In October 2000, a freight forwarder in Shanghai received a fax from an unknown company in Hong Kong who claimed to be a “consolidator/forwarder” and offered them a new business opportunity of arranging some shipments from Shanghai to Chittagong. The consolidator alleged that they were introduced by another forwarder in South Korea and would like to nominate the Shanghai forwarder to ship out the goods from China, firstly to Hong Kong for consolidation, with a final destination in Bangladesh or Indonesia.

The consolidator asked that they arrange the shipment as follows:

- the Shanghai forwarder to issue their own through bill of lading covering the entirety of the intended voyage from Shanghai to Chittagong showing the buyer as the consignee.
- they arrange an ocean voyage from Shanghai to Hong Kong with a shipping line, whilst naming the consolidator as consignee on the ocean bill of lading.
- the consolidator would take delivery of the cargo in Hong Kong and then arrange transshipment to the ultimate consignee in Chittagong after consolidation.
- the buyer in Chittagong to issue a letter of credit.

A problem arose on the third shipment involving the transport of denim at a value of US$500,000. The consignee shown on forwarder’s through bill of lading claimed that the cargo had never arrived. The shipper in China, who still held the full set of original house bills of lading, claimed that they had never received money from the buyer because the letters of credit were fake.

The Shanghai forwarder is facing threatened legal action from the shipper for the full cargo value of US$500,000. The buyer even suspected that the forwarder might have been involved in the fraud with the consolidator regarding the shipment.

**Recommendations**

Never issue any bill of lading assuming responsibility for an entire voyage where you, in fact, have no control over the voyage.

Some new business can generate a loss instead of a profit.
Ian Lush appointed Marketing Director

Ian Lush joined the Club Managers in January from GeoLogistics where he was European Marketing Director with specific responsibilities for marketing development across all of GeoLogistic’s operations in Europe, the Middle East and Africa.

Ian brings to TT a broad experience base gained in LEP International (re-branded GeoLogistics in 1998) and in Pinkerton Security Services where he was part of an international team focusing on the security of high value products in transit.

New Property Underwriter

Recognising market pressure for one-stop shopping, the Club recently announced that it would expand its ports and terminal operators’ cover to include property related risks. To assist in the development of this new business sector, Niels H. Aaskov has been appointed as its Property Underwriter.

Chief Executive, Paul Neagle provides further details: “Many terminals which are primarily container handling facilities, also have property risks, typically warehouses, storage and inspection facilities. The Club has taken a decision to position itself so that it is able to underwrite such risks as part of an overall package. Indeed, this strategy has already paid dividends with the acquisition of additional business in both the Americas and Europe.”

Niels points out that other types of Members have property risks and it seemed logical and consistent with the mutuality of the Club for these risks to be written as part of the Club package.

“The fast-developing logistics and supply chain management sectors offer us major opportunities. Many forwarders and logistics & supply chain specialists now have large property assets such as warehouses and distribution centres and they require cover for these buildings and their contents wherever in the world they are located.”

Niels joined the Club from AIG where he was Assistant Vice-President, AIG Global Property Facility. He has extensive experience of writing property and energy business around the world and has wide contacts in non-marine areas of the market which, formerly, have not been part of the Club’s business but which are becoming relevant as the transportation industry’s insurance requirements evolve.

Niels has excellent linguistic skills. His first language is Danish, he also speaks Norwegian, Swedish and some German besides excellent English.

Simplification changes to the Club’s wordings

Commenting on his new role, Ian explains, “the Club has a great opportunity to leverage its market position not only to build upon existing products but also to add significant value to its Members’ businesses with new, innovative products. The opportunity to work within this constantly evolving market in a newly created role is both exciting and demanding.”

Members and brokers will know that the design of Club certificates has changed. The intention has been to make them more attractive, and easier to follow.

To go with this change, we have re-written the Club wordings. The cover is identical to that contained in the existing wordings, and in some places enhanced. This is formally guaranteed by the Club.

However, simpler language has been used and the number of words has been reduced by between one-half and two-thirds. There is now a semi-tabular layout and increased reliance on context and cross-referencing, in order to keep repetition to a minimum.

To minimise confusion, the existing structure has been preserved. Cover is still generally made up of clauses dealing with the same risks, assembled in the same sequence. Only the style within the individual clauses dealing with each risk has been revised.

The results have been thoroughly tested globally, by marine lawyers and potential users. We now feel confident to roll out the wordings. They will begin to appear with accounts starting or renewing from mid-2001 onwards.

