

## **A Note from the Editor**

A warm welcome to all our regular readers and to any new readers who have just joined us.

We would appear to have weathered the storm as far as the millennium bug is concerned so let us hope we can look forward to a "bug" free year. In this edition we tackle such issues as piracy and stowaways; themes that are set to dominate the 21st century as much as they did in the last century and the century before that.

Unfortunately, this is my last edition as editor of TT Talk and I shall now be handing over the reins to my colleague Shirin Haque.

Christine Williams, Editor

## **Stowaways on the high seas**

There have been stowaways on ships for as long as there have been ships sailing the oceans but the past year or two have seen the numbers rising rapidly. It is a trade that must be curtailed both for humanitarian reasons and for financial reasons. But how?

The trade in stowaways appears to be driven by economics since most stowaways are clearly seeking betterment in more affluent economies although undoubtedly, wars, religious or racial persecution and famines stimulate this human migration too. Much has been written in the European press about illegal immigrants from the war-torn Balkan states and Kurdish refugees attempting to enter the affluent EU countries; however we should not forget that it is a global problem.

The past weeks have seen several reports of stowaways being discovered, not all of them alive, in containers arriving on the North American West Coast from Hong Kong. There have also been a number of major tragedies in other types of vessel where stowaways have simply selected the wrong ship or cargo and died as a result. (One incident saw stowaways asphyxiated in the hold of a banana carrier while others died when the container loaded with cocoa beans in which they were hiding was routinely sprayed with insecticide.)

Apart from the humanitarian aspect, which is apparent to all, the problem for the shipping industry is that it is being held responsible by governmental agencies for facilitating this trade in stowaways. Financial penalties are being applied and this, inevitably, is increasing the cost of transportation for bona fide shippers. There is a global knee-jerk reaction whereby carriers are told that they are responsible for bringing the stowaways into the countries in question and therefore they must pay for their subsequent upkeep, legal expenses and possible repatriation.

Generally speaking, the costs associated with stowaways are covered by the shipping lines' P&I clubs but these are insurance mutuals and the cost still ultimately falls on the lines themselves, as indeed it would ultimately under any other insurance regime. Inevitably, increased claims are eventually reflected in higher premiums and of course, higher costs to the carrier are eventually reflected in higher freight rates. Therefore all involved in the shipping chain should take note of the current trends.

The recent cases on the North American West Coast have highlighted what appears to be a new trend in the trade in that they appear to involve crime syndicates who, masquerading as forwarders or shippers, actually book containers and then load them with would-be illegal immigrants just as other shippers load electronic goods or garments. What can carriers do to eliminate this 'commodity' being moved in their boxes?

The TT Club notes that during 1998/99, there was an increase in the theft of reefer containers that were disappearing in China. Carriers were delivering these empty containers to supposed shippers who simply spirited them away. In some cases, these 'shippers' had gone to the effort of renting office space and printing stationery in order to deceive the carriers.

As a preventative measure, the Club advised all of its members to check the credentials of any shipper requesting a reefer container before releasing the container. As a result, the number of thefts reported decreased substantially. The Club suggests similar action may also reduce the number of containers containing stowaways. While it's far from being a total solution, checking out new customers should be routine procedure.

A number of the boxes detected have been open-tops and consequently Hong Kong's Customs and Excise officers have decided to inspect all open or canvas topped containers to check for illegal immigrants. The move, which could result in earlier cut-off times for late shipments, was agreed during a meeting between law enforcement officials and representatives from the Hong Kong Liner Shipping Association, Hong Kong Shipowners Association, container terminal operators and box lines.

There is a move to introduce sophisticated X-ray and carbon dioxide detectors at terminals but Hong Kong Shipowners Association director, Arthur Bowring, told Lloyd's List, that this equipment is very expensive:

"It would be just as easy to open doors of a container and conduct a visual inspection".

Contributor: David Cheslin, Dunlem Public Relations Ltd. - London

### **Woolf reforms in practice**

One of the overriding objectives of the new Civil Procedure Rules (CPR) which came into effect on 26th April 1999 is that they allow a court to deal with cases justly e.g. ensuring that a case is dealt with expeditiously and fairly. One of the Club's terminal operator Members was involved in a lengthy litigation, spanning more than a decade. The claim involved alleged nuisance as a result of a new dry bulk cargo operation, which had produced dust problems in the area. At one stage towards 2,000 claims were in play.

Even though this case commenced before the CPR came into effect it was dealt with as a transitional case and thus employed the spirit of the new rules. The Club's lawyers took advantage of this by drawing the court's attention to its new case management powers under paragraph 1.4(1) of the CPR wherein it must decide promptly on those issues that need full investigation at trial and accordingly dispose summarily of the others. They also took advantage of Part 3 of the CPR which deals with the court's general powers of management and pointed out that the court has the discretion to strike out claims which disclose no reasonable grounds for bringing or pursuing such a claim. Finally, the Club's Member had already put forward a structured settlement, including an offer to allow discontinuance with no order for costs by Claimants who were not to be compensated under the proposal.

### **The strength of the Part 36 offer**

Under CPR either a Claimant or a Defendant may make an offer with a view to settling the claim. If either party rejects the offer, but at trial the court make an award which is less advantageous, then that party stands to be penalised by way of costs and interest.

Many of the Claimants were on Legal Aid and the Club's lawyers were also mindful of the close attention that the Legal Aid Board would pay to any pre-trial offer that was made.

