

## THE ENVIRONMENTAL ASPECTS OF SHIPPING

### Law and Practice – Training options

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#### Summary

I offer talks and workshops on various environmental aspects of shipping and related topics. These have been designed mainly for legal and claims executives in P&I Clubs and other liability insurers.

The focus of the sessions is not simply on latest developments but on providing a structured grounding in the legal framework, set in its practical context.

Three workshops are available in which I liaise with senior claims personnel in coaching their colleagues, who benefit from a combination of external and in-house expertise and experience. These sessions have also worked successfully as contingency exercises for senior casualty managers.

Nine talks are on offer. Each is free-standing, and a programme can be constructed with any combination of them that may be preferred. Each of the workshops provides an exercise in the topics covered by three of the talks.

I have given various combinations of talks and workshops to complement the training programmes of most P&I Clubs in the International Group. Workshops have usually been given with the corresponding talks on the same day – this being practical particularly for sessions outside London or the UK – but sessions can be spread over a longer period if this is felt more convenient.

Please feel free to discuss a customised programme.

Further details are given below as follows:

- A. Talks**
- B. Workshops**
- C. Cost**

#### **A. Talks**

Talks are offered on the following topics:

- 1 FRAMEWORK OF INTERNATIONAL LAW AND PRACTICE
- 2 OIL POLLUTION FROM TANKERS
- 3 LIABILITY FOR POLLUTION OF PARTIES OTHER THAN OWNERS
- 4 POLLUTION FROM SHIPS' BUNKERS AND LIMITATION OF LIABILITY
- 5 WRECK REMOVAL AND DUMPING AT SEA
- 6 THE RESPONSE TO INCIDENTS
- 7 REGULATORY REGIMES, ENFORCEMENT AND CRIMINAL PROCEEDINGS
- 8 P&I COVER FOR POLLUTION, BLUE CARDS AND CERTIFICATION
- 9 POLLUTION IN THE USA

Each of these talks should run for about 40-60 mins, to include questions. If two or more are given on the same day the total period may be condensed.

For outlines of the content of each of these talks please see Appendix I below (pp. 3-9). Materials are provided for each talk (pdf handouts of Power-point slides).

## **B. Workshops**

The following workshops are currently on offer:

1. Tanker spill
2. Bunker pollution, wreck removal and dumping
3. Insurance, regulatory offences and fines, detention of ships by authorities and US issues

Based on problems distilled from a wide range of real cases, the scenarios provide practical exercises in routine response to incidents, a methodical approach to the legal basics, and recognition of more challenging issues on which a judgement call is required.

The participants are divided into two or more groups. As the scenarios unfold, the groups break out at each stage for round-table discussion before returning for collective feedback on how they would deal with the problems involved. The emphasis is not on legally right or wrong answers, but on decisions reflecting a combination of factors including commercial and political elements.

Normally a senior claims executive is assigned to each group to facilitate discussion. This format has enabled these sessions to work successfully for participants with various different levels of experience. I liaise in advance with the 'facilitators' and provide them with notes – these are available for distribution as hand-outs when the session is over.

The workshops last about 2½ - 3 hours. A session including the three corresponding talks typically lasts 5½-6 hours, including breaks for lunch and coffee.

An outline of the content of each workshop can be seen at Appendix II (pp. 9-10).

A further option is a **legal and technical workshop** provided jointly by me and by ITOFF. This highlights the inter-play commonly involved of legal and technical factors, and includes exercises in the technical aspects of incident response. The programme runs into two days but allows some scope for flexibility to suit particular needs.

## **C. Cost**

Talks are charged at £475 each, to include all preparation, admin and materials. If a programme involves more than six talks, the seventh and subsequent talks are charged at £375.

Workshops are charged at £1,200 each (for up to two workshops) and £1,000 for a third.

For sessions outside London travel expenses are also charged.

## APPENDIX I

### TALKS – OUTLINE OF CONTENTS

#### **1. INTERNATIONAL LAW AND PRACTICE**

- Framework of uniform global laws to prevent pollution from ships and to provide compensation. Law of the Sea Convention and powers of states.
- Role of the International Maritime Organization and its Committees. Industry representation.
- Brief overview of main civil liability regimes
  - CLC/FC
  - Bunkers
  - HNS
  - Nairobi
  - LLMC
- Brief overview of main regulatory regimes
  - SOLAS and MARPOL
- International conventions and terminology
  - Adoption, signature, ratification, accession and denunciation
  - Protocols and other amendment procedures
  - Role of governments and of national implementing laws
- Comparison with unilateral domestic laws
  - OPA-90
- Websites
  - IMO
  - IG

