

Insurance and P&I

Navigating US laws in new wave of losses

THE recent sinking of the cruise ship *Sea Diamond* off the Greek island of Santorini raises questions not only about the risks that ocean carriers face from accidents to terrorism to piracy, but also the potential for litigation when a loss occurs.

Cruise passengers are increasingly likely to employ two unique devices available under US law to maximise their potential recovery. One is the use of state consumer protection statutes to certify class action lawsuits against cruise lines.

The other is the use of "Rule B Attachment" (as set forth in the Supplemental Rules of Admiralty or Maritime Claims and Asset Forfeiture Actions, February 2, 2007) to obtain security for alleged cruise passenger injuries and damage.

An understanding of these quirks in US laws can help carriers navigate potential hazards. State consumer protection laws were originally enacted to protect individuals from predatory practices of larger or more sophisticated corporate entities.

Creative plaintiffs, however, are now claiming deceptive advertising, unfair trade practices, or improper vessel handling on the part of cruise lines to form the predicate for class action status.

Cruise lines without a presence in the US may still be vulnerable to passenger remedies there for injury and damage, writes **David Loh**, pictured right



These statutes are dangerous in that they allow for the recovery of punitive damages and attorney fees, in addition to the claimant's individual damages.

For example, the State of New Jersey, pursuant to its own consumer fraud statutes, sued Royal Caribbean Cruises because passengers were not refunded the cost of their tickets even though the vessel changed its destination from Bermuda to Halifax after getting under way. Royal Caribbean diverted because an impending hurricane would have crossed the vessel's intended track to Bermuda.

If there were 500 passengers who sought refunds as a

result of the diversion to Halifax and each passenger paid \$3,000 for the trip, it is not difficult to see a potential exposure against the cruise line in the millions (500 passengers x \$3,000 = \$1.5m). Since punitive damages are calculated in terms of treble damages, the potential exposure could escalate as high as \$4.5m. The ultimate result of this case is confidential.

Class certification also may be raised when relatively large numbers of passengers complain of sickness or personal injuries on the same voyage.

Defending against class action statutes — particularly those involving consumer protection statutes — re-

quires a proactive stance on the part of cruise lines to: (a) manage the inevitable public-opinion attacks on business reputation; (b) develop creative arguments; and (c) short-circuit discovery wherever practicable so that the merits can be considered as soon as possible.

At first blush, it would appear that passengers aboard ships like the *Sea Diamond* are without US legal remedies — particularly if the applicable cruise ticket contract requires suit to be filed outside the US.

However, even if suit must be filed in a specific foreign jurisdiction, a cruise passenger can nevertheless obtain security for the maximum

value of its claim through Rule B Attachment. The intricacies of this rule are beyond the scope of this article, but suffice it to say that foreign cruise lines without a US presence are especially vulnerable to Rule B Attachment. This may sound counterintuitive, but this is based on how the rules concerning maritime attachment are written in the US.

Within the last decade, US courts have expanded the types of assets which are potentially attachable to include electronic fund transfers (EFTs). With most cruise passengers residing in the US, all cruise lines conduct business in dollars. If a carrier receives or transmits

funds in US dollars anywhere worldwide, those funds must be electronically transferred through an intermediate bank in the City of New York.

This is true even if the funds do not originate in the US or are to be deposited in another country. This means that any EFT transaction (even if unrelated to the case) involving the named carrier is potentially subject to seizure in a maritime attachment action.

The US district court for the Southern District of New York is the preferred venue for this type of proceeding because all intermediate banks handling EFTs are within that court's jurisdiction.

To avoid possible funds

being attached, certain corporations and traders have chosen not to conduct financial transactions in US dollars. Given the large numbers of Americans purchasing cruise tickets all over the world, that is probably not an option for cruise lines and their agents.

Another way to avoid the maritime attachment of EFTs is to establish a business presence in Manhattan, where those intermediate banks transacting EFTs are located. If your company does business there, a potential claimant would not satisfy the requirements for maritime attachment pursuant to Rule B.

The critical advantage of

being in Manhattan is that a cruise line would still be able to conduct business in the US while avoiding potential maritime attachment of any EFTs involving US currency. Hopefully, vessels will operate with fair winds and following seas. However, cruise lines and other vessel operators should be proactive in familiarising themselves with these intricate US legal devices to avoid their pitfalls — and ultimately minimise risk and exposure — in the unfortunate event of a calamity.

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The bow of the *Sea Diamond* surrounded by liferafts. In the marine market at large, Rule B Attachment could come into play in some casualties. AP



COMPOSITE Legal Expenses managing director John Mullin, was in illustrious company at Cardiff City Hall when British Prime Minister Tony Blair delivered the inaugural Callaghan Lecture on topics ranging from urban re-

generation to youth crime. Cardiff Chamber of Commerce, which represents 1,400 businesses, has chosen to support the lecture as a keynote annual event in memory of James Callaghan, the only Cardiff MP to be-

come leader of the Labour Party and prime minister.

