carry IMO Class 4.2. cargo, i.e. substances liable to spontaneous combustion.

### SPECIAL PERMISSION TO LOAD

Charterers argued that as the U.S. Coast Guard had given special permission to load this cargo it could be loaded and that they had carried this particular cargo on other chartered vessels many times before without incident. There is some confusion as to whether this type of cargo is hazardous. However, the only types of cargos specifically listed in Section 4.2 of the IMO as non-hazardous seed cake are solvent-extracted soy bean meal, rape seed meal, cotton seed meal, and sunflower seed meal. Furthermore, the Coast Guard's special permission to load clearly refers to the cargo as 'solid hazardous material in bulk', so there can be little doubt that this cargo is considered hazardous.

### VESSEL NOT OBLIGATED TO CARRY SEED CAKE

The charter party prohibited loading of 'inflammable or dangerous goods as defined by IMO'. The Coast Guard's special permission to load is not concerned with whether owners are obligated to carry the cargo under the terms of the charter party. As owners, with Skuld's assistance, concluded that this cargo was hazardous, they had no obligation to carry it. Whether the vessel had permission from the Coast Guard to load the cargo was irrelevant, as the vessel was not obligated to carry any dangerous cargo, including seed cake, under the terms of the charter party.

### RULES OF 'EXCLUDED RISK'

If owners had agreed to load the cargo, their P&I cover could have been prejudiced. The relevant clause in Skuld's Rules is the 'excluded risks' section 30.4.3: "liabilities, costs or expenses which arise out of or are consequent upon the vessel carrying contraband, blockade running or being employed in a trade or on a voyage which is unlawful or which the Board of Directors considers to be unsafe or unduly hazardous". The phrase "unsafe or unduly hazardous" includes the carriage of hazardous cargo. There is also a duty to disclose an alteration of risk (Rule 28.1). Accordingly, had the owners failed to notify Skuld that they would be carrying the seed cake cargo, they would also have been in violation of this rule.

### SUBSTITUTING CARGO

After several days of assisting our members in their dispute with charterers, charterers finally agreed to substitute seed cake with a non-hazardous cargo.

**“CHARTERERS  
 FINALLY  
 AGREED TO  
 SUBSTITUTE  
 SEED CAKE  
 WITH A NON-  
 HAZARDOUS  
 CARGO”**

## HNS CONVENTION

The HNS Convention was adopted in 1996 with the aim of providing compensation for damage caused by hazardous and noxious substances (HNS). The regime closely follows that applicable for oil pollution, with strict liability on shipowners, compulsory insurance requirements and a limit on the shipowner's liability supplemented by a second tier of compensation funded by cargo interests. However, the Convention has not entered into force since it is not ratified by a sufficient number of states. The lack of governmental support is due to perceived shortcomings in relation to the cargo contributions.

A protocol to the Convention designed to address these problems will be considered at a diplomatic conference at the end of April arranged by the International Maritime Organisation. The protocol contains a package of measures designed to amend the original Convention and should clear the way for ratification by enough states for the Convention to come into force. The part of the package of most interest to P&I clubs is an increase in liability limits applicable to packaged goods. The increase should be 'modest', but the actual figures will only be agreed at the Conference. The clubs in the International Group support the Convention, particularly because the alternative is regional legislation.

# / LEGAL ISSUES

## LMAA INTERMEDIATE CLAIMS PROCEDURE – ONE YEAR ON

# FASTER, CHEAPER AND UNUSED

In March 2009, the London Maritime Arbitrators Association (LMAA) introduced a new 'condensed' arbitration procedure for intermediate value claims of between USD 100,000 and USD 400,000.

This Intermediate Claims Procedure 2009 (ICP) was introduced by the LMAA, in part, to address the recent increased criticism that international arbitration was becoming a prohibitively expensive and often slow means of dispute resolution. The ICP is designed to complement the three existing LMAA procedures and provide a tailor-made means of resolving intermediate disputes. These cases cannot sustain the costs of standard arbitration procedure under full LMAA terms, but as they involve issues of relative complexity and/or claim value they cannot be appropriately dealt with under LMAA Small Claims Procedure or FALCA (Fast and Low Cost Arbitration Procedure). The ICP's predominant aim is to provide arbitrating parties with greater certainty regarding their costs exposure and to ensure that such costs are more proportionate to the amounts in dispute.

In essence therefore, the introduction of the ICP is an attempt by the LMAA to address the recent trend in claims-costs inflation and to provide arbitrating parties with the means to arbitrate intermediate value disputes efficiently and proportionately. As such, this development should be viewed by the industry as a welcome step forward for dispute resolution in London. Therefore, it is with some surprise that, a year after introduction, the ICP has not been widely utilised. Indeed, statistics shortly to be formally released by the LMAA, indicate that there has only been one ICP appointment received by the LMAA in the twelve months since its introduction.

