



CIS PANDI Services Ltd

P & I REVIEW – UKRAINE

Presented by Adv. Pavel Svertilov

Manager of CIS PandI Services Ltd, Ukraine

Ukraine, 2013

HEAD OFFICE

P.O.Box 54189.
Suite 102, 118 Anexartisias Str.,
3040 Limassol,
Cyprus
Tel: +357 (25) 763 340
Fax: +357 (25) 763 360
Email: ho@cispandi.com
Web: www.cispandi.com

OFFICES :

Moscow	Sakhalin
Novorossiysk	Odessa
St.Petersburg	Kiev
Murmansk	Izmail
Klaipeda	Mariupol
Tallinn	Tashkent
Vladivostok	Alma-Ata
Nakhodka	Shanghai
	Phnom Penh



CONTENTS:

- 1.** Maritime Labour Convention, 2006 (MLC 2006) entered into legal force: new international requirements and Ukrainian national regulations, P&I aspects.
- 2.** Customs fine for misdeclaration of bunker onboard of the ships calling at Ukrainian ports. P&I Correspondents' recommendations.
- 3.** Personal injury warning: local developments and crew claims settlement.
- 4.** Cargo operations on the anchorage at Ukrainian ports: shipowners' protection and P&I Correspondents' recommendations.



1. Maritime Labour Convention, 2006 (MLC 2006) entered into legal force: new international requirements and Ukrainian national regulations, P&I aspects.

The Maritime Labour Convention, 2006 (MLC 2006) entered into force internationally on 20 August 2013 after ratification by more than 30 member-states which together constitute more than 33% of world gross tonnage of vessels. MLC 2006 will naturally affect the world shipping industry significantly in many aspects, such as: shipowners' contractual obligations towards seafarers, minimal working standards, crew accommodation, seafarers' health and safety conditions, seafarers' medical assessment and care, shipowners' financial security and guarantee for repatriation, etc. The new working and security standards in the world marine sector contained in the Convention summarize and update more than 68 international labour standards.

We will need to adapt along with our Principals – P&I Clubs and Shipowners to new developments which are taking place since MLC 2006 is in force.

Ukraine traditionally is one of the biggest supplier of labour force in the world shipping industry. Therefore handling crew claims is significant part of P&I Correspondents' activity in Ukraine. Nevertheless Ukraine did not ratify the Convention; as such, standards of Convention are not formally mandatory in Ukraine. In practice standards provided by the Convention are implementing in Ukraine because Ukrainian seafarers mostly work on ships flying the flag of the states-members of the Convention, and Ukrainian personal injury lawyers claiming the shipowners on that basis.

Thus, we would like to emphasize how the new developments related to the implementation of MLC 2006 will effect on the local practice in settlement crew claims in Ukraine.

The MLC 2006 provides number of standards for the protection of seafarers at work as well as guarantee for seafarers' social security standards.

The main standards adopted by the Convention which related to traditional P&I risks are as follows:

- 1. Seafarers' repatriation and replacement.** This standard outlined the seafarers' right for repatriation and require from the shipowners to provide a financial security for their liability to repatriate seafarer at ship owner's account including repatriation in case of insolvency. The definition of financial security is not determined and may be a matter for discussion with PSC inspectors;
- 2. Shipowners' liability for sickness, injury or death.** Although such risks are generally covered under the standard P&I coverage provided by the P&I Club, nevertheless this standard refers to the ship owners' liability to provide seafarers the compensation as a result of death or long-term disability due to occupational injury or illness as set out in the national law, the seafarer's contract of employment or collective agreement. Actually this is an optional right for the claimants and their lawyers and gives a legal ground to claim the compensation in a maximum amount on the basis of the legal document which is most favourable for the claimants.
- 3. Recruitment and replacement.** This standard imposed some obligation on the shipowners manning agencies, for instance, to guarantee the labour and social security standards in case of employment. The breach of this requirement could be a ground to impose sanctions on shipowners manning agency and even to terminate the license for crewing activity.
- 4. Wage and compensation for unemployment.** Although risks of unpaid wage are not covered by P&I clubs and this matter is commercial and regulates by national law and in accordance with employment



