

# UK CLUB

## Hi-Lights - Issue No.5

### Contracts of Employments

We regularly encounter contracts of employment which are silent by way of stating levels of compensation to be paid to sick or injured crew members and/or dependants of crew members. We are pleased to offer assistance and advice with regard to crew contracts of employment upon request.

We would remind Members in line with the Association's Rules and Bye-Laws under Rule 2, Section 2 and Section 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.

### Filipino Seamen - Court Rules on Seafarers' Status

In our first issue of HiLights, we posed the question "Is the Filipino Seafarer a regular or contractual company employee?" The reason why the answer to this question was considered of importance is that company (regular) employees in the Philippines are able to file for termination and retirement pay, while contractual employees can not. If it was ultimately decided that seafarers are regular employees, then a precedent would be set with the likelihood of severe financial implications for owners and their manning agents.

The Philippines Supreme Court has recently issued its ruling on the contested employment status of Filipino seafarers by declaring them as contractual and not regular employees. The Supreme Court in its ruling decided Filipino seamen are governed by the rules and regulations of the Philippines Overseas Employment Administration (POEA) whose standard employment contract provides for a "fixed period." The Supreme Court said seafarers' employment is "governed by the contracts they signed every time they are re-hired, and their employment is terminated when the contract expires. "

Good news, indeed, for shipowners.

### Charterers Beware

From 18th September, all ships entering United States waters will, in addition to information supplied to the US Coast Guard (USCG) and Immigration Authorities, have to name its charterer. While a basic list of charterers already appears on USCG's Port-State Control websites, USCG is now demanding information concerning a charterer

who "contracts for the majority of the ship's cargo-carrying capacity."

In the view of USCG, a charterer has the power to inspect a ship while rejecting any ships it believes to be of a substantiated nature. According to USCG, a charterer has no excuse for not carrying out a check on a ship or for requesting his broker to do so.

### Lifeboat Drills

In HiLights Issue No. 3, we detailed two incidents concerning crew members injured while working on or testing lifeboats.

A leading Norwegian safety expert has claimed the worrying number of casualties during drills has made seafarers wary of the life saving systems installed for their benefit. It is suggested crew should not be inside the lifeboat during launching drills. This effectively should reduce the risk to life from an unattended hook release.

These concerns are shared by the United Kingdom Marine Accident Investigation Branch. The MAIB suggests many on-load release hooks have become over-complicated, with "poor labelling, complex mechanisms and hard to follow operating instructions." A lack of understanding of the mechanism involved, lack of adequate training and poor maintenance, are also blamed for incidents/accidents arising.

### **Recent MAIB Lifeboat Accidents Statistics**

<i>Classification</i>	<i>Number of Incidents</i>	<i>Injuries</i>	<i>Lives Lost</i>
Hooks	11	9	7
Tricing and Bowsing	10	5	2
Falls, Sheaves and Blocks	12	19	2
Engine and Starting	18	15	0
Gripes	12	10	0
Winches	32	8	0
Davits	7	7	0

**The information provided in this bulletin is believed to be correct, but we do not guarantee its completeness or accuracy.**

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One recent injury during a lifeboat drill involving a cruise operator connected with the United States concerns an injury to a ship's waiter, while the ship was in port in Mexico. During the lifeboat drill, and as a result of a missing safety pin, the lifeboat was left suspended above the water, jammed at a 450 angle. The Boatswain ordered this crew member to use a manual crank to right the lifeboat.

During this manual operation, repairs to the electric device that moves the lifeboat were completed, thus correcting the jam. As a result, a steel winch, which the crew member continued cranking, began to spin out of control, striking him on the head. The crew member lost an eye and received severe facial and head fractures, putting the crew member into a coma for a week.

16 operations followed as did a court award of USD7.7 million compensation to the seafarer, after owners admitted liability for the accident, leaving a Miami Jury to decide damages. The matter is subject to appeal based upon alleged errors in pre-trial rulings.

