

MARINE OIL SPILLS -
A SHIPOWNERS' PERSPECTIVE

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MLAANZ speech.

"Marine oil spills – a shipowners' perspective"

I would like to "fess up" to a couple of deficiencies in my bowling action:

- 1 I'm not a lawyer, although I have been told that if I mention Roman civil law, Sir Matthew Hale's *Treatise de Portibus Maris*, and Lords Ellenborough and Donaldson, then I could let others monopolise the conversation. I'll come back to Ellenborough.
- 2 My own business perspective is from an oil industry, oil tanker background. This experience should illuminate the future path in regard to marine oil spills for non tanker shipping.

A loose opener: I have attached to the written copy of this speech some probably biased statistics of marine oil spills, and I want to take these as read, but quickly go through the main points of these so as to get marine spills into perspective.

First, the marine transport sector is a low contributor relative to all sources of marine pollution from human activities at some 12% in 1990.

Secondly, marine world trade is on the increase, as is the amount of oil moved by sea – yet despite this, the amount of oil spilled from tankers is on the decrease. Interestingly, the incidence of oil spills from non tankers and other marine spill sources, relative to tankers, is on the rise.

Lastly, it is worth noting the "top 3" causes of tanker spills world wide during 1979 - 1998:

<i>Small spills [<7te]:</i>	Loading/discharging	40%	}
	Other routine operations	18%	} 75%
	"Other"	17%	}
<i>Medium spills [7-700te]:</i>	Collision	28%	}
	Loading/discharging	24%	} 70%
	Grounding	18%	}
	4 "Other"	14%	}
<i>Big spills [>700te]:</i>	Collision	33%	}
	Grounding	32%	} 78%
	Hull failure	13%	}
	4 "Other"	8%	}

I have added the 4th cause for medium and big spills in anticipatory rebuttal under learned cross-examination from you that Australasian waters are not as densely trafficked as compared to the rest of the world, and therefore local statistics may not rate "collisions" in the "top 3" causes of marine spills in those categories.

A couple of points before closing this section:

- 1 *The only common cause of all sizes of spills is “other”, or “none of the above”.*

These days, accidents and spills rarely have a simplistic cause, rather it is the combination of an “event chain” that leads to the accident and/or spill. The Air NZ Erebus accident, for example, had an event chain of some 19 linked events, and the accident would not have occurred if that chain had been broken at any one event. As with safety, so with oil spills. No incident is too small to record, to report, and to make known to others for them to share your experience. Safety and oil spills are not competitive issues.

....and speaking of safe navigation....

- 2 *Groundings.*

As a collector of antique paper based maps and charts, it never fails to amaze me how on earth in this electronic day and age, especially now since that well known Millbrook golfer Billy Clinton has finished playing with his cigars and allowed the rest of the non-US military world free access to “DGPS” signals that allow a vessel to position itself to within 2 metres of its true position in most places on the planet, that groundings are as significant a contributor to oil spills as I have stated. Even with the assistance of pilots, groundings occur – the *Mikhail Lermontov* being arguably the most infamous Australasian example. Vessels still hit bits of land that have been charted for over 200 years with light-houses on top!! Some vessels even log passing such devices even when they haven’t, and if you are of a mind that Erebus could not happen at sea, then I refer you to an oral judgement from NZ’s Employment Court delivered by Goddard CJ on 18 December 1997 [ref WEC67/97 W102/97] [copies available for your perusal at the Conference].

The 3 factors that keep me awake at night are:

- Safe navigation
- Engine room fires
- Cargo operations

So to the 2nd delivery in this over: a shipping perspective of the regulatory environment within which it operates. I am not going to regale this gathering with a series of 3, 4, 5 or even 6 letter acronyms, but rather summarise the changing intent of the regulatory environment with respect to oil spills. It is my view that 20+ years ago, technical factors were the main thrust of regulation. More recently, regulation has focused on procedural matters to maximise safety, minimise spills on the basis of its not *what you’ve got*, its

what you do with it that matters. Currently, the focus has been on the human factor – the so-called “pilot error factor”, the “*who’ve you’ve got*” to continue the above analogy, and here I refer to the International Safety Management [“ISM”] code, or to give it its full title:

The International Management Code for the Safe Operation of Ships and for Pollution Prevention. [emphasis added].

The safety part is well known, but not so the pollution prevention part.

This code was introduced to address statistical analysis which suggested that about 80% of all, recent shipping accidents are caused by **human error**.

A couple of rubs:

Rub #1

Primary school regulatory environments concentrate on the consequences of safety failure, which include finding *some-one to blame*. This creates a *culture of punishment*, where the essential theme was and is to identify and apportion blame, *often to the last person in the chain of events*. Remember Erebus?!

