

BUSINESS SESSION 4

TOPIC: FINES - A WAY TO SHIPOWNERS' POCKETS

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FINES - A WAY TO SHIPOWNERS' POCKETS

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I represent The Swedish Club. Club, of course, means P&I Club, an underwriter who provides insurance protection to shipowners against liability based on the concept of mutuality. The Swedish Club was in fact founded in 1872 as a mutual Club for Hull and Machinery risks. In 1910 the Board decided to extend the business to include P&I insurance. Since 1982 The Swedish Club is a Member of the International Group of P&I Clubs.

The meaning of the word Club may not be clear to everybody. Last winter we had a ship in Halifax, Nova Scotia where 100 grams of heroin were found in the crew's quarter. The ship was arrested by the Canadian Customs and Mounted Police. They requested a cash deposit of the applicable fine which was CAD 1.000 per gram or a total of CAD 100.000. We immediately cable-remitted the amount to the agreed bank to have the ship released. It was by the end of the week - ships are always arrested on Thursdays or Fridays to make life miserable for P&I underwriters. To be on the safe side we also sent a telefax to the bank to confirm that money was in the pipe-line. Our faxed letter started traditionally with a heading to specify the matter. The heading included the name of the ship and the words "drug smuggling Halifax December 1988". The arrival of the fax caused immediate panic in the bank. A club in Sweden sending CAD 100.000 in connection with drug

smuggling! The Swedish Club, what kind of a club was that? A club of pot smokers and hip-hoppers? Could it be dirty money? The local bank immediately referred the whole matter to head office in Ottawa. It was cleared up just in the nick of time for the ship to depart on schedule.

This brings us to the subject of this afternoon session: ships, fines and P&I Clubs.

Before we proceed, let us take a short look on P&I. Although some strictly defined liabilities are covered under a ship-owner's Hull and Machinery policy, the main shield against liabilities is provided by P&I. For those who deal with P&I claims from 9 to 5 and sometimes from 5 to 9 there is seldom a dull moment. Almost any unbelievable sequence of impossible coincidences may occur onboard a ship. As if that was not enough, law makers all over the world make their best to complicate matters.

The largest number of cases handled by a P&I underwriter is for loss of or damage to cargo. Another well-known P&I risk is liability for personal injury or loss of life. People in shipping also know that P&I insurance covers pollution by oil or other substances. However, beyond these well-known risks, there is a wide menu of liability risks of various kinds. Somebody may find it surprising that fines are among the risks covered.

When I say that fines are covered I must immediately add that the cover is subject to various restrictions. The purpose of this presentation is not to define the extent of insurance cover under the P&I policy in detail or even in broad terms. Although the P&I clubs follow the same principles, the limits of compensation are laid down in the Rules of the individual Club, the construction, wording and interpretation of which may vary. Some general guide-lines could, however, be given. Fines arising out of personal misconduct by the shipowner himself are strictly excluded. Personal fines against the Master, officers or members of the crew are not recoverable under the shipowner's P&I policy unless the individual fined could be regarded as a stand-in, substitute or scapegoat for the shipowner.

It is difficult to be more specific than that. For fines it is especially hard to define the constantly changing reality within the framework of insurance conditions. Fines are based on an endless variety of domestic regulations. They are applied by local or governmental officials, not to say bureaucrats. They are often decided outside the due process of law.

I deliberately use the word fines although I know that some of the sanctions are in the form of dues or called penalties or charges. What I am after is the sometimes indiscriminate punishment of shipowners by charging him large economical sanctions.

Let us take a look at some situations in which fines are imposed. Some of them are spectacular and involve a lot of money. Others represent problems by which shipowners are plagued more or less daily. These cases may not be for huge sums of money but the number is increasing. It means that the economical impact is not unimportant to the industry.

Fines were originally restricted to situations when cargo was missing at the time of discharge. The excuse for such fines is that the customs authorities assume that the shipowner has caused any missing package, which he cannot properly account for, illegally to enter the country. In order to oppose such fines it is necessary to produce a short-shipment certificate from the port of loading or some other piece of evidence to prove that the missing package was never shipped, was lost overboard at sea or was wrongly discharged in another port. In short you must satisfy the authorities that the cargo did not enter the country concerned.