Members and brokers who would like to look at these new wordings immediately, or who have any comments or questions, should contact Ian Hyslop at the Managers’ office in London.
Sending blank bills of lading?

Sending blank bills of lading is rather like giving your cheque book to someone else and saying “we have agreed that you will only draw cheques on my account for expenses incurred on my behalf, and then not more than £50 at a time”. By Andrew Trasler, London

Of course you would not do that as you would have no control over the use that the agent would make of your cheque book. Yet giving someone your blank bills of lading to complete and sign on your behalf, amounts to much the same thing. An NVOC bill of lading is not just a piece of paper; like a cheque it has been invested by the law with magical powers. It represents the goods, it is evidence of a contract between you and the shipper; it also carries your logo and with it a message that you are liable to the holder for anything which happens to the goods. That is an awful lot of your company goodwill to give to someone else in a distant country.

If you give an agent blank bills, you have only his word that he will only use them in your joint service. But what happens if he goes against his word? What happens if one day he encounters problems with another NVOC in, say, Australia or the USA and cannot get any more bills from them and decides to issue your bills of lading instead? The first you may know of it will be some time later when a claims recovery company starts writing nasty letters demanding compensation for some cargo which arrived damaged in Alice Springs or Albuquerque. Even worse, the agent may pop round to his local printers to get some more copies run off, perfect in every particular except that you have no knowledge of it. Sitting in Birmingham or Bradford or Basingstoke, you can have no idea what is happening in offices in Bombay, Busan or Buenos Aires. Yet those guys are doing things in your name.

Even if the use of your bills is restricted to your joint service, you are picking up the responsibility which rightly belongs to the agent at the loading point. The cargo may have been badly packed or stowed: if it has, you will be responsible for the damage unless the bill has been appropriately clausued. Maybe the cargo was short-shipped, yet the agent issued a “clean on board” bill of lading in your name: you have stated that the cargo was definitely on board the named vessel and will be liable to the consignee when it does not turn up on the due date. Maybe someone in the agent’s office is doing some unofficial “side business” with the shipper: effectively conspiring together to defraud the buyer or the banks. Whatever is going on, all the time the bills of lading are being issued with your name, address and company logo proudly at the top.

For these and a host of similar reasons, the TT Club does not recommend that forwarders send out packs of their blank bills of lading to other forwarding companies in another country, unless both companies are somehow linked through ownership, shareholdings or similar arrangements. It is far better, in the Club’s view, for each partner in a joint service to issue its own bills for outward-bound cargo: that way each company takes responsibility for its own loading and despatch arrangements. Some agreement may be necessary for the partners to share the deductibles on insurance claims in the same way as profits are often shared, but that is a different matter entirely from giving someone the keys to your own company safe.

If, having read this, you still feel that you can trust someone sufficiently with blanks of your bills of lading, then you should take the following precautions:

- All bill of lading forms should be clearly overprinted to show whether they are intended as originals or non-negotiable copies. The originals, in sets of three, must also be printed with serial numbers, and the agent must be asked to submit monthly reports of the bills issued. Any unused originals from the sets of three, and any spoilt sets, must be cancelled and returned to you with the reports.
- A senior member of staff should be given the task of monitoring the traffic, the returns and the relationship with the agent. Actions should be taken as soon as problems arise, not left to run for a few weeks or months “to see how it works out”. If there are any difficulties in getting monthly reports no new batches of blanks should be sent out until the reports are up-to-date and any outstanding problems resolved.
- There must be a clear contractual agreement with the partner company setting out the arrangements and the use to which your bills can be put.
- And finally (but, actually before you do any of this) you must check with your liability insurers to see if they will cover the increased risk of someone else issuing your bills, and pay the additional premium they will (very likely) want.
Vertical Tandem Lifting (VTL) of containers

By Mike Compton, Director, PSO

At a recent meeting of Technical Committee (TC) 104, the working group of ISO Standard 3874 dealing with handling and securing of containers, consideration was given to VTL becoming a new work item (agreed by all parties) and to decide how to deal with this aspect of container handling. An original draft amendment to the Standard, to include a new paragraph 6.2.5, said that series one freight containers can be used in VTL operations provided that the equipment used to link the boxes together is certified under ILO Convention 152. If the text as proposed had been adopted, there would have been no limit to the numbers of boxes that might be lifted in this way, nor any reference to the loaded/unloaded state.

The working group at its previous April meeting in Paris had commissioned a technical report on the engineering aspects of the capabilities of corner castings and twistlocks under tensile, racking and compression forces. In addition, a thorough test/research programme relating to twistlocks and, separately, corner castings in assemblies with twistlocks had been carried out in the summer by a US Government facility for the Occupational Safety and Health Administration (OSHA) and those results were also available.

