UK P&I CLUB

WINTER 2015/16

BODILY INJURY NEWS

The journal of the Thomas Miller Americas' bodily injury team

A shipowner's obligation to those lawfully on board

Proof of negligence post *Scindia*

The role of jury focus groups

Negotiating damages through BI mediation

Managing the cost of maritime healthcare in the US

UK P&I CLUB IS MANAGED BY **THOMAS MILLER**

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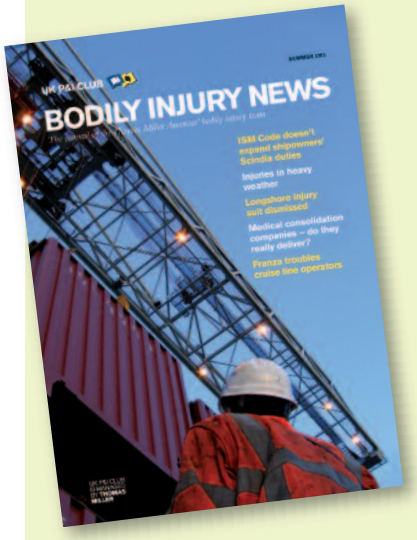


Bodily Injury News

Bodily Injury News is the bi-annual newsletter of the Thomas Miller Americas' Bodily Injury Team.

The topics it addresses are highly relevant to all our Members worldwide given more than half of the Club's personal injury claims over $100,000 are brought in the American courts.

We welcome your feedback on the topics we cover as well as suggestions on subjects to address in future issues. Please send your comments and ideas to Louise Livingston at louise.livingston@thomasmiller.com

The information in this newsletter is not legal advice and should not be relied upon as such.

Mutual strength

At the half year, the UK Club holds free reserves and hybrid capital of $559 million. The low number and cost of notified claims on the 2015 policy year is encouraging with few large claims falling within the Club or Pool retentions. Underlying claims inflation is currently running at around 4% per annum, however, this has been offset by the continuing reduction in claims frequency. Although moving the premium forward to meet claims inflation remains a key objective of the Club, the Board is very aware of the continuing stress in certain sectors of the shipping market and has therefore set the General Increase for 2016 below the level of claims inflation, at 2.5%. The Board has decided to lessen the impact of the General Increase decision by declaring a Mutual Premium Discount of 2.5% on the total mutual call for the 2014 policy year. This discount will be applied by way of a credit to the final instalment of the 2014 policy year mutual premium and will amount to a 10% reduction for all mutual Members for that instalment. This is the second such return made in the last four years.

The 2015 BI Seminar

This year's seminar was busy and covered topics ranging from legal duties to longshore workers, crew, visitors and passengers, medical bill auditing, damages recoverable in personal injury cases, to calculating damages awards in an actual case handled by the Club. The seminar combined legal updates with practical advice and exercises, and was well attended by a broad range of Members. The response from delegates was overwhelmingly positive.

One World

This was the starting site of the post-BI Seminar festivities. Seminar guests, speakers and the Club toured the observatory located on the 100-102 floors of the building. Seeing the early evening New York skyline in 360 degrees was spectacular. Cocktails and dinner followed at the nearby Palm Restaurant.

Welcome Julia

Julia M. Moore, a New York maritime attorney with 27 years litigation experience, joined Thomas Miller Americas and the BI Team in October. Julia specializes in maritime personal injury defense and insurance coverage matters. We look forward to her contributions to the Team and the BI Seminars.

We welcome your feedback on the topics we cover in our newsletter and invite you to suggest future topics. Contact details for our Bodily Injury Team can be found on the back page. ■

Mike Jarrett
President & CEO, Thomas Miller (Americas) Inc.

A shipowner's obligation to those lawfully on board

Life on a ship can be very busy, with many different people on board, but a shipowner has a duty of care to them all. Should anyone who is lawfully on board be injured or killed, the owner, operator or charterer may be liable to pay compensation. **Dee O'Leary** summarizes the morning session from the seminar.

Greg O'Neill, a partner at New York's Hill, Betts & Nash LLP, provided a brief summary of the obligation of a shipowner to those persons on board their ship.

Generally, there are three groups of people who are owed a duty by the shipowner: visitors, passengers and seamen.