It seems that the Member's Part 36 offer was one of a number of factors that precipitated a steady process of collapse on the part of the Claimants and/or their advisors. The threat of paying the Defendant's costs and the fact that Claimants' Counsel had also to advise the Legal Aid Board of the offer were instrumental in the final settlement. The final result was that Legal Aid was withdrawn from any Claimant who did not accept the offer or discontinue.

Certainly it seems that, by employing the spirit of Woolf, litigants are encouraged to reach early settlement over a dispute or risk financial penalties. This is a pattern seen in other cases also, leading to swifter and advantageous settlements.

Contributor: John Maxwell, Hill Dickinson - Liverpool, United Kingdom

### **Piracy and armed robbery in the 21st century**

The risk of piracy and armed robbery on the high seas continues to be a threat for many shipowners. At the beginning of 1998 armed robberies against ships continued in Indonesian waters and off Thailand and the Philippines. Attacks also continue to occur in South America, notably Santos in Brazil, and have involved the use of firearms resulting in some cases of death and injury to crewmembers.

The Department of the Environment, Transport and Regions in the United Kingdom have issued in the past Guidance Notes to assist all ship owners and seafarers in understanding the risk of piracy and armed robbery against ships.

The key points that the Department emphasised were as follows:

- be vigilant
- reduce opportunities for theft
- establish secure areas(s)
- prepare and exercise anti-attack plans
- report all incidents to the coastal and flag state authorities

The Guidelines suggest that the majority of attacks will be deterred if the robbers are aware that they have been observed and that the crew has been alerted and is prepared to resist attempts to board. Crewmembers who constantly move around the ship on random rather than predictable patrols is therefore advocated.

An anti-attack plan should be prepared having regard to the risks that may be faced, the crew numbers available, their capability and training, the ability to establish secure areas on board the ship and the surveillance and detection equipment that has been provided. It is recommended that the plan cover, inter alia:

- the need for enhanced surveillance and the use of lightning and surveillance or detection equipment;
- crew responses if a potential attack is detected or an attack is underway;
- the radio and alarm procedures to be followed, and
- the reports that should be made after an attack, or an attempted attack.

Contributor: Department of the Environment, Transport and the Regions, United Kingdom - Marine Guidance Note No. 75

TT handbook on International Conventions

In liaison with Holman Fenwick & Willan, the TT Club has produced a handbook, free to all TT Club members, on International Conventions and common carriage conditions. While primarily written from an English law perspective, the analysis has international application.

## **Bolero Update - "Interoperability"**

Readers following the development of bolero.net know about the organisation's aim to create the global electronic platform for world trade. The most obvious way bolero.net has started to realise this aim has been through the Bolero system, which since its September launch has already been adopted by a range of major multinationals (see [www.bolero.net](http://www.bolero.net) for details). Another important factor that is helping bolero.net to win widespread acceptance from the business community is the "Interoperability Project".

At the moment, if you send a piece of data or a document to someone electronically, there is no guarantee that it is possible to read it at the other end. "Interoperability" is the term used to describe the ability of different computer systems to work together, facilitating business transactions across organisations. The Interoperability project will allow all members of the bolero.net community to exchange information in a simple way, instantly readable by humans and computers.

Transport providers will be able to exchange trade documentation with their customers in a common electronic format, eliminating errors caused by manual processing and reducing the workload associated with each individual business transaction.

Our starting point has been to work from the fact that none of the competing, existing standards has as yet won widespread acceptance and so is unable to meet the requirements of the trade community for straight through processing. There are some interesting attempts in progress to establish new standards but it is expected to take years before any of these will result in an operational solution.

bolero.net is therefore taking the lead in enabling the trade community to take advantage of electronic commerce by developing simplified electronic trade document definitions using XML (Extensible Markup Language).

XML represents a big step forward from HTML (which has until now been the common language of the Internet). It has been embraced enthusiastically by both the IT and the business community as the future tool for electronic data exchange. XML will enable bolero.net to provide document definitions that are simple and inexpensive to use and implement and which accommodate all levels of sophistication within any size of organisation.

We have been working with a number of organisations from the bolero.net community to incorporate their business expertise into our interoperability activities. Our future aim is to establish a virtual community with whom we will co-operate to ensure that common business requirements are reflected in our document definitions.

The main steps of the development process are outlined below:

Step 1) bolero.net will combine existing knowledge and experience with the input of 2-3 key industry players to create the first draft document definitions.

Step 2) The draft definitions will be distributed to a select but broader group of users who will be given a few weeks to review and comment on the drafts. It is expected that these two steps will provide a fast and efficient way of collecting and validating core requirements prior to the general release of the draft definitions.

Step 3) The draft document definitions will be published on the bolero.net web-site [www.bolero.net](http://www.bolero.net) for ratification and implementation by users. The ratification process will be facilitated via an on-line Internet discussion forum.

Our immediate focus is the following set of documents:

- Bill of Lading
- Packing List
- Commercial Invoice
- Seaway Bill

- Proforma Invoice
- Forwarders Cargo Receipt
- Advanced Shipping Notice
- Shipping Instruction
- Purchase Order
- Purchase Order Acknowledgement
- Dispatch Advice
- Insurance Certificate
- Insurance Policy
- Documentary Credit Application
- Documentary Credit

If you are not already involved and are interested in taking part in any of the development steps for one or more of the documents listed above or you would like further information, please feel free to contact us: [Interoperability@bolero.net](mailto:Interoperability@bolero.net)

Contributor: Dirk Singer - [bolero.net](http://bolero.net) - London, United Kingdom

**Forthcoming seminar - San Francisco**

The Pacific Admiralty Seminar is to be held in San Francisco between October 5th and 6th . The TT Club will be chairing one of the sessions at this event.