## 2. OIL POLLUTION FROM TANKERS

- International compensation regime
  - Civil Liability Conventions 1969 and 1992
  - Fund Convention 1992
  - Supplementary Fund Protocol 2003
  
- IOPC Funds
  
- Definitions of 'ship', 'oil', 'incident' and 'pollution damage'
  - application to offshore craft
  - typical claims and claims issues
    - preventive measures
    - property damage
    - economic loss
    - damage to the marine environment
  
- Exclusions and limitation of liability
  
- Arrest and release
  
- Direct liability of insurers
  
- Claims-handling practice
  - MOU with IG
  - IOPCF Claims Manual
  - Role of ITOPF
  - Interim payments
  
- STOPIA and TOPIA
  
- Websites
  - IOPC Funds
  - ITOPF

### 3. LIABILITY FOR POLLUTION OF PARTIES OTHER THAN OWNERS

- General principles
  - Potentially responsible parties and interests of insurers
  - Liability to pollution claimants
  - Liability by way of recourse to owner
  - Effect of 'channelling' provisions – position under CLC and other regimes
  
- Charterers
  - *Erika* case
  - Liability to owner under charterparty
    - Unsafe port
    - Limitation of charterer's liability
  - P&I cover of charterers' risks
  
- Owners of colliding ships
  - Liability to pollution claimants
  - Liability to owner of spilling ship
  - Limitation issues
  
- Other parties
  - Ship managers, operators and associated parties
  - Salvors
  - Limitation issues

#### 4. POLLUTION FROM SHIPS' BUNKERS AND LIMITATION OF LIABILITY

- Practical significance of pollution from ships' bunkers
  - Large number and variety of ships
  - Bunker fuel normally relatively persistent
- 2001 Bunkers Convention
  - Liability framework
  - Similarities to CLC
  - Differences from CLC
  - Linkage to 1976 London Limitation Convention (LLMC)
- Limitation issues
  - Fund not dedicated to pollution – claims compete with non-pollution claims
  - No second-tier fund
  - Problems with interpretation of LLMC Art. 2.1
    - No express reference to pollution
    - No allowance for owners' expenses
    - Option for contracting states to exclude limitation for wreck removal – implications for bunker pollution claims
- Cases
  - *Full City; Pacific Adventurer*

#### 5. WRECK REMOVAL AND DUMPING AT SEA

- Wreck removal
  - Practical issues and transition from salvage
  - Nairobi Convention on Wreck Removal
    - General principles
    - Geographical scope
    - Rights and obligations of owners
    - Financial security
    - Relationship with other liability regimes
  - Commercial aspects - standard form contracts
- Dumping of waste
  - Problems post-casualty in dealing with derelict ship or contaminated cargo
  - Cost, safety and environmental factors
  - London Convention and LDC Protocol
    - What substances can be dumped?
    - In what waters can this occur?
    - When and from whom is a permit required?

## 6. THE RESPONSE TO INCIDENTS

- Response by the State
  - 1969 Intervention Convention
  - Places of refuge
  - SOSREP and other types of decision-making authority
  - IMO Guidelines
- Co-operation in oil spill response
  - OPRC Convention
  - National response systems and contingency plans
  - 'Tiered response' approach
- Response plans
  - SOPEPs
  - Incident reporting procedures
  - Contracts with Oil Spill Response Organisations
- Costs of preventing pollution in port or place of refuge
  - General average
  - P&I cover

## 7. REGULATORY REGIMES, ENFORCEMENT AND CRIMINAL PROCEEDINGS

- Outline of main regulatory regimes
  - MARPOL Annexes I –VI
  - Operational discharges
  - Accidental spills
- Enforcement of laws to prevent pollution
  - Industry controls
  - Flag State control
  - Port State control
  - Coastal State control
- Criminal proceedings
  - Evidence
  - Penalties
  - Fair treatment of seafarers

## **8. P&I COVER FOR POLLUTION, BLUE CARDS AND CERTIFICATION**

- Standard terms of cover of pollution risks and wreck removal
  - Cover for civil liabilities and expenses
  - Cover for fines and penalties
  - Exclusions and limits
- Compulsory insurance
  - Requirements of different regimes
  - Certification procedure
  - Direct liability for claims
  - Claims issues
- Blue Cards
  - Content
  - Termination issues
  - Issue of Blue Card prior to renewal of cover
  - IGA and LOUs
  - Aggregate exposures
  - Administrative issues
  - IG Guidelines

