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1. MSC Napoli - what's below the surface?

Peregrine Storrs-Fox, the TT Club's Risk Management Director, comments on the Marine Accident Investigation Branch ('MAIB') report into MSC Napoli:

While the MAIB report - and much of the commentary since publication - rightly majors on issues of naval architecture and general seamanship, it is interesting to note what is and is not said in relation to cargo operations. There are two key comments in the report on this side of matter, namely the difference between declared and actual weights for the 660 containers stowed on deck, and the fact that 7% of the containers on deck were in the wrong position or declared as the wrong container.

In relation to weight misdeclaration, while the report identifies that 20% of the deck stow was more than 3 tonnes adrift from the weight declared, it also reveals that the total 'deadload' (being the difference between the deadweight calculated from the observed draught and that calculated from known weights of cargo, bunkers and ballast) was about 1,250 tonnes on departure from Antwerp. Separately, the report draws attention to the fact that shippers in the container industry are sometimes unable to weigh containers before shipment because they lack the facilities, and additionally encounter disincentives such as import taxes, loading restrictions, and rail and road weight restrictions. While it is accepted that many shippers or consolidators may not have easy access to weighing facilities, the safety implications even before loading on board a ship are significant. Most modern gantry cranes have functionality to weigh containers, but this is clearly the wrong modal point in the supply chain. There are technologies available to weigh road or rail containerised cargo by axle load, regardless of the simpler requirement that the documentation is accompanied by a weighbridge certificate.

The detailed investigation also has provided a unique opportunity to assess the efficacy of cargo declaration, particularly in relation to dangerous goods, although it has to be recognised that exports from Europe would be less dominated by such cargo. The most likely inherent cause, however, for misplacement of containers on deck is to accommodate (declared) dangerous goods. The report states that 7% is within the industry norms of 10%.

These findings underline the TT Club's persistent concern that cargo weight and detail is habitually misdeclared. While not seen as a primary cause of the accident, the report does state

that misdeclaration is an element that erodes or eliminates the safety margins that are in place, noting also that only in container shipping is the weight of the cargo unknown. 

2. Ship stack emissions - efforts to create a cleaner environment for quay crane drivers

Laurence Jones, Director Global Risk Assessment at the TT Club, reports on ship stack emissions:

Ship stack emissions have been on the agenda of regulatory authorities, shipping lines, port authorities and terminals globally for some time now. The main discussion point has been on how to reduce the emissions in ports. There are a number of options being looked at which include 'cold ironing' (shore based power supplies), lower emission fuels and even hoods which sit over the ship's stack and contains and 'collects' the emission. The aim is to ensure a safe and clean environment within ports and surrounds. More detailed information on air quality issues has recently been published by the International Association of Ports and Harbours (IAPH) entitled 'IAPH Tool Box for Port Clean Air Programs'. This is freely available on the IAPH website (<http://www.iaphworldports.org/>) and recommended for the development of appropriate strategies for cleaner air in ports.

For TT Club Members who have employees or contractors working in ports, the immediate issue is the potential exposure to these stack emissions and a safe and clean environment for the workers. The personnel mainly at risk of exposure are the quay crane operators. The quay crane operator cabins are normally air conditioned and designed to be air-tight or at least prevent emissions from entering, but in many cases they are not and a good deal of ship stack exhaust could be entering the cabins. At times crane operators can be less than 9 feet (3 metres) away from the top of a ship's stack.

The TT Club recommends that Members' ensure quay crane cabins are properly risk assessed in relation to this potential hazard, to include air quality monitoring during operations, and that appropriate control measures are put in place to counter any exposure to emissions. Such measures might include ensuring air tight cabins, effective air conditioning units with the use of high quality filters to prevent the entry of harmful emissions from ship's stacks. Any control measures put in place (e.g. seals or A/C units) should be subject to a regular inspection and maintenance regime to ensure effective and ongoing management of the issue. Such steps will provide a cleaner and safer environment for workers. 