In February 1977 a Swedish ship carried a consignment of Nitric Acid in drums from Hamburg to Calcutta. The acid was heavily corrosive and was stowed on deck. During the voyage drums started to leak and emitted poisonous smoke which endangered the safety of the ship and those onboard it. All leaking drums had to be thrown overboard which created a shortage of 36 drums at the time of arrival at Calcutta. The jettison and the reason for it was properly recorded in the ship's log book. Still, the authorities imposed a fine on the ship of about USD 20.000. It took us 12 years and heavy legal

expenses to convince the Indian Customs authorities that they were completely wrong in charging fines for a situation where the shipowner acted prudently, according to good seamanship and in the best interest of crew, ship and cargo. In May this year we got the final confirmation that the fines had been withdrawn.

There are cases and places where fines for missing cargo are worse than this. Some serious cases were reported from Algeria. When a tanker had completed the discharging of oil, about 700 tons seemed to be missing. By investigations it was soon established that it was all based on a miscalculation. The Chief Officer had used an out-of-date set of ullage tables. The shortage could be fully explained. The missing oil never existed. The Algerian receiver did not suffer any loss. Still the authorities described the shortage as an attempted smuggling. The ship was confiscated. An additional fine of USD 1.000.000 was imposed. After one and a half year of negotiations the ship was released against payment of USD 255.000. At the same time the Master and the Chief Officer were allowed to leave the country where the Master had spent 5 months of the time in jail.

The fact that large fines can be expected for missing cargo is a matter to be considered when extensive cargo damage has occurred during the voyage for instance after a hatch leakage or cargo shifting. Although it may be justified and practical to dump or discharge such cargo in an intermediate port, when a surveyor has declared the goods as a total loss, it may

still be tempting to let it remain onboard to destination in order not to create a shortage which would cause you to pay fines on top of the claims for cargo damage. On the other hand, there are countries in the world, for instance in South America, which charge fines also on damaged cargo so you may be equally bad off both ways.

Egypt and Syria are extremely difficult when it comes to fines on cargo. The fines are frequent and high. Cases drag out for decades. One explanation is that they do not have the necessary infrastructure to keep track on cargo actually discharged. If a container is shortshipped and fully declared as such on one ship and the container arrives on another ship still fully declared on that ship, the chance is 90% or more that you shall have one fat fine for shortage on the first ship and an equally fat fine for overdelivery on the other. We have especially trained people who travel to Syria and Egypt on a regular basis just to try to match shipments and consignments together and convince suspicious and inco-operative authorities that they have actually got the cargo to which they were entitled, no more no less.

In Syria a Swedish shipowner was fined when a consignment of used spareparts was found to weigh 20 kilos more than the manifested weight of 16 tons. For a shipment to a West African port the manifest recorded the total weight of container and cargo which was 5,2 tons. The custom's declaration, however, only stated the weight of the cargo which was 3 tons. Although both figures were correct in itself, the shipowner received a

fine of USD 28.000 but was able to negotiate a reduction to about USD 2.500.

Australia is in the process of adopting the Hague-Visby Rules. A strong argument for the new rules is that they increase the carrier's liability per package. That is fair enough. My point is not to complain over the fact that such increased liabilities are shouldered by the P&I Clubs. I just want you to keep in mind that package limitation by international conventions is made illusory from the shipowner's point of view if some local authority, whose decision is without appeal, can charge and collect a fine for the shortage of several times the unlimited value of the missing goods.

To make things even worse such fines can be imposed years after the completion of the voyage. It is in the authorities' discretion to decide when they consider a voyage to be completed. This could be 10 years after the discharge. I just mentioned that it took 12 years to get rid of the unjustified claim for fines in India. In fact, the time limit for fines in India is 60 years from the completion of the voyage. If that case had continued, our file might have been closed by my grandson just before he retired.

There are other types of fines related to cargo. The U.S. Coast Guard is strict in enforcing U.S. law on hazardous cargoes. We have had many cases where cargo was stowed in breach of such regulations or incorrectly described in the dangerous cargo manifests. Each single violation - and there

can be many at each port of call - can be subject to a fine of up to USD 25.000. Therefore the total bill from Coast Guard can be for a considerable amount. For many reasons it is vital that all regulations with regard to hazardous cargo are strictly observed not only by those onboard but also by the owners or charterers and their respective agents who prepare the ship's documents.