It is difficult to understand why the ICP has not been more widely adopted to date, given the apparent advantages it offers to arbitrating parties for timely and cost-effective dispute resolution. Certainly from the club's perspective, the ICP is a welcome development. One must wonder whether the reason for non-use is because owners and charterers remain largely unaware of the ICP's potential advantages. Consequently, for members' benefit, the central features of the ICP are highlighted here:

**1. Costs:** Perhaps the most important feature of the ICP is the cap placed on parties' respective recoverable costs. Under the ICP, parties' recoverable costs are capped at a sum equivalent to 30% of the claimants' monetary claims (and distinct counterclaims) where there is no oral hearing. If an oral hearing is involved, this percentage

increases to 50%. The costs of the tribunal are similarly capped at up to one third of the total at which the parties' costs are capped where a sole arbitrator has been appointed, or two thirds if the tribunal consists of two or three arbitrators. With this clearer indication of maximum costs exposure, arbitrating parties are able to better assess the cost risk involved in arbitrating the matter, both in terms of potential liability and recoverability of costs.

- 2. Disclosure:** Under the ICP there is no formal disclosure stage in arbitration proceedings. Parties are obliged to produce all relevant documents with their opening submissions, although each side may specifically request disclosure of relevant documents as well.
- 3. Witness and expert evidence:** Witness and expert evidence is limited in scope. Parties under the ICP are entitled to serve witness evidence 28 days after submissions have closed, but only if they have given prior notice that they intend to do so. Unless served with opening submissions, no expert evidence is permitted without express permission of the tribunal.
- 4. Oral hearing:** There is no automatic right to an oral hearing. Only in exceptional circumstances is one held.
- 5. The award:** The tribunal's intention is to produce an award within six weeks of the service of the parties' last submissions.
- 6. Appeal:** A right to appeal is only permitted when the tribunal certifies in its award that a question of law with general interest to the industry is involved. Whilst this provision significantly limits the right to appeal, it is also designed to avoid the parties having to incur the (high) costs of an application to the English High Court for permission to appeal.

Members can view full details of the LMAA Intermediate Claims Procedure 2009 in the terms section of the LMAA's website at [www.lmaa.org.uk](http://www.lmaa.org.uk).

In summary, the ICP provides a significantly condensed mechanism for dispute resolution and sets out measures to ensure predictable

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Bridge over troubled water – the LMAA's Intermediate Claims Procedure aims to reduce the cost and time of arbitration.

and proportionate costs. Therefore, the procedure warrants careful consideration for members who routinely face, or may face, intermediate value claims and wish to avoid long drawn-out and expensive arbitration proceedings.

Contracting parties who want to use the ICP need to include a provision in their contracts' arbitration clause. To assist, the LMAA in conjunction with BIMCO have published an arbitration clause that expressly provides for the incorporation of the ICP – see BIMCO/LMAA arbitration clause (2009). BIMCO has also drafted recommended additional wording, along with commentary, to facilitate incorporation of ICP terms. Both of these wordings are published on the Skuld website.

READ MORE

[www.skuld.com/publications/clauses](http://www.skuld.com/publications/clauses)  
[www.lmaa.org.uk](http://www.lmaa.org.uk)

**“IT IS  
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UTILISED”**



By Nikolai Ivanov  
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## CURRENT ENFORCEMENT

# THE EU LOW-SULPHUR DIRECTIVE

Members will no doubt be aware that the new EU low-sulphur directive (Directive 1999/32/EC as amended by Directive 2005/33/EC) is now in force and is aimed at controlling marine fuel emissions within EU ports.

### EU DIRECTIVE 2005/33/EC

Article 4b of EU Directive 2005/33/EC requires that, with effect from 1 January this year, member states must take all necessary steps to ensure that ships berthed or anchored in European Community ports are not permitted to consume marine fuels with a sulphur content exceeding 0.1% by mass. This regulation applies to all vessels irrespective of flag, ship type, age or tonnage.<sup>1</sup>

In practice, this means that it is necessary for many ships to switch from residual fuel oil (heavy fuel oil) to distillate fuel, such as marine gas oil, when in port. The directive requires that this fuel changeover operation should be carried out as soon as possible after arrival and as late as possible prior to sailing.

