

Hellas HiLights

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Thomas Miller strengthens Greek team in key market

Two new staff appointments at Thomas Miller highlight its continuing commitment to Greek ship operator Members of the UK P&I and UK Defence Clubs.

Paul Collier, who is an Underwriting Director, has been appointed to lead the underwriting service provided by both Clubs to their Greek Members. Paul has ten years underwriting experience with Thomas Miller during which he supported the Clubs' Greek and South American Members. Previously he had spent five years working as a P&I broker.

Working closely with Paul will be Mark Mathews who is joining Thomas Miller in September. Mark previously worked as a senior underwriter with another P&I Club and also for many years as a marine insurance broker and will be bringing with him a wealth of experience.

Daniel Evans, the Club Manager for Thomas Miller Defence, is assuming the role of Regional Director for Greece. In this strategic role Daniel will be responsible for the level of service and support provided to Greek Members of the UK P&I and UK Defence Clubs. Daniel has been with Thomas Miller since 1992 and has been heavily involved in the Greek market since that time. He played a significant role in expanding the office of Thomas Miller (Hellas) and was its Syndicate Manager from its inception as a claims office in 1998 until he returned to London in 2002.

Thomas Miller's chief executive, Hugo Wynn-Williams, welcomes these appointments, "Daniel, Paul and Mark's considerable expertise and experience in P&I and Defence is an essential component of the broad collection of skills our dedicated Greek team deploys, both at home and abroad.

We look forward to their continuing contribution to the long and loyal relationships we have enjoyed with our Greek Members."

As Members will be aware the previous Regional Director, Nigel Brooks, will be leaving Thomas Miller after serving more than 20 years with the firm.

Greek controlled ships account for approximately one quarter of the UK Club's total membership of 105 million gross tons. The Club can trace its links with Greek owned ships as far back as 1885, to a ship called the Embiricos. Its first Greek director, Basil Mavroleon, was elected as a Director of the UK P&I Club Board in 1938. The current Chairman is Mr Dino Caroussis.

The UK Defence Club also has a significant Greek membership with about one third of its entered ships being Greek controlled. The current Chairman of the Club is Mr Panos Laskaridis.

Thomas Miller has a team of 26 claims handlers and underwriters, located in Piraeus and London, on hand to support Greek Members of the UK P&I and UK Defence Clubs.

Rod Lingard is the current Syndicate Manager of Thomas Miller Hellas, known by the abbreviation H1, and he is supported by nine claims directors and executives and support staff.

"Our executives have a broad range of experience and backgrounds which provide the office with an extremely balanced and well qualified source of P&I and FD&D knowledge. We have Greek and English speakers with English and Greek legal qualifications. With this expertise, we have built up experience and skills in handling claims in all the world's major jurisdictions for our Greek-based membership."

In the London office, Syndicate 2 supports Greek controlled tonnage whose Members prefer to manage their insurance affairs through their London offices. Philip Clacy leads Syndicate 2 assisted by thirteen claims handlers, many with either legal or practical shipping experience, some of it in ship operators' employment. Philip led the H1 team prior to Rod's appointment in 2009.

Posidonia Open Day

Thomas Miller Hellas had its most successful Posidonia party yet when more than 400 P&I, Defence, Hellenic War Risk and ITIC Members together with brokers, lawyers, surveyors and other shipping service providers attended the office Open Day on 10th June, 2010.

The Thomas Miller event was again held towards the end of the exhibition week and with the end in sight it gave those attending an opportunity to wind down and enjoy good food and good company in the knowledge that they had survived yet another Posidonia!

Several desks were dismantled and removed to make way for the bar and catering areas. The guests went on to consume 2,000 duck rolls and the same number of pieces of sushi washed down with several gallons of frozen margaritas. The fact that the salt for the edge of the glasses ran out didn't deter anyone. The party venue lived up to its billing as, "the verandah with the best harbour views in Piraeus", and on a bright, sunny day with the temperature reaching in to the 30's, the ice cream bar also proved very popular. Extremely positive feedback was received from those who attended.

The success of this event is dependent on a huge team effort involving the local Thomas Miller Hellas office, Nick Whitear and his team in London, a large contingent from the London office and on this occasion visitors who travelled from Hong Kong, the Isle of Man and New Jersey. The main thanks must however go to Anna Lagos who put a huge amount of effort in to ensuring that everything ran smoothly.

A selection of photos from the day follows.