Mr Mullin was there because Composite Legal Expenses is the official provider of legal expenses insurances and other services to the British chambers of commerce. He is

also a patron member of the Cardiff chamber.

Mr Blair (fourth from right), Peter Hain (Secretary of State for Wales and Northern Ireland, third from right), along with other patron members and sponsors of the lecture.

Global Minerals takes a shine to Slovakia's Strieborna copper seam

By James Brewer

CHRISTOPHER Columbus reputedly owed the seaworthiness of his galleons to their being strengthened by copper from Slovakia.

Thousands of miles from the sea, this source supplied metals for much of the booming shipbuilding and other industries in the Middle Ages. Now it looks as though Slovakia will provide new copper-bottomed investments in the minerals market.

Several towns made their fortunes from the 15th to 18th centuries from silver and copper mining within the then Kingdom of Hungary, so much so that the Ottoman Turks tried to conquer the producing territory.

Modern mining companies have been focusing on the potential post-Communism, and after eight years of intensive negotiation, Vancouver

based Global Minerals has, subject to Toronto Venture Exchange approval, agreed to form a joint venture to develop the Strieborna silver/copper/antimony deposit, in eastern Slovakia, near the border with Ukraine.

Global Minerals will have a 60% interest and Slovak partners Pideco will hold 40% in what Canadian investor Richard Groome describes as a mine exhibiting very high grade ore, which could well rank among the top 20% worldwide.

All this is in line with the strategy of the company, founded 10 years ago by president and chief executive George Heard, of focusing on advanced mid-tier size ore bodies which are ignored by the major mining companies in their quest for scale.

The company already has

a revenue stream from a gold and silver mine in Boulder, Colorado, and has other positions including rights close to the famously productive Carlin Trend in Nevada.

The deposit in Slovakia is close to the town of Rosnava, which has a skilled work force and the infrastructure to support mining operations. In regard to country risk, Global Minerals says that the Slovak Republic, as a member of the European Union, meets its criteria.

Since its discovery in 1981, the Strieborna vein has been explored underground by more than 3,000 m of drifts.

Historical calculations, which will be rechecked, suggest a 1.25m tonnes resource with 400 grams per tonne of silver, and the company says that commercial production is likely to start in mid-2008.

Mr Groome and his colleagues have been briefing investors in London and other European cities on company plans, following a \$3.7m fundraising in March, giving it a total of \$4.5m in cash and \$6.5m in marketable securities. Mr Groome's record in past financings is impressive, including delivering a 495% return from Calvalley Petroleum, an oil explorer and producer in Yemen; and even higher yields from Carpathian Gold which focuses on Romania and North American organic food company SunOpta.

Mr Heard says that at recent prices of \$14.04 per ounce for silver, \$3.50 per lb for copper and \$2.68 per lb for antimony, the Strieborna Project could provide an attractive return on investment.

North of England beefs up its team of legal experts

NORTH of England P&I club has recruited five international shipping experts to reinforce its P&I and freight demurrage and defence teams.

The 70m gt club makes a particular point of maintaining a strong in-house legal team.

As earlier reported, the club has attracted Stephen Mills, founding partner of maritime law firm Rayfield Mills, and regarded as one of the leading experts on car-

riage of goods by sea. Mr Mills, who has been appointed an associate director, has had a long relationship with the club, both as a legal advisor to its FD&D and P&I teams and as co-author of its well-regarded loss-prevention guides Bills and Lading (1998) and Letters of Indemnity (2005).

He will continue to work with the club's FD&D and P&I departments, which is led by director Andrew Taylor,

Mr Mills will serve as general counsel, replicating his former role of external legal adviser and case handler.

Karen Lane Angell is joining North of England as an FD&D lawyer from law firm Clyde & Co, where she practised for 12 years in shipping litigation.

After qualifying as a barrister in 1983, Ms Lane Angell spent six years handling FD&D matters and P&I disputes for West of England P&I club and a further five

years specialising in FD&D work with Ince & Co.

P&I claims expert Andrew Stithbury is moving to the North of England as a senior claims executive, from marine claims management company WK Webster, where he has specialised in general average and cargo casualty management.

Previously he spent seven years as a claims executive with Steamship Mutual followed by four years as senior claims executive with Ocean

P&I Services and three years as claims controller with British Marine Managers.

Also joining North of England from Rayfield Mills are assistant solicitor Ben Roberts, who has been appointed a lawyer in the FD&D department, and legal assistant Maria Psaroudaki, who will become a P&I claims executive.

