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New Club entry MV Nikolas

HiLights

You may recall that the last issue of HiLights followed the UK P&I Club Directors meeting in Athens and the UK Club Forum on "Criminalisation in the Maritime Context" in May of this year. Since then Thomas Miller Hellas has continued to serve the locally based Membership through the provision of a claims handling and advisory service to Members of both the UK P&I and UK Defence Clubs and of course we are now entering the period running up to the 20th February renewal.

In October we organised two Defence Club seminars, which were very well supported by the local membership and are the subject of a separate article within this newsletter. In this edition of HiLights, we have also included a brief resume of the news imparted by Hugo

Wynn-Williams during the annual dinner held for Principals of the Greek Members and an article concerning the increasing exposure of Members to injury claims involving Greek seafarers. We hope you find the contents interesting.

As usual, I would welcome any feedback or suggestions for improving the value of this publication.

Thomas Miller (Hellas) will not be sending out Christmas cards this year. Instead, we will be making a donation to The Ark of the World, a charity providing care for the needy in Athens. All that remains is for me to wish you all a happy Christmas and a prosperous New Year.

Phil Clacy

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Seafarer compensation on Greek ships

Greece has an established legal system and procedure for determining liability of its ship owners towards seafarers who are killed or injured whilst serving with them.

The Greek compensatory system applies to foreign seafarers serving on board Greek flagged or Greek owned/managed vessels irrespective of any agreement in their contract of employment for the application of a foreign law.

There are two compensatory systems under Greek law according to which the injured seafarer or in case of death, the family of a deceased seafarer can pursue claims against the employer.

Employment law

The first system is a strict liability system and applies to cases of injury or death due to an accident arising in the course of the seafarer's employment irrespective of any fault on the part of the employer. The employers' liability in the case of injury or death of a seafarer during his employment on board the vessel is governed by Law 551/1915.

Under Law 551, the amount of compensation payable depends upon whether the injury results in a temporary or permanent disability.

In the case of a temporary disability to work, compensation is calculated by taking the seafarer's half-daily earnings plus victualling allowance for the period during which he remained unfit for work up to a maximum of two years period from the date of discharge.

For permanent work disability, the compensation is calculated based on the seaman's monthly earnings and the degree of his disability to work. The compensation is calculated according to the following formula: Seafarer's monthly earnings x 72 months x % disability less € 2,934.70 / 4 + € 2,934.70

The non-fault death compensation includes a lump sum (calculated on the basis of the average monthly earnings plus a victualling allowance that the lost seafarer could have earned the last twelve months before the accident) x 60 months – € 2,934.70 / 4 + € 2,934.70.

The strict liability compensation, considering the rise of the seafarer's wages, has increased over the years to the extent that the death compensation exceeds € 100,000.



Civil Law

The second system is based on the civil law provisions on tort and applies to cases of wrongful death or injury. In case of fault of the owners and/or their servants the compensation payable for death and injury claims for both Greek and non-Greek seafarers serving on board Greek owned/managed vessels, is far in excess of the amounts payable under the strict liability claims of Law 551.

Article 16 of Law 551/1915 provides that when an accident is caused through breach of the safety regulations by the employer or his servants, the injured seafarer or in case of death, the family of the deceased is entitled to the damages provided by the civil law.

The damages recoverable by the seafarer's family under the civil law include both general damages (loss of financial support) and moral damages (mental pain and suffering).

The general damages, in case of a seafarer's injury, include loss of income for as long as the seafarer remains unfit for work and in case the work disability becomes permanent, until the end of the seafarer's expected professional life.

In case of death, damages are subject to the extent of dependency on the late seafarer, include loss of support of his dependants.

Article 932 of the Greek Civil Code gives the right to the injured seafarer or in case of death, to the deceased's family to claim moral damages.

The interpretation of the term "family" given by the Greek courts is quite wide and can include the deceased's widow, his children, parents, siblings, grandchildren, his father/mother in law as well as fiancée.