There are serious concerns that switching from heavy fuel oil (HFO) to marine gas oil (MGO) in existing boilers constructed for HFO use, could lead to operational problems and potential safety risks, including flame failure and, in extreme cases, an increased risk of explosion. In California, where similar fuel switching regulations have been in force since 1 July 2009, there are 15 reported casualty investigations attributed to fuel switching in the three months following implementation. Consequently, many vessels trading to/from EU ports need to conduct modifications to boilers, engines, associated fuel storage and supply and control systems in order to ensure safe compliance with the directive.

Initially, many shipowners assumed (wrongly) that HFO with 1% sulphur content would become more widely available and/or that implementation of the directive would be postponed so it could be brought in line with the IMO sulphur limits prescribed in MARPOL Annex VI. For these, and other reasons, the modification process only started in earnest during 2008, which has placed an enormous burden on the shipping industry. Indeed, as the 1 January deadline approached, it was clear that a large number of vessels had not undertaken the necessary modifications and verifications. Given this widespread non-compliance and the safety concerns highlighted by the industry, there were practical arguments for the EU postponing implementation or introducing a phase-in period for the directive. Consequently, there has been considerable uncertainty (arguably with justification) as to how, and to what extent, the directive would be enforced after the 1 January deadline.

**“IMPLEMENTATION HAS NOT BEEN SUSPENDED AND THERE ARE NO EFFECTIVE EXEMPTIONS”**

### EUROPEAN COMMISSION

#### RECOMMENDATION:

**21 DECEMBER 2009**

On 21 December 2009, the EU moved to dispel the confusion surrounding implementation of the directive by publishing a recommendation designed to provide guidance and clarification to member states for enforcement of the directive. The recommendation directs member states to enforce the directive fully and completely from 1 January 2010. However, the recommendation also indicates that, in assessing the appropriate penalty to be applied to non-complying vessels, member states should take into account concrete steps undertaken by the shipowner to achieve compliance. These steps should include disclosure of a contract with the manufacturer and a class-approved retrofit plan clearly providing a completion date for the adaptation within eight months after the enforcement date.

In short, shipowners should be left in no doubt that EU Directive 2005/33/EC is in full force. Implementation has not been suspended and there are no effective exemptions, even when modifications have been arranged, but not yet carried out. EU members are obliged to enforce the directive fully, although the method of enforcement is flexible. Any non-compliant vessel is in breach of the directive and therefore at risk.

### THE CURRENT POSITION ON ENFORCEMENT

As stated, the directive gives a great deal of latitude to member states when determining the appropriate penalty for non-compliance and where liability falls. The only constraint is that the penalties for breach must be effective, proportionate and persuasive. Therefore, at this early stage (and at least until widespread enactment<sup>2</sup>) it is difficult to assess to what extent the directive is being enforced and what the appropriate penalties are for non-compliance.

Prompted by an awareness that many ships calling at European ports are not in compliance with the directive, many member states are not, at present, widely enforcing the directive. However, this will change. The emerging position is that some member states are enforcing the directive reluctantly and others with gusto.

In Italy, for example, the authorities have directed that until August 2010 vessels can apply to the harbour master for authorisation to burn fuels exceeding the 0.1% limit. However, the application must be made one day prior to the vessel's arrival and include a statement from the vessel's registry confirming full details of the approved retrofit plan. Notwithstanding this, some Italian ports have taken a harder line and Trieste, for example, issues non-compliant vessels burning higher-sulphur fuels with fines of between €15,000 and €150,000, and subjects vessels burning low-sulphur fuels without approved modifications to Port State Control inspection due to unsafe practice.

In contrast, authorities in France and Germany have confirmed that they will apply the directive, but have offered no clear response or guidelines (at the time of writing) on the enforcement measures or penalties. There are also fears that the crew may bear the brunt of additional inspections and penalties, with some member states levying penalties against the master and/or chief engineer, rather than the shipowner.

Members should note that fines imposed for non-compliance with the directive are not generally covered under members' P&I insurance. Such fines do not fall within Rule 19 (Fines) of the club's rules, and are only covered in exceptional circumstances under discretionary cover provided by Rule 19.4.

Given the differences in enforcement, even within member states, shipowners should be prepared. For the time being, any shipowner with a vessel unable to safely comply with the directive should check the relevant control measures being taken by individual states when fixing charters prior to entering the designated EU port.

In conclusion, the enforcement and legal impact of the EU low-sulphur directive is still far from clear. The burden and risk of modifying ships to comply with these EU standards rests squarely with shipowners. It remains to be seen how member states will enforce the directive, but it is clear that significant operational and legal challenges remain for the shipping industry in complying with regulations imposed by the directive.



Many ships are currently not in compliance with the directive.