3. 'K-Loader' vehicle a 'package' under US COGSA

In *Maersk Line v United States of America* (judgment of 28 January 2008), the United States Court of Appeals for the Fourth Circuit considered whether a 'K-Loader' vehicle was a 'package' in the sense of US COGSA, which limits the liability per package to US\$500. The United States (through the Military Surface Deployment and Distribution Command 'SDDC') and Maersk Line concluded a contract for the carriage of seven K-Loaders from Charleston (South Carolina) to Thumrait (Oman). A 'K-Loader' is a large wheeled vehicle with an adjustable deck that is used to load cargo onto aircraft; it weighs over 30,000 pounds and can lift up to 25,000 pounds of cargo. During the ocean voyage to Oman, one of the 'K-Loaders' sustained damage of US\$31,280.

First, the United States Court of Appeals for the Fourth Circuit explained that US Congress had failed to define 'package' or to give any indication in COGSA itself or in the legislative history. The court therefore relied on the definition of 'package' used by the Court of Appeals for the Second Circuit in *Aluminios Pozuelo v SS Navigator* (1968): 'a class of cargo, irrespective of its size, shape or weight, to which some packing preparation for transportation has been made which facilitates handling, but which does not necessarily conceal or completely enclose the goods'.

The court in the present case noted that this did not define 'package' in a technical way but expressed its 'plain and ordinary' meaning. It then applied this definition to the 'K-Loader': Maersk Line's only preparation done to facilitate handling of the 'K-Loader' was to place it on a flat rack. However, this preparation was in fact the only possible method of lifting the 'K-Loader' onto the vessel.

The court then examined the intentions of the parties as expressed in the contract documents. It concluded that the United States considered the K-Loader to be a package. For instance its 'Transportation Control and Movement document' ('TCMD') provided a single 'Transportation Control Number' for each K-Loader and referred to the 'K-Loader' as a 'Type PACK VE' (which means: 'Type of Package: Vehicle'). The court construed any ambiguous references to 'package' the court construed against the United States as the party who drafted them. Based on these considerations, the United States Court of Appeals for the Fourth Circuit (upholding the decision of the District Court) held that the 'K-Loader' was a 'package' in the sense of section 4 of US COGSA. This allowed Maersk Line to limit its liability in this case to US\$500.

Please use the following web link for the full text of Maersk Line v United States of America (United States Court of Appeals for the Fourth Circuit, judgment of 28 January 2008):

<http://pacer.ca4.uscourts.gov/opinion.pdf/071013.P.pdf> 

4. Reach Stacker incident

Port Skills and Safety Ltd ('PSSL'), an industry organisation promoting health safety, skills and standards, commented in Information Paper 012/2008 on a Kalmar Reach Stacker incident (failure of boom extension ram anchor bolts):

'PSSL has recently been notified of an incident at a port involving a Kalmar Contmaster Reach Stacker, DRS model, where the anchor bolts of the boom extension ram failed whilst it was being examined by engineers. As a consequence, the ram and its associated anchor trunnion were ejected out at speed from the rear of the boom. No persons were injured.

However, if the bolts had failed whilst the Kalmar Reach Stacker was being used to lift during normal operations, the outcome could have been much more serious. All DRS model Kalmar Reach Stackers at the port are now being repaired with a substantial up-rating to the rear end anchor and associated bolts. Members who operate such equipment are advised to inspect the anchor bolts of the boom extension ram and take any remedial action deemed necessary. As a result of the incident, Kalmar has published Service Information Sheet SI108-003 - Inspection of Bolted Joints (...). The SI applies to DRS machines produced in Finland and Sweden.' 

5. Conclusion

Please note that TT Club's London office will be moving from 26 Creechurch Lane to 90 Fenchurch Street, London, EC3M 4ST during the summer.

We hope that you will have found the above items interesting. If you would like to have further information about any of them, or have any comments you would like to make, please email the editor at tt.talk@ttclub.com. We look forward to hearing from you.

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for the TT Club

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