

LEGAL AND REGULATORY UPDATE

Chesapeake Area Professional Captain's Association

WINSTON
& STRAWN
LLP

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February 2014

TOPICS

- U.S. Coast Guard NVICs & Policies
- Maritime Labour Convention 2006
- MARPOL – APPS enforcement
- Cases
- Q&A

RECENT NVICS

- NVIC 01-14: Medical Certificates
- NVIC 02-14: Grandfathering for MMC
- NVIC 03-14: Approval of Training Courses
- NVIC 04-14: STCW Survival Craft & Rescue Boats
- NVIC 05-14: STCW Fast Rescue Boats
- NVIC 06-14: STCW Navigational Watch
- NVIC 07-14: STCW Engineering Watch
- NVIC 08-14: STCW Basic Safety Training
- NVIC 09-14: STCW Advanced Firefighting
- NVIC XX-14: Casualty Reporting

MEDICAL CERTIFICATES

- NVIC 01-14: Medical Certificates
- The CG will issue when processing applications:
 - Original
 - Raise in Grade
 - Renewal
- CG will also issue proactively to STCW personnel
- Period of Validity;
 - STCW – 2 years
 - Pilots – 1 year
 - Others – 5 years

CASUALTY REPORTING

- Draft NVIC
 - Emphasize importance of reporting casualties
 - Enforceable by civil penalties, license action
- Report
 - Marine Casualties
 - Diving Accidents (death / 24 hrs / 72 hrs)
 - Pollution
- Casualties (46 CFR 4.05-1)
 - grounding; loss of maneuverability; FFS; death; injury; >\$25K; pollution

CASES

- **Youngberg v McKeogh**
 - Motorboat overtakes, ran over PWC
 - Duty is on overtaking vessel to signal passing
 - Negligent entrustment – burden to show unreasonable
- **Markel Am. Ins. v. Veras**
 - Insured lied about boat value, prior claims & losses
 - First Circuit adopts *Uberrimae Fidei*
- **Marasa v. Harrington**
 - Tug crew injured during anchor lift when tug went beam to sea
 - Lack of training + beam sea = Jones Act negligence

CASES

- Offshore of the Palms v. Lynch
 - Plaintiff was thrown in air just outside inlet; Vessel owner sought limitation, plaintiff wanted jury trial
 - Lim. of Liability Court yields to single claimant
- In Re. Bopco
 - Collision at canal intersection due to obstruction of grass; no company training, but policy to not use radar
 - Lack of Training + no radar policy = negligence
- New Hampshire Ins. v. Carleton
 - After liaison on RHI, woman drowns, family sues
 - Ins. Company denial rejected – focus on specific terms

CASES

- **Arcure v. McCabe**
 - Towboat was docking tow, plaintiff put hand between piling and tow during landing
 - No recovery for injuries due to being stupid
- **Am. Petroleum v. New York**
 - Bridge got stuck “down” due to alleged negligence, and company was unable to transit, causing business losses
 - Second Circuit adopts Economic Loss Rule – no recovery in tort in absence of physical injury

THE SCOURGE OF PIRACY



THE COST OF PIRACY

Ransoms	\$148 million
Insurance:	\$460 million to \$3.2 billion
Routing costs:	\$2.4 - \$3 billion
Security costs:	\$363 million to \$2.5 billion
Naval forces:	\$2 billion
Piracy trials	\$31 million
Organizations:	\$19.5 million
<u>Macroeconomic costs:</u>	<u>\$1.25 billion</u>
Total:	\$7 to \$12 billion per year

PIRACY: UNDER THE LAW OF NATIONS

Pirates have long been regarded as *hostes humani generis*, or "common enemies of mankind," subject to prosecution and punishment wherever captured



PIRACY: UNDER THE LAW OF THE SEA

- Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS):
- Piracy is an:
 - Illegal act of violence or detention
 - for private ends
 - by a ship against another ship
 - on the high seas outside the jurisdiction of any State