*This article is an abridged version of a talk given at the International Bunker Conference, 2010. The complete text with an analysis of the legal implications of the directive is found at [www.skuld.com/publications/Beacon](http://www.skuld.com/publications/Beacon).*

#### Footnotes

1) *The directive has very few exceptions, but does not apply to vessels berthed for less than two hours as part of a published timetable, i.e. ferries on scheduled services.*

2) *It is important to remember that each member state must implement the EU directive through national legislation to make it law in their own country.*

READ MORE

[www.skuld.com/publications/Beacon](http://www.skuld.com/publications/Beacon)

# / LOSS PREVENTION

KNOW YOUR COUNTERPARTY



## TIME TO GET SMART

In many industries it is common practice to conduct extensive due diligence on business partners new and old, irrespective of whether the deal is a one-off or part of a multi-year, multi-million dollar project. It's time to get smart and extend this principal to the shipping industry.

### MY WORD IS MY BOND

In the world of shipping, people often rely on personal relationships and a firm handshake. Yet "trust me", as many have unfortunately learnt over the last 18 months, are two very dangerous words.

Some also felt that they could always secure claims quickly and cheaply through a Rule B attachment of an Electronic Fund Transfer in New York, but since the Supreme Court has refused to review the Jaldhi case that overturned Rule B, this is now impossible.

### WHERE TO START

What can you do when you are unsure whom to trust and getting your money back is harder than it has been for a long time? Knowing more about whom you are doing business with is a good start.

Parties often rely on previous business experience (not always a bad thing), and information supplied by dealmakers about a new fixture. Parties may take at face value a partner's reputation, financial standing and even non-reconfirmed third-party guarantees based on simple fixture recap statements.

By Christian Ott  
Assistant Vice President, Lawyer, Skuld Far East Syndicate  
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If it all goes horribly wrong you may discover that guarantees are not enforceable (even under English Law) unless made under seal or supported by valuable consideration (just like normal contract formation). Also, not every legal system sees the world in the way English law does. For instance, Chinese law takes a far stricter view of contract formation, so that fixture recap you thought was fully binding is in fact non-enforceable. This can be a problem if your counterparty is smart and quickly launches a pre-emptive lawsuit to declare the contract null and void. Oh yes, this happens!

To make matters worse, your other counterparty, the one you had been dealing with for the last ten years, suddenly goes bankrupt. A quick check of company records may have shown they were on the way down even before the crisis struck. Alternatively, a corporate intelligence investigation could have revealed heavy exposure on high-risk business with some chancy counterparties. The point is – take the time to be sure whom you’re doing business with. And don’t be afraid to insist on the information you need to make an informed decision.

#### TAKE MATTERS INTO YOUR OWN HANDS

Protecting your business and your money may not take a lot of time or effort. The boxes to the right provide some tips on where you can gather information and what to look for.

## “DON’T BE AFRAID TO INSIST ON THE INFORMATION YOU NEED TO MAKE AN INFORMED DECISION”

#### INFORMATION SOURCES

- / Your own company – the low-down on a hot new prospect from a colleague may leave you cold
- / Your friends – amazing what you can learn over a cup of coffee
- / Brokers and lawyers – they work for you, so make them work for you
- / Trade press – every week it’s full of information about trade and legal disputes
- / Internet – amazing what you can find these days with a quick Google search
- / Corporate intelligence agencies – not cheap, but a few thousand spent early can save a few million later
- / Skuld – we have 110 years of knowledge and a very long memory

#### THINGS TO WATCH OUT FOR

- / Do not accept key information at face value
- / Guarantees should be confirmed in writing and countersigned by the guarantor
- / Make sure contracts and guarantees are concluded not just in line with the law of the contract, but importantly also in line with the law of the home jurisdiction of your counterparty
- / Track record – who are they and how long have they been around
- / Are you signing with the parent company or just a subsidiary, and is this just a shell

#### QUESTIONS YOU SHOULD ASK

- / Full name and address of your counterparty
- / Where is the company incorporated
- / Does the state of incorporation give access to the company’s audited accounts? If no accounts have been filed, why not
- / Is it a pure operator or does the company own ships or any other physical assets
- / Does it hold a high profile in the trade press? If yes, why
- / Is the person concluding the contract fully authorised by his company to do so
- / Will the guarantor give a proper written guarantee (not just a one liner in a fixture recap)
- / Are there unusual charter terms that may allow another party to sub in, or is the money going to an apparently unrelated third party
- / Ask your brokers how much is known about the people they recommend to you and who else they have done business with. Call these people and ask them what they think
- / Does the company have official brochures? Does it publish an annual report and final accounts? If so, get copies



By Nicola Mason  
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## COMBINING THEORY WITH PRACTICE

# TRAINING THE NEXT GENERATION

A vessel's crew is as important as the ship itself. It can be an owner's pride or a source of disaster.



