

TM HELLAS

SUMMER 2006 ISSUE 14



HiLights

Another Posidonia over and by any standards it must be rated as a huge success with the influx of many shipping related individuals to Greece including a strong contingent from our London office. As usual we were delighted to welcome many of our members and other friends to the office "Open Day" which was enormously successful despite the fact that the exhibition itself was not on our doorstep this year. We take this opportunity of thanking everyone who attended.

H1 has experienced a busy 2006 to date. Alongside dealing with the day to day activities involving claims handling and advisory services provided to the members locally, individuals from the office have been involved in several conferences and seminars since the beginning of the year. We also continue to arrange ad hoc in-house seminars on discrete topics for small numbers of Members often involving outside speakers. On the last such occasion Andrew Speake from Barlow, Lyde and Gilbert kindly gave a detailed presentation on Owner's limitation of liability. Alexandra Couvadelli detailed the Club's perspective and why limitation is such an important concept from the point of view of liability insurance.

Our office recently underwent a surveillance visit from Lloyd's Register Quality Assurance and in common with the other parts of the International Division of Thomas Miller we continue to be accredited under ISO 9001:2000.

Rule B attachments in the United States have been a fashionable weapon for obtaining security for a while now. We have gained a fair amount of experience and include a Defence Club overview of this procedure on page 6.

The team also has plenty of experience dealing with stowaway cases. On page 7 Ernest Foster, the H1 "People Claims" specialist, summarises his article published in Lloyds List a few weeks ago.

Finally, June this year saw the retirement of Stephen James, a very well known individual in the P&I world, ex Chairman of the International Group and Chairman of Thomas Miller. After over 40 years with Millers he will be missed. We wish him a long and happy retirement. Of course we could not let him go without a small Greek gift!

Philip Clacy Thomas Miller (Hellas) Limited

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UK P&I CLUB

H1 Team out and about



"ISM on Trial"

The H1 team continues to be actively involved with the Piraeus conference scene. On 5th May, H1 senior claims director Tony Fielder spoke, and was a panellist, at a much publicised London Shipping Law Centre's mock trial of ISM. The "ISM on Trial" was attended by over 200 delegates, many of whom were well known UK Club Members.

He highlighted the dilemma faced by ship operators, namely whether the ISM actually could restrict the extensive full insurance cover available for ship operators.

He was able to show from the Club's records that, on the limited data available since ISM mandatory Phase 1 implementation, the number of claims presented to the Club relating to cargo and pollution appeared to be falling. He noted, however, that whilst this could suggest a positive benefit from the implementation of ISM and an insurance benefit, a detailed analysis of the precise causes of the incidents would have to be conducted.

The H1 team were also involved with other Club Managers and Hugh Parker, Tim Wadsworth, and Richard Johnson of ITOPF and other Club Members in updating tanker operators from Piraeus and Athens on the current state of the world's pollution regimes.

The ITOPF team gave a detailed overview of ITOPF's technical role both in "peace time" and in response to spills when they do occur.

The seminar was highly informative and gave some practical examples of the types of responses needed with reference to particular case studies.

Tony Fielder also spoke recently with mediator Stephen Ruttle and Gregory Timagenis, at the Institute of Naval Architects and Marine Engineers Symposium on Mediation.

Stephen Ruttle outlined what mediation is and how it works. He went on to give his view of why it matters and what were the benefits. Gregory Timagenis drew on his recent experiences of a multi-party and multinational mediation.

Tony drew on some of his experiences of mediation to set out what he saw as its advantages and where, in his view, its use was, and was not, appropriate. He highlighted the significant saving on legal costs that could be made by its appropriate use. On the downside, he highlighted that very often it occurred too late, and often solely as a result of the vast amount that had already been incurred by way of legal fees.



"ISM on Trial" panel



Hugh Parker and Phil Clacy



Tim Wadsworth, Paul Kaye and Dominic Hurst



Posidonia Cup 2006

The UK Club once again participated in this year's Posidonia Cup, the Lloyds Register sponsored sailing event organized by the Hellenic Offshore Racing Club/ Posidonia Exhibitions, held in Faliron Bay on Friday, 2nd June.

Thomas Miller (Hellas) managed, despite a short supply of boats, to fix a 46-foot sloop named TRINITY for entry in the ORC Class. The boat was delivered on the day itself complete with Austrian skipper, two German crewmembers (who had arrived in Greece only the night before to cruise round the Aegean Islands) and a well-stocked fridge.

Externally, weather conditions were mixed but favourable. Scattered showers before the start of Race 1 were replaced by a gradually strengthening wind throughout the day, giving us all plenty of sail changes and trimming over the two races.