## **9. POLLUTION IN THE USA**

- Overview of liability regimes in OPA-90 and CERCLA
- Oil pollution liability framework
  - Liability of responsible party to pay damages
  - State laws
  - Oil Spill Liability Trust Fund and the NPFC
- Removal of spilt oil
  - Vessel Response Plans
  - QIs and OSROs
  - National Contingency Plan
- Financial responsibility
  - COFRs
  - Role of guarantors providing security for COFRs
  - Role of insurers and usual documentation
- Criminal liability

## APPENDIX II

### WORKSHOPS – OUTLINE OF CONTENTS

The three standard workshops currently on offer correspond to the talks as follows:

1	FRAMEWORK OF INTERNATIONAL LAW AND PRACTICE	WORKSHOP 1 Tanker spill
2	OIL POLLUTION FROM TANKERS	
3	LIABILITY FOR POLLUTION OF PARTIES OTHER THAN OWNERS	
4	POLLUTION FROM SHIPS' BUNKERS AND LIMITATION OF LIABILITY	WORKSHOP 2 Bunker spill, wreck removal and dumping
5	WRECK REMOVAL AND DUMPING AT SEA	
6	THE RESPONSE TO INCIDENTS	
7	REGULATORY REGIMES, ENFORCEMENT AND CRIMINAL PROCEEDINGS	WORKSHOP 3 Regulatory offences, cover and US issues
8	P&I COVER FOR POLLUTION, BLUE CARDS AND CERTIFICATION	
9	POLLUTION IN THE USA	
10	HNS AND RELATED CARRIAGE ISSUES	

#### **Workshop 1 – Tanker spill**

The scenario involves a spill from a small tanker at a terminal owned by an oil company chartering the vessel. There are potential issues of unsafety or contributory fault by the charterer, which assists with STS and clean-up operations required by the national authorities. The workshop participants split into groups representing the owners and charterer.

The exercise begins with routine checks to establish what regimes are in force, what liability limits are involved, and what facts need to be established to verify that the incident is governed by CLC. Various claims issues are examined, including claims-handling procedures and the effect of STOPIA. The workshop concludes with a negotiated settlement of the claims and cross-claims among the principal parties.

#### **Workshop 2 – Bunker spill, wreck removal and dumping**

This scenario begins with diversion to a port of refuge by a bulker which has sprung a leak into the engine room but now has this under control. The initial questions concern the measures required by the local authorities to avoid pollution, how these are to be funded, and whether the costs are allowable in GA. Later the ship runs aground, causing a bunker spill and calling for salvage assistance.

The issues include dumping of spoilt cargo, limitation of liability for clean-up and whether the P&I insurer/owners should take over clean-up begun by authorities. When the ship breaks up, wreck removal orders involve legal questions under the Nairobi Convention as well as commercial issues in agreeing terms with a suitable contractor. The relationship between the Bunkers and WR Conventions is considered along with the implications for direct exposures of the insurer. The workshop concludes with settlement of claims by the local authorities and the question of how far, if at all, the insurer is prepared to support payment under political pressure above the LLMC limit.

### **Workshop 3 – Insurance, fines and US issues**

The participants consider a series of free-standing scenarios, two of which illustrate different types of MARPOL violation, illicit and accidental. These lead to different types of enforcement proceedings by flag state, port state and coastal state authorities. Questions arise as to the steps which innocent owners might take to minimise their exposures, and as to whether P&I cover is available for the penalties imposed.

In a third scenario a bunker spill occurs from a small tanker which has been sold within the last two months to a buyer who is now insured outside the IG. The ship has on board certificates of insurance naming the an IG Club which insured the previous owners. The new insurers have not yet issued any Blue Cards and have taken a coverage point. The national authorities say they will ‘federalize’ the clean-up unless one of the insurers responds. Issues include the relationship between the Bunkers Convention and CLC, differences in the compulsory insurance and limitation regimes, the effect of liability reservations in Blue Cards, and the relationship between the legal and political dimensions of such a case.

A fourth scenario involves a bunker spill from a container ship which has run aground in the US due to pilot error. It highlights differences between the US and international regimes, particularly with respect to limitation and the role of the NPFC, but the main object is to provide a basic exercise in responding to a typical incident in the US. The facilitators coach the participants through the steps they would expect to be taken.

In a second stage of the scenario facts come to light suggesting coverage defences which the P&I insurer could invoke. An entity in Bermuda is named in the vessel’s COFR as the provider of financial security, and the P&I insurer has provided to it the usual documentation. The facilitators then lead a discussion of the merits of these defences in the light of the political dimensions involved.