

South African Review

JUNE 2011

Welcome

Welcome to the first edition of our joint UK P&I and UK Defence Club review for our South African Members.

In this first edition, one of our correspondents gives an overview of stowaway problems, with specific reference to local South African issues. The question of armed guards on-board ship as a counter to piracy is also reviewed on page 7. Whilst not prohibited by P&I cover per se, some difficult issues arise from the implementation of armed guards in respect of firearms regulations.

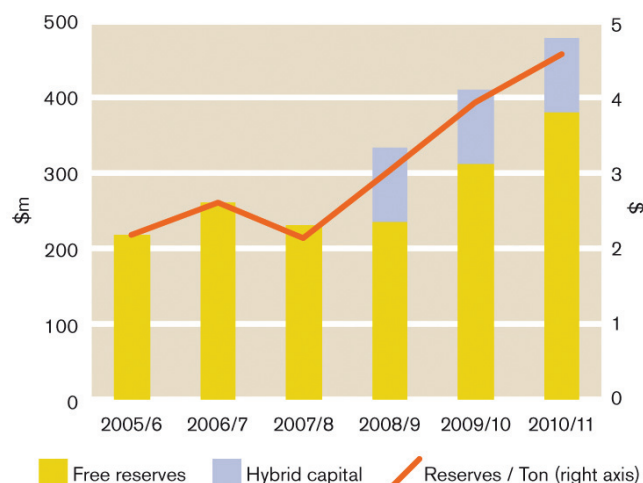
On a lighter note, presentations were made this year to Grindrod Group's Alan Olivier to mark the Grindrod centenary and to Tim McClure on his retirement from IslandView Shipping.

Both the UK Club and UK Defence Club have recently announced strong financial results for the year ended February 2010. Further details are found on clubs' websites (ukpandi.com & ukdefence.com) where summary financial reviews have been published.

Contact details for South African Members complete the back page of this review. Daniel Evans heads up the South African regional team, which consists of three highly experienced claims handlers – Paul Kaye, Ioana Gonciari and Sarah Sullivan – with Nigel Long providing the underwriting expertise. The South African team are equally skilled and experienced in both P&I and FD&D matters.

Paul and Ioana's early summer visit to South Africa includes a seminar for UK Club and UK Defence Club Members at the Royal Natal Yacht Club on a number of key issues which affect Members, including piracy.

UK P&I Club – Capital and reserves for financial years 2006-2011



UK P&I Club – Financial highlights

- Capital and reserves increased to \$478 million
- Capital and reserves per ton increased to \$4.5
- Standard and Poor's rating of A- (Stable)
- Capital adequacy per the S&P capital model comfortably in the AA range
- Total assets \$1.6 billion

UK Defence Club – Financial highlights

- Total number of ships entered 3,493
- End of year reserves £21.7 million
- Total funds £51.6 million
- The Club continues to have a strong balance sheet with assets of £51.6m and a ratio of assets to liabilities of 172%



Retirement of Tim McClure

At the beginning of the year, a reception was held at the Thomas Miller office in London to mark the retirement of Tim McClure from the boards of Island View Shipping and Grindrod.

As Tim has been a Director of the UK Defence Club for many years, the function was attended by a number of Defence Board Directors and Thomas Miller guests. Thomas Miller chairman, Hugo Wynn-Williams, was on hand to present Tim with a set of wine glasses individually engraved with images of South African wild birds.

Grindrod Centenary

UK P&I and UK Defence Member Grindrod Group achieved their centenary in 2010.

Thomas Miller was honoured to be able to present Grindrod Group CEO and UK Club Deputy Chairman, Alan Olivier with a commemorative 'Mandela dish'. The engraving within the dish is an extract from Mandela's Long Walk to Freedom and reads:

"There is nothing like returning to a place that remains unchanged to find the ways in which you yourself have altered." A Long Walk To Freedom, 1994

The dish was produced by leading British glass artist Carl Nordbruch and engraved by Peter Furlonger.