On board, unfamiliarity with the boat, communication (which among our multi-

national crew was, at times, comically disjointed) and fatigue - the skipper had to be dragged from his bunk for the start of the Race 2 - were major obstacles. Nevertheless, good humour and determination prevailed, with our 6th place in Race 1 improving to 3rd place in Race 2, and giving us a respectable overall 5th place out of the 8 entries in the ORC Class.

It was a great day out for all of us. More practised crews took the accolades while we focused on enjoyment through 'beer and sandwiches' (rather than 'champagne and caviar'!) and semi-serious sailing.

Those of us in H1 who took the time out of the office - Phil, Cedric and Nick - would, in particular, like to thank Athina Vakali (Blossom Maritime), Yannis Chardalias (A.M. Nomikos) and Sozon Alifragis (Newfront Shipping Co.) for their contributions throughout the day and for joining us at the crew dinner at the Astir. We look forward to more of the same in 2008!

Posidonia Open Day 2006



Graham Daines and Dinos Caroussis



Captain Vassilis Bakas and Peter Wright



Adamantios Lemos and Alexandra Couvadelli



Yannis Chardalias



Afrodite Dellaporta and Hugo Wynn-Williams



Tony Fielder, Paul Kaye and Alexandra Couvadelli



Takis Alikaris and John Markianos



Dina Kanetaki



A "mystery guest"



George Fragiadakis and Dimitris Gadzounis



Stephen James and John Pipilis

Rule B Attachment - Friend or Foe?



WWW.UKDEFENCE.COM

LAUNCHING JUNE, 2006

THE MARITIME COMMUNITY'S LEADING
PROVIDER OF LEGAL COSTS COVER

Post - 9/11 legal reforms in the US have led to the development of a highly effective method for obtaining security for your claims. The Rule B Attachment now offers claimants a recognised way of intercepting US dollar transactions, regardless of where the payment originates from or is due to be received.

As 80 per cent of all payments in US dollars are routed through some 20 intermediary banks located in New York's Southern District, a claimant's lawyer is able to serve them all, either electronically or by fax, on a daily basis with a Rule B Attachment Order.

Obtaining the Attachment Order is the first hurdle to be overcome, of course. But, if you have a "maritime claim" or are trying to enforce a foreign judgment or award which arose out of a "maritime claim", you are permitted to attach funds which are being transferred electronically through the intermediary bank provided you have a prima facie case that security is required. It is even possible to extend the attachment to subsidiary or related companies. Provided actual control by the parent company, rather than the mere opportunity to control, can be demonstrated, the court will pierce the corporate veil to grant the attachment. Whether you are intending to commence proceedings or have done so already, an ex-parte hearing is all that is required to obtain the attachment order.

Whilst you need not have any connection with New York, it is important that the

defendant does not operate within the Southern District of New York. If the defendant can be said to be "found" within the District, or if the attachment is considered to be "unreasonable", "unfair" or "abusive", your application will either be unsuccessful or will be routinely vacated at a follow-up hearing. The courts have also started to weigh up the claimant's need for security against the defendant's ability to meet any judgment with a view to restricting the operation of the attachment to a certain extent. Moreover, claimants should evaluate the prospect of facing a counter-demand for security in respect of counterclaims before taking any action. If the counterclaims are considered to have merit, the courts have ordered that counter-security up to the value of the Attachment be provided. However, as a number of cases relating to the scope of the Rule and the application of appropriate criteria for granting the attachment are pending before the Court of Appeals, we anticipate the law developing further in the near future.

For the time being, it is certainly worth bearing in mind this rapid and inexpensive method of bringing pressure to bear upon your opponent when you intend to pursue a claim arising out of a charterparty, bill of lading, COA or casualty incident - generally speaking, an attachment costs in the region of US\$3,000 to obtain and serve, and a further US\$4,000 to defend if a standard challenge is made. If your application is vehemently defended, on the other hand, you may be left facing a bill far in excess of that. You would therefore be advised to check with the Club before initiating any attachment proceedings.

However, on a cautionary note, there is no reason why the relative ease with which an attachment can be obtained will not be exploited by cargo interests, charterers, shipyards or suppliers seeking an alternative to ship arrest. We are aware of at least one time charterer that has successfully sought security from an owner by this means and, with renowned cargo lawyers recently announcing the opening of an office in New York, the writing has to be on the wall for evasive ship operators or any others who might be in their sights.