The results showed that twistlocks had a tensile force capability in excess of the corner castings, which in turn had a capability far in excess of the design load specified in ISO Standard 1161. By basing VTL limits upon the design load of the top corner castings in 1161 it was clear that the integrity of the containers and the twistlocks would be fully maintained. Two further controls were built in.

Firstly, that the number of boxes should be limited to three and, secondly, that an arbitrary wind force factor was established which would be required to be taken into account at all times. This was quoted in kN. The result in respect of a 1AAA container (9’6” high, 40’ box) would be that with two boxes being lifted and after taking account of the tare weight of the boxes and the wind load factor, the permissible cargo load would be no more than 11 tonnes.

A further note drafted by the working group stated that the certification process for twistlocks should use a safety factor of at least four based upon the ultimate strength of the material. The working group also considered an earlier amendment to the Standard, which has just completed its ISO procedure and will be published shortly.

This sets down for the first time ISO standards regarding twistlocks, latchlocks, lashing rods and stacking pieces. They are to be published as four Annexes to the Standard. However, the working group decided that the reference in both the twistlock annex and the latchlock annex to only being used to lift empty containers should be changed and that latchlocks should only be used in lifting if the bearing surface was not less than 800 mm2. This would eliminate the single sided latchlock having only 600 mm2 bearing surface which tests have shown has a greatly reduced tensile force capability.

All of these changes were agreed by Sub Committee 1 (with a few improvements to the wording used) and, finally, by the full Committee. The ISO position now goes for voting by national standards bodies and it does not represent the final position and members should bear that in mind. The International Cargo Handling Co-ordination Association’s (ICHCA) International Safety Panel was asked by TC 104 to develop a complementary package that terminals, shipping companies and enforcement agencies should be able to accept as a safe, sound and authoritative guide to the operational aspects of VTL. In this way VTL may be introduced in a safe way. ICHCA will seek consultation with the container handling industry on the practicalities of the operational guidelines.
Scientists at NASA have developed a gun built specifically to launch dead chickens at the windshields of airliners, military jets and the space shuttle, all of which suffer travelling collisions with airborne fowl, to test the strength of the windshields. British engineers heard about the gun and were eager to test it on the windshields of their new high-speed trains. Arrangements were made to borrow the gun. But when the gun was fired, the engineers stood shocked as the chicken hurtled out of the barrel, crashed into the shatterproof shield, smashed it into smithereens, crashed through the control console, snapped the engineer’s backrest in two, and embedded itself in the back wall of the cabin.

Horrified, the British engineers sent NASA the disastrous results of the experiment, along with the designs of the windshield, and begged the US scientists for suggestions.

NASA’s response was just one sentence: “Thaw the chicken.”

**IMDG Code**

- Training - chapter 1.3 outlines a programme for training those involved in consigning and handling DO for sea transport. This is specifically stated as not being a mandatory requirement.
- Samples - part 2.04 allows samples to be transported under the Code’s provisions. The Proper Shipping Name must be supplemented by the word SAMPLE.
- Flammable Liquids - the sub divisions 3.1, 3.2 and 3.3 based upon flashpoint have been removed and any sub division is now based entirely on packing group criteria.
- Containment - chapter 3.2 allows some relaxation in the use of IBCs. Chapter 4.1 now includes a formula to determine the maximum degree of filling allowed for containers for liquids. Chapter 4.1 and 6.6 introduces the concept of large packagings.
- these are packagings consisting of an outer packaging containing articles or inner packagings having a capacity of between 400 kg or 450 litres up to 3000 litres. The provisions for the construction of portable tanks in chapters 4.2 and 6.7 are now based upon the Orange Book provisions. However, existing IMO type tanks can continue to be used until 2010.
- Solid Bulk Materials Possessing Chemical Hazards - apart from a reference in the index, all information relating to their transport has been deleted from the Code.
- Marking, Labelling and Placarding - the following changes are included in chapter five:
  - the word SALVAGE must be marked on the package as well as on the dangerous goods note.
  - IBCs of more than 450 litres must be marked and labelled on two opposing sides.
  - all labels have been identified with a code number corresponding to the class and, where appropriate, sub division.
  - all specified subsidiary labels must now include the class number and for class 5 the division number.
  - a new class 7 label is included for fissile materials.
- Segregation - chapter 7.2 includes a number of diagrams to assist understanding of segregation arrangements for CTUs.