The calculation of moral damages is not based upon any schedule or scale and it is up to the discretion of the courts. The factors taken into consideration by the courts will include but are not limited to the particular circumstances of the seafarer's death, the degree of blame, the age of the deceased and the financial circumstances of the claimants.

Claimants, given the discretion of the courts in assessing the moral damages, tend to enhance their moral damages claims. The amounts claimed are very high sometimes exceeding € 300,000 for each family member.

The moral damages, according to the decisions of the Greek courts including the Supreme Court, are recoverable not only in cases of breach of safety regulations, but also in cases of compensation claims pursued under Law 551/1915, where simple fault on the part of the owners or his servants is involved.

Range of moral damages awards made recently in Greek courts

	Low end of range	High end of range
Widow/Children	€ 100,000	€ 120,000
Parents	€ 90,000	€ 100,000
Siblings	€ 45,000	€ 55,000
Father/mother in law	€ 10,000	€ 15,000
Grandparents	€ 25,000	€ 35,000

Annual dinner for Principals and the general increase for the 2006 policy year



(Left to right) Stephen James, Dinos Caroussis and Hugo Wynn-Williams

The UK Club's annual dinner for Principals was held at the Galaxy room in the Athens Hilton on 25th October 2005. We were delighted with the level of support demonstrated by the high turnout at what must be rated as one of the best venues in Athens.

The UK Club's Directors and managers joined over fifty of the Club's Greek members at the Principals dinner. The Club's Deputy Chairman, Dinos Caroussis attended the event.

The dinner was a week after the UK Club Board's meeting in Bermuda at which the Directors had decided on a 12.5 per cent general increase for the 2006 policy year. This was naturally a topic of keen interest to all present.

The chief executive of Thomas Miller P&I, Hugo Wynn-Williams, gave a brief presentation entitled "Claims Factors: a new and volatile environment" which explained the Club's rationale in setting its general increase at this level.

The Board determine the general increase as part of a wider process of long term financial planning. To meet these targets the Club is concentrating on achieving the necessary general increase for the 2006 policy year whilst continuing to review reinsurance and investment policy and focus on costs.

The planning process has resulted in specific targets relating to solvency including a minimum A rating from Standard and Poor's, a combined ratio of 100% (no technical underwriting deficit) and a free reserve ratio of between 135-150%.

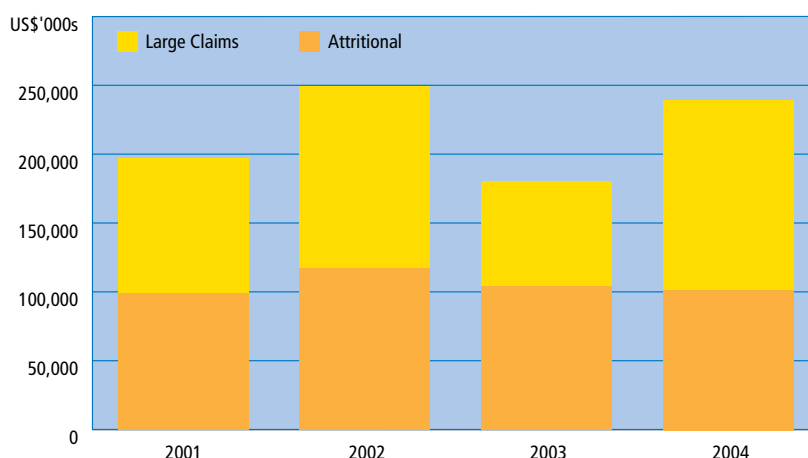
The introduction to the presentation explained the environmental factors this planning had to address including increasing regulation of insurance, the influence of financial rating agencies, the competitive environment and the future beyond 2009 following the end of the EU's exemption for the International Group. However, the key factor was claims.

The claims factors considered include a significantly increased number of large claims, (above US\$ 500,000) a relatively stable level of attritional claims, increasing commodity prices, an increasingly burdensome shipowner liability environment and external events with consequences for reinsurance rates.