A Member recently enforced an arbitration award obtained in default against a Swiss company, to which it had voyage chartered its ship, that had refused, primarily by shielding itself behind a Monaco registered company which had signed the charterparty as agent, to pay a balance due of over US\$100,000. Legal advice from Swiss, English, and Monegasque lawyers had indicated that, whilst it might be possible to enforce the award by combining court actions in all three jurisdictions, there would be significant costs and risks involved. The Club Managers therefore proposed a Rule B attachment as a simpler, more effective method of obtaining security in order to press the charterer to pay up. Within a month of the application, full security had been put up and the claim was settled shortly afterwards with the result that the Member successfully recovered the outstanding balance in full, plus interest (at Court rates) and costs.

An Owner Member claimed under a time charterparty, damages of approximately US\$70,000 for premature redelivery of the vessel. Considering the delay and expense usually associated with having to track vessels time chartered by the charterer with a view to arresting the charterer's bunkers, the Club Managers proposed obtaining security by means of a Rule B attachment order. Six weeks later over US\$500,000 was attached. The balance of the attached funds was released on provision of adequate security for the claim, interest and costs of over US\$120,000. While negotiations continue, the attachment has led to the charterer increasing its own offer of settlement. The Member will be able to satisfy his claim by either agreeing with the charterer to pay out of the attached funds on the basis of a settlement agreement, or, if the London arbitration is progressed, by enforcing an award in New York and drawing down upon the attached funds.

Look out for a fuller appraisal of Rule B attachments in the next edition of the Defence Club's newsletter, Soundings, due out soon.

Doing it by the book, not by heart

Ernie Foster - a Senior Claims Director in the Thomas Miller (Hellas) team shares some of his experience on the treatment and repatriation of stowaways.

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. 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 vary considerably between countries.

Once stowaways have been discovered, both masters and crew 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 recent case in Durban, South Africa showed how things went 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 secret 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 vessel 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



Ernie Foster

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.

Procedures for dealing with stowaways

Many stowaways give themselves up once the vessel is at sea, often by making a loud noise. For a vessel 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 to speed up the acquisition of travel documents. If digital photography is available it may be possible to e-mail 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 onboard, 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.

New Regional Director



Nigel Brooks

Nigel Brooks was recently appointed to the role of Regional Director for Greek Members.

He has been well known to our Greek Members as their senior underwriter since 1995. He is assisted in that role by the Greek underwriting team of Paul Collier, Chris Gimson and Lily Soesan.

In addition to retaining overall responsibility for underwriting Greek Members, Nigel also assumes leadership of both the Piraeus office managed by Phil Clacy and the London based Area Group L1 under Charles Elmer.

The unique nature of the Greek ship operating industry requires a flexible and responsive service structure. Although Nigel is based in London, he will continue to visit Greece frequently ensuring Members' needs are met. The Piraeus office of Thomas Miller will continue

unchanged as a fully authorised and resourced facility for Members.

Nigel has been a supporter of the H1 group since its inception. Indeed, for many years he enjoyed a successful working partnership with Peter Wright the founding head of that office.

A qualified barrister, Nigel originally joined Thomas Miller in 1981 as a claims handler. This valuable experience enables him to appreciate, and more importantly, provide practical help and guidance on all aspects of the Member relationship.

Like a number of his colleagues, Nigel has a family connection with Thomas Miller as his father was one of the Signum investigators.

Nigel can be contacted at the Thomas Miller London office (Tel +44 20 7204 2071 or email: nigel.brooks@thomasmiller.com)

New HiLights Editor

Nick Milner has put together this edition of HiLights for your information and interest. He would very much like to receive any thoughts you may have, whether good or bad, on anything at all about the newsletter.

Please feel free to call him on his direct line (+30 210 458 5219) or mobile number (+30 6944 94 74 74) or drop him a line on his personal e-mail: nick.milner@thomasmiller.com

Nick is a Senior Claims Executive handling both P&I and Defence claims for the H1 membership. Formerly a barrister practicing in common law chambers in London, Nick has lived in Greece for over nine years and joined Thomas Miller (Hellas) Ltd in August 1999.



Nick Milner

Before Millers, he worked for a prominent Piraeus shipowner and then in the Greek office of a leading firm of solicitors specialising in dry shipping litigation.

Despite growing up in the UK, he is a bilingual Greek/English speaker.

Duty Executives in August

To assist you with your forward planning, the contact numbers for the Duty Executives who will be covering the month of August are set out below.

Vangelis Nomikos - 02/08 to 08/08
Mobile: 6944 39 43 43
Home: 210 41 83 173

Paul Kaye - 09/08 to 15/08
Mobile: 6948 88 53 72
Home: 210 89 92 488

Alexandra Couvadelli - 16/08 to 22/08
Mobile: 6944 96 54 11
Home: 210 96 19 122

Dominic Hurst - 23/08 to 29/08
Mobile: 6944 79 16 23
Home: 210 96 53 373

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