Lloyd's List, 69-77 Paul Street, London, EC2A 4LQ

Ports still not safe enough

WHEN APM Terminals launched its safety awareness campaign in 2005, it was recording about 32.5 injuries per million man hours, while four years later the incidence of injury has fallen to just under three per millions man hours — a level at which the oil and chemical industries broadly sit.

Given the recent Deepwater Horizon crisis, comparing the port and terminal industries to their oil and chemical counterparts might not be the most advisable. Nonetheless, the extrapolation that a few years ago working in a port was actually some 10 times more dangerous than working on an oil rig is surprising.

The improvement in accidents in the intervening period is welcome, and demonstrates the efficacy of introducing a prevention-first scheme, which was successful primarily because it got the employees involved at a micro level.

However, this is not just an issue for port and terminal operators. Shipping lines also have their part to play. While terminal operators have had verifiable success in reducing the number of accidents in container yards, especially in regard to container handling vehicle collisions, there is a still a lot of work to be done at the interface between vessel and shore.

Some 40% of all accidents in ports involve lashing operations, while recent UK P&I Club research highlighted the dangers to mooring crews who are not properly trained for a potentially lethal occupation. In both these cases, labour is predominantly casual and the operations are often outsourced to local contractors.

Doubtless many of these contractors have to train their crews properly, and it is right that a terminal operator should take responsibility for what goes on within its theatre of operations. Indeed, we would welcome operators being given greater legal powers to enforce that responsibility rather than merely trying to 'influence' their sub-contractors.

In the case of mooring operations, shipowners have responsibility to make sure mooring equipment is well-maintained and not actually degrading the ropes they are installed to serve. With an average injury cost of $150,000, and numerous cases where medical costs of reconstructive surgery have gone up to $300,000, there is good business case for higher safety standards.

Settle Fos dispute

BACK in the days when Britain had a unionised waterfront, the mere threat of a dock strike was enough to cause to a run on the pound, in anticipation of the severe impact on the balance of payments.

But France usually takes a more laid back attitude to such matters, and a spot of industrial unrest among stevedores is usually seen as insufficient reason to interrupt a game of boules, let alone lunch in a decent brasserie.

However, the situation at Fos-Lavera, where a stoppage has entered its third week this week, has now reached the point where some urgency is called for.

Matters came to a head yesterday, with workers in the power sector and public transport joining the protests.

The facilities, close to Marseilles, represent the third-largest oil terminal in the world, and 16 days into the walkout, nearby refineries are starting to run out of crude.

The government has responded by releasing reserves of crude and products, but stocks are running low. Meanwhile, Corsica is already running out of petrol, and many commentators are predicting that shortages will spread rapidly.

Gallic insouciance is a wonderful thing, but the impact of all this is being now felt beyond France's borders. At the time of writing, some 56 ships were backed up outside the port. The owners and crews are not party to the squabble over government pension plans.

Mesdames et messieurs, a settlement s'il vous plaît. ■

Industry Viewpoint

Have we lost sight of equal protection under the law?

JOHN CARTNER

The Prestige oil spill case is a shameful example of a shipmaster being criminalised in a way that would not be inflicted on a shoreside person caught up in the same circumstances

HARD cases make bad law. The Grand Chamber of the European Court of Human Rights had a hard case and gave on September 26 bad law. It found that the human rights of Apostolos Mangouras were not violated when bail bond was set at €3m ($4,1m).

Capt Mangouras questioned the quantum. Under article 5.3 of the Human Rights Convention: "Everyone arrested or detained... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial." Capt Mangouras applied that his personal situation (profession, income, assets, previous convictions, family circumstances and so forth) were not considered in deciding on the quantum.

However, the courts at every level took great care to ensure that his profession of master was taken into account — and not fairly. The discomfort of some of the bench was perhaps evident in the decision, which was agreed by a 10 to seven majority.

Capt Mangouras commanded the oil tanker *Prestige*. Off Spain he encountered conditions worthy of force majeure. He asked for refuge under the ancient doctrine. He was denied by Spain on the pretence of pollution by threat of force. He was denied in France and in Portugal by naval interdiction. The vessel broke up. The cargo polluted the Galician beaches. He got his crew off safely. He exercised command judgement in dealing with salvors and the authorities in Spain. The ship sank. He had tried to avoid all this. Nonethless, Capt Mangouras was arrested and charged for the Spanish crimes of polluting and not co-operating with authority. The quantum was far in excess of Capt Mangouras' means. Why?