Amendment 30 has a long transitional period attached to it. In fact, both the present Code and the new one will remain viable for the whole of 2001 and the new provisions will not come fully into force until 1 January 2002.

**Electronic Version**

Version 5 takes Amendment 30 into account and is now available from IMO. Both single user and network versions of the software are available starting at £295 plus VAT. Contact IMO’s electronic sales department for details on + 44 20 7463 4137 or www.imo.org
The topic of the dissertation for the Award in 2000 was to arrange the shipment of some project cargo from the entrant’s home country to another country that is roughly half way around the world.

The cargo was a pipe-winding machine. This cargo was principally in three parts: the machine itself – a sensitive piece of equipment that had to be kept upright, and was packed in a case of a size such that it would not go into a container, neither would it go through the cargo door of an aeroplane. Spares for the machine, and chemicals (dangerous goods) to test the machine after installation.

The spares were delayed by two weeks due to production problems and could not be shipped with the machine and the chemicals. There was a time penalty applicable if the entire cargo was not on site in good time for the commissioning of the machine.

All candidates were asked to decide how best to ship all sections of the project cargo bearing in mind the transport options available and the fact that a time penalty (financial penalty) was part of the contract.

The winner was Heike Hurst of Danzas in Appenweier, Germany who wrote an excellent dissertation based on shipping the goods from Germany to Melbourne in Australia.

A precis of the winning paper is set out below.

The following dissertation relates to all the processes involved in handling a shipment to Australia. The goods being shipped are a machine and chemicals, classed as dangerous goods. Because the various components of the shipment were to be finished at different times, the consignment must be separated to enable the shipment to be processed economically. At the same time the aspects of importance to the principal must be noted when choosing the carrier (speed or cost effectiveness). By selecting two carriers, aircraft and ship, both the time frame and financial aspect can be maintained at an acceptable level. The dissertation also deals with the documents to be processed along the transport chain which are required to ensure that the shipment runs smoothly. In addition to the normal transport procedures, account is to be taken of the special handling needed for the dangerous goods.

Place of departure: Ludwigsburg, Germany
Destination: Melbourne, Australia
Delivery terms: Delivered duty paid

The inland destination was chosen as the machine is used in the chemical industry, which is mainly in the Melbourne area in Australia.

Two options are available to ship to the overseas destination: ocean and air-freight. The consignment has to be split as the spare parts will not be finished on time. The machine and chemicals for the test runs, which can be ready on time, are sent by sea. The spares will be sent on by air at a later date so that the consignment reaches its destination complete and on time. The consignor is to be made aware of this by fax.

Attention must be drawn to the following to ensure that the two parts of the consignment are carried without any hitches.

Conventional or container loading is possible. As the frequency at which container ships sail is significantly higher than that of conventional cargo vessels, container loading is recommended.

The machine is packed in a wooden case. As the materials for the test runs are dangerous goods, special features must be observed when packing.

First of all the hazard class, UN number and packing group must be determined for each of the dangerous goods. This is done using the IMDG Code.

The packaging for the individual substances must be UN tested. For the nitrocellulose solution either the carton must be tested as the outer packaging or the individual cans. For the glycaldialdehyde either the carton is to be tested as the outer packaging or the individual sprays. The types of packaging permitted for class 3 dangerous goods are explained in appendix 3 of the IMDG Code.

As all the substances mentioned are class 3 dangerous goods and there is no ban on combined cargo within this class (see appendix 4 of the IMDG Code for separation regulations), all hazardous substances can be packed in a wooden case for simplicity’s sake to prevent any small packages from going astray.

A Sirex certificate is needed for this case to comply with Australian quarantine regulations regarding the use of wood as a packaging. Testing to UN guidelines is not applicable as the case is only considered as a repackaging/loading aid.
The load must be adequately secured within the case so that none of the individual consignments can be damaged. The consignment will be handed over to a shipping agent in Hamburg for it to look after stuffing the goods. Because of its size, the machine cannot be loaded flush with the edges of a flat container. Attention should be paid when stowing as to whether the machine can be loaded jutting out on one side or whether it has to be fixed centrally on the container on account of internal localised loading.

Because of its width, the machine will probably be stowed relatively further up on deck due to the “missing batches” which may occur. As, depending upon stowage categories, the dangerous goods must be partially loaded on deck it is possible to pack the case on the flat container. Insurance allows deck loading. When loading on deck, care must be taken to ensure the packaging is secure and weather-proof as the consignment faces between four and five weeks sailing time and is exposed to extreme changes in weather. It is recommended that the dangerous goods in the cartons are also packed in oiled paper to prevent water damage.