A visitor is someone who may go aboard the vessel to perform some type of service, often times for pay. The obligation to visitors is "a duty of reasonable care to all who are on board for purposes not inimicable to the shipowners's legitimate interests." *Keramec v. Compagnie General Transatlantique* (U.S. S.Ct. 1959)

A passenger is one who travels in a public conveyance (ship) by virtue of a contract (ticket), express or implied, for consideration given (fare). The obligation to passengers is "a duty of reasonable care under the circumstances." *Rainey v. Pacquet Cruises* (2d Cir. 1983)

A seaman is defined as a person with an employment relationship that is (1) substantial in both time and nature to a vessel or group of vessels; (2) the vessels are in navigation; (3) the person contributes to the function of the vessel or the accomplishment of the mission of the vessel. A Seaman's primary remedies are:

- Maintenance and Cure (General Maritime Law)
- Unseaworthiness (General Maritime Law)
- Jones Act Negligence (Statutory, gives right to jury trial)

Maintenance and Cure

This remedy arises out of contract, express or implied, with the employer of the seaman. It was the only remedy throughout the 19th century. It is without regard to fault, meaning that it is an absolute duty. The seaman must prove two things:

- The seaman suffered an injury or became ill.
- At the time he suffered the injury or illness, the seaman was in the service of the ship.

The employer has an obligation to treat the injury or illness and to provide food and lodging until the seaman reaches Maximum Medical Improvement (MMI). MMI means that future medical treatment cannot improve the seaman's physical condition or ability to function. It is a medical decision, not a legal decision. With respect to maintenance and cure, all doubts are resolved in favor of the seaman, and if there is a question of fact, the employer must pay until the issue is resolved. If the employer fails to pay, he may be subject to punitive damages if the seaman can show that the failure to pay was willful, callous and arbitrary.

Unseaworthiness

The vessel owner owes a seaman a strict and absolute duty to provide a seaworthy vessel. This duty is a warranty. The vessel owner has a duty to furnish a vessel that is "…reasonably fit for its intended purpose." The standard is not perfection, but reasonably fit for intended use. It is

liability without regard to fault. The damages are compensatory (pain and suffering, loss of income) but not punitive.

Jones Act Negligence

Jones Act (Merchant Marine Act) (1920), 46 USC §30104 provides,

"A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of *trial by jury* against the employer. *Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section."*

Creates a statutory cause of action for negligence

Eliminates many elements of common law negligence to make recovery easier and "to pass the human cost of doing business from the employee to the employer".

The Jones Act provides both an injury and survival cause of action that can be brought against the employer only. There is a right to a trial by jury and damages are limited to compensatory and pecuniary.

Most importantly, there is relaxed causation standard, i.e. any conduct which "in whole or in part" causes the injury or death, known as the "featherweight" burden. In other words, any negligence which plays a part… any part…no matter how small…

Lastly, Greg O'Neill touched on the Death on the High Seas Act, or DOHSA 46 USC Section 30302, which applies to passengers, seaman and visitors:

- For death of an "individual"
- Caused by "wrongful act, neglect or default"
- Beyond three nautical miles
- Against person or vessel responsible
- Non-jury
- Pecuniary loss only

Previous issues of Bodily Injury News have covered Maintenance and Cure and Jones Act Negligence. ■

Section 905(b) post *Scindia:* A real and impactful defense

Bob Blanck, of Blanck & Cooper in Miami, explained the significance for shipowners and others in the maritime industry of Section 905(b) the Longshore and Harbor Workers' Compensation Act. **Noreen Arralde** examines the issues.

In 1972, Congress amended the Longshore and Harbor Workers' Compensation Act, commonly referred to as "LHWCA." The amendments provided an increase in the statutory benefits longshore workers receive from their employers, which improved the condition of the longshore community, and in exchange abolished the ability of longshore workers to sue vessel owners for a breach of the warranty of seaworthiness. Under the LHWCA amendments, liability is based on a narrow negligence standard, as opposed to unseaworthiness. Congress intended to shift responsibility from the vessel to party best able to prevent injuries: the stevedore-employer.

