

P & I REVIEW – UKRAINE
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1. Crimean ports: sanctions remains. P&I Correspondent’s recommendations.

Further to our newsletters of 2014-2015 about situation in Ukrainian ports due to political turmoil and conflict with Russian Federation, we may report that now the situation is stable, trouble free, and secure for the vessels. All Ukrainian ports are working in usual regime. There are no sanctions or other prohibitions related to Ukrainian ports of Black and Azov Seas. There were no marine incidents recorded since the beginning of 2016. However due to increased security requirements, the port authorities require all surveyors to arrange their entry passes to the ports in advance with prior notice to port authorities given via ship’s agents.

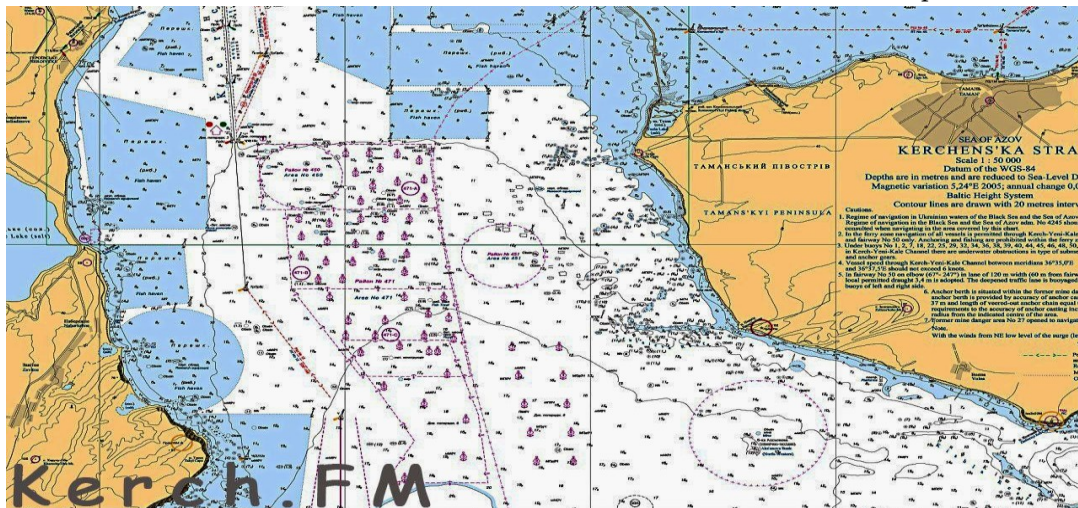
Ukrainian authorities started a commencement criminal cases (for illegal visiting the temporarily annexed territory (all ports located in Crimea) as per Art. 332-1 of The Criminal Code of Ukraine) against crews, Owners of the vessels which visited Crimean ports (mostly: Kerch, Sevastopol) after the annexation of Crimean peninsula by Russian Federation in March 2014.

Thus, if vessels visited Crimean ports after March 2014 there is a high risk of ship’s arrest by Ukrainian court or Ukrainian Public Prosecutor in case of subsequent ship’s call at Ukrainian ports on a mainland. Relevant department was established at General Public Prosecutor Office of Ukraine for monitoring ship’s traffic at Crimean ports. A number of ship-owners faced problems (detentions, arrests) when calling Ukrainian ports with charges been placed even for performing cargo operations at the anchorage of Crimean ports.

Crimean ports regulations introduced by Russian authorities became stricter for foreign ship-owners, for instance, under order of Ministry of Transport of Russian Federation dated 23, May 2016 No 313 “Obligatory Rules of Kerch Sea Port” all foreign-flagged vessels which pass Kerch-Yenikkale straight should have a pilot onboard. It means that pilotage for all foreign ship-owners for passing Kerch-Yenikkale straight to ship’s call to Ukrainian and Russian ports on Azov Sea (Mariupol, Berdyansk, Rostov-on-Don, Taganrog) is mandatory and would be prohibited to sail through the Kerch-Yenikkale straight without pilot onboard. Taking into account that The State Enterprise Kerch Sea Port is in the international sanctions list, all payments for pilotage should be arranged via the ship’s agent located and officially registered in Russia, i.e. not in Crimea.