BS Teeka constructed a fully-classed ship at Lonavala in 2007.

### INCREASING CLAIMS DUE TO HUMAN ERROR

*"Crew shortages and a dwindling pool of skilled officers in the marine industry could result in increasing claims due to human error....additional ships will exacerbate the existing crew shortage, especially for complex vessels such as the new generation of LPG/LNG tankers.... Bigger ships, tankers and dredgers are creating bigger concentrations of risk and magnifying the potential scale of disaster for P&I, liability and cargo insurers as well as hull underwriters."*<sup>1</sup>

Indeed many experts attribute the record-high pool claim years of 2006 and 2007 to an increase in human error caused by the shortage of competent crew.

### HOW WILL THE ECONOMIC SLOW DOWN ALTER THE PICTURE?

The economic slow down may provide a temporary reduction in demand for ships and crew, but demand for crew still exceeds supply, with the industry predicting a global shortage of as many as 46,000 qualified officers by 2010.<sup>2</sup>

### BRIDGING THE GAP BETWEEN THEORY AND PRACTICE

Crew training often falls short without real shipboard experience to supplement theoretical education. In this respect, the Samundra Institute of Maritime Studies (SIMS) at Lonavala, India has created the first ever 'Integrated Gas Tanker Simulator' (IGTS). This facility, which has been inspected and fully approved by DNV Norway, trains crew to work on gas tankers managed by Executive Ship Management (ESM). This state-of-the-art facility is intended to bridge the gap between theory-based knowledge and practical experience.

SIMS campuses in Mumbai and Lonavala were established in 2002 and 2004 respectively. SIMS is the brainchild of BS Teeka, Managing Director of Executive Ship Management, Singapore and Principal Trustee of SIMS. Teeka saw the desperate need to pair theory with practice and, in addition to other innovative training equipment, constructed a fully-classed ship at Lonavala in 2007. Now with IGTS, he has taken practical experience to the next level.

The writer attended the IGTS launch on 15 December 2009 where she had the opportunity to discuss with Ms Sikha Singh, HRD Director, ESM

and a principal trustee, SIMS's commitment to quality maritime training and the challenge of nurturing a competent generation of officers and crew.

### A HOLISTIC APPROACH TO CADET TRAINING

Ms. Singh explained that a holistic approach is taken by ESM while recruiting and training crew. SIMS, Mumbai conducts over 50 value-added post-sea courses for the officers and ratings already sailing on board, while SIMS, Lonavala is the cradle of the organisation nurturing the future generation of officers. The selection and training processes both ensure that a cadet has the requisite calibre and mental stamina for life at sea.

The campus itself is set in landscaped grounds with art and sculpture thoughtfully placed to inspire the cadets during their training. Facilities include a swimming pool, gym and other sports facilities that create a sense of balance to the academic and practical training. Cadets join mandatory yoga lessons and are encouraged to play musical instruments. Developing and enhancing emotional and social-intelligence skills are especially relevant for life at sea where crewmen are vulnerable to



According to Ms Sikha Singh, HRD Director at ESM, SIM's selection and training processes ensure cadets have the calibre and mental stamina for life at sea.

emotional and social difficulties, and face a high degree of stress in their working environment. At SIMS, the emphasis is on the complete person. ESM's aim is that SIMS graduates well educated, socially intelligent and motivated crew members who contribute not only to their organisation, but to the entire global maritime industry.

#### MOTIVATION AND INSPIRATION

At both the formal inauguration of SIMS Lonavala on 1 Nov 2007 and the IGTS on 15 December 2009, Mr John Ridgway, CEO of BP Shipping, officially opened the facilities. As a long-term business partner, ESM & SIMS provide full training to all Indian seafarers employed on BP Shipping vessels. Mr Ridgway joined BP as an officer cadet in 1971, where he rose to the rank of captain, and is now the CEO of BP Shipping. When new recruits hear of the increasing criminalisation of seafarers and the risk of piracy, it is important that they are inspired by their career choice. In this respect, Mr Ridgway is the perfect role model for these new recruits who enthusiastically listened to his speeches where he highlighted the importance of "shining a light on ignorance," and "lighting up talent on cadets".

SIMS has responded to the industry challenge by focusing on crew recruitment, training and retention. Combining theory with practical experience gained from the IGTS helps ensure a supply of competent gas tanker officers for the new generation of LPG tankers.

