

# UK CLUB

## HiLights - Issue No. 3

### Farewell to Drachmae

We would remind everyone that we are set to say farewell to the Greek Drachmae (GRD) on the evening of 31st December, 2001 - after a lifespan of over 27 centuries - and welcome the EURO with hope and optimism. The Drachmae - which was originally introduced in the beginning of the 7th century B.C. on Aegina Island - as from 1st January, 2002 will no longer be Greece's national currency, but will circulate up to, and including, 28th February, 2002 and be used only for cash transactions.

### Stowaways at Matadi/Congo (ex-Zaire)

We have encountered numerous incidents recently concerning stowaways boarding at Matadi and recommend extra vigilance should be undertaken for this port. One of the more remarkable attempts at stowing away at this port was recently brought to our attention by one of our Members when prior to sailing, and in line with company procedure, a stowaway search was undertaken revealing 15 individuals who were subsequently disembarked ashore.

These stowaways were hiding inside the ship's kingposts upper horizontal platforms, about 30 meters over main deck and had climbed up from cargo holds through ventilation pipes, leading up to the top of the kingposts. Ship's crew were required to cut holes on the top of the ship's kingposts upper platforms in order to gain access to stowaways' hiding space.

### Lifeboats - Beware!

We have recently seen a number of incidents involving injuries to crew members while working on or testing lifeboats.

One such incident occurred when a crew member was unlocking the remote release mechanism of the lifeboat. The forward hook of the lifeboat was released resulting in the forward section of the lifeboat falling down to the main deck. The crew member had attached himself by a safety belt, but the lifeboat had not been secured. While the crew member remained safely suspended, or so he believed, by the safety belt, he was struck by the shackle attached to the falling block resulting in head injuries. In a second incident, a crew member was injured when preparing to lower the starboard lifeboat. He fell from the boat deck to the main deck below, while the lifeboat fell into the sea. In this instance, the crew member was not wearing any safety harness. He sustained a fractured rib and liver damage.

In both cases, had the job in question been planned beforehand and carried out in a competent manner, it is likely neither incident would have resulted in injury sustained

### Healthy Crew Saves Money

Philippine Maritime Authorities have been tasked with giving priority to Filipino seafarers' health to stem increasing medical unfitness and a growing number of crew repatriations. Delegates to the 6th International Symposium on Maritime Health recently held in Manila, noted that shipping companies should ensure that every member of their crew was in good health since they would incur greater expense sending a seafarer home and acquiring a replacement. Dr Pedro De Guzman, Chairman of the conference, said "*Among the world's seafaring nationalities, Filipinos are now the most screened, because of increasing cases of repatriation on medical grounds.*"

In this respect, we would remind Members of **The UK Club Crew Risk Management Programme** specifically set up by the Club on the back of increasing demand for a more thorough pre-signing on medical examination of seafarers.

This Programme is designed to protect shipowners from claims arising from medical conditions existing prior to employment, and is believed to have saved millions of Dollars from reduced claims levels. To date, an excess of 32,500 examinations have been carried out in the 5 years since the Programme began, half of which have been Filipino Nationals.

We will be pleased to provide full details of The UK Crew Risk Management Programme on request

### Litigation in the Republic of Ireland

As redundancies and downsizing remove disincentives to suing employers, litigation in the Republic of Ireland appears to be recession proof, despite the economical downturn within the country. It is predicted that claims, both in value and number, are likely to increase despite the fact that there are more personal injury claims there than in other European countries.

**Members should be aware that if an incident occurs on one of their ships in the Republic of Ireland, then Irish judges are more generous with awards making this jurisdiction amongst the highest in Europe for compensation payments.**

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

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In turn, this has an affect on legal costs which are estimated to run at approximately 25% - 40% of personal injury awards. In an attempt to curb costs, the Irish Government has announced a new Personal Injuries Assessment Board will be set up. Since personal injury claims comprise a large chunk of the work of Irish lawyers, particularly barristers, since Irish solicitors engage Counsel in 75% of cases, as against 3% in Britain, the proposals have not been generally welcomed by the legal profession.