Several things disturb me in the opinion. The arraigning court concluded that Capt Magouras' profession, income, and previous convictions indicated low risk. However, these were outweighed by the perceived severities of the crimes and environmental injury. The Grand Chamber agreed. In justifying its position, the Grand Chamber trod beyond its jurisdictional limits and expressed opinions on government policy and politics. The court is a human rights court and only to the extent of the human rights of the applicant should it deal. To justify political meddling, the Grand Chamber opined the "growing and legitimate concern both in Europe and internationally in relation to environmental offences", which justified the need "to identify those responsible, ensure that they appear for trial and, if appropriate, impose sanctions on them". That is pure politics and hardly impartial.

The *Prestige*: the European Court of Human Rights has backed the decision to set bail for the master, Apostolos Mangouras, at €3m ($4.1m).

Going beyond the narrow question of whether or not Capt Mangouras' human rights were violated, the Chamber turned several times to his profession as a key determinant in setting bail. There is a sense that the profession of master is somehow different than all other professions as to the environment and to the court, and that a master should be treated differently than others similarly situated ashore. That sense suggests a current in the court of which is of twofold concern.

Equal treatment is a bedrock principle in western law. Any person who commits an act should be treated the same as any other person who commits a similar act. Criminalisation may be defined as the vilification of a seafarer in law for committing and act which would not bring vilification to a shoreside person committing the same act. Hence, criminalisation is a phenomenon peculiar to seafarers merely because of profession. Therefore, at a fundamental level, Capt Mangouras was not treated as any other person ashore similarly situated would be treated. Thus the court in its decision endorsed the criminalisation of Capt Mangouras and every other shipmaster in his circumstance.

Capt Mangouras' bail was set excessively high not because he was a flight risk. His bail was set high because he was a master. Capt Mangouras was vilified because of his profession which apparently is good enough to create a low risk of flight but is not good enough to avoid an exorbitant bail bond which detained him until it was posted. Capt Mangouras was treated differently in law than others ashore similarly situated because of his status, not his acts. "However, it is clear from the foregoing that in fixing the amount the domestic courts sought to take into account, in addition to the applicant's personal situation, the seriousness of the offence of which he was accused and also his "professional environment", circumstances which, in the court's view, lent the case an "exceptional" character".

Capt Mangouras was confined by the arraigning court before any impartial determination of his guilt or innocence. The confinement was because the injury to the environment was weighed against his status as the accused. The arraigning court had no expertise in those injuries and as is usually done, relied on the words of the prosecutor. Prosecutors are not impartial. Where is the fairness here?

The court's opinion suggests that a judge may set bail at any number he wishes before guilt is assigned by an impartial hearing. As a general matter this undermines the rule of law and is unworthy of a court and federation priding itself on its human rights record.

Shame. Shame. Shame. ■

John AC Cartner is a maritime lawyer practising in Washington, DC. He holds the US Coast Guard's unrestricted master mariner certificate and is the principal author of The International Law of the Shipmaster (2009) Informa/Lloyd's.
jacc@shipmasterlaw.com

YM Uranus collision shows value of HNS Protocol

Letter to the Editor

From Peter Swift

SIR, Further to the regrettable incident on October 8 in which the chemical tanker *YM Uranus* was damaged when the bulk carrier *Hanjin Rizhao* collided with it off Ushant in northwest France (YM Uranus crew safe after bulker collision, Lloyd's List October 11), we are pleased to note that the *YM Uranus* arrived safely in Brest under tow, that its crew were safe and well after being picked up in their lifeboat, and that there has been no pollution from this incident.

However, if there had been pollution from the vessel's cargo of pygas (a naphtha-range product with a high aromatics content used either for gasoline blending or as a feedstock), the need for a compensation regime for victims of damage by HNS substances as offered by the failed 1996 HNS Convention would quickly have become clear.

The 2010 HNS Protocol, amending the convention and overcoming a series of obstacles to its ratification, was adopted at IMO Diplomatic Conference in April. This reignites the potential for an international HNS compensation regime following the well established principles of the CLC and fund regime for oil pollution.

We therefore join with industry colleagues, the IMO and others in urging governments to ratify the protocol to bring it into force at the earliest possible date.

The protocol is open for signature from November 1 this year until October 31, 2011, and will thereafter remain open for accession. It is hoped that the protocol will now have sufficient support to establish an international regime for compensation for damage resulting from HNS cargoes. The protocol will come into force 18 months after ratification by 12 states, provided that four of the states have ships with a total tonnage of at least 2m gt, and in the previous year there has been at least 40m tonnes of cargo received in states that have ratified the protocol. ■

Peter Swift
Managing Director, Intertanko