agreements, MLC 2006 provides for unemployment compensation for seafarers in case of ship's loss or foundering although such compensation is limited to two months. Thus, these standards give an additional ground to claim against shipowners even in cases for which shipowner is not responsible. For instance, in Ukrainian court there was a legal case when seafarers were claiming shipowner for compensation of significant sums for moral damage due to piracy attack in Somalia region despite of the fact that seafarers have been released with shipowner's assistance and wage has been paid to them in full amount.

5. **Social security.** This standard is very important and provides that seafarers and their dependants are entitled for social security protection. Usually such protections provides by collective agreements and contracts of employment. However we faced with case when PSC inspector of state party of the Convention requested from ship-owner documentary evidences that Ukrainian seafarers are covered by national social security scheme. Thus, such demands may have a consequence as un-justified ship's delay.
6. **Medical care.** In order to meet this standard ship-owner should guarantee the occupational health protection and medical care specific to work onboard the ship as well as a prompt access to the medical facilities for determination the diagnosis, medical treatment and expertise, availability of the medical chest and medical guide onboard and possibility to obtain a medical advice given by radio or satellite communications, in the event of occurrence of medical case onboard to prepare the medical report as per the relevant form by ship's administration, seafarers' access to shore-based medical facilities, accidents' loss prevention measures onboard, etc. We are handing a claim when local lawyers acting on the next of kin behalf build up their death compensation claims on the basis that medical care to the seafarer was not arranged onboard in time and seafarer's death took place due to ship owner's negligence (delay in providing the medical care to the seafarer) and as result tortious factors entitled negative consequences as a legal suite.
7. **Medical certificates.** This standard provides that all seafarers are medically fit for service at sea and valid medical certificate for maximum of two years should be available. In order to maintain proper level of medical facilities who assess the seafarers and issue the PEME certificates the network of PEME clinics accredited by the P&I Clubs are operating in Ukraine. Regular Clubs' representative visit to local PEME accredited clinic as well as cooperation with local P&I Correspondents in this regard is an effective way to maintain the proper service level of PEME accredited clinics and provide medically fit and qualified seafarers to the shipowners.

As we mentioned Ukraine is not a state member of the Convention. However in Ukraine there are some significant developments which take place due to entry of MLC 2006 into force.

- Increasing crew claims connected with seafarers' dismissal and repatriation on their own account in case of misdemeanor or infringement the terms and conditions of seafarer's contract of employment or breach the labour discipline or even ship owner's "Drug & Alcohol Policy";
- Increasing of Ukrainian trade union activity representing the Ukrainian seafarers. They require to implement the standards provided by MLC 2006 into the collective fleet agreements concluded with ship-owners regardless of Ukraine not ratifying the Convention;
- Ukrainian authorities will require that collective fleet agreements should be posted on the shipowners 'manning agent's offices in a conspicuous place that is accessible to the seafarers. Non-performance of such demand could be a ground to claim against of manning agent and shipowners.



- Ukrainian lawyers who specializing in personal injury claiming against shipowners for non-performance of the provisions of MLC 2006 if their vessel flying flag of the state-member of the Convention and require compensation amount on a maximum level and asked for legal assistance (for instance to arrest the ship) the personal injuries' lawyers who works in other most favorable jurisdictions – States Party of the convention;
- During the inspection the ships at the ports of State – Party of the MLC 2006 PSC inspectors require written evidences that Ukrainian seafarers onboard the ship are protected by the Ukrainian state social security scheme and such demands entailed a ships' delay;
- Increasing the number of tortious claims which is not limited by determined amount under the Ukrainian Law.