**Export documents for the machine:**

**Export declaration**

Two copies of the commercial invoice in English; this must not be certified but duly signed. The original commercial invoice must have a handwritten signature.

Packing declaration (on FCL consignments this is prepared in the hinterland by the consignor/loader whilst for LCL consignments this document is drawn up at the port by the stowage firm).

Packing list

Sirex certificate

Certificates of origin are not required

Bills of lading must not be certified; bills of lading to order are permitted - a notify address is required.

Importing into Australia is relaxed to a large extent; there are import quotas for certain goods. There are no restrictions on importing machines into Australia. Should an import licence or approval for the importation of these goods be necessary, these documents would have to be dealt with by the buyer in advance of the purchase contract.

Packing regulations for exports to Australia are strict and the regulations must be complied with.

Every kind of wooden packaging (both inner and outer) is subject to inspection by the quarantine authorities at the time of importation and in the event of an attack by boring insects it can be fumigated or rejected at the cost of the importer. It is therefore recommended to treat the wood against Sirex wasps (Sirex or other wood-boring insects) in Germany and attach a relevant Sirex certificate to the export documents.

The wooden packaging provisions are also important when loading in containers. Care should be taken to ensure that the wood used to fasten the packages in the container (wedges, slats, etc) has been treated by these methods.

**Insurance/liability**

Door-to-door insurance with full cover (WPA) is recommended for this transport. The premiums are geared to the value of the goods and risk.

When properly packed, the insurance (company) is liable for partial and total loss, damage, etc. Any damage which may occur must be reported to the goods in transit insurer which for its part will seek recourse (liability under Commercial Code 8.33 special drawing rights for damage during on-carriage, liability under bill of lading or Visby rules 2 SDRs/kg or 667.67 SDRs/unit).

Spare parts will be sent by airfreight because of the time factor. The cost of the airfreight is low by comparison to the penalty that could be imposed. These calculations are sent to the shipper and approved before the goods are airfreighted.

**Conclusion**

This dissertation deals with the complete processing of a shipment to Australia. A theoretical concept of the whole process must first be developed when planning the shipment. Things such as loading possibilities, pre-determined deadlines, handling of dangerous goods, special characteristics of the goods, etc, must be clarified during this planning process. The information gleaned determines the next course of action. The smooth running of the whole project should always be the central theme when planning the shipment. Consideration should always be given theoretically to whether the individual steps and precautions to be taken will merge together without any problems and no difficulties can come to light. This relates to both the practical side of the shipment such as loading, stowing, etc and the theoretical aspect which is responsible for the documents being processed smoothly. In this respect consideration must be given above all to the customs documents so as to avoid any problems during export and import. A start can be made on the practical handling of the shipment once the theoretical concept has been defined. A schedule is recommended to take account of on-carriage, transshipment and journey time so that all parts of the consignment arrive at their destination at the same time.
Much has been said in the press lately about the danger to small vessels – and even large ones - created by floating containers. However, the risk of hitting a container, statistically speaking, is not that great. Research reveals that the number of containers lost overboard on the high seas each year is just a tiny percentage of those transported, and of those that do go overboard, most must sink within a short period of time.

To put the problem in perspective, the top 20 carriers control vessels with a total container slot capacity of 3.7m TEU (CI Yearbook 2001) and these lines represent something approaching 60% of the total world container fleet, currently around 13 million containers. Not all of these units are moving at the same time, but some 5 – 6 million containers are often on the move at one time. In any year there could be a total movement of some 48 million containers.

The Club insures 15 of the top 20 container lines for their container losses along with a number of other lines. By extrapolation of information from its own insurance statistics, the Club calculates that the total number of losses on the high seas, over the side, is probably less than 2000 boxes per annum. That means that less than 0.005% of the containers shipped each year, end up in the ocean – or one in 17,500. Put another way this is one container in the capacity of three large container ships.

Most dry cargo containers are steel boxes weighing between two tonnes (20ft) and four tonnes (40ft) and are constructed to be weather-proof not watertight. If empty they sink quickly due to water ingress. If full, they may float for a while as air trapped in the cargo may hold a box on the surface until the cargo becomes waterlogged. In rough weather conditions containers tend to be smashed up by wave action. The average side wall of a container is made of mild steel just 1.3mm thick and with up to 20 tonnes of cargo moving around inside they soon lose their structural integrity and sink. In calmer seas this process may take longer.