P&I Correspondents’ recommendation:

1. We recommend to Ship-owners not to enter to Crimean ports and make relevant clauses to the C/P that charterers avoid any ship’s calls to any ports located in Crimea.
2. We recommend to Masters to keep a limit of 12 nautical miles from the coastline in case of passing the Crimean coastline and avoid cargo transshipment on anchorage of the Crimean ports.
3. In case of payment for the pilot service for passing Kerch-Yenikkale straight, we recommend to avoid payments to the legal entities located and registered on Crimean peninsula or payments in favor of Crimean and Russian legal entities which included into EU/USA sanctions list in order to avoid any sanctions against ship-owners in case of call Ukrainian ports.



2. Problems with next of kin status in settlement the death compensation claim. P&I and legal aspects.

Handling of death compensation claims is quite big share in claims activity of Ukrainian P&I Correspondents due to significant number of Ukrainian seafarers working in a world fleet. Recent legal cases with compensation claims with Ukrainian seafarers are of greater concern because sometimes legal status of the beneficiary of the compensation and next of kin status was not determined in a proper way.

The initial stage in death compensation claims is related to determination of the person who is proper Next of Kin after seafarer' death. Mostly the person who is the Next of Kin is specified in Next of Kin's declaration. Next of Kin Declaration is a written document which fill in by seafarer at the moment of concluding the employment contract and where indicated the person - Next of Kin - beneficiary of in case of seafarer's death.

However, sometimes such document is absent or next of kin details are missing thus, status of legal beneficiary of death compensation is not determined. In such cases, there is a possibility of potential claims from third parties (relatives/heirs/dependants/guardians and/or any other persons who consider that he has a right of claim for compensation).

The status of Next of Kin is not clearly determined by Ukrainian Law, only status of legal heirs or dependants who received financial support from the late seafarer (bread-winner).

According to Ukrainian Civil Code in case of absence of the will the provisions of legal succession should be applied. The Ukrainian Law establishes five lines of heirs under the law and the first one consists of children, widow/widower and parents among whom the mass of succession should be divided equally.

In case of absence from the seafarer a written form which seafarer completed at the time of concluding the employment contract and where he indicated the beneficiary of death compensation in case of his death, we have several potential claimants with unclear legal status.

We provided some practical recommendations depending on existence or absence the dispute concerning to the compensation amount between next of kin of deceased.

P&I Correspondents' recommendations:

1. We recommend notarization of binding Statement of R&R with claimant/s for protection of the Shipowners' interest.

2. We recommend that in the wording of The Statement of Receipt & Release the following phrase will be included which protects the Club/Owners from potential demands from third parties:

QUOTE

In case of payment of the amount aforesaid, I also hereby release, forever discharge and agree to indemnify the Owners, Operators, Managers, Agents, Underwriters, Charterers, Manning Agents and P&I Club of the vessel «_____» in respect of all actions, proceedings, claims, demands, costs, damages, losses and expenses, which they individually or collectively may incur as a result of being required to pay any amount in addition to the said USD _____, or as a result of my actions or the actions of third parties connected to the this incident, whenever and wherever arising.

UNQUOTE

3. In case of no dispute between deceased's heirs, we recommend to proceed with the notarization format of binding statement from all deceased's legal heirs that they do not have any claims and agree that death compensation would be paid in favor of the chosen beneficiary (for instance, widow) or will include all of them to the relevant wording of the Statement of R&R.

4. In case of dispute between deceased's heirs, we recommend to proceed with notarization of their settlement agreement at Notary office in order to make the agreement as fully binding and legally valid for all parties concerned and arrange signing of Agreement on sharing the funds between all family members. Alternatively they should settle their family dispute in the court and provide the court judgement in favor of legal beneficiary of compensation or sharing the compensation between several beneficiaries.