Scindia: The negligence standard

In 1981, the United States Supreme Court defined the legal standard applicable to 905(b) in the case *Scindia Steam Nav. Co., Ltd. v. De Los Santos.* In *Scindia,* the Court articulated three narrow duties the vessel owes to longshoremen, stating that a plaintiff must prove the breach of one of these three duties to prevail in a case against the vessel:

- Turnover Duty
- Active Control Duty
- Duty to Intervene

Longshoremen are considered to be "expert and experienced" in their field. The burden is on the longshoreman-plaintiff to prove breach of a narrow duty by the vessel. Courts generally focus on the conduct of the plaintiff as opposed to the defendant.

Status requirement

Although 905(b) claims are typically filed by longshoremen, they are not the only ones permitted to pursue such claims. In order to pursue a 905(b) claim, a plaintiff must be "engaged in maritime employment." Section 905(b) applies to independent contractors, provided they meet this status test. Examples of independent contractors who have been permitted to pursue a 905(b) claim include:

- Independent contractor employed to determine the effect of rust on the thickness of vessel tank walls was entitled to 905(b) claim. *Hill v. Texaco, Inc.* (5th Cir. 1982).
- Independent contractor employed to provide seismic services aboard a vessel was eligible to bring a 905(b) claim. *Hudson v. Schlumberger Tech. Corp.* (5th Cir. 2011).

905(b) statute of limitations and laches

LHWCA does not provide a specific period in which suit must be filed. Courts generally hold that the three (3) year statute of limitations that applies to maritime torts also applies to 905(b) claims. However, not bringing a claim within three years is not necessarily fatal as the court can still apply the doctrine of laches. Under the doctrine of laches, plaintiff bears the burden of showing excusable delay and lack of prejudice to the defendant.

905(b) and shipowners/ charterers

By its terms, 905(b) applies to owners of cargo ships, cruise vessels, bulk carriers, tankers, etc. But 905(b) can also apply to bareboat/demise charterers and voyage/time charterers, if it can be shown they have operational control over the vessel and breach one of the *Scindia* duties. The initial inquiry in such a case is to look at the charter party to determine whether any of the traditional responsibilities of the vessel owner have been transferred to the charterer by the terms of the charter party.

What consitutes a vessel under 905(b)?

According to the US Supreme Court, under the LHWCA the word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. For example, a dredge for removing silt from the ocean floor, which navigated short distances by manipulating its anchors and cables, was a vessel since it was practically capable of maritime transportation, regardless of whether dredge was in motion at a particular time or was primarily used for transportation. *Stewart v Dutra Constr. Co., 1* (U.S. 2005). However, an unfinished ship was not a vessel, although the hull was afloat on navigable waters, since it was not itself navigable. *Rosetti v Avondale Shipyards, Inc.* (5th Cir. 1987). A barge firmly moored to provide a permanent painting platform was not considered a vessel, but a barge spudded in place, which occasionally moved from site to site during a dock building project was considered a vessel under the LHWCA.

Turnover duty

The turnover duty is the most commonly litigated *Scindia* duty. The

duty is a narrow one. It requires vessel owners to turn over the ship to the stevedore in such a condition that a skilled and competent stevedore can carry out its work in reasonable safety. It does not require the vessel to be in a perfectly safe condition. The vessel is generally not liable for injuries caused by an open and obvious condition since such injuries could be anticipated and prevented by a competent stevedore.

Examples of cases in which the courts found no breach of the turnover duty:

- Plaintiff slipped while climbing down angle-iron supports into engine room. The presence of anti-corrosive substance not uncommon and the court granted summary judgment. *Romero v. Cajun Stabilizing Boats, Inc.* (W.D. La. 2007)
- The vessel owner had no duty to warn of slippery soybean residue because it was common and should have been anticipated. *Stass v. American Commercial Lines, Inc.* (5th Cir. La. 1983)

But in the following case, the courts found the vessel breached its turnover duty:

- A longshoreman was injured by a bundle of wood that fell on him after a vessel-owned sling broke. The vessel owner knew or should have known of possible defects in the sling, which would not have been apparent to the stevedore through the exercise of reasonable care. *Revak v. Interforest* (E.D. Pa. 2009)

The focus is on whether the stevedore should anticipate the defective condition or, through the exercise of reasonable care, could have discovered it.