The main points are summarised below:

1. Claims of industrial disease are likely to increase
2. More personal injury claims there than in other European countries
3. Personal injury claims against employers are double in number of those in Britain
4. Legal costs - estimated to be approximately 25% - 40% of personal injury awards
5. Irish solicitors engage Counsel in 75% of cases as against 3% in Britain.
6. Compensation levels for personal injury are among the highest in Europe

### Human Acts Right

In October 2000 the Human Acts Right 1998 was enacted in England. This Act gave effect to the European Convention on Human Rights ("the Convention"). Since this enactment of the Convention certain issues have been raised under English law. One issue concerns Article 6 of the Convention which article provides:

*"In determination of his civil rights ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".*

This article has become relevant in considering the question of applications for leave to appeal from arbitration awards and from the High Court to Higher English courts.

The current existing practice is that reasons for granting or refusing leave to appeal are not given. This followed a House of Lords ruling in the ANTAIOS which held, essentially, that on questions of leave a court is only determining whether the case fits within existing guidelines permitting an appeal rather than determining the case itself and, that the giving of reasons would lead to a further disputes and appeals arising out of the reasons given. Article 6 however, has been used to challenge this principle and arguments have been raised in the High Court that reasons must now be given on whether to grant or refuse leave to appeal.

At present the only reported judgement relates to Mousaka Inc. v Golden Seabirds. In this case the High Court held that section 69 of the Arbitration Act sets out grounds for granting/refusing leave to appeal and therefore compliance with article 6 of the Convention is met. This is currently being appealed to the Court of Appeal and will be determined in March, 2002. The decision is awaited with interest and may well have an impact on how the English Courts deal with applications for leave to appeal in the future. A further report on this matter will be forthcoming in a future edition of HiLights.

### Piracy/Armed Robbery

#### High Risk Ports

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| · Bangladesh         | Chittagong, Mongla  |
| · Brazil             | Santos, Amazon ports  |
| · Ivory Coast        | Abidjan   |
| · Dominican Republic | Rio Haina   |
| · Ecuador            | Guayaquil   |
| · Guinea             | Conakry   |
| · India              | Chennai, Kandla, Cochin                                       |
| · Indonesia          | Jakarta, Belawan,<br>East Kalimantan ports<br>Ananbas Islands |
| · Kenya              | Mombasa   |
| · Malaysia           | Penang, Sandakan  |
| · Nigeria            | Delta area, Lagos/Apapa                                       |
| · Peru               | Callao  |
| · Philippines        | Mindanao area, Manila   |
| · Thailand           | Ko Sichang  |
| · Vietnam            | Vung Tau  |

### Emergence of paper shortages claims

We have recently seen the re-emergence of paper shortage claims for crude oil cargoes loaded in the Black Sea and discharged in the Mediterranean. Loading ports are usually Theodosia and Batumi and discharging ports Fos and Trieste. **In order to properly defend and reject these claims, we recommend the following actions are taken at loading and discharging ports.**

Before loading, an accurate OBP measurement should be taken and countersigned by the terminal inspector. The terminal inspector should be requested to carry out a shore line displacement check. A protest should be lodged if necessary. The measurement method for bill of lading calculations should be clarified. After loading, an accurate and careful after-load measurement should be carried out. The ship experienced factor should be applied to the loaded volume. The terminal figures should be checked against the ship figures. Make sure the inspector countersigns the ship's ullage report and ensure that all calculation methods are comparable.

At the discharge port and before discharge, the terminal inspector should be expected to carry out a shoreline displacement check. If the request is refused a letter of protest should be issued. An accurate and careful measurement should be carried out to determine in transit variation. After discharge, the liquid or non liquid ROB should be measured. A provisional out-turn should be requested for comparison purposes. Owners should also ensure that the inspector and/or the terminal representative countersigns the ROB report or dry tank certificate. In general terms, owners are recommended to closely monitor and record all measurement and data taken by the inspector and terminal representative. **Never allow taking of soundings, ullages, water dips or temperature without a senior deck officer present.** The independent inspector and/or terminal representative should countersign the ship's OBP, ROB and ullage reports. The same ship's equipment should be used at load and discharge ports to create consistency. Copies of all documents especially the hand written copies should be kept together with up to date records (VEF, tank cleaning records, last cargoes, etc.).

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