Fines for hazardous cargo can be found everywhere. A shipowner entered with The Swedish Club was fined for having allowed a container with bon-bon snap crackers to be discharged in Singapore without permission from the Port Master. Fortunately the amount was far below U.S. standard.

There are also fines all over the world for violation of general safety rules. We have seen fines for improper flame screens on the ullage holes of a tanker, violation of fire precautions during welding onboard, speeding in harbour areas and negligent crossing of traffic separation lanes. If speed limits or traffic regulations are violated deliberately by a shipowner in order to save time and money, compensation should not be allowed under the P&I policy. This follows the principle of mutuality - disloyal Members should not be allowed to make a profit at the expense of those who loyally observe existing rules.

I do not deny that fines constitute justified sanctions for those who violate safety regulations. Therefore, the Swedish Club has exclusions in the Rules according to which we do not

cover fines for overloading, for carriage of more passengers than permitted and for insufficient upkeep of the the ship's lifesaving and navigational equipment. As a mutual underwriter for Hull and Machinery and P&I risks we work hard on loss prevention. Therefore, we do not show any lenience against those who endanger the safety of crew, ship and cargo.

However, it is hard to see any serious safety aspect in the following case. An Israeli ship was fined USD 9.500 for failure to paint the load line in a colour which contrasted to the ship's hull. The vessel was painted gray. Neither black nor white was accepted as a suitable contrast by U.S. Coast Guard. They never told what they had in mind. Maybe tartan.

The shipowner has a strict liability for pollution of oil and other substances. It should not come as a surprise to anybody that on top of that he may be charged considerable fines. These show a great variation in size and legal construction from country to country. They are often formally directed against the Master or Chief Engineer personally. The unauthorized use of detergents from ships to clean pollutions on a do-it-yourself basis, can cause equally high fines as the pollution itself.

Unauthorized or unreported changes of destination can cause fines. A tanker in good faith reported to the Saudi Port Authority that she was bound for Singapore. Executing their rights under the Charter Party the Charterers instead decided

to send her to Larak Terminal in Iran. The Owners were charged a fine in SAR 25.000.

The deviations do not need to be that long. We had a case where due to lack of communication between the shipagent and the local U.S. Customs Service, the Authorities were not informed that the ship had shifted berth. She started to discharge before the Authorities were able to drive their car to the new berth. For this offence the ship was fined USD 125.000. The amount could, however, be reduced later on.

There are numerous political reasons for fines. Consequences are usually serious if Israeli products are found on a ship calling Arab ports. The main brand of Swedish matches is called "Three Stars". Such matchboxes found in the galley on-board Swedish ships in Arab ports have caused fines as the stars have five points and were, therefore, regarded as Jewish symbols.

A ship better fly the right flag when entering port. A Swedish ship was to call an African port where there had just been a revolution. Strict instructions were given over radio to the ship by the local agent regarding the colours and design of the new flag valid since a few days. The bosun worked hard with his sailmaker's tools. His masterpiece was proudly flown on the signal mast when the ship entered the port. Unfortunately nobody told the Master which was up and down on the flag. The Captain gladly paid the fines when he saw people who

had ended up in lamp-posts for having paid less respect to the new national symbol.

Presence of arms onboard a ship is bound to cause problems. It does not always help that they had been declared in the ship's documents. On a German ship, which we insure, there was an old air-rifle capable probably only to scare a seagull if fired at close distance. Although the rifle was duly declared, customs in Sicily, of all places, became most upset. You would think it should take some heavier artillery to impress anybody in Sicily. Still, the Master was saved from being arrested by the intervention of our lawyer. We have been forced to make an advance payment for fines yet to be decided.

Stowaways continue to constitute a problem to shipowners and their P&I Clubs. It is often difficult, especially for political reasons, to find a country willing to allow them to disembark and be repatriated. It happens that a Master signs them on as crew-members probably in the hope that it would be easier to get rid of a seaman than a stowaway. If the attempt is revealed by the immigration authorities - and it often is - the shipowner is surely up for a fine.