Often inadequate lighting is said to be a basis for a 905(b) claim, although it is the duty of the stevedore, not the vessel owner, to provide adequate lighting for stevedoring operations. *Dow v. Oldendorff Carriers GMBH & Co., KG* (5th Cir. La. 2010).

Active control duty

The active control duty is triggered once stevedoring operations have begun. Generally, the vessel owner is not required to supervise, inspect, or monitor the stevedore's work. But the vessel may be liable if it "actively involves itself in the cargo operations and negligently injures a longshoreman or if it fails to exercise due care to avoid exposing longshoremen to harm from hazards they may encounter in areas, or from equipment, under the active control of the vessel during the stevedoring operation." *Scindia*. Simply observing cargo operations, as may be customarily done by the ship's crew, does not rise to the level of "active control." *Manuel v. Cameron* (5th Cir. 1997).

The test as to whether the vessel owner retained active control over the work includes:

- Whether the area in question is confined to stevedore's work area
- Whether the work area has been turned over to the stevedore
- Whether the vessel owner controls methods and operational details of work.

Duty to intervene

The duty to intervene applies after cargo operations have begun, but unlike the active control duty "concerns the vessel's obligations with regard to cargo operations in areas under the principal control of the independent stevedore." *Scindia*.

The vessel owner has a duty to intervene to protect the longshoremen if it has actual knowledge that the ship or its gear poses a danger to the longshoremen and that the stevedore is failing, unreasonably, to protect the longshoremen from the harm. Constructive knowledge does not constitute a breach of the duty to intervene. Courts have repeatedly held that the duty to intervene requires that a plaintiff show "something more" than the vessel owner's mere knowledge of a dangerous condition. *Futo v. Lykes Bros. Steamship Co.* (5th Cir. La. 1984).

Dual employment doctrine

What happens when the vessel owner employs the longshoremen as well? If a longshoreman is injured as a result of the vessel owner's negligence in its capacity as vessel owner, then a 905(b) suit against the vessel may be maintained. If a longshoreman is injured as a result of the vessel owner's negligence in its capacity as stevedore-employer, then the only remedy is statutory compensation. *Gravatt v. City of New York* (2d Cir. N.Y. 2000).

Indemnity issues between stevedores and vessels

The 1972 amendments eliminated a stevedore's obligation to indemnify a vessel owner or its charterer and voided contractual indemnification clauses. Indemnification clauses in contracts are valid only if they do not violate 905(b). Below is an example of an indemnification clause in use today:

(Stevedore) shall defend, indemnify and hold harmless (Vessel Owner), its employees, agents, successors, and affiliated companies against losses, damages, suits, expenses, claims and demands, including court costs and legal fees involving claims for death or personal injury or property damage, including pollution clean-up or damages, arising out of or in any way related to, directly or indirectly, the work contemplated by the Agreement, but not to the extent such loss or damage is caused solely by the negligent act or omission of (Vessel Owner), its agents or employees. **A determination of partial invalidity of this indemnification under the provisions of the Longshore and Harbor Workers' Compensation Act shall have no effect on the validity of any portion thereof not held invalid, nor shall a determination or declaration of invalidity of this indemnification as a whole affect the validity of this Agreement in its entirety.**

Note the indemnification clause specifically acknowledges 905(b)'s anti-indemnity requirement.

905(b) and the benefits of being an additional insured

Nothing prevents a stevedore from including a vessel owner as an additional insured on its liability policy. *LeBlanc v. Global Marine Drilling Co.* (5th Cir.1999). But read carefully the terms of the policy because many insurance policies covering stevedoring operations do not cover claims occurring on a vessel. For a stevedore's insurance policy to cover a vessel owner's liability, the watercraft exclusion must be deleted, as well as any other policy provision that would limit or exclude coverage to vessel owners. In addition, the vessel owner must be named as an additional assured with a waiver of subrogation and the policy must contain a provision making it primary coverage.

Don't assume that an insurance certificate showing additional insured coverage is sufficient. The vessel owner must confirm, by reading the policy, that it provides cover for shipboard liabilities.