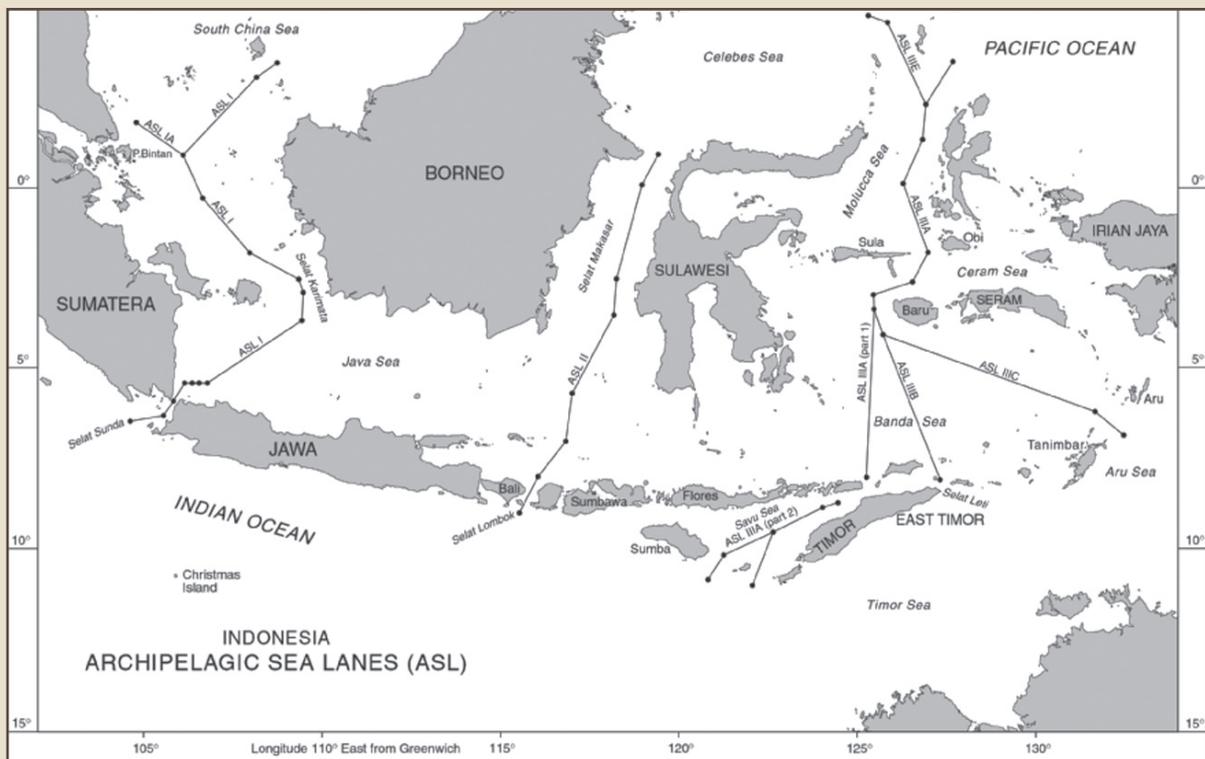
The query

A Member's ship was fixed on a time charter for a round trip from People's Republic of China via Australia to load manganese ore for discharge in Pohang. The charterer routed the ship in accordance with the appointed weather routing agency's suggestion. However, the master consulted his on-board publications before producing a voyage plan to take account of passage through the Indonesian Archipelagic Sea Lanes ("ASL"). The difference between the charterer's proposed route and that selected by the master was approximately 275 nautical miles and resulted in a dispute over time and associated costs. Key in the master's choice of route was his understanding of Indonesian government regulations concerning ASL's and the Admiralty Ocean Passages of the World. Whilst these appeared to him to oblige him to route through one of the three ASL's, the charterer disagreed stating that there was no such obligation. We were asked to check the status once the ship had already made its way to Australia.

Archipelagic sea lanes

What is an ASL?

Article 53 of UNCLOS III, which gave rise to the Law of the Sea Convention, ("LOSC"), that entered into force in November 1994, outlines the right of an officially-recognised archipelagic state to designate ASLs within its waters for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas and another. ASL differs from "innocent passage" in that it allows a vessel to transit in "normal mode of operation", for example, submarines may transit submerged and surface ships may replenish-at-sea within the designated channel. More importantly, ASL passage cannot be suspended by order of a state. At present, there are only three of them in the world, all in Indonesia. However, as 19 states have claimed archipelagic status, there is a possibility that the number of ASLs will increase.



Archipelagic Sea Lanes (continued)

An international issue

The LOSC envisaged that the IMO would be the competent authority to decide whether or not a proposed ASL should be adopted or not. However, due to a difference of opinion between the interests of coastal states and maritime states, the development of ASLs has been slow. Indonesia's application in 1996 was, for example, opposed by the US and Australia with the effect that the IMO classified Indonesia's ASLs with "partial designation" only. In effect, this permits those transiting Indonesia's waters to use "normal passage routes" whether or not these are within the ASLs. What constitutes "normal passage route" is, of course, open to debate but a route that is used regularly will most likely pass the test.