In conclusion we should emphasize that all recommendations given in our previous review for handling the crew claims are applicable to claims arising from provision of MLC 2006. However as crew claims based on MLC 2006 are complex matter, P&I Correspondents should be more proactive and cooperate with various parties, such as: shipowners' manning agents, PEME accredited clinics, medical experts, local reputable lawyers appointed by the Club in order to provide the most effective service and protection for the shipowners.

2. CUSTOMS FINE FOR MISDECLARATION OF BUNKER ONBOARD THE SHIPS CALLING AT UKRAINIAN PORTS. P&I CORRESPONDENTS' RECOMMENDATIONS.

Under Custom Code of Ukraine which is entered into legal force since 01st June 2012 any vessels entering at Ukrainian ports is considered as a vessel under custom control. Upon ship's arrival at Ukrainian port, Master is obliged to complete customs declaration and declare all ships' stores, drugs, pharmaceuticals, paints, currency, spare parts, quantity of lub oil, crude and diesel oil in the tanks, etc. available onboard. Actually the list of items to be declared is not limited under the Ukrainian Law, so Customs authorities have wide range of powers to inspect any ship's premises and ask why any other items were not declared. Completed customs declaration should be submitted to the Custom authorities by the ship's administration duly signed and stamped.

Bunker's misdeclaration may cause significant problem. New Custom Code of Ukraine set out new fines imposed on shipowners for misdeclaration of bunker.

We have alerted shipowners in many cases when custom authorities are being very strict about the amount of bunker, crude oil, lub oil, diesel oil in ship's tanks being declared in due course.

In such cases the Customs issue a protocol under Article 472 of the Custom Code of Ukraine - non-declaration of goods (bunker in our case).

The sanction of the Article 472 is confiscation of goods (or equivalent of its commercial value) plus fine in equivalent of 100% of custom value of non-declared goods – bunker. Non-declared quantity of crude/lub oil/diesel oil (mostly it is excess of bunker onboard) evaluates by the Custom House and after this determined value of bunker will be multiplied by two.

In our practice in 2013 the average sums of fine imposed is ranging from USD 20,500 up to USD 28,500.



Moreover as a state organ, Custom House refuse to mitigate the amount of fine. Agent's guarantee letter for settlement the fine in case of final court judgment is accepted by the Custom House in exchange for not detaining the ship. Under the Law such custom's cases is under control of Public Prosecutor and they will also support the Custom's legal position as to the imposing of fine at the court. Usually local court will issue the judgment for customs cases within 2 months. If shipowners decide to appoint a lawyer, duly apostalized power of attorney with appropriate form under local Law should be arranged for the legal representation at the local court.

P&I Correspondents' recommendation:

We recommend to Principals to undertake the following steps in order to prevent or reduce negative effect due to Custom authorities' inspection and investigation and in any case immediately notify P&I Club/P&I Correspondents with request to assist.

- Master must ensure that the declared stores list and bunker calculations is as accurate as possible and copy of declared store list with exact bunker quantity is retained onboard and its identifiable as a true valid copy of the list which was declared and passed to the Customs;
- Master should alert the Chief Engineer (who occasionally happy to keep some "spare" bunkers and other consumables about the importance of accurate measurement and reporting.
- To ask ship's agent assistance in proper completion the custom declaration and ship's documentations, vessel's oil records books, bunker receipts, should be collected, prepared and passed to the Custom Authorities upon their request in due order;
- Ship's representative should accompany Custom officers constantly during their inspection the vessel. In case of measurements of oil quantity in ship's tanks by custom authorities ship's administration also should make the measurements of oil at the same tanks in order to re-check and verify the actual quantity in the tanks and Custom's measurements;
- In case of any problems with Custom authorities or commencement the official investigation, to request attendance of P&I Correspondent and surveyor onboard in order to assist Master with discussion with Custom officers and obtaining and signing any official documents, resolutions, protocols, etc., and making additional bunker measurements, preferably jointly with Customs;
- If any dispute in bunker quantity, request Custom authorities to carry out the fast evaluation of non-declared quantity of bunker and avoid instructions to discharge excessive bunker ashore because technically this is rather impossible due to lack of relevant facilities at Custom's disposal. Avoid detaining the ships in exchange of issuance the relevant guarantee letter by the ship's agent on payment the fine in case of obtaining the considerable court judgment;
- to arrange P&I Correspondents or lawyer's attendance on the basis of the duly signed and apostalized power of attorney in the local court when the custom file will be passed from the Custom House for the final decision regarding to the fine imposing.