Secondary school regulatory environments involve the regulation of safety by prescription, which leads to a *culture of compliance*. This culture seems to find fanatical zealots in Australasian waters, with little thought given to past compliance history setting future compliance assessment. Russian rustbuckets of the month are given similar compliance status to vessels which have histories of minimal, minor non-compliances.

At a tertiary [ISM] level, the focus is the creation of a *culture of self-regulation*, whereby safety is organised by those who are directly affected by the implications of failure. What is important here is to learn from the lessons from the chain of events, not only your own failures but the failures of others, so as to prevent repetition. This can only occur if the chain of events is known, and disseminated. It requires a *no blame culture* within which to flourish.

So to Rub #1: in my view the current marine regulatory environment on both sides of the Tasman has yet to fully embrace the underlying principles and culture of the tertiary, ISM level of safety and pollution prevention. Fee earning opportunity #1!!

Rub #2

The ISM Code requires companies to fess up inter alia to its organisational structure in order to comply with part 3 of the Code relating to “Company Responsibilities and Authority”. This disclosure can be used in evidence against companies on other, particularly industrial relations, matters. This has already occurred in NZ, when the NZ Seafarers’ Union were in dispute from August 1998 through January 1999 with Silver Fern Shipping Ltd, and later Coastal Tankers Limited [“CTL”] and later

again with CTL's shareholders, regarding a Collective Employment Contract variation. The NZSU's documents included excerpts from SFSL's ISM documentation. In fact, all of the NZSU documentation in that case was generated by SFSL and CTL!! Opportunity #2!!

The timing of compliance to the ISM code by shippers is as follows:

1 July 1998:	passenger ships		
	oil tankers	}	
	chemical tankers	}	
	gas carriers	}	500 gross tonnage +
	bulk carriers	}	
	cargo high speed craft	}	
1 July 2002:	other cargo ships	}	500 gross tonnage +
	mobile offshore drilling rigs	}	

A final comment on the regulatory environment. One definition of "*good shipping*" is "*compliance with international standards*". From a NZ perspective, this is effected in part by compliance with the Maritime Transport Act 1994. We have, however, the Resource Management Act 199? To comply with that latter Act introduces regional variations on the international compliance theme. This would be acceptable if there was a common intellectual basis to such regional compliance, but in my view there isn't. I am ignorant of the equivalent situation in Australia.

The 3rd ball: a short bouncer regarding public and shareholder acceptability of oil spills. It is my contention that the 2 perspectives are identical, and are as follows:

Historical position: Oil spills are barely acceptable.

Current position: Zero tolerance [cf drunk driving], hostile non-acceptance.

The basis for the current business position on oil spills can be summarised in order as:

- They can put you out of business
- Image and reputation factors
- They can be a huge diversion of scarce resources
- \$

The key point I want to make here is that the financial cost of an oil spill can be the last concern in an oil spill event.

A yorker for 4: Given acceptance of the non-acceptability of oil spills, the shippers' **aim** with regard to oil spills is as follows

ZERO SPILLS

And if perchance [because no-one is perfect] you do have a spill then the following criteria apply in order:

No loss of life

Look after the vessel and the cargo, and you'll look after the environment

Incident control

Image/reputation control

Media control

Incident closure

For the **penultimate ball** in this over, I want to briefly go over the key lessons from recent oil spills. I am assuming that you are familiar with the details of these incidents, salient details will be either appended to this speech if time permits before the conference, or available at it.

Mention "oil spills", and the Pavlovian response is invariably "*Exxon Valdez*". 3 points on this one:

- 1 At the time of the spill [1989], only 2 oil companies could have remained in business after the spill. In 2000, 3 companies could have remained in business.
- 2 This spill bats only #35 on the all-time list of oil spill batting averages!!
- 3 The lawyer has yet to be born who will complete his life's work on claims relating to the Exxon Valdez.

But, I hear you all say, this couldn't possibly happen in Australasia – could it? Well, not yet, but we've come close:

Osco Star nearly pranged the Great Barrier reef in 1997 during a cyclone which totally demolished a tall ship sailing to Hong Kong from Lyttelton. Would Shell Australia have stayed in business if she had hit the Barrier? No blame culture meant that the master continued his employment.

DW529 successfully clipped Stewart Island, grounded for 3 days then sank, overseas media reports temporarily closed NZ's fishing exports to the US and Japan until they realised that the salmon farms near the scene of the accident did not represent 100% of NZ's fishing exports.

Here is an oil spill everyone has forgotten about: the *American Trader*, several months after the Exxon Valdez off the Californian coast. Here's what the US Coastguard had to say about this one:

"The response mounted by the ... OSC and the responsible party ... became one of the most successful open sea oil recovery operations in US history and has been called a textbook example of shoreline clean-up and interagency co-operation..."