PIRACY PROSECUTIONS

Ref: UN Security Council Report S/2012/50

<i>COUNTRY</i>	<i>NO. HELD</i>	<i>RESULTS</i>
Belgium	1	1 convicted
Comoros	6	
France	15	5 convicted
Germany	10	
India	119	
Japan	4	
Kenya	143	50 convicted
Madagascar	12	
Malaysia	7	
Maldives	37	Awaiting deportation – no law under which to prosecute
Netherlands	29	10 convicted
Oman	22	All convicted
Seychelles	70	63 convicted
Somalia		
“Puntland”	290	Approximately 240 convicted
“Somaliland”	94	68 convicted (approximately 60 subsequently released)
South Central	18	Status of trial unclear
Republic of Korea	5	5 convicted, appeal pending before the Supreme Court
Spain	2	Both convicted
United Arab Emirates	10	
U. R. of Tanzania	12	6 convicted
U.S.A.	28	17 convicted
Yemen	129	123 convicted and 6 acquitted
Total States: 20	1 063	590 convicted

ENFORCEMENT

- BUT: an estimated 90% of pirates captured are released – the "Pirate Catch & Release" Problem



WHAT NEXT?



**SO MANY PIRATES
SO FEW YARDARMS**

Major Shipping Companies Prosecuted for MARPOL-Related Crimes

- Columbia Shipmanagement
- AP Moller Maersk
- OSG
- Hoegh Fleet Services
- Fleet Management, Ltd.
- Matson Navigation Company
- Royal Exxon Shipping
- ConocoPhillips/Polar Tankers
Wallenius
- Evergreen
- OMI Corporation
- Clipper Wonsild Tankers
- Fairmont Shipping
- MSC Shipmanagement
- Horizon Lines
- Dryships, Inc.
- Target Ship Management
- Pacific Gulf Marine
- IMC Shipping
- B Navi Ship management
- Polembros Shipping
- National Navigation Company
- Ionian Shipmanagement
- Norwegian Cruise Lines
- Royal Caribbean Cruise Lines
- Holland America Lines
- Princess Cruises
- Carnival Cruise Lines
- Karlog Shipping Company
- Gulf-Stolt Ship Management
- Genmar Management

MARPOL REQUIREMENTS

- Water from machinery space bilges may only be discharged through OWS with 15 ppm monitor, automatic 3-way valve
- Sludge must be incinerated
- Cargo space slops must be discharged through ODME
- Otherwise wastes must be discharged ashore
- All oil-related operations must be accurately recorded in Oil Record Book
- Flag states and port states monitor compliance with MARPOL through detailed examinations and audits

THE INTERNATIONAL "ENVIRONMENTAL" ENVIRONMENT

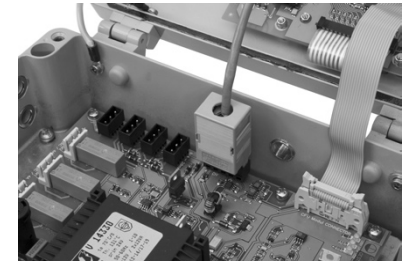
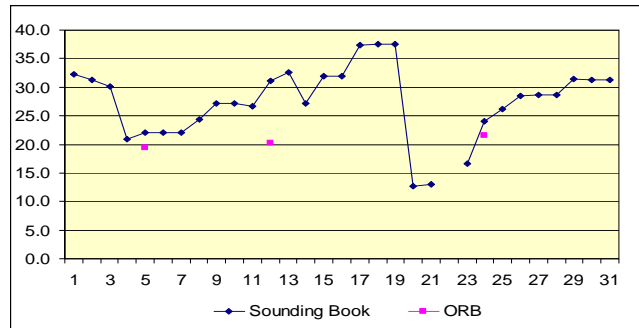
- **Global Enforcement Campaign**
 - US
 - Europe
 - Pacific
- **Charterers/Shippers demand highest levels of compliance**
- **Company & Officers have leadership role in industry**



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DETECTION OF VIOLATIONS

- Remote Sensors:
 - Satellites
 - Aircraft
- Routine Inspections
- Enhanced Inspections
- Tank & Pipe examinations
- Crew interviews
- Equipment testing
- Referrals from Other Countries
- Supply & Maintenance Records
- Oil Record Book, Sounding Logs
- Memory Cards, Alarm Tapes
- Mystery Spill Investigations
- Whistleblowers



QUESTIONS AND DISCUSSION



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