3. PERSONAL INJURY WARNING: LOCAL DEVELOPMENTS AND CREW CLAIMS SETTLEMENT.

There have been a number of recent developments in Ukrainian marine legal practice which are adverse to shipowners who employ Ukrainian crew and needed to be considered when handling Ukrainian crew claims.

Recent legal cases with personal injury claims with Ukrainian seafarers are of greater concern. We wrote in our previous P&I newsletters that local courts are quite favourable for Ukrainian seafarers in permanent disability adjudications even if seafarers suffered relatively minor injuries and unfortunately such tendency remains in place.

Moreover, despite of significant reducing of claims due to pre-employment illness as a result of introducing the P&I Club's PEME schemes and activity of PEME accredited clinics there were some cases when seafarer who claimed for disability benefit as a work-related, while actually seafarer's illness was not work-related (problem with kidneys and their transplantation was required). Such medical operations are very expensive. The pre-employment nature of seafarer's disease was determined by investigation of P&I Correspondents. During the investigation relevant medical reports have been collected, PEME clinic's doctors (who assessed seafarer and issued fitness certificate) are being interviewed and doctors' statement along with relevant report have been passed to Club and shipowners as requested. As a result, we convinced seafarer to withdraw his permanent disability claim and settled the claim on the minimal amount in exchange of duly signed Statement of Receipt&Release at Ukrainian Notary Public. Needless to explain the saved significant amount taking into account that seafarer was disembarked at hospital in U.S.A. and repatriated with kidneys problems for the States.

No doubt PEME scheme is designed to protect shipowners from claims arising from medical conditions existing prior to seafarer's employment. Nevertheless listed P&I Correspondents should assist P&I clubs and shipowners with collecting true information about seafarer's health condition, diagnosis and nature of his illness, to request and collect medical reports, medical card which should be kept at clinic along with analysis' results, etc. and if necessary to request clinics to assist in providing all necessary documentations, statements which is required for claims' settlement as per shipowners and clubs' request.

Another permanent disability claim was lodged by Ukrainian seafarer who suffered from relatively minor injury and various appointed medical experts in Ukraine determined him 30% of disability which was corresponded a compensation in amount USD 37,500. Nevertheless seafarers' lawyers requested 100% of disability which was corresponding to USD 125,000 under CBA. After lengthy negotiations seafarer's lawyer hired lawyers in Panama and they commenced legal proceedings on Ukrainian seafarer's behalf in Panama Marine Tribunal and increased the sum of claim. As a security measure Owners' vessel was detained under the court resolution by The Panama Canal Authority.

Due to prompt and effective assistance of Club's appointed lawyers in Panama vessel was released in exchange of Club's LOU. Simultaneously, as Ukrainian P&I Correspondents, we convinced seafarer to dismiss their lawyers (we explained that court proceeding in Panama is a lengthy procedure and lawyers quite expensive) and agreed the settlement on the reasonable amount as per Club's/Owners' instructions.

Certainly administrative and legal proceedings always takes time, nevertheless due to chosen correct tactic of claim's settlement, such as involvement of Ukrainian P&I correspondents with legal background and close cooperation with Club's appointed marine lawyers in Panama we reached satisfactory outcome. Therefore



actually claim was solved on a reasonable level for shipowners and Statement of Receipt&Release was duly signed by seafarer at Ukrainian Notary Public, apostilized in Ministry of Justice of Ukraine and sent to the Club's lawyers in Panama for closing the case in Panamanian Marine Tribunal.