One reason why this happened was that the cargo owner sent a high level team with executive decision making authority to the incident scene. On the downside, environmental claims relating to this incident have yet to be finalised.

Getting it right once, however, does not mean getting it right all the time. The same cargo owner was involved in one of Australia's better known incidents, the *Kirki* off the coast of Western Australia where the bow fell off and the vessel caught fire forward – all this despite the vessel being vetted before being chartered!

Luck can play its part. The *Braer* incident of the Shetlands gave new meaning to the term “weathering”, and the recent incident involving the *Seafresh 1* off the Chatham Islands earlier this year demonstrated the benefit of having an incident's On Scene Commander in place before the incident occurred!!

In December 1999 there occurred a Heavy Fuel Oil [“HFO”] spill off the Brittany coast of France that will knock the *Exxon Valdez* off its most publically memorable perch. I refer to the *Erika*, which split in two during a storm spilling some 25,000 tonnes of HFO along the western beaches of France from Christmas Day. The repercussions of this event include:

- The possible demise of one flag state
- The possible demise of one ship management company [this event affected the recent sale of CTL's *Toanui* to Italian owners in December 1999]
- The possible demise of several classification societies
- The introduction of tighter than US pollution laws [OPA] into Europe [the so called “EUROPA” laws!!].....
- so, standby for “sub-standard” shipping into Asia/Australasia??
- Tighter rules on “classification society” hopping
- Vessel “age-ism” at 20 or 25 years, in turn leading to much debate on
 - “old and well built/maintained” versus “old and not so well built/maintained” vessels [and CTL's *Taiko* comes into this reckoning, as she just comes within the proposed 20 and 25 year old rules]
 - “good” shippers versus “bad” shippers

HFO is a persistent oil. Modern shipping [including vessels other than oil tankers] burns HFO [“bunkers”] rather than the non-persistent diesel, as its cheaper. More oil spill incidents now involve vessels other than oil tankers, which means a bunker spill from these vessels is likely to be HFO soooo, if you read anything that mentions the *Erika*, it may pay to read on!!

One final incident from Australia before a quick canter through some recent NZ spills. One of the last things you want to do 1 year out before Olympic year is to have a spill in Sydney Harbour AND interrupt a performance in the Sydney Opera House - but that is just what happened on the evening of 3 August 1999 when the *Laura d'Amato* released some smelly Murban crude into Gore Bay between about 1820 and a little after 1900 hours.

This is a sample of the media feeding frenzy that resulted:

[Cut to short video presentation]

The “media” diary of events went something like this

- instant public reaction because of “smell” [rotten eggs a la Rotorua]
- ABC report at 1930
- Media conference 2130
- 2200ish – AAP gone to print with an erroneous story
- 2220 first media statement and backgrounder issued by Shell
- 2300 debriefs of Captain and crew
- 0300 next day – letter box drop to affected community
- Saturday: www site established to log claims [in addition to paper mechanisms].

Shell’s prime concern: **reputation management** [eg Olympic sponsor].

The quick NZ canter:

NZ1 – the *Niagara*. Sank 1941, still leaking 1999!!

NZ2 – the *Dong Won 529*. NZ’s first and so far only “Tier 3” oil spill. Other “notable points” of this incident include:

- Incident occurred in a communications “black hole” – that was known before the incident
- A grounding that wasn’t
- Salvage attempted despite non-conformance with required oil spill contingency plan
- Lots of legal opinions
- Lack of information – the OSC has still to receive the “general arrangement” drawing of the vessel!!
- “SOSREP” issues per Lord Donaldson’s report
- Good media response
- Good oil spill response
- Good community interaction
- NZ MSA a bit bruised and battered afterwards

For further details on this one, button hole your President!

NZ3 – I'm going to link *Toanui [1997]* with *Rotoma [1999]*. The *Toanui*'s device for measuring oil in water was not working, so the crew pumped an oily water over the side using the Mark 1 eyeball to comply with the 15ppm MARPOL limit. Silver Fern Shipping fessed up to the MSA on this one. SFSL got the device going, procedures training as well some 18 months later. The point was that such equipment and its use is irregular, complicated and does not have a good track record of working. We thought others should be aware of this. To the best of my knowledge, the incident learning was not passed on – our fault as much as anybody's. So the *Rotoma*, having problems with similar equipment soon after leaving Auckland, pumps oily bilge waters over the side – but on this occasion in the vicinity of the Poor Knights Islands, NZ's marine equivalent to Australia's Great Barrier Reef. Wade Doak was not impressed, and I have to say neither was I, nor were the Courts [\$250,000 fine] but the real cost may be yet to come in terms of a longer sea lane that may be imposed that increases the clearance distance for shipping from the Poor Knights.