Longshore compensation lien and attempting to settle a case

The LHWCA gives the stevedore-employer a subrogation right to recover the full amount of compensation benefits paid from the proceeds of a longshoreman's third-party suit. Moreover, the stevedore may intervene in the longshoreman's third-party suit and assert a lien to the extent of the compensation benefits paid. The claimant cannot settle a third-party suit independent of the LHWCA lien.

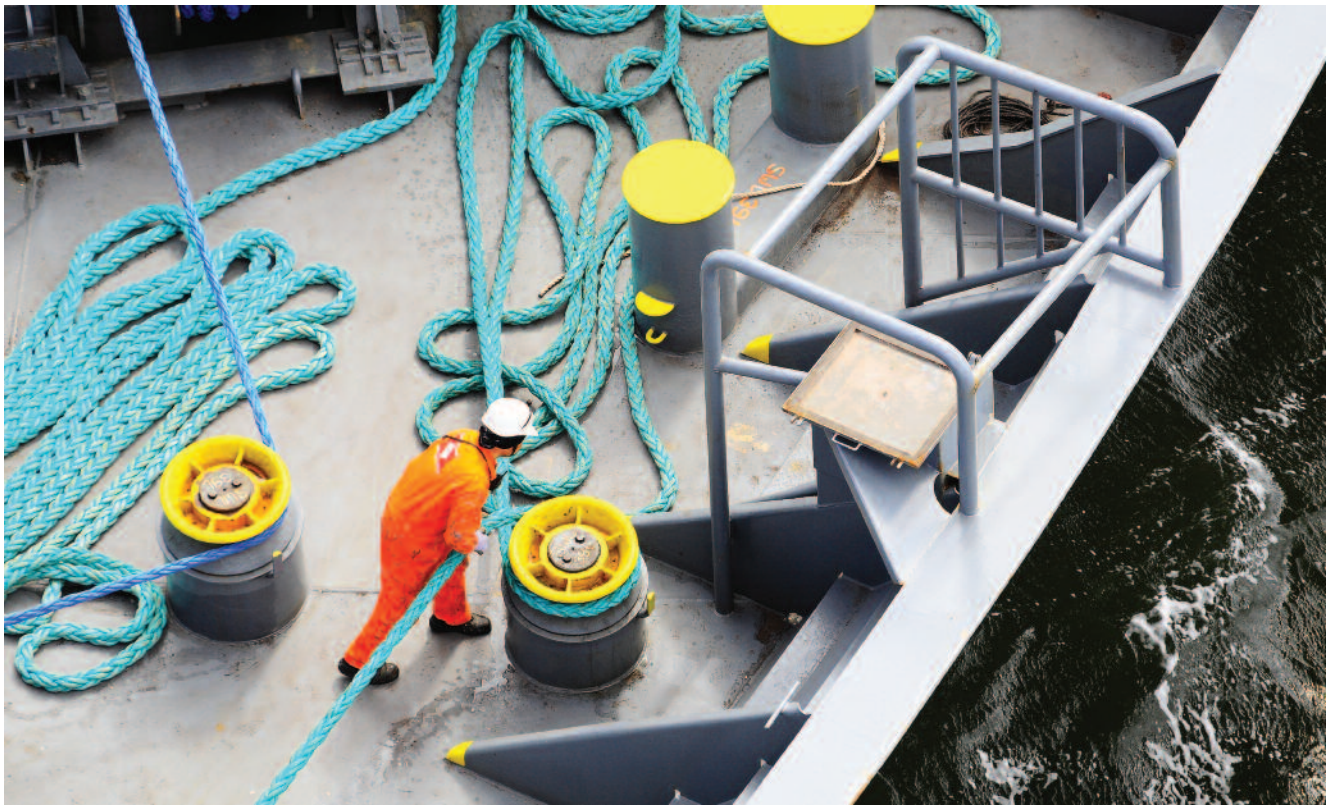
There is no reduction of the lien for the stevedore-employer's negligence. There is also no reduction of the lien for the claimant's negligence, although the lien holder may be persuaded to reduce the lien in cases of substantial claimant negligence, since the prospect of any substantial recovery at trial of the third-party suit is diminished.