Finally, in Teeka's own words: "Our journey in pursuit of excellence is not going to stop here. SIMS will continue to develop and perfect maritime training. SIMS will continue to serve as the beacon of our

commitment to the industry and responsibility to the community that we all belong to."

#### References

1. *Aon 2008 Marine Insurance Market Review.*
2. *"Today's Shorthanded Merchant Marine: The Cause, Risks, and The Solutions", Bill Davies, Senior Vice President, Wells Fargo Insurance Services, white paper, 2009.*

**"ESM'S AIM IS THAT SIMS GRADUATES WELL EDUCATED, SOCIALLY INTELLIGENT AND MOTIVATED CREW MEMBERS"**

#### FURTHER INFORMATION:

[www.samundra.com](http://www.samundra.com)  
[www.executive.com](http://www.executive.com)  
[www.skuld.com](http://www.skuld.com)  
 Beacon Issue 187 2006:  
 Crew claims – the human factor

## S/S SHTANDART

# A WINTER'S TALE

This winter, Marion Carlmar, Senior Claims Executive in Syndicate 2 Oslo, provided us with a copy of an e-mail sent to members in St Petersburg. We want to share both the story and the photo with our readers.

Dear All!

As you no doubt know, the S/S SHTANDART is a replica of Tsar Peter the Great's battleship built in the year 1703.

It is functioning as a training ship for young cadets. Due to bad weather this autumn, they did not manage to get into the Baltic and to their home port of St. Petersburg before the waterways froze over. Hence, they ended up spending the winter along the Norwegian coast. This is actually a good reminder of why P&I cover starts on 20 February – the breaking of the ice in the Baltic.

Saturday, they sailed into the small port of Drøbak, south of Oslo, which happens to be my home town. The ship was open for visitors, so a lot of people took the opportunity to visit the ship. My husband took the attached photo.

Being merely 100 feet long and not very wide, it is rather incredible that when the original ship was "working" as a battleship, she had a total crew of 150 persons and they had to take turns in sleeping. Food for thought in case your crew members are complaining of the standard of accommodation...

Have a nice day.

Kind regards  
Marion Carlmar



Photo: Per Carlmar



### S/S SHTANDART

**Built:** St. Petersburg. First set sail in 1999

**Design:** A replica of the 1703 battle ship of Tsar Peter the Great

**Captain:** Vladimir Martens

**Crew:** Some 40 young Russian sailors taking part in the Shtandart project. This instils in them the competence, self-esteem and ability to work as a team

**Summer 2010:** Visiting festivals, regattas and tall-ship races in Europe

**Web:** [www.shtandart.com](http://www.shtandart.com)

### P&I AND THE BALTIC ICE

Why are P&I renewals completed by 20 February? The answer lies in the Baltic. Traditionally, the winter season led to most claims, so when the Baltic ice started melting around 20 February every year it was considered a clear sign that winter was over. In the world of P&I this meant that claims figures were concluded and a new P&I year could begin. The tradition lives on with the majority of P&I clubs still celebrating new years' on 20 February.

# / PERSONNEL NEWS

FROM SKULD OFFICES  
AROUND THE WORLD

## NEW EMPLOYEES & PROMOTIONS



### SKULD BERGEN

**1 / Kristian Valevatn**  
CLAIMS EXECUTIVE  
Kristian joined Skuld in October 2009 with Master of Law degrees from both the University of Bergen and the University of Southampton. He has also studied international business at La Trobe University in Melbourne.



### SKULD COPENHAGEN

**2 / Vibeke Guldager**  
HR EXECUTIVE, PERSONAL ASSISTANT TO HELLE LEHMANN  
Vibeke joined Skuld in December 2009 as HR executive and Personal Assistant for Helle Lehmann. She has worked for ABB Scandia and Maersk Air after taking a degree in international sales at the Academy of Business in Hobro. Vibeke has also studied 'coaching in organisations'.



**3 / Åse Naaman Jensen**  
CLAIMS EXECUTIVE  
Åse was appointed Claims Executive, Assistant Lawyer in January 2010. While studying law at the University of Copenhagen, Åse joined Skuld as Claims Assistant and was appointed Claims Executive in February 2009. Before joining Skuld, she worked at MAQS Law Firm in Copenhagen and Cardillo & Corbett in New York. Prior to studying law, she was a shipping assistant at Mediterranean Shipping Company in Copenhagen and Oslo.