5. Avoid any compensation payments without duly signed documents by beneficiaries (R&R, Settlement Agreement between claimants, or court judgement).

There have been some practical recommendations based on marine legal practice which helps Shipowners who employ Ukrainian crew and needed to be considered when handling compensation claims in Ukraine.

3. Settlement claims with next of kin of missing seafarers. P&I Correspondents' recommendations.

Death compensation claims always a significant part in P&I Correspondents activity, however the most difficult claims are those related to missing seafarers at sea when the body was not found and such cases entailed a great stress for the seafarer's families due to uncertainty of seafarer's destiny and create a ground for various interpretation and complications in the claim settlement.

Shipowners should be mindful of potential risks and specific of settlement the claims with missing seafarers not only due to a great stress for the seafarers' families but also due to authorities involvement which create a settlement much more complicated and should follows P&I Club's/P&I Correspondents' recommendations.

Risks of criminal proceedings and detention the vessel.

Missing of Ukrainian seafarer under unknown circumstances onboard creates a ground for commencement the criminal proceeding, irrespectively of the crew nationality, flag and place of the incident. Moreover if some evidence will be found, such as seafarer's letters, correspondence, etc., in which seafarer asked for signing off before missing, etc. all of these facts entail a negative scenario and may adverse Shipowners significantly.

The criminal proceedings may be initiated by the next of kin or authorities on the basis of statement of any person as a fact of commitment the criminal offence and request to investigate the fact of seafarer's missing. Under Criminal and Procedural Code of Ukraine vessel might be detained as an evidence for the investigation, witnessing the crew, search onboard, etc. The period of such detention is not limited in time and depends on the investigator's decision.

After commencement the criminal proceeding investigator is entitled to inspect the vessel's premises, goods, ship's and other documents, to interrogate the crew, to carry out a search onboard, make copies of the documents (log book, engine room book, witness statement, etc.). Under the Criminal and Procedural Law there are some measures of securing at criminal proceedings, including the arrest of the property, including the arrest the ship and imposing the ban on the responsible person – Master to move the vessel till

the completion the investigation.

Needless to say that all of these actions are time consuming and entail the vessel's delay sometimes on quite lengthy period of time.

Risks of civil proceedings against Shipowners and arrest the vessel.

The above-mentioned risks at criminal proceedings do not eliminate the risk of legal actions against the Shipowners within the civil proceedings. Arrest of the vessel could be imposed by the court on the basis of various Laws: under Maritime Merchant Code of Ukraine, Civil Code of Ukraine and International Convention on Maritime Liens and Mortgages (1993) which is also ratified by Ukraine. Therefore in case of proceedings in local courts risks of arrest the vessel as security of next of kin claims within the civil proceedings arising out of claim due to presumable loss of life of missing seafarer considered as a substantial.

Another specific in missed seafarer cases is special legal procedure of acknowledgment of seafarer's death.

Under Civil and Procedural Code (Art.46) a person may be acknowledged as a dead person due to lack of any information on his location within three years at the place of his permanent residence. Such term might be reduced until six months if person should be declared as missed under circumstances that threaten his life or provide grounds to assume his death as result of accident or marine peril. The vessel will be considered as source of high danger therefore term in 6 month will be applicable to commence court proceedings for acknowledgment of the seafarer's death. On the basis of mentioned terms person (next of kin: usually widow or parents) should apply to the local court at the place of seafarer's permanent residence to acknowledge seafarer as dead person. All documents related to the seafarer's missing (reports, witness statements, etc.) should be submitted to the judge in due course.