Smuggling is a traditional cause of heavy fines against ships. Crew members are sometimes involved in illegal trade of narcotics. It is, however, no secret that in certain ports narcotics are planted onboard ships by customs officers only to be "discovered" with much publicity to form an excuse for fines or bribes.

One of the major problems for shipping today is the U.S. Anti-Drug Abuse Act 1986 which imposes exceptionally severe sanctions on shipowners if drugs are found in their ships or its cargo. It is not my intention at this session to go deeply into this new legislation. That would require much more time and would be better and more adequately covered at a separate session by some of my American lawyer friends. Still, you cannot discuss fines without mentioning U.S. Anti-Drug Abuse Act. The application of the Act is quite simple. As certain amount of money has been fixed on a weight basis for each kind of drug found onboard. The fine for 1 ounce of heroine has been set at USD 1.000 and for 1 ounce of marijuana at USD 500. It does not take a very large quantity of drugs for the fine to reach astronomic amounts. Confiscation of the ship is an option available to the Customs Service. Just some examples to show what we are talking about. One ship was recently fined nearly USD 82 millions after 10.222 lbs. of marijuana having been found in a container which was manifested as carrying plastic garbage bags. Just before I left home I saw reports about two U.S. ships having been fined USD 24 millions and USD 36 millions respectively for the same reason. The authorities can reduce the gross amount of the fine or withdraw it completely if the shipowner can prove his innocence. Such burden of proof is difficult to sustain. The shipowner must show that he exercised "the highest degree of care and diligence". In a case tried in court the judge said that the shipowner "must leave no stone unturned" to prevent the smuggling. It goes without saying that such a legally imprecise wording or rubber language gives the authorities a discretionary right to exer-

cise their judgement. It is difficult to say yet what the real long term impact of the new legislation will be. Another Scandinavian P&I Club just reported that a claim in USD 59 millions had been withdrawn completely. This is, of course, a good sign. The shipping world would, however, deceive itself if it regarded the new legislation as a paper tiger. In fact, P&I Clubs and shipowners world-wide spend much time, money and effort to sharpen up organizations, routines and procedures onboard and ashore in order to avoid the consequences of the Act.

Besides narcotics the smuggling of pornography has increased considerably and, of course, the number of fines against ships on which it is found. It does not even need to be a case of smuggling. In many parts of the world pin-up girls "for private consumption" in the crew's quarter will cause fines and thus become expensive for the shipowner and his P&I Club.

On a Greek ship the French customs found 30 cardboard boxes in the propeller shaft each containing 1.000 pornographic magazines. In negotiations we were able to persuade the customs authorities only to charge the minimum fine of FRF 10 per magazine. It still meant that we had to pay FRF 300.000 to lift the arrest of the ship.

Another variation of the same problem where an innocent shipowner was hit by unnecessary expense, happened on a Swedish ship. She was discharging a consignment of bales manifested as "once-read newspapers" in an Israeli port. Suddenly one bale

fell out of the sling, hit the ground and burst to pieces. To the by-standers' great excitement it was found to consist of men's magazines. However, within ten minutes the entire consignment was literally put under military armed guard and was immediately carried away on escorted trucks for destruction. For the shipowner and for us it meant payment of destruction costs, a shortage claim from the receiver for the loss of the bales and, of course, fines.

Undeclared spirits and cigarettes found outside the sealed bonded store inevitably leads to fines. Recently a ship was fined USD 20.000 in an Egyptian port because 3 bottles of whiskey and 5 cartons of cigarettes were found in the crew cabins.

Before fines for smuggling are reimbursed under the Owner's P&I policy, we try to investigate whether the money could be recovered from the smuggler, if apprehended. Sometime ago we had a considerable fine for smuggling of pornography on a Swedish ship. A crew member had been caught red-handed. As a routine matter and with no real hope of success we asked him if he was prepared to discuss a payment plan on the fine. Much to our surprise he promptly paid the entire amount in cash. It was probably more a proof of the profit of the trade than of his friendly disposition towards the Swedish Club.