For the UK Club, 2001 and 2003 have proven to be relatively light claims years but 2002 and 2004 have been significantly worse. For the 2004 policy year three claims, two involving ships entered in the UK Club, have cost a net of US\$ 40 million. These are the Athos I, the Hyundai No.105 and the Selandang Ayu. Even so, the Club has suffered a fall of only US\$ 13 million of free reserves in that year. In view of the high volatility in claims over different policy years, 2005 is currently prudently estimated at US\$ 276 million of claims.

What is certain is that all Clubs have been affected by the increasing claims trend. For the UK Club, quality membership, loss prevention and a generally more stringent safety environment has impacted on attritional level claims. Although there has been huge volatility in large claims this has been offset at the top level by the Swiss Re excess of loss protection and of course the UK Club has and continues to reserve prudently.

UK Club's Claims Development 2001-2004



Whilst attritional claims have been broadly stable, the large claims experience has been volatile ranging from US\$ 80m to over US\$ 140m in recent years.

UK Defence Club seminars

On Wednesday 5th and Thursday 6th October 2005 Thomas Miller (Hellas) Ltd hosted the UK Defence Club seminars at the Marine Club, Piraeus and the Pentelikon Hotel, Kifissia respectively.

The seminars were the second consecutive annual seminars hosted by the UK Defence Club. The seminars consisted of four presentations on a variety of separate topics. The presentations were made by four speakers, all from Thomas Miller.

Daniel Evans, Deputy Club Manager from the London Office (formerly Area Director of the Greek Office for four years), kicked off the presentations with a talk on "Marpol – Annex VI, the EU, the Environment and the Implications for Shipping". The topic brought to the audience's attention, the recent changes to Marpol, in particular, Annex VI and the EU directives, which respectively have come into force and will come into force next year and, primarily, dealt with sulphur emission limits and the obligations concerning fuel specifications and quality. The presentation concluded with how the regulations and directives may impact on bunker quality issues and disputes.

Alexandra Couvadelli of the Greek Office then gave a presentation entitled "MOA Disputes – Some vexing issues", which looked at various clauses in a MOA that commonly give rise to disputes against the backdrop of a hypothetical sale and purchase scenario.

Paul Kaye, also of our Greek office, spoke about "Damages – It's not as straightforward as one might imagine". The presentation gave a brief overview of the principles of damages under English law and through examples of specific

English Authorities, highlighted that the assessment of damages in both, charterparties and MOAs is complex.

Particular attention was drawn to a recent case handled by the UK Defence Club, on behalf of an owner Member, which has been heard by a London tribunal, the English High Court on appeal and recently the Court of Appeal.

...an excellent opportunity, not only to highlight the membership areas of law and issues, but also provide the Members with an opportunity to meet and chat...

The issue for determination was whether, in view of the war clause in the charter and the outbreak of the Gulf War in 2003 (more than two years after the charterer had unlawfully repudiated the charterparty) placed a limit on the damages payable to the owner for the remaining four years left to run of the charter at the date of the repudiation. The tribunal and High Court both found that damages payable to owners were limited up to the outbreak of the war. The Court of Appeal has upheld the High

Court decision since the paper was written and the seminar taken place.

Marc Jackson, handling Greek Member accounts from the London office, concluded the presentations with "EU Competition Law – Potential Legal Future Implications and the Impact upon Pool Agreement". The presentation provided an overview of the subject, the likely removal of the EU exemption from competition law to liner conference agreements and tramp services and spoke about the implications to these agreements and services.

The presentations at the Marine Club and the Pentelikon Hotel were both well attended, with most members represented. A drinks reception followed the seminars. The feedback received has been very positive. It is the intention that Thomas Miller (Hellas) Ltd will host seminars, for and on behalf of the UK Defence Club, on an annual basis for its members.

The seminars present an excellent opportunity, not only to highlight the membership areas of law and issues, which are topical and of interest, but also provide the Members with an opportunity to meet and chat with each other in an informal, but pleasant surrounding.

The presentations lasted approximately 25 minutes each and papers of all the presentations given were handed out to attendees. Spare copies of the papers are available upon request to Thomas Miller (Hellas) Ltd.

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