The local response

Indonesia, apparently dissatisfied with the IMO approach, enacted domestic legislation of its own in 2002 that characterised the three original ASLs as fully designated. This statute asserts that all traffic outside the three ASLs is subject to "innocent passage" only, restricting to a certain extent what a ship operator can do when their ship is in transit but outside the ASL. Thus, there are currently two levels of regulation in place, the international and the local Indonesian.

Nautical chart courtesy of HMSO and the UK Hydrographic Office

The answer we gave

To understand the problem faced by the Member and provide a useful response we contacted our correspondents in Jakarta for their insight and also asked a firm of international solicitors for advice. Within 24 hours, after collating the responses we received, we advised the Member not to insist on ASL routing on the return leg to Pohang as that would most probably be an indefensible stance under the prevailing English Law charterparty regime. Whilst the position in Indonesian law appears to be different, provided ships abide by rules of innocent passage and, if they do not use the ASL channels, make sure that they follow "normal passage routes" they should not find themselves in trouble. If in doubt, just drop us a line.

Some links that tell you more about ASLs

http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf

<http://www.gmat.unsw.edu.au/ablos/ABLOS03Folder/PAPER7-1.PDF>

Ten years on Akti Miaouli

The importance of the Greek community to the Club has never been underestimated and the Managers of the UK P&I and UK Defence Clubs have maintained a representative office in Greece staffed by Thomas Miller executives for more than 30 years.

Peter Wright moved to Greece in 1997 to head up Thomas Miller's operations there. Under Peter's guidance, in 1998, Thomas Miller (Hellas) Ltd. was restructured into a fully fledged claims handling unit responsible for service delivery to the Greek based Members of the UK P&I and UK Defence Clubs. The office relocated to Akti Miaouli in 2000 to accommodate its expanding activity. Peter retired in 2003.

Initially Daniel Evans, who is now the Club Manager of Thomas Miller Defence Ltd., was the Syndicate Manager based in Piraeus. Daniel handed over to Philip Clacy in 2002 and then in 2008 Philip moved back to London to head up the London based Syndicate 2, which also services Greek controlled tonnage, and Rod Lingard became the resident Syndicate Manager.



Following the financial crash in the final quarter of 2008 the UK Defence Club, in common with its competitors, faced a significant increase in claims both in terms of the number, and the value, of those claims.

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As some ship operators found themselves facing significant difficulties meeting their contractual obligations the services of the Club were in great demand as Members sought to protect their positions. Claims were of a very high value with MOAs, shipbuilding contracts and long term charterparties fixed at the height of the market being cancelled or re-negotiated on a regular basis.

The financial strength of the Club has meant that it was well placed to deal with the increase in claims and its free reserves currently stand at £19 million, which is well in excess of regulatory requirements.

The 2010 policy year has started more slowly and claim numbers are more in line with previous years. The types of claim being seen are of a more “traditional” nature such as speed and performance, unpaid hire and demurrage disputes.

Thomas Miller Hellas has been involved in two very high profile cases in recent months, both of which are significant for the shipping industry in general.

The Court of Appeal case of the RAINY SKY concerned the circumstances under which a buyer could make a claim under a refund guarantee following the insolvency of a shipyard. Disagreeing with the decision of the High Court, the Court of Appeal held that the construction of the refund guarantee meant that it did not respond to such an event. Following this unsatisfactory decision the buyer Member has successfully obtained leave to appeal to the Supreme Court and the case is expected to be heard later in the year.

The office has also been actively involved in assisting the owner Member in the case of the SALDANHA, which concerned the question of whether a ship should remain on hire whilst under seizure by pirates. An eminent London arbitration tribunal initially found that the ship was on-hire however the charterer obtained permission to appeal to the English High Court. The Court re-confirmed the decision of the arbitration tribunal and the judge concluded that if parties wished to treat seizure by pirates as an off-hire event then they could do so by way of specific wording to that effect. The charterer has been refused leave to appeal to the Court of Appeal and the case is now at an end.

The UKDC is holding a seminar on 5th October, 2010 the details of which are set out below.

Maritime Arbitration – London, New York, or elsewhere...

**Tuesday 5th October, 2010 1630 - 1830hrs
Galaxy Room, Athens Hilton**

A drinks reception will follow the seminar.

With the assistance of the president of the LMAA, Mr John Tsatsas, and well known New York attorney, Jim Textor of CCKV&T, we will explore some of the different arbitration centres, including London, New York and Singapore. London remains the traditional centre for maritime arbitrations, but what are the alternatives? Does New York have the capacity and experience to deal with a large volume of arbitrations? Is Singapore going to become a key venue given the emergence of Asia? What about the LMAA - what is it doing to respond to the current views and expectations of its users?

The seminar will look at issues such as:

- recent developments
- costs & Part 36 offers
- case management & interlocutories
- enforcement
- new arbitrators
- recent awards, appeals and case reporting

Invitations will be sent out in due course.

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UKDC

UK DEFENCE CLUB

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