### SKULD HONG KONG

**4 / Rita Lau**  
LAWYER  
Rita Lau joined Skuld (Far East) in December 2009. Rita has a LLB from the University of Liverpool and is a Hong Kong-qualified solicitor with nine years' post-admission experience in shipping and commercial litigation. From 2000 to 2009, she worked with Johnson Stokes and Master as Senior Associate. Rita speaks fluent English, Cantonese and Mandarin.

**5 / Nicole Ng**  
SECRETARY  
Nicole joined Skuld in September 2009. She graduated from a local commercial school and has over nine years' clerical/secretarial experience.

### SKULD NEW YORK

**6 / Tiffany Maldonado**  
ADMINISTRATIVE ASSISTANT  
Tiffany joined Skuld in October 2009. She has a Bachelor in Legal Studies from John Jay College of Criminal Justice and six years' experience within law and administration from New York.

## NEW EMPLOYEES & PROMOTIONS



### SKULD OSLO

#### 7 / Ronny Larsen ASSISTANT VICE PRESIDENT, SYNDICATE 1

Ronny has joined Syndicate 1 as Assistant Vice President, Claims. He first joined Skuld in 2001 as Claims Executive and was promoted to Claims Manager in 2005. From 2007 to 2009, Ronny was Head of Skuld Hamburg and returns to the club after a short period with the Norwegian Society for Sea Rescue. Ronny has seafaring experience from the merchant navy and the Royal Norwegian Navy. He has studied maritime law at the University of Oslo and the Insurance Academy at BI Norwegian School of Management.

#### 8 / Christina P. Bergh SENIOR EXECUTIVE, UNDERWRITING SUPPORT

Christina is promoted to Senior Executive having joined Skuld in 1996 as Underwriting Assistant. In 2002, she was named Assistant Underwriter and, in 2008, Executive Underwriting Support. She has studied sales and marketing in Australia and Norway, and has worked at different legal offices in Australia.

9 / Ole H. Broberg  
SENIOR EXECUTIVE, IT  
Ole is promoted to Senior Executive. He joined Skuld in 2002 as IT Developer with a four-year education within economics and information technology from Buskerud University College, Norway.

#### 10 / Eirik Bøhm SENIOR EXECUTIVE, BUSINESS CONTROLLER

Eirik is promoted to Senior Executive, Business Controller. After joining Skuld in 2001 as Credit Controller, he was appointed Business Controller in Skuld's Finance department in 2007. Eirik has studied auditing at Telemark University College, Norway.

#### 11 / Christin Falk CLAIMS EXECUTIVE

Christin is promoted to Claims Executive. She joined Skuld in 1988 as Secretary in the former Dry Cargo Department and has since held positions in various departments and syndicates. Alongside work, she studied at BI Norwegian School of Management and graduated with a Bachelor in Business Administration.

#### 12 / Marianne Nordlien ASSISTANT UNDERWRITER

Marianne is appointed Assistant Underwriter in Syndicate 2. Marianne joined Skuld in 1990 as an Accountant and was named Credit Controller in 2000. While working, she has also studied business economics at the BI Norwegian School of Management.

13 / Merethe Nydahl  
CREDIT CONTROLLER  
Merethe is promoted to Credit Controller after joining Skuld as Accounting Assistant in 2009. She has a financial background from companies such as International Maling AS and Areva T&D AS, where she was in charge of administration and accounting-related assignments.

14 / Inna van Spriel  
SENIOR CLAIMS EXECUTIVE, LAWYER  
Inna is promoted to Senior Claims Executive, Lawyer having joined Skuld in 2007 as Claims Executive. She has a law degree from Immanuel Kant State University, Kaliningrad and a Master of Maritime Law from Oslo University. Inna has ten years' experience with Russian and international shipping and insurance companies.

/ TOTAL NUMBER OF  
EMPLOYEES IN SKULD

169

## SOME CURRENT CASES AND OTHER SKULD NEWS



The iron ore cargo could seriously compromise ship and crew safety.

### / EXCESSIVE MOISTURE CONTENT OF IRON ORE CARGO

A vessel loaded a cargo of iron ore in bulk at Mangalore. On behalf of Skuld charterer members, local experts were appointed and found that the cargoes' moisture content was in excess of the Transportable Moisture Limits (TML) allowed in the BC Code and could seriously compromise the safety of the ship and crew. Skuld assisted the member in cooperating with the owner and negotiating a favourable settlement with the sub-charterer in respect of demurrage and damages for detention at the load port.