Generally, when a 905(b) claimant recovers from a third-party by judgment or settlement, the funds are distributed as follows: (1) the claimant pays the costs of litigation plus attorney's fees; (2) the stevedore-employer (its LHWCA insurer) receives credit for any compensation liability not yet satisfied and reimbursement for compensation already paid; and (3) the claimant retains what is left, if anything.

If a third-party case has a settlement value of $500,000 and the stevedore-employer has paid out $250,000 in medical and indemnity benefits, which is not at all unusual, the settlement figures might look like this:

Settlement payout	$500,000
Less costs of litigation	$10,000
Less attorney's fees *(1/3 of gross recovery is a typical attorney's fee)*	$166,500
Less LHWCA lien	$250,000
Net claimant recovery	$73,500

As can be seen above, settling these cases can be very difficult unless you can put pressure on the stevedore-employer's LHWCA insurer to reduce the lien. ■



Are focus groups useful?

The seminar's afternoon breakout session examined the role of focus groups in case evaluations and trial preparation. **Markus McMillin** reports on the damages awarded when attendees were asked to evaluate a hypothetical case.

The hypothetical case involved an alleged injury to the shoulder, back, neck and leg of a Jones Act seaman who was knocked down by a heavy power cord while laying up a ship for the winter. The hypothetical seaman underwent months of physical therapy along with nerve block injections into his back. He claimed he could not return to work after the incident. He claimed post-traumatic stress disorder and major depression as a result of his injuries. The shipowner argued the seaman's x-rays were normal, MRIs only showed mild arthritis or degenerative changes, and his injuries were minor in nature.

As the focus of this year's seminar was damages, the delegates divided into groups, and each group was asked to list all of the damages they thought the seaman could claim based upon the fact pattern provided. Most groups named them all. They included: past and future lost wages; past and future medical costs; past and future pain and suffering; past and future loss of enjoyment of life; value of replacement services and a life care plan.

All the groups were presented with additional facts from both the plaintiff and defense points of view regarding plaintiff's claimed damages, along with a jury verdict form. Again, as the focus was damages, we asked the groups to assume shipowner liability (with 25% comparative fault to plaintiff) and ascertain the amounts of damages they would award the plaintiff (before comparative fault). Some groups had a very difficult time coming to a consensus, but after being pressed, due to time, the results were as follows:

Group One:	**$180,000**
Group Two:	**$400,000**
Group Three:	**$440,000**
Group Four:	**zero**
Group Five:	**$500,000**

The results varied greatly (zero to $500,000), which illustrates how difficult it really is to predict the outcome – and set reserves – for bodily injury cases.

This fact pattern was closely based upon a real case that was recently tried by a Member with support from the Club. Prior to that trial, we completed an in-depth focus group exercise conducted by a jury consulting service company. We wanted to ascertain the possible exposure levels, help us decide if we wanted to try the case, and assist defense counsel in constructing effective trial themes and strategies if we did try the case.

All three groups (with 12 people per panel) evaluated both liability and damages. All three panels determined the shipowner/Member was liable to the seaman for his injuries. But, they all also found a sizeable amount of comparative fault by plaintiff as well (about 40-60%). The results were as follows (damage numbers before comparative fault was applied):

Group A:	**$460,000 - $1,500,00**
Group B:	**$783,000**
Group C:	**$312,500**

Like the seminar breakout exercise, the focus group damage numbers also varied greatly; however, when plaintiff's comparative fault was applied, even the highest number (around $900,000 which is $1,500,000 x 60% liability to the shipowner) was far below plaintiff's "bottom-line" demand in the real case: $2.2 million. So, with these kinds of results, we felt fairly confident that we would beat plaintiff's number at trial. And we did. The jury actually returned a defense verdict in the case!

Such a result illustrates that focus groups are far from perfect (here, all three focus group panels found liability as compared to the real jury, which did not), but focus groups do greatly assist in providing the Member and Club parameters of exposure, help us decide case values and whether the case should be tried. They also are fantastic tools for defense counsel to better understand what trial themes and strategies should work at trial. Finally, they also give us a small snapshot into the minds of American jurors - and sometimes that can be a very scary experience! ■

Great expectations

During the seminar, **Louis Selig** of Selig ADR, Houston, guided us through the process of negotiating damages through bodily injury mediation. Here, **Louise Livingston** highlights some of the facts he revealed.