North of England employs 160 staff at its offices in Newcastle-upon-Tyne, Piraeus and Hong Kong.

Stalberg to further expansion in northern Europe for Swedish Club

FRANS Malmros, managing director of the Swedish Club, recently addressed guests at a Hamburg seminar for the shipping and broking sectors.

More than 60 people attended the event, which was an opportunity to greet Peter Stalberg, the club's new area manager for Germany.

Mr Malmros under-

lined the significance of Germany for the hull and P&I mutual, and said that, with free reserves of more than \$100m, the club was well positioned for growth.

Mr Stalberg has been asked to further the expansion with particular reference to northern Europe. Lars Malm, his predecessor as manager for

Germany, the Netherlands, the Americas and the UK, has become director, team management.

During the seminar, Tony Redding of TRS Public Relations, presented an overview of "casualty response and the media" in emergencies involving vessels ranging from tankers to containerships.

Danger ahead: preparation crucial to warding off risks

WE live in an increasingly dangerous world, so it is best to be prepared for what 2007 and beyond might have in store for us, even if it does not happen. That is the overriding impression after analysing the Risk Map for 2007 prepared by the respected teams of analysts at Control Risks group.

Their opinion is that the linkages between terrorism and maritime security could grow. A number of high-profile maritime terrorist attacks have occurred in recent years, the last involving the *Superferry* in the Philippines in 2004.

Methods range from the relatively straightforward to the complex, although such attacks are generally even more difficult to execute than

Analysts warn that threats of piracy and terrorist attacks remain very much on the map, reports **Denzil Stuart**

attacks on aviation. Scenarios could include militants ramming vulnerable vessels or blowing them up in port.

Cargoes could also be infiltrated, with containers used to convey hazardous materials into target jurisdictions or serve as weapons. It may not happen, but port and container security measures remain weak, says Control Risks, an independent consultancy with 18 offices on five continents.

The possibility of co-ordinated suicide attacks on commercial airliners using improvised explosive devices remains a persistent threat, while a number of terrorist organisations have long

harboured the ambition to acquire a chemical, biological, radiological or nuclear (CBRN) capability.

"The global Islamic extremist network's ambition to stage a CBRN attack can be assumed to remain undiminished following an upsurge in reporting relating to mass-casualty CBRN programmes," says the consultancy. "While al-Qaeda is unlikely to have already obtained both suitable radiological material and a reliable means of delivering it, this is almost certainly a focus of current activity. Intent and any form of concrete capability would make for a catastrophic mix."

Naturally, global warming gets a prominent showing in Risk Map. If it continues, the North-West Passage, the sea route north of Canada connecting the Atlantic and Pacific oceans, could become a commercially viable navigation channel within the next 20 years.

This could bring huge savings in shipping costs; routes between Europe and East Asia that currently transit the Panama Canal would be shortened by around 2,500 miles (4,000 km).

But opening up this new trade route could also open a can of worms over claimed sovereignty for the land and waters. Canada's land claim

is widely recognised, but its control over the region's waters is not unanimously accepted.

The issue is bound to generate tensions, says Control Risks, because of perceived threats from Russia, which also has commercial and strategic interests in the Arctic, and China.

The US, which argues these are international waters, will undoubtedly ignore Canadian claims and prioritise its own economic and security concerns.

So, global warming will not only bring disputes over diminishing resources (such as water wars), but will also cause friction as nations com-

pete over new opportunities. As for marine insurers, they have for long given thought to the risks and implications of an open North-West Passage, and Lloyd's is believed to be ahead of the pack in scenario planning.

In the opinion of Control Risks, the problem of piracy at sea is unlikely to ease. It already costs the shipping industry around \$16bn each year. Significant increases in commercial shipping are likely over the next few decades, while piracy remains closely linked to a shortage of onshore economic opportunities.

Control Risks maintains that pirate gangs have been

allowed to operate with growing impunity, and is highly critical of official measures ("confused and inadequate") to combat the pirates.

Also, "the lack of publicity surrounding the issue has resulted in an unfocused, under-funded international response".

Norway's role among the leaders in shipping and marine insurance is beyond dispute. Yet political differences may even threaten to result in government collapse in 2007.

Nevertheless, such an event would not significantly affect the business environment. "Norway is one of the safest business destinations

in the world, economic growth is good and companies face no serious operational obstacles. Security risks are insignificant."

In its assessment of political and security risks country by country, the Risk Map singles out Bahrain as a possibility for a large-scale terrorist attack in 2007.

The emirate provides a "target-rich" environment for transnational Islamic extremist groups, including a large Western expatriate population, and serves as a base for the US Fifth Fleet in the Gulf region.

"However, small-scale, opportunistic attacks will continue to pose the most immediate risk to foreign personnel," the consultancy adds.