### **Funny Money**

One of our Member's recently faced a problem in Durban, South Africa when two crew members were arrested allegedly for handling counterfeit money. It is a well-known practice at Durban for crew members to purchase cell phones from hawkers on the quayside. In this incident, the two crew members handed over a USD100 bill in exchange for the cell phone receiving USD62 change. They later attempted to purchase drinks in a local bar, but were arrested on suspicion of handling counterfeit money. The USD62 given by the hawker being counterfeit.

A lawyer was retained to represent the two crew members at a hastily arranged court hearing. Fortunately, the Judge hearing the case immediately realised the two crew members were the innocent party in this scam, and they were released without charge.

Obviously, crew require to take precautions from whom they purchase such items as cell phones, while checking any change given to them during the course of any transaction.

### **Medical Repatriations via Scheduled Airlines**

Frequently, we are required to arrange medically escorted repatriation home for sick or injured seafarers. In the past few months, we have detected a growing reluctance on the part of major airlines to accept seriously ill/injured patients.

The two basic methods of dealing with such patients on a scheduled flight are either in a dedicated "bed" seat in first class or by removing seats and installing an approved stretcher (normally this happens at the rear of Economy Class).

Post September 11th, 2001 airlines were eager to accommodate patients travelling in this manner. However, the situation open to us now is not as favourable with airlines much less willing to have patients in the first, or business cabins, in case the presence of ill/injured patients "upsets" fellow passengers.

In a recent case, British Airways declined to carry a passenger to Orlando, citing the non-availability of a scissor lift at Orlando Airport.

Repatriation was subsequently carried out by another airline. British Airways now only accept stretcher cases to 6 United States airports.

Owners should be aware, therefore, that if this trend continues, it may not be easy to organise such repatriation. We will, therefore, request early notification from hospitals and attending doctors of when a patient is likely to be repatriated under medical escort in order early attempts can be made to alleviate problems that may be encountered with airlines. We will monitor this trend reporting further if the situation worsens.

### **Arrest in India for securing claim in arbitration**

We are advised following a recent judgement of the Bombay High Court in the case of M/V MEHRAB delivered in July 2002, it is now possible to arrest a ship in India for securing a claim in a pending or future arbitration. This will come as a relief to claimants who are looking for security in respect of their claims in London arbitration. Whilst the court now has the discretion to make the order of arrest, the claimant will have to satisfy the court that the claimant has a maritime claim and there is a need for security.

### **Spain - Tackling the problem of Stowaways**

There has been a sharp increase of the number of stowaways attempting to reach the Spanish mainland, with hundreds of African immigrants coming in every day through the Canaries and Andalusia. This is occurring against the backdrop of the Directorate General of Merchant Marine Affairs strengthening its policy against sub-standard ships, as well as sub-standard practices.

The Directorate based in Madrid has recently discussed matters involving stowaways being intercepted while trying to enter Spanish territory through the many ports of Spain. While stowaways and illegal immigrants fall within the remit of the Spanish police, the Directorate can intervene in accordance with the State Port Act of 1997, Article 115-e.

Article 115-e states that the failure of the Master to secure a stowaway on board prior to the stowaway being handed over to the competent Authorities, constitutes a breach of Spanish law, which, incurs a fine or fines of up to €180,000 (USD178,000).

In practice, the Directorate, through the offices of the Harbour Masters, impose fines of €150,000 (USD148,000) for each case of breach of Article 115-e.

As you can see, this penalty is considerable and must be secured before the ship is allowed to sail. Therefore, the message to Masters is to secure stowaways on board on arrival at Spanish ports, while assisting Spanish Authorities with any formalities that are required to be undertaken.

Breaches of Article 115-e are occurring at a rate of more than 1 per month, with fines of €2 million having been imposed by the Directorate in the last 12 months. While there is little doubt that the European Union immigration policy is still not dealing with the question of stowaways and illegal immigrants in the most effective way, in the case of stowaways Spanish Harbour Masters and the Directorate will deal severely with owners/Masters.