We faced with situations when P&I Clubs requested to settle the next of kin claims related to missing seafarer as soon as possible, i.e. without the official acknowledgement of seafarer as dead person. However in this case there is a risk of extra payment due to additional compensation claims against Ship-owners from the side of other family members because under the

Ukrainian Law right to demand the death compensation arise only after the official acknowledgment the missed seafarer as a dead person by relevant court judgment. In order to overcome the problems and avoid any risks of vessel's arrests due to claims of next of kin of missing seafarer we give some practical recommendations to Shipowners and Clubs for effective handling such categories of P&I claims.

P&I Correspondents' recommendation:

1. We recommend that Master acting on Shipowners behalf should collect all necessary evidences concerning o the circumstances related to missing seafarer (issue Master's report, take crew witnessing statements, make photos of missed seafarer's accommodation premises, seafarer's cabin should be sealed in closed position till the authorities arrival onboard for the investigation, to provide information about search of missed seafarer from the Coast Guard or Marine Administration of nearest port, prepare copies of all documents for the authorities).

2. To enter into discussion with the next of kin and family of missing seafarer and establish a good working contact with assistance of P&I Correspondents and explain that Shipowners undertake all necessary steps to find the missed seafarer and all competent authorities were informed in due course and Shipowners cooperate with them;

2. To keep seafarer's relatives closely informed about developments in missed seafarer's search. Do not ignore other seafarer's relatives (parents, for instance) and maintain contact with all seafarer's family members;

3. To familiarize the seafarer's family with the documents related to fact of missing. Refusal from providing documents entails an adverse effect and allegations from the seafarer's family and next of kin side;

4. Prior to the claim settlement of the loss of life (death in service) compensation the seafarer should be officially acknowledged as dead person under Ukrainian Law by Ukrainian court and judgement should be enter into legal force. Such proceedings take about two months and perhaps in order to minimize the stress for the family and negative effect to assist them via P&I Correspondent or local lawyers in

receiving such court judgement and providing all necessary documents (copy of Master's report, witnessing statement) for the court;

5. To establish a rightful beneficiary of compensation in order to avoid a risk of additional claim from other seafarer's family members;

6. All compensation payments should be performed on the basis of duly notarized Receipt&Release only.

4. Operations with cargo of grain products at Ukrainian ports: Beware of dead animal contamination

Ukrainian ports operating with significant volume of grain product cargoes mostly storing at port silo and port terminals designated for grain storage. We handled several claims which took place due to cargo contamination by bodies found inside the cargo (like rats, dead pigeons, etc.). Despite of protective measures undertake by terminal animated bodies penetrated inside the cargo and made an adverse to the cargo condition and dispute between terminal and Shipowners concerning to the liability for such cargo contamination, procedure of cleaning the cargo and costs for removal the contaminants and signing the cargo documents.

Contamination the cargo by animal's bodies creates a claim from the receivers and problem with sanitary authorities at the port of discharge.

If cargo will be discharged at EU ports due to EU Sanitary requirements Health Authorities at EU ports may inspect the cargo and impose a ban to discharge the cargo where the animated bodies will be found. Cargo will not be allowed to be imported (as per the animal feed legislation) and brought into the national market, and have to be destroyed. The Health Authorities will take samples and analyses the type of fumigation carried out, to ensure this is correct and does not affect the product.

In order to avoid the potential cargo claims at the port of destination we recommend the following steps and loss prevention advice for proper defense of Shipowners' interests.



P&I Correspondents' recommendations:

- to instruct P&I Correspondents to appoint and instruct P&I surveyor in advance in order to instruct to carry out a loading supervision and check cargo condition;
- to carry out visual inspection of cargo on a storage site and during loading and stop the loading immediately if during loading operation any suspicious matters, bodies inside of the cargo will be found;
- to collect evidences relating to the cargo condition, photographic record, photo-report will be necessary to assist in the evaluation of the situation and verification of actual cargo condition which should be forwarded to Shipowner/Club by P&I Correspondents without any delay;
- Master should lodge the Letter of Protest to the terminal administration and all parties concerned (shippers, charterers, etc.);
- If there is suspects