

Accidents involve large fines

An English company received a record fine following an accident that cost seven lives

Recently an English railway company was fined a record £1.5 million (US\$2,400,000) for a criminal offence arising out of a rail crash that killed 7 people and injured 150.

The fine was the largest imposed on an individual company. The previous record was £1.2 million, although four companies were fined a total of £1.7 million following the collapse of an elevated walkway to ferries at Ramsgate in 1994 in which six people died. These large fines stand in addition to the compensation claims made by the injured or the dependants of those killed, to legal fees, court costs and other related expenditure. Shipowners whose ships are involved in accidents occurring in England may well have to face similar heavy fines



Fines totalling £1.7 million followed the collapse of this walkway

to those faced by English companies found guilty under Health and Safety at Work regulations.

Such fines flow from prosecutions initiated by the Health and Safety Executive. Although the Executive has jurisdiction over maritime incidents, investigations and prosecutions involving maritime incidents are usually overseen by the Marine and Coastguard Agency which is entitled to pursue criminal charges under the Merchant Shipping Act 1995. Any major incident involving a ship in the United Kingdom will be

investigated by the MCA; the Agency will consider both the facts giving rise to the event itself and whether or not there is any criminal culpability on the part of those involved.

The principal sections of the Act under which such

prosecutions would be pursued are Section 58 – conduct endangering ships, structures and individuals, Section 85 – Safety and Health on ships, Section 98 – Owner and master liable in respect of dangerously unsafe ship and Section 100 – Owner liable for unsafe operation of ship. Prosecutions under these sections can be heard in a Magistrates Court or in the Crown Court. In more serious cases the magistrate would be unlikely to accept jurisdiction and such cases would find their way to the Crown Court where a maximum prison sentence of 2 years and/or a fine could be imposed upon conviction.

In the Crown Court there is no limit to the fine that can be imposed and in serious circumstances a very large fine could be imposed upon a company or upon an individual. As far as companies are concerned, prison sentences are not viable possibilities at present under English Law but they are a real danger for named individuals involved in an incident, depending upon the particular circumstances of the case ■



Legionella in ship's water systems

The risk of bacterial infection by the organism *legionella pneumophila* has been under investigation since the first identified outbreak of what became popularly known as 'Legionnaires disease'. Its common name is derived from an outbreak of pneumonia that occurred in Philadelphia in 1976 at a convention of the American Legion from which 29 people died.

Infection can occur when viable bacteria, carried in airborne droplets of water that are sufficiently small, enter the lungs. It affects about 1% of people exposed to the medium and has an incubation period of 3 to 6 days. Men are more likely to be affected than women, particularly in the 40 to 70 age range, and smokers, alcoholics and people with respiratory conditions are especially vulnerable.

Legionella pneumophila flourishes in water, particularly at temperatures around 30°C. This coincides with the temperature of water in most cooling towers and in the condensers of air-conditioning systems. Such plants and

equipment can give off water in the form of the fine droplets that disperse the bacteria and facilitate infection through inhalation. Unexpected areas where infection can occur are spa baths and whirlpools where warm water is re-circulated as a matter of course. It is believed the disease cannot be spread from person to person.

The symptoms of infection are varied. They may include a fever, headache and muscular pain, progressing to pneumonia. In some cases symptoms such as diarrhoea and vomiting, with abdominal pain, occur. Obviously any of these symptoms require immediate medical attention.

Detailed risk assessment of water systems is required to prevent and control the risks arising from hazardous micro-organisms including *legionella*. Members need to identify and assess sources of risk with the emphasis upon the entire system, concentrating in particular on little used components. A safe working practice for the prevention and control of the risk from micro-organisms should be implemented.