It clearly shows how the close cooperation between P&I Correspondents and Club's lawyers in various countries under Club's supervision is important and fruitful.

4. CARGO OPERATIONS ON ANCHORAGE AT UKRAINIAN PORTS: SHIPOWNERS PROTECTION AND P&I CORRESPONDENTS` RECOMMENDATIONS.

In recent years much cargo operations is carried out while vessel is at anchorages with increasing tendency. For instance, in port of Kerch (Crimea, Ukraine) practically all cargo operations are carried out in anchorage and even beyond of Ukrainian territorial waters.

Mostly such cargo operations perform by means of floating cranes and cargo is delivered on anchorage by barge and then loaded on the vessel by grabs. Thus, the shipowners' benefits are obvious because in such cases vessel does not pay port dues and ship's call is less expensive.

However shipowners whose vessels are involved in the operations on the anchorage on Ukrainian ports should be aware of related problems



Photo No. 1 – Foreign matters found at cargo iron ore pellets.



Photo No. 2 – Cargo iron ore concentrate contaminated by foreign matters at terminal's storage site.

Our surveyors while attending the vessels during loading at anchorage with grain cargoes, iron ore concentrate etc, pass their concerns due to cargo quality, in particular its physical condition because quite often cargo is partly contaminated by foreign matters, admixtures, pieces of rags, foam, timber, or even large pieces of plastic and rust, etc. The contaminants ranged from small parts, stones, rust, timber, debris, to entire plastic bottles, polyethylene bags or wire rope up to a half meter length seriously affecting cargo condition. It is clear that large pieces of foreign matters may cause a damage to discharge equipment, resulting a delay in cargo operations and subsequent claims and disputes.



Photo No. 3 – Cargo iron ore concentrate stores at terminal's open area on a stockpile contaminated by foreign matters.



Photo No. 4 Foreign matters found at cargo iron ore concentrate.

In the usual circumstances if cargo is loaded on the pier at the port, our P&I surveyors recommend to arrange cargo cleaning by stevedores' brigade, to arrange cargo screening, install grates in order to separate the cargo from foreign matters, pieces of rags, plastic, lumps, etc. Such situation with cargo condition is quite common in Ukrainian ports especially if cargo stored at the ports'/terminals' open storage sites. All cleaning operations are carried out in the presence of our P&I surveyor who is monitoring and control the cleaning operations and check the cargo condition during loading constantly.

However if cargo operations is performed in the anchorage and cargo has foreign matters, sweepings, etc. possibility to clean cargo on the anchorage is very limited due to lack of suffice number of stevedores.



Photo No. 5 – Loading operations on anchorage of Ukrainian ports.



Photo No. 6 – Grain cargo screening by stevedores in order to separate cargo from foreign matters.



Photo No. 7 – Pieces of rust contain in grain cargo.

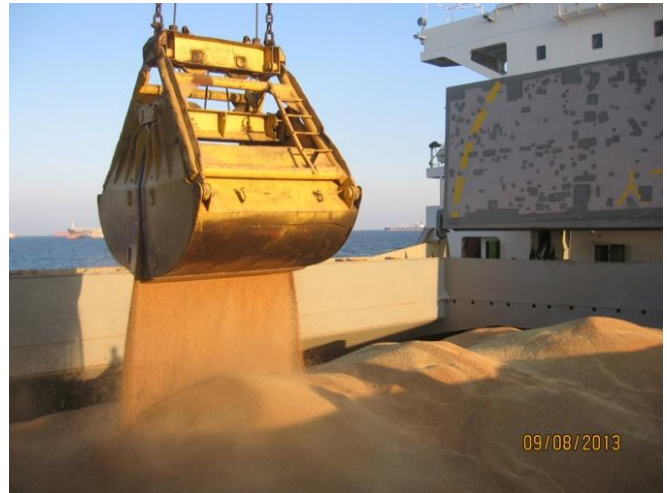


Photo No. 8 - Loading of grain cargo by grabs on the anchorage of Kerch port from the barge.