## FACTS

The five dominant vessel categories in Skuld at renewals 2010 in percentages based on the number of vessels entered for owner members:

**33%**  
GENERAL CARGO  
**18%**  
TANK  
**18%**  
BULKER TYPES  
**16%**  
CONTAINER  
**15%**  
CHEMICAL TANKER



SOURCE: SKULD UNDERWRITING

### / BUNKER CONSUMPTION DISPUTE

A dispute arose as a result of the master reporting incorrect bunker figures to the charterer on delivery. As a survey was not carried out pre-delivery, the key issue was the quantity of bunkers on board as the charterer did not accept the mistake. Skuld supported the owner member in negotiations with the charterer. The appointment of an independent expert was discussed, but the charterer dropped the claim against our member before the appointment became necessary.

### / SHORT-LOADING OF CARGO

Skuld owner members were in dispute with their charterers over lost freight revenues from a balance of cargo unable to be carried, allegedly due to problems with the vessel's ballast system and/or the starboard windlass. Simultaneously, charterers pursued a claim against their sub-charterers. Skuld appointed experts to assist the member in successfully defending charterers' claim.



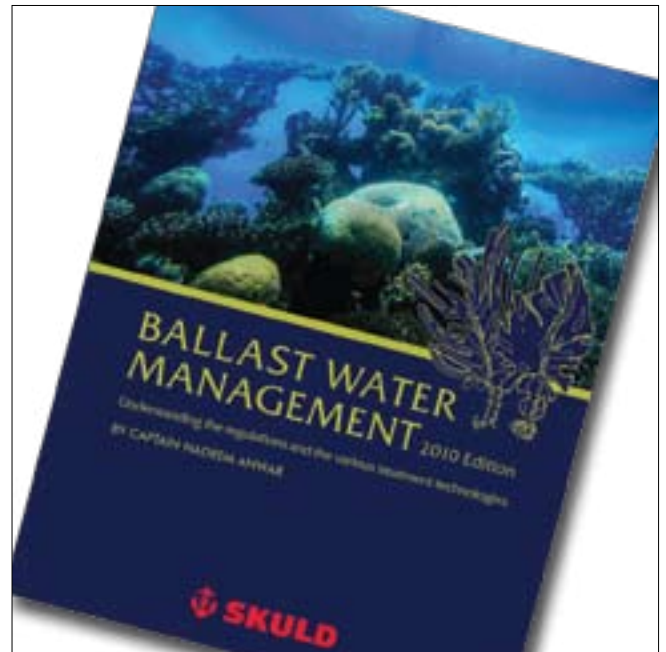
Have you used the Clause Library yet?

### / FOCUS ON CLAUSES

The Skuld website now contains a new section on commonly used clauses connected with P&I or with other areas where we receive enquiries from members. We hope that this Clause Library provides a useful reference source. The intention is to gradually extend the scope of the clauses and we welcome input and suggestions from readers.

READ MORE

[www.skuld.com/publications/clauses](http://www.skuld.com/publications/clauses)



## BALLAST WATER MANAGEMENT

Through Skuld's cooperation with publishers Witherby Seamanship International Ltd., the 2010 edition of 'Ballast Water Management' by Captain Nadeem Anwar will soon be available to all members. This helps readers understand the regulations and various treatment technologies for effective ballast water management.

Every day on literally every ship at sea, millions of marine organisms are carried in ballast water. The World Wildlife Fund has estimated that around 7.5 million litres of ballast water are released every hour into US waters alone and 10 billion litres a year are transferred around the world.

The 'International Convention for the Control and Management of Ships' Ballast Water and Sediments' was adopted in February 2004. Our book represents an up-to-date guide to the regulations and various treatment technologies. It also details all the systems with basic or final approval from IMO or type approval from class.

Every Skuld member will receive a copy of the book free of charge. Further copies may be ordered directly from [www.witherbyseamanship.com](http://www.witherbyseamanship.com). By entering the promotional code SKULDSPEC, Skuld members receive 20% discount on the retail price of GBP 75.

READ MORE

[www.witherbyseamanship.com/category/skuld.htm](http://www.witherbyseamanship.com/category/skuld.htm)

SKULD  
MAGAZINE

BEACON

NEXT ISSUE

OUT SEPTEMBER 2010

# LIFE AT SEA

How is everyday life at sea for crew members in 2010? What conditions do they live with and how are these improving? In the next issue, we look at health and safety, personal injury trends and share members' initiatives for improving life on board.

## ABOUT SKULD

As the New Generation P&I Club, **SKULD** provides liability insurance to New Generation shipowners and clients in the shipping industry. The head office for our global operations is located in Oslo, with additional offices in Bergen, Copenhagen, Hamburg, Hong Kong, Moscow, New York and Piraeus.

**24-HOUR  
EMERGENCY  
NUMBER**  
**+47 952 92 200**

Call this number if you have an emergency incident where Skuld can assist.

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