The operational and management advice supplied by manufacturers of water systems should be read, implemented appropriately and retained for future reference. The risk assessment should be reviewed at least every two years, whenever there are changes to the system or in the usage of the system, whenever relevant news on the risk or controlling the risk is published or whenever evidence of fault is

forthcoming. Laboratory analysis of samples from the systems should be incorporated into the risk control measures but it must be emphasised that reliance upon sampling is not an adequate substitute for thorough risk analysis, assessment and control. Records of risk assessments made, risk control measures implemented and audit records should be kept for a minimum of five years ■



Fines and detention costs for stowaways – Australia

Whilst a ship was discharging at a small Australian port three stowaways escaped from the ship and made their way to Sydney. The stowaways were detained by the local authorities and immediately applied for refugee status. Their application was finally refused by the Australian immigration department four months later.

The immigration department's enquiries indicated that a crewmember, acting on his own initiative, had helped the stowaways board the ship in China and make their escape into Australia. Infringement notices were therefore issued by the authorities and served on the ship's master, the shipowner and the ship's local agent. Each notice provided for a fine of A\$2,000 per stowaway. The ship's agent successfully appealed against the fine, but both the master and the shipowner had to meet the fines – A\$12,000 in all. The shipowner also had to meet detention costs for 5 months until the stowaways were repatriated, amounting to A\$60,000 and additional costs for repatriation and escort's travel costs amounting to A\$6,000. The total costs incurred by the shipowner as a result of the three stowaways were therefore in excess of A\$78,000 (US\$50,000).

More and more countries are confronting shipowners with fines, detention charges and additional costs whenever ships bring stowaways to their ports ■



Changes to the ITF standard crew contract

There have recently been changes made to the ITF standard crew contract for use onboard open register ships and to other affiliated union contracts. New clauses and amendments significantly alter the basis on which benefits are paid to crewmembers, in particular the clauses relating to death, illness and disability compensation. They also require crewmembers to observe picket lines established by dockers and require shipboard safety committees to be established with ITF representation thereon.

The revision of the draft contract requires the shipowner to provide immediate medical attention for illness or injury and to bear the cost thereof indefinitely. It requires sick pay provision to continue until the seafarer has been cured. There are no exceptions for compensation even if caused by an individual crewmember's wilful misconduct or suicide. The contract also states that assessment of a crewmember's disability is to be determined only by a doctor appointed by the ITF and effectively removes the employer's right to challenge such an assessment or obtain and rely upon a second opinion.

Members are reminded of the provisos to Rule 2, sections 2 and 3: "Where the liability arises or the costs or expenses are incurred under the terms of a crew agreement or other contract of service or employment and would not have arisen but for those terms, that liability is not covered by the Association unless and to the extent that those terms shall have been previously approved by the Managers in writing."

Members should pay particular attention to the re-negotiation of crew contracts as well as to existing contracts, all of which should be submitted to the Managers for approval prior to adoption ■



Filipino seafarers' contracts to be revised

Changes to the Philippine Overseas Employment Agency (POEA) contract are currently under consideration and a working committee is meeting regularly. The committee is made up of the POEA, industry representatives, union

representatives, Department of Labour and the Employee's Compensation Committee (ECC).

Shipowners and manning agents have recently expressed concern about the growing number of seafarers who, despite being compensated under the usual POEA contract, file claims for additional compensation in jurisdictions outside the Philippines. These claims are usually based upon allegations of negligence. Courts in the Philippines do not, in general, look upon such claims favourably. That is probably why seafarers have recently preferred to pursue such claims abroad, particularly in the United States of America.

Consideration is also being given to including a list of occupational diseases in the POEA contract. The list would identify recognised complaints that regularly form the basis of work related claims. It is believed this is an attempt to adopt a list of occupational and compensatory complaints that has been current in the ECC for a number of years.

The intention of the committee is to revise the POEA contract so that it will provide more balanced protection for both shipowners and seafarers alike ■

Article 282 Hong Kong Labour Ordinance

Chinese shipowners frequently incorporate Article 282 of the Hong Kong Labour Ordinance into crewmembers' employment contracts for the purpose of calculating the compensation to be paid to Chinese crew in the case of injury or next of kin in the case of death.

According to Hong Kong's Labour Department an injured crewmember is required to undergo a post-recovery examination by a nominated Hong Kong doctor to ascertain any degree of permanent disability, upon which the amount of contractual compensation will be based.