Stowaways in South Africa

These unwelcome guests on-board our Members' ships generate significant numbers of claims each year. Club correspondents local knowledge and expertise are frequently called upon to help resolve stowaway incidents.

Correspondent Ron Evans from P&I Associates has been handling stowaway claims on behalf of shipowners for over 15 years. Last year, their offices in Durban, Richards Bay, Cape Town and Port Elizabeth disembarked and repatriated 138 stowaways from arriving ships as well as 36 from Walvis Bay, Namibia.

Here, he gives an overview of the specific issues presently encountered in South Africa.

How the problem has arisen

Despite enhanced security such as perimeter fencing, security checkpoints, boom gates and cameras, stowaways continue to breach insufficiently protected areas in South Africa's major ports, particularly in Durban, Richards Bay and Cape Town.

Since the opening of South Africa's borders in 1994, inhabitants of neighbouring countries, and

those further afield, have migrated in substantial numbers. Some anticipate better opportunities in South Africa, others see it as a departure point for other countries. The number of illegal immigrants is estimated as high as five million.

In an effort to deal with the problem illegal immigrants have been allowed to apply for refugee status in the form of a Section 41 Permit. This allows them to remain in South Africa pending their application for residence or a work permit. Stowaways from South Africa are often found with these permits which are invalidated by leaving the country illegally i.e. by stowing away. Our experience is that mainly Tanzanian nationals are stowing away from South African ports.

The shipowner's responsibilities

Shipowners are responsible for any stowaways found on-board a ship after it has been cleared to sail from a Port of Entry in South Africa by the Immigration Officer. Once the ship has cast off and begun its outward journey, it has effectively left the Republic of South Africa. Any stowaways found on-board are returned to South Africa and deported.

The Immigration Act states that any illegal foreigners removed from the vessel and detained by the immigration authorities are deemed to be "under the custody of the Master of the Ship". Consequently, the Master or owner is liable to pay for those deportation costs from South Africa.

Government policy and the independent role of regional immigration departments

South African government policies are unchanged in respect of disembarkation of stowaways at South African Ports. But, the practice of some immigration departments at individual ports has changed.

Previously in Cape Town, the Department of Home Affairs (Immigration) would transport disembarked stowaways by road or rail to





Johannesburg in the custody of official immigration escorts. However, Immigration has now required contractual arrangements be made with private companies to move deportees. Our Cape Town correspondent office has been tasked to move stowaways using their private escorts, usually to Johannesburg by air and then on to final destination. These approved escorts are used by South African Airways and have built a longstanding good relationship having moved stowaways worldwide back to Africa.

Similarly, there is no uniformity of immigration fines or deposits for stowaways.

The Immigration Act 13 of 2002, Sections 8 and 9, states that an immigration fine of not more than R10,000-00 shall be imposed for bringing in an illegal foreigner to South Africa. However, this fine is not rigidly applied.

In Durban, for instance, a non refundable fine of R5,000-00 is paid after the stowaway has been disembarked. In Cape Town, a deposit of R10,000-00 per stowaway has to be lodged with the Department of Home Affairs (Immigration). This deposit is used in the repatriation of the stowaway.

In Richards Bay and Port Elizabeth, Immigration levy a non-refundable fine of R10,000-00 per stowaway. In Walvis Bay, Namibia (served by our Cape Town office) Immigration require only that there are sufficient repatriation funds made available – but there is usually no fine or deposit required.

Although the lack of set standards for all South African ports may be criticised we do what we can to keep the system working smoothly. South Africa is one of the few countries in the world in which stowaways can be disembarked. Any unnecessary interference could ultimately be detrimental to ship owners and their operations. To this end, we continue to work closely with each of the authorities concerned at the various ports to ensure owners' interests are protected.

Prevention is better than the cure

Security on and around ships whilst in port is paramount. Appropriate deck and gangway watches are essential. Detecting a stowaway once he has boarded can be very difficult prior to sailing. Crew will understandably be preoccupied with preparing the vessel for sea and searches may not be as thorough as they should be.