- Cargo operations on the anchorage is possible if weather permitted only because any operations of floating cranes even during insignificant swell in anchorage is strictly forbidden as per the port regulations. Therefore if bad weather prevails during lengthy period cargo operations are excessively lengthened. Barge may stay with loaded cargo onboard and waiting the vessel; therefore on the time of inspection this cargo parcel is actually loaded on the barges and it may be inspected on the barge only if such inspection will be permitted by barge's operators. During barge's staying in bad weather all hatches should be closed properly in order to avoid water ingress in cargo compartments due to rain, swell, precipitations, etc. Thus, cargo condition on the barge also should be inspected by surveyor;

- It is very common situation when it is impossible to inspect the cargo condition to be loaded at the place of storage ashore, on a stockpiles at ports'/terminals' storage sites because terminals sometimes refuse to issue entry pass for the surveyor due to their own pass regime and instructions of terminal's owners who sometimes make a serious obstacles for P&I surveyors to access the terminals' area;

- As we pointed out P&I surveyor's attendance on anchorage is problematic. However if the vessel is under cargo operations in anchorage with "closed Ukrainian borders" P&I surveyor's attendance is rather impossible due to local immigration rules. Under local rules issuance of immigration pass on the anchorage on the vessel with "closed borders" is very lengthy and bureaucratic procedure and immigration always has a ground to refuse with pass issuance to P&I surveyor.

- For surveyor's boarding vessel in anchorage, launch should be arranged by the ship's agent with prior shipowner's notification and confirmation of payment the considerable costs. Launch's costs will be not less than USD 1,000-2,000. If ship's agent is acting on the charterers' behalf any assistance with providing the launch/tug-boat to P&I surveyor, considerable costs should be agreed between shipowners and charterers in advance.

All above-mentioned factors acknowledged that during cargo operations in anchorage shipowners sometimes actually remain without any protection.

In order to overcome the above-mentioned problems we recommend the following steps for proper defense of shipowners' interests:



- To instruct P&I Correspondents to appoint and instruct P&I surveyor properly in advance in order to avoid late notices because pass arrangements and surveyor's delivery on the anchorage takes time;
- To inspect loaded cargo during stoppages. Watch officers should notify immediately in case any contaminants will be found;
- Launch/tug boat should be ordered by shipowner in advance via the ship's agent and delivery of surveyor in fixed time on the beginning of cargo operations should be arranged. We recommend that surveyor be onboard during the full process of loading, i.e. till it's completion and issuance the cargo documents. Sometimes the repeated surveyor's delivery onboard by launch entails an extra costs and technically quite difficulty to perform (absence of launch on the fixed time, agent's engagement with other vessel, bad weather, etc.);
- P&I surveyor will assist Master with clausing Bill of Ladings and other cargo documents, especially if cargo has some foreign matters inside. A photographic record, photo-report will be necessary to assist in the evaluation of the situation and verification actual cargo condition which should be forwarded to shipowner by P&I Correspondents without any delay;
- If cargo has foreign matters, pieces of rust, plastic, rags, timber, foam, etc. P&I surveyor recommend to Master to arrange screening the cargo by sifter or anything available means and make composite cargo samples for each hold. Any cargo samples should be made in the presence of the ship's administration and properly sealed and documented. In some cases analysis on determination the sweepings' parameters should be carried out. Master should be familiarized with analysis' results and one cargo sample should be sealed and passed to Master.

All above-mentioned recommendations are given as a general advice in order to provide comprehensive guidelines and protect Owners' interests during cargo operations in anchorages in Ukrainian ports, however in each particular case local P&I Correspondents and surveyor should be appointed in due course.