This leaves us with a number of unspecified odd situations where fines have been imposed which sometimes do not lack a certain bizarre humour. A passenger on a ferryboat took her

little poodle for a long wished-for visit to a lamp-post ashore: fines against the ship. When a Master found a package of marijuana onboard in a West African port, which probably had been planted there by customs, he threw it overboard: fines against the ship. In a North African port customs found two more bed covers in the crew's quarter on a Swedish ship than stated in the inventory: fines against the ship.

Another Scandinavian P&I Club reports a case where U.S. Coast Guard found not only three live lobsters but also one boiled claw, shell and tail onboard a large trawler. As this indicated a violation of U.S. fishing regulations, a fine of not less than USD 250.000 was imposed. The only explanation those onboard were able to offer when interrogated was that the ship must have got a boiled lobster in the trawl. Coast Guard allowed them some credit for such an unusual catch and reduced the fines to USD 100.000 which still was a high price per kilo.

As far as possible I have spared you the direct quoting of domestic laws and regulations on fines. For me it would have been a Sisyphean task and for you deadly boring. Let me just add that in this type of cases we mostly have to rely on local lawyers who with their legal machete cuts the way in the legal, administrative and bureaucratic jungle and undergrowth which hides the solution to the problem which at the outset may seem to be beyond human reach.

It does not take too much imagination to suspect a direct link between certain fines and the quantity of bottles and cigarettes discretely transferred to those officials who first board the ship. There are many ways to show your disappointment and make life difficult for a Master who did not let his joy and excitement over the custom's visit be adequately manifested generously enough.

I suppose that we all own a car. If it is new and expensive we may have an insurance policy to protect us should the car get damaged. In any case we are most probably obliged by law to have an insurance cover ready to pay third parties for any damage we may cause to persons or property. However, if you ask your car underwriter to compensate you for the fines you were charged by the police for speeding or for wrong parking, he will probably show very little understanding.

Still, a shipowner's liability underwriter, the P&I Club, under certain circumstances allow fines to be reimbursed under the insurance policy.

It may seem surprising because fines are generally regarded as well deserved penalties imposed by society for offences committed against laws and regulations democratically adopted for the common best. This was at least the position some years ago. However, an increasing number of countries have discovered that fines against ships provide an almost unlimited source of state income. When shipowners find themselves running the ruining risk of being arbitrarily hit by exorbi-

tant fines for trivial or even provoked violations of obscure administrative regulations, then they have in my opinion a justified and urgent need for insurance protection.

As mentioned before there is no cover and compensation in a case where the shipowner himself is involved. The purpose of the insurance is just that a bona fide Owner shall be able to continue trading his ships even if he is victimized by actions or legislation he did not know or could not control or foresee. The fact that the fines are paid by his P&I Club does not mean that the shipowner escapes unhurt. The fines have an instant and direct effect on his insurance records which means that he has to pay increased premiums for years to come. It lies within the concept of mutuality that large fines, which would have wiped out an individual shipowner, are shouldered by the community of shipowners first within the P&I Club concerned and then, for really big cases, by the entire shipping world in the International Group of P&I Clubs which represents over 90% of the world tonnage.

By their unique position and experience the P&I Clubs actively promote on a broad basis among almost all shipowners in the world the good and prudent behaviour and performance which ought to be the purpose of any legislation sanctioned by fines. However, as I hope I have been able to show to you today, there are many fines which bear no reasonable relation to the offence committed. They only constitute a way to reach the shipowners' pockets.

Let me end by telling you what happened on a small Swedish ship when she called a French Mediterranean port. No sooner had she moored when a number of customs officers entered the Master's office which was part of his cabin. There were golden stripes on the uniforms and shining emblems on their caps. After a while the Master politely pointed out that his office was part of his home, that his wife and daughter were present in the room and that, therefore, they ought to show good manners by taking off their caps. The customs officers bluntly refused. One word gave the other. After a while they all left the ship in a hurry with red faces but with their caps still on. Half an hour later the ship was arrested and a fine of FRF 5.000 was charged because the Master had insulted French customs, de Gaulle, la Gloire, le Tricolore and la France.

It was a Friday, of course, but we got her out in time. It is not bad, after all, to have a P&I Club to rely on.

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