The psychology of gain vs. risk vs. loss

As most participants in US mediations know, mediation is at least 75% psychology. The essence of the psychology of mediation is the concept of gain versus risk versus loss. When a person is faced with a choice solely between risk and loss, risk is always chosen. However, when a person is presented with a choice between the perception of gain in addition to risk or loss, gain is invariably chosen. The task of the mediator, particularly for the plaintiff's side, is to help the parties understand their losses, risks and potential for gain.

What does this mean in practice? Most plaintiffs in personal injury cases are unfamiliar with the litigation process, its costs and unpredictable risks. Their lawyers have told them how much their case is worth and have usually not been objective about the case value. As a result, plaintiffs often approach mediation with a false sense of the value of their case. They think only of gain and choose risk. As a result, the initial stages of negotiation appear to them as a loss.

One of the goals of the mediation process is to help clarify plaintiff's current loss (injury, disrupted life, economic loss, loss of position and sense of self worth) and prospective loss of the case at trial or defendant establishing significant comparative fault. As negotiations progress, a solid settlement offer to plaintiff can begin to be viewed as a gain even if it looks like a loss in comparison to their unrealistic expectations.

The defense's perspective, while usually more experienced with the mediation process, is similar. The available defenses may initially appear very strong in view

of the exorbitant plaintiff's demand. Over the course of negotiations however, the benefit of economic certainty may become more appealing than the costs and risks of trial.

What is the negotiation and when does it start?

Everyone dislikes the initial rounds of numbers which simply exchanges abstract figures. Negotiations really begin when a gap is formed after plaintiff is close to their bottom line settlement demand and defendant is close to their top settlement authority. Closing that gap between the parties is what the mediator helps the parties negotiate.

Dealing with life care plans

Life care plans are part of the legal landscape and are here to stay. A plaintiff never loses by including a life care plan in their settlement demand. Many life care planners are expert witnesses who generate the plan figures but don't admit until cross examination that they are paid consultants. Sometimes the life care plans are generated by medical care providers whose testimony about what their patient needs can be compelling to a jury. Ultimately, juries don't award defense verdicts because they disliked a plaintiff's life care plan.

Next number vs. last number

This is a technique which allows the parties to consider settlement figures without actually making a firm settlement demand or firm settlement offer. It saves the last demand/offer position for future negotiations if needed.

Here is how it works. A defendant could say it will move from $500,000 to $750,000 as a last firm offer. $750,000 is the last number. The defendant could also say that if plaintiff would demand $1M to settle the case, the defendant would pay it or seek authority to pay it. The $1M is the next number. The next number message can be accompanied by an additional statement to the effect that no further firm offers will be made until plaintiff makes a more realistic demand. Plaintiffs can use the same technique, thus allowing the parties to preserve their last firm settlement positions while exploring other settlement numbers. ■

Managing the cost of maritime healthcare in the US

While the quality of care in the United States is generally regarded as high, the cost of such care is inconsistent. **Linda L. Wright** explains how best to minimize those costs.

When a crew member, passenger, longshore worker or other maritime worker is injured, the cost of treatment is very difficult to predict. The price medical providers charge is not related to the quality of service, but rather to what the market will allow. The Club recommends all Members develop a system to manage the medical treatment of the injured party, with the goal of minimizing costs while ensuring the party receives the necessary care.

Unlike in other developed countries, the United States does not have a uniform healthcare system. Medical facilities are free to charge any price they wish for procedures and services. As there are no regulations regarding costs, the same procedure at different hospitals may be billed at a wide range of figures. For instance, a CT scan can range from $400 to $7,000 within the same state. The average CT scan in the US in 2011 was $523. In comparison, the same CT scan was $122 in Canada, $141 in France, and $272 in Germany. These prices are often listed in a hospital's Charge Master – a price list of every procedure and medical supply offered to patients. California is the only state to require hospitals to post their Charge Master to enable bill payers to compare and negotiate final costs. No one pays 100% of the billed charges for healthcare service in the United States.