Should an accident happen in a harbour area, the harbour authority would be expected to issue a wreck removal order as standard procedure. Similarly, the removal of boxes is an integral part of standard wreck removal programmes instigated by the appropriate maritime authority.

It is true that reefer boxes and tank containers, due to their inherent buoyancy, are more likely to be visible on radar and to the observant watch. Given the relatively small number of boxes lost over the side each year, most of which will disappear without incident, the threat to shipping is statistically small. The Club suspects that the container is being held responsible for many incidents that it has not caused. There are many hazards floating around in the oceans from fallen trees and other material carried to the sea by rivers, to sleeping whales, a problem known to seafarers for generations.

George Fawcett, the Club’s container claims specialist, is somewhat sceptical of claims that relatively minor damage to small vessels has been caused by floating containers:

“Amy collision with a container that is lying dead in the water is likely to do serious damage to a lightly built vessel, especially if the impact involves a corner casting or corner post.”
In defence of the shipping industry, George states that no one is uncaring or unwilling to improve the safety of containers at sea but the issue is one of perspective and cost based upon the statistics.

“Millions of dollars are spent each year ensuring ship safety and consistent operations but when ships hit severe storms and heavy seas, some losses may occur. Together with the UK P&I Club, we recently produced a pair of ‘awareness’ videos intended to help those involved in container transport including those who load containers, often many hundreds of miles from the ocean.”

The Club believes that the benefit of containerisation to world trade and population far outweighs the risk of hitting a container at sea. George Fawcett again:

“Virtually all manufactured goods carried at sea are containerised and clearly container distribution is a major contributor to global trade patterns and the low cost of transportation benefits us all.”

No complacency in the ship design field

“Although container transport is actually very safe in terms of total numbers, the industry is not complacent and supports all initiatives that help reduce losses at sea or prevent accidents.”

This will take some time as any changes in current practice would come at a cost and may not bring the benefits sought. If carriers were to act independently they may face a competitive disadvantage.

Given the highly competitive nature of international business any changes to regulations have to be agreed at an international level to be meaningful. Amongst the changes being mooted are improvements to lashing systems, on-deck cell guides and changes in tonnage measurement. George believes that the potential for improving the safe working load of lashing and securing systems is limited:

“There has been constant improvement for 30 years and there is only so much further the technology can advance. Much of the recent development is related to improving the safety of the working environment for stevedores, thus reducing the need to work on top of ever increasing container stacks.”

The debate regarding on-deck cell guides and open hatches is on going. Several major lines pioneered the concept in large vessels but significantly the latest vessels have been built for conventional deck stowage. Nevertheless, the concept is not regarded as a failure and still has supporters at the highest levels. Certainly, operational experience has shown that this type of ship is less likely to lose containers over the side.

Germanischer Lloyd executive board member Hans Payer and the former Nedlloyd naval architect Ernst Vossnack are amongst those who are proposing changes in tonnage measurement which would give naval architects more freedom to design better vessels.

There are some people that would like to see higher freeboards with more boxes carried below deck and with greater use of on-deck cell guides. However, any owner building such a ship today would find himself with a white elephant. Current tonnage measurement rules mean that such a ship would be paying much higher port and canal dues than a conventional container ship.

Changes in tonnage measurement rules are required and this is not likely to happen overnight. With the on-going consolidation amongst the deep-sea lines maybe dialogue between carriers, leading ports and canal authorities could come to some sort of compromise when it comes to new designs?

The Club is working with the tracking specialist TRI-MEX International, and is looking at the possibility of fitting tracking devices to containers so that they can be more easily located and recovered – or avoided. Technology cost considerations mean that only reefer or tank containers are likely to be so fitted in the foreseeable future but as these boxes are the most likely to remain afloat, such a development would be very positive. To fit all containers would currently be uneconomic, but there again, technology costs are falling year by year.

It has been suggested that containers could be fitted with EPIRB systems and this is possible but as George Fawcett points out: Who is going to monitor eight million containers?

Which frequencies would be used?

Who is going to recover containers in international waters?

Whilst there is little likelihood of containers overboard causing damage, if readers have any simple ideas to “show” the container prior to its sinking please send them to the Editor.

High visibility children

The recent introduction of the Club’s very own high visibility waistcoats has proved to be very popular. Not only have the jackets been worn by Members for statutory protection and safety whilst working around port and terminal areas, but they have also shown themselves to be far more versatile.