Private security companies can be contracted to carry out physical searches prior to the ship sailing. We recommend the use of search dogs for their acute senses of smell and hearing. Jack Russells are often used as they can reach confined spaces with ease.

Ship searches with dogs have discovered many stowaways. Removed prior to sailing they are



handed to the South African police and prosecuted for trespassing. The benefit of this successful search is the stowaways then become the responsibility of the state.

Dog search companies often guarantee repatriation costs if stowaways are found on-board a ship after it has sailed. Guarantees vary from ship to ship so local agent and master should scrutinise the contract and benefits before commencement of



the service, as often they have exclusion clauses in place. Statistics from one of the three reputable dog search companies in Durban for March 2011 show seven Tanzanian stowaways were found on-board five different vessels prior to sailing. Another eleven stowaways attempted to board, but managed to escape when detected.

Practical considerations – the “professional” stowaway

Over the years stowaways have become increasingly physical, difficult to handle and demanding. For example, when boarding aircraft, either in South Africa or overseas, they may demand remuneration with the threat they will cause a commotion in front of passengers and crew. This concerns airlines to the extent that pilots may refuse to allow stowaways to board. Many stowaways aim to use the lack of time to negotiate when boarding a flight to their advantage.

For more information on this issue, please contact Ron Evans at: evansr@pandi.co.za or alternatively London Syndicate 3, which handles stowaway claims on behalf of Members at: LS3.UKClub@thomasmiller.com

Procedures for dealing with stowaways

Many stowaways give themselves up once the ship is at sea, often by making a loud noise. For a ship discovering stowaways, the priority is for them to be disembarked at the next port of call. The master should therefore immediately inform the owners and the Club or Club's correspondent so that international formalities can be completed as soon as possible.

A master should, if possible, immediately:

1. Search the area where the stowaway was found for concealed documents etc.
2. Search the stowaway's clothing.
3. Interview the stowaway and immediately advise the Member and the agents at the next port of call of the following:
 - a. Port of embarkation.
 - b. Details of documents held.
 - c. Name.
 - d. Date and place of birth.
 - e. Address.
 - f. Nationality.
4. Photographs should be taken of the stowaway in order to speed the acquisition of travel documents.

If digital photography is available it may be possible to e-mail transfer the images to the agent or the Club's correspondent at the ship's next port of call, thereby saving time with the necessary formalities.

5. The stowaway should be kept secure at all times, particularly when the ship is in port.
6. While the stowaway is on-board, the master should not provide work for him and the stowaway should not be signed on to the Ship's Articles.
7. The Member should immediately advise the Club of the above, together with:
 - a. Full itinerary.
 - b. Details of agents at future ports of call.
 - c. Details of ship's radio/fax/telex.
8. The Club will agree a course of action with the Member and instruct local correspondents where necessary.
9. Masters should always bear in mind that stowaways frequently give false details in order to delay their removal from the ship. If the master believes that the stowaway is not telling the truth, he should so report.

Dealing with stowaways – Doing it by the book, not by heart

As soon as stowaways have been discovered on-board, masters, crew, owners and operators are compelled to deal with a series of complex legal and administrative procedures.

You see foolhardiness, bloody mindedness, ingenuity and even courage among stowaways. You see ruthlessness and skulduggery among the criminals who make the arrangements and charge the stowaways huge sums for doing so. And then there are the authorities. Their obligations have changed over the years but the degree to which they discharge them and their zeal in doing so varies considerably between countries.

Once stowaways have been discovered, masters and crew on the one hand, and owners and operators have to follow demanding legal and administrative procedures or find themselves in trouble. An outline procedure that should be undertaken by masters in the event of stowaways being found on board is set out below.

A case in Durban showed how things can go massively wrong when master and crew allowed their feelings to influence their judgement and depart from the proper procedure.

Seven stowaways revealed themselves to the crew after the vessel had left Kenya for Durban. The crew felt sorry for the stowaways and the master kept their presence from the owner.