No one pays 100% of the billed charges for health-care service in the United States

Keeping costs under control

It is important to ensure that the injured party is in fact receiving the necessary treatment. With serious injuries, managing the medical services can be difficult without the assistance of a nurse case manager (NCM). The NCM is the liaison between the medical provider and your claims team. The NCM's assessment of the treatment plan can determine the length of stay and appropriate procedures necessary to ensure progress toward a fit for duty/maximum medical improvement status. Frequent NCM updates, with reports and test results included, assist in monitoring the health of the crew member and preparing for return to the vessel or repatriation home.

Bills, bills, bills

A first step should be the appointment of a medical bill auditing company to review and reduce the fees/costs. A true audit of the services provided on each invoice is the most efficient way. Savings from overcharges, coding/billing compliance, and errors (duplicate or unrelated services) can best be determined by a diligent review of each item on a bill. Members should receive a copy of the itemized bill with procedure codes and fees to compare to the medical reports. If there are questions, the NCM should obtain explanations from the doctor or the hospital.

Alternatively, Members could enlist a medical review company that has prearranged percentage discounts from medical providers. For example, if a bill for a serious injury or illness totals $100,000 and the bill review has a contract to offer 25% discount, $25,000 would be saved on the bill.

However, it is important to recognize that a blanket discount for all services may not always be the best strategy to minimize costs. When the services are individually audited, procedures may be eliminated as redundant or unnecessary, alternatively reductions per the workers compensation code may be applied. An example of such disparity is apparent in a case involving a crew member who required bilateral rotator cuff surgeries. The first shoulder surgery was billed at $60,000 and the contracted discount provided by the bill reviewer reduced the costs to $40,000. Not bad. But when the second surgery was performed six months later, the shipowner engaged a medical auditor. The line by line review for the procedure – performed by the same doctor with the same $60,000 price tag – resulted in a final bill for $28,000. This was a huge cost difference for the Member because the bill was audited.

The importance of engaging an appropriate medical management company at the onset of an injury or illness is high. However, the choice of a medical manager is sometimes made by the local vessel agent (prior to contacting the Club), who may have been recruited by a specific company. If the Club and Member are not involved immediately after the incident, medical management control may be lost to the agent's choice. Often the Club sees expensive management handling charges and weak discounts across the board from these arrangements.

When evaluating potential medical review vendors, Members should consider both their professional experience in the medical field and their knowledge of the maritime personal injury/illness field. Their technical understanding of cost of care, usual and customary (U&C) fees, accuracy of the charges/coding, and reasonableness of the fees should be confirmed. Ethically, they should be transparent regarding their relationship with all medical providers, sharing a copy of the itemized invoice with a Member's claims team, and answering any questions regarding the process and their fees.

The Bodily Injury Team has researched many of the medical management companies, and is available to answer questions on bill auditing and nurse case managers. The team can also provide recommendations when a serious case requires expert treatment and cost management. ■

A major medical incident occurs…

DO:

- Ensure your crew's health and welfare is your first priority
- Give instructions to your ship managers and local agents to contact the Club and owners immediately so they may initiate medical oversight at the onset
- Assign a nurse case manager on all cases where the crewmember is admitted into the hospital
- Have all medical bills reviewed and audited by a reputable cost containment company who specializes and understands the maritime industry
- Require that you be given a copy of all medical bills before you pay for medical services and review fees

DO NOT:

- Rely on your port agent as your contact for medical treatment management or review of providers' invoices
- Pay medical bills unless they have been reviewed and audited by a reputable cost containment company
- Pay medical bills until you receive a copy of the itemized invoice submitted by the medial providers
- Accept a discount off of a medical bill without an explanation from the provider

Expertise and experience

A specialist group from both the New Jersey and San Francisco offices empowered with a significant settlement authority to deal with the particularly demanding cases of bodily injury in America.

This dedicated team supports Members based both in the United States and abroad in dealing with a diverse and complex range of personal injury and illness cases. The one common factor is the influence of US jurisdiction or emergency response.

The team has handled cases ranging from suspicious death, passenger's leisure activity injuries, long-term occupational illness, engine room and cargo handling fatalities, through to shore-side accidents, loss of limbs in mooring activity and even sexual assault.

As well as supporting Member's claims and enquiries directly, the team share their collective experience through the pages of "Bodily Injury News".

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