The Club likes to ensure that its employees are trained early when it comes to safety, so pictured is Andrew Webster’s (our man in Dubai) one year old son, showing that the jackets are also particularly useful when it comes to tracking wandering children!
Carrier’s agent is entitled to benefit of foreign forum selection clause in ocean bill of lading

Continuing to extend the reach of the Supreme Court’s 1994 Sky Reefer decision, a federal district court in New York has recently held that if an ocean carrier’s local agent is a “subcontractor” within the meaning of a “Himalaya Clause” in an ocean bill of lading, the local agent is entitled to the benefit of a foreign forum selection clause in that bill of lading. As a result, claims against a carrier’s local subcontractor must be brought in the forum identified in the bill of lading, not where the local subcontractor can be found or even where the damage allegedly occurred.

In the New York case, plaintiff shipped goods to New York with an Italian NVOCC. The ocean carrier issued a waybill to the NVOCC showing the NVOCC’s New York agent (“Challenger”) as the consignee. The NVOCC issued a bill of lading to the shipper showing the shipper’s buyer as the ultimate consignee. The shipper instructed Challenger not to release the shipment to the ultimate consignee until the shipper authorised its release. Challenger in turn allegedly instructed the carrier’s agent in New Jersey not to release the shipment. The shipment was nevertheless released to the ultimate consignee. The shipper was allegedly never paid. The consignee filed for bankruptcy. Thereupon, the shipper filed suit against Challenger in New York for the value of the goods, contending it suffered the loss because Challenger did not follow the shipper’s instructions.

Challenger in turn filed a third-party complaint against the ocean carrier and the carrier’s agent for indemnity in the event it was held liable to the shipper. The waybill called for disputes to be resolved in China.

The carrier and the carrier’s agent filed a motion to enforce the Chinese forum selection clause. As to the New Jersey agent, the contention was made that the carrier had subcontracted its duty to make proper delivery to the agent. The “Himalaya Clause” in the bill of lading extended the benefits available to the carrier under the waybill to the carrier’s subcontractors. Accordingly, the benefit of the Chinese forum selection clause ran in favour of the New Jersey agent as well as the carrier.

Challenger contended that the third-party claim was one for indemnity and that an indemnity claim did not “arise under” the bill of lading. As to the New Jersey agent, the shipper’s agent also contended that the foreign forum selection clause was not an “exemption”, “defence”, or “limitation” under the Himalaya Clause.

Judge Koeltl ruled in favour of the carrier and the carrier’s agent. He held that in these circumstances Challenger’s third party claim arose under the bill of lading and further held that the Chinese forum selection clause was a “defence” under the Himalaya Clause that ran in favour of the carrier’s agent. LPR, SRL v. Challenger Overseas, LLC, 2000 US Dist LEXIS 9746 (7 July 2000). Judge Koeltl also enforced a provision in the NVOCC bill of lading calling for disputes between the shipper and the NVOCC, including its agent, Challenger, to be heard in Italy. As a result, plaintiff’s claims were dismissed. Healy & Baillie represented the carrier and the carrier’s agent in that litigation.

Since there is one contract of carriage, a plaintiff should be allowed only one recovery from all parties performing that contract of carriage. Allowing suit in one forum against all relevant parties serves this purpose. As stated by Judge Koeltl, if the carrier’s subcontractors did not have the benefit of the forum selection clause, it “would have the untenable result that different claims arising out of the very same agreement to transport goods would be litigated in different parts of the world.”

By LeRoy Lambert of Healy & Baillie LLP, New York

TTMS (Gulf)

By Andrew Webster

Since 1995, TTMS (Gulf) has been involved in developing and servicing TT Club business in the Middle East and the Indian subcontinent region. We have been involved with several national forwarding associations and have assisted in the writing of standard trading conditions and training programmes designed to educate the next generation of forwarders and logistics companies.

This type of involvement reinforces the TT Club’s commitment to a regional strategy of bringing services to its Members. Travel in the region is extensive as face-to-face contact is the best way of ensuring Member satisfaction - all members of the team in Dubai travel to Members in the region. Dubai provides an ideal central location for the region as flight connections are excellent and communications are first class.

In the course of our operations in Dubai we handle some 450 claims from 90 Members in a typical year and the team is happy that they are consistently asked to give papers at conferences and provide in-house seminars for Members both on loss prevention and coverage issues.

Over the last year, Dubai itself has seen an enormous growth in the internet “industry” and indeed we now have a business park/free zone dedicated to this - Internet City. The Dubai ports and customs has embraced the new internet age wholeheartedly and is seeking to ‘web enable’ almost all of its systems within a very short time. It intends to provide a faster more efficient platform for its trading community - we will undoubtedly see many of the other regional administrations taking a similar route very soon.