On arrival at Durban, they were not declared to the port authorities. The crew allowed the stowaways to climb down a rope and drop into the harbour to swim to a remote quayside, perhaps in search of another ship on which to stow away.

Tragically, two of the seven drowned. The other five made it to the quayside where they declared they had been forced off the ship.

The stowaways made statements to the police and prosecuting authorities in which they portrayed themselves as the victims and the crew as the



villains. The master and three crew members were arrested. Initial charges of murder were reduced to culpable homicide (manslaughter in other jurisdictions). They agreed a plea bargain, were heavily fined and received suspended prison sentences.

Typically, stowaways may well have suffered more of life's downs than ups, and crews may be inclined to treat them with kindness. It's a natural enough reaction. Yet, just as naturally, stowaways will often seek to improve their situation by enlisting the crew's sympathy. They will tell the crew awful tales of life in their home countries and that they are desperately seeking a new start in a first world country.

However, do not make friends with your charges as it can rebound upon you disastrously. They certainly won't be your friends when something goes wrong. As this case clearly illustrates, they may suddenly turn and bite the hands that have been feeding them.

Security guards in the Indian Ocean

There is no P&I cover restriction or prohibition per se on the deployment of on-board security personnel.

Appropriately trained and competent personnel may well assist in enhancing on-board security procedures and response. Proper care and diligence should be exercised in relation to the selection of the appointed security company.

The current view of most States and the industry, is that crew/on-board security personnel should not be armed. The reasons include the risks inherent in use of arms by untrained/improperly trained persons, the enhanced risk of loss of life/injury through armed engagement and the risk of encouraging the escalation of armed engagement and the use of more potent and warlike weaponry. There is increasing pressure from some states to positively support the use of armed on-board security. The most recent indications from the US are that it is heading in this direction in relation to US flag ships. Industry bodies are also moving to a more neutral stance on the issue and leaving the decision to the owners.

A key consideration for South African operators are the Flag State and Port State restrictions, licensing requirements or prohibitions on arms on-board ships. South African police require 21 days notice prior to a ship arriving with arms or ammunition on-board and that a permit has to be obtained. Failure to comply may result in a fine.

Whether P&I cover is prejudiced by having armed guards on-board is likely to be dependent on loss/causation on a case-by-case basis. It is unlikely that cover would be prejudiced by the use/actions of unarmed guards, but intervention by armed guards could result in prejudice to cover if their use is in breach of, Flag State, Port State or other applicable legal prohibition.

Shipowners should also ensure that the embarkation of additional security personnel does not place them in breach of SOLAS safety equipment certificate requirements.

The UK Club has seen a variety of different forms of contractual arrangements in use by on-board security providers. These arrangements may

contain assumptions of responsibility to indemnify or hold harmless in respect of consequential losses and damages. There may also be obligations to provide insurance cover.

In many of the contracts we have seen the security company's insurance cover has a fairly low limit of cover. The consequential liabilities assumed by shipowners may not be fully covered by the Club and may be excluded if those liabilities would not have arisen but for the terms agreed where these are not permissible in accordance with the governing principles in the Pooling Agreement relating to contracts and indemnities.

As a minimum there would be an expectation that the terms would contain reciprocal indemnities for liabilities arising from negligence or would be no less favourable to the shipowner than knock for knock.

In the event that the "weapons of war" exclusion is triggered, there would be no P&I cover and shipowners would need to clarify the position of their war risks underwriters in relation to the terms of the security company contract.

Members are encouraged to consult fully with the Club and their war risks insurers before entering into such arrangements so we can advise on any potential gaps in or restrictions on cover.

Armed guards and firearms control

Due to the upsurge in piracy activity in the Indian Ocean region, there has been an increase in the number of merchant ships that are carrying security guards, guns and ammunition.

It is common for security guards disembark their client ship after it has transited the piracy high risk area of the Gulf of Aden and Indian Ocean but for their guns to remain on-board, only to be removed at the ship's final destination. The issue of guns and ammunition remaining on-board vessels is creating problems in South Africa. Two masters have already been arrested and charged under the South African Firearm Control Act.

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