NZ4 – another link, *Toanui [1999]* and *Pohokura-1 [2000]*. Both extremely small spills, the lesson from the first incident if promulgated could have reduced the spill in the second incident. The second incident is probably

- a benchmark on how to respond to a spill, and
- directly responsible for NZ oil rig procedures being the international benchmark.

The lesson: simply that standard operating procedures are not always followed, and this can cause a spill.

The yorker to complete this over. What do oil spills mean to lawyers, and/or vice versa.

First, a diurnal observation: "*Time, tide and the media wait for nobody.*"

The list of nobodies includes:

- King Canute
- Shippers, and
- Lawyers

A shipper is fortunate if he/she learns of an incident from internal sources, and not via the public or the media. And if it is via internal sources, then a shipper has a time interval expressed in *minutes* before facing a telephonic/televisual media feeding frenzy. If the incident is a grounding, then a salvage option could be implemented within *12 hours* – ie before the next high tide. Incidents have an annoying habit of occurring at 0300 of Day 1 of a 4 day weekend, when most of your key staff are either just on leave or about to return. You don't have time – are you prepared to handle the incident, let alone the media onslaught, and remember this little dictum from Walter Nagel of the German High Command before WW2:

"It matters not what is right or wrong, but exclusively what is believed".

There is plenty of preparation- some 60 to 70% - that can be done ahead of any incident on both incident preparation and also for media preparation – and this can be legally signed off on where necessary before hand.

But preparation alone is not sufficient – speed of response is important. Take the Laura d'Amato - the media response was needed within 1 hour, not 3. How the media information gets out there needs thought – does your fax machine have the key numbers pre-encoded, are there 1 or 2 key agencies that can "spread the gospel" – your gospel, not some-one else's. Can you use your web site? Can your PC illiterate management use this stuff before the IT geeks arrive? Again, time is not on your client's side – is the required legal support available when it is required?

First impressions count in an incident, and if this gets off on a good footing then this can be maintained throughout. A negative first impression can be impossible to reverse. One key early consideration is that of liability, and this should be thought through preferably BEFORE any incident. In the Laura d'Amato incident for example, the cargo owner was presented with a legal dilemma. Shell Australia felt that they were not legally liable, because they thought that the spill was caused by an operational error on a vessel which they did not own, but had chartered. How to protect then their shareholders' interests – do/say nothing, pass the buck or cop the flak? Don't forget the incident happened at a terminal owned by Shell, and in a country where the company had many customers and employees. Shell was shocked and embarrassed – they wanted to fix the problem and fix it quickly.

What would your advice have been?

I'll close this address by telling you what happened at the conference!!

Perspective

Contribution of marine pollution from human activities:

- land based discharge 44%
- atmospheric inputs 33%
- marine transport 12%
- dumping 10%
- oil exploration/production 1%

Source: Group of Experts on the Scientific Aspects of Marine Pollution [GESAMP], 1990 – as reported by International Chamber of Shipping publication “Shipping and the Environment: a Code of Practice” 3rd Edition 1999.

Increased world trade:

	Total	Oil
- 1983	12600 billion tonne miles	5600
- 1998	21425	9800

Source:

Quantity of oil spilled from tankers, tonnes:

- 1983 384000
- 1988 198000
- 1993 144000
- 1998 10000

Source: The Tanker Newsletter, Issue #3, January 2000 [an Intertanko publication].

Marine oil pollution from transportation activities:

1990: Operational discharges	411000 tonnes
Tanker/non-tanker accidents	121000
Terminal/bunker/other	37000

Source: US National Academy of Sciences, 1990 – taken from ICS 1999.

Spills by cause & size: [1979-1998]

	<u><7 tonnes</u>	<u>7-700 tonnes</u>	<u>>700 tonnes</u>
collision	2%	28%	33%
fire/explosion	1%	2%	7%
grounding	4%	18%	32%
hull failure	11%	9%	13%
loading/discharging	40%	24%	7%
bunkering	7%	2%	0%
other routine op'ns	18%	3%	0%
other	17%	14%	8%

Source: ITOPF, 1999 – taken from ICS 1999.

Recently:

1998: 16 incidents attended on-site by the International Tanker Owners Pollution Federation Ltd [ITOPF] staff in the 12 months to 20 February 1999:

- 5 from oil tankers [of which 1 not an ITOPF member]
- 8 from non-tankers
- 3 from “not a ship”

Source: 30th Annual Report and Accounts of ITOPF for year ended 20 February 1999.