The growth in technology has not been forgotten in the logistics sector, with many TT Club Members in the region investing heavily in new hi-tech applications to allow integration
with their customers and provide a seamless logistics service.

The Club is fortunate to have a good name and reputation in the region, largely due to the service we provide to the Members. With a dedicated claims handling team in Dubai backed by expertise in London we can solve Members’ problems for them quickly and efficiently.

Building on past success, TTMS is seeking to expand the Membership in India and Egypt by means of small forwarders’ schemes, giving the smaller operator access to the Club’s services in the most cost-effective way.

Speed and empty straddle carriers

A claim from an incident involving a straddle carrier, that occurred last year at a Member’s terminal, highlights the perils of driving straddle carriers too fast, especially when running empty.

The straddle carrier was damaged as a result of toppling over whilst rounding a corner at a container receiving area. It was reported that the straddle was not carrying a container and the spreader was estimated to have been in the mid height position.

A preliminary survey of the straddle carrier showed no obvious abnormal mechanical faults with the tyres or the steering boxes and associated linkages. The speed of the straddle at the time of the incident was unknown, although it is likely that the incident was a result of the straddle carrier travelling too fast for the corner.

The estimated cost to replace the unit, which has been written off, is approximately US$2.8 million.

With an empty straddle carrier speed is the major culprit in rollovers of this type. When the straddle has a box attached, the centre of gravity is somewhat lower than an empty straddle (irrespective of the position of the spreader).

The Club advises that in general the older (1 over 2) models travelling with a box less than five metres high on the spreader should be limited to 20kph in a straight line.

If the box is greater than five metres high on the spreader then the speed, in straight-line travel, should be reduced to 15kph and on corners to 12kph irrespective of the height of the box.

Even in straight-line travel the later models have been fitted with speed limiters that reduce the operating speed in accordance with the travelling height of the box.

We shall be using the TTXpress platform to provide documentation for these schemes so that administration and time spent waiting are reduced to a minimum. Iran is also a relatively new market for the Club and we are currently exploring the best way to deliver the TT product range.

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The Club advises that in general the older (1 over 2) models travelling with a box less than five metres high on the spreader should be limited to 20kph in a straight line.
Carry out a thorough check on all new customers and business partners, including as much of the following as possible:

1) Date of foundation.
2) Parent, subsidiary and affiliate companies.
3) Licence details with renewal dates.
4) Details, and a copy, of the company’s liability insurance policy.
5) Membership of professional associations or organisations.
6) List of other clients and any letters of recommendation.
7) Directors’ names and their personal experience and that of senior staff.
8) Details of company’s trading conditions, bill of lading, etc.

If necessary, contact a Club office or correspondent to request assistance with these checks.

Be constantly alert to offers of new business that come from a remote and strange source. In this case, the named South Korean forwarder had only a few business contacts with the Shanghai forwarder during 1995, but had no such contacts during the past few years.

When you have only limited information about your business partner, avoid issuing your own bill of lading, but instead, sign as agent on your partner’s house bill of lading.

If you do not have control over the entire voyage/transit, then do not issue documents that evidence such total control.

In the previous edition of House to House we asked whether any ports and terminals covered by the Club would be willing to assist ICHCA’s International Safety Panel in setting up international benchmarking by providing details of accidents for the year 1999.

Little data has been received by PSO in London, which means that this work may not go ahead. The Club feels that such benchmarking would be of value to the industry and we ask once more if you have such data, would you assist ICHCA in this task.

The details needed are repeated below for ease of reference:

The raw data supplied will be treated in total confidence by the PSO and used solely for global benchmarking. The final data will only be supplied to those organisations that take part by supplying the initial data.

In developing the scheme, the Panel has tried to make data collection as simple as possible. For example, for container operations, the two pieces of information which need to be supplied are:

a) Measure of personal injury - the number of persons absent from work for more than one day as a result of accidents at work.

b) Measure of work carried out - the total number of TEUs, or units for Ro-Ro operation, handled in the same period.

Ideally these figures should be supplied separately for each geographic location, where operations are carried out at more than one location. The way it is intended to work is that each response will be calculated as the number of injuries per 100,000 containers/units handled. All berths are treated as being the same. The total number of responses will be added up and an overall rate calculated. This becomes the benchmark which will be sent to all those who participate.

All responses should be sent to Mike Compton, Director, PSO, 64 -78 Kingsway, London WC2B 6AH, UK fax + 44 20 7404 6806 or e-mail: info@portsafety.demon.co.uk.

Responses should be sent to the PSO as soon as possible.