It is difficult and time consuming for Chinese crewmembers to obtain an entry

permit to Hong Kong. Travel and medical costs, as well as the costs associated with the entry permits for such visits, also make it an expensive exercise for the shipowner.

The Club's Hong Kong office suggests that a suitable practitioner from a reputable hospital based in China should conduct a post-recovery medical examination. His detailed medical report along with x-rays and other supporting material can then be sent to the Hong Kong doctor for the purpose of evaluating any degree of permanent disability. It is understood that this procedure would satisfactorily comply with the requirements of Article 282 of the Hong Kong Labour Ordinance ■



Change in English personal injury litigation

A new personal injury protocol has been incorporated into civil justice procedures in England since April 26, 1999. The intention of the protocol is to improve 'pre-action' contact between the parties, to achieve better exchange of information, to achieve better pre-action investigation and to facilitate earlier settlement of claims. Failure to comply with the protocol will, in the absence of good reason, be met with penalties by the court.

The new regime demands active case management; this will require detailed factual witness statements and expert evidence to be obtained promptly. A 'statement of truth' will be required from a senior member of the company involved in the action. The consequence of signing a statement of truth without an honest belief in its veracity could be

particularly severe; proceedings could be commenced against the individual concerned for contempt of court.

The court will strive to appoint a joint expert for the majority of cases. The scope for either party to appoint experts themselves will therefore be curtailed significantly. Leave of the court will be required to produce expert evidence at trial in many circumstances. The award of costs under the new rules will involve consideration by the court as to the conduct of the parties during litigation. This is likely to include such factors as whether or not the claim has been exaggerated or whether it was reasonable to defend it under the circumstances.

The new rules permit both the claimant and the defendant to make offers of settlement at relevant stages in the proceedings. This facility is a powerful

weapon. A defendant will always need to give serious consideration to such an offer. The consequences of requiring a claimant to proceed to trial, if he is finally awarded more than he sought in an offer, would be severe. Defendants will also need to consider making realistic offers of settlement to compel claimants to give serious consideration to reasonable settlements.

The Club requires early notification of any incident that is likely to lead to personal injury litigation in order to decide what preliminary action should be taken. The new protocol makes this even more important in connection with personal injury claims brought before the English courts. A letter of claim must be acknowledged within 21 days (from the date of posting), failing which the defendant will forfeit a 3 months period of grace during which he can thoroughly investigate the claim. Members are reminded to advise the Club immediately of any correspondence received by them relating to personal injury claims. If the correspondence is from English solicitors, the new protocol means it is essential to do so urgently ■

Cholera outbreak – Northwest Madagascar

A recent outbreak of cholera has been reported in Northwest Madagascar. The outbreak probably originated in the Comoros Island. Efficient sanitation and a clean water supply are important in the fight against cholera; these must support scrupulous personal hygiene and careful food preparation. Travellers to the region are therefore advised to observe strict food and hygiene precautions.

Initial symptoms of cholera are painless fluid diarrhoea and vomiting; severe cases show muscle cramp and prostration. The condition worsens relative to the amount of body fluid lost. Prompt medical advice is required upon appearance of the symptoms; treatment will include replacement of fluids and lost electrolytes such as sodium chloride, bicarbonate and potassium.

Medical response in Madagascar is directed towards comprehensive administration of antibiotic medication. International visitors are met at ports and airports with compulsory antibiotic medication (300mg Doxycycline). Adverse

reaction to Doxycycline is rare, the most common reactions being nausea, vomiting or diarrhoea. Some more serious side effects may include rashes, itching or increased sensitivity to sunlight; these reactions are rare but medical advice should be sought if they are encountered.

Travellers should retain the official confirmation issued by the medical authorities after taking medication. This will help avoid repeated administration of the antibiotic that is tendered at many police roadblocks and other points throughout the country. The normal dosage for Doxycycline ranges between 50 and 200mg daily but an occasional extra dose is unlikely to cause serious problems.

Recent medical advice suggests that immunisation with standard vaccines provides little protection against cholera. Stringent food and personal hygiene precautions are the best steps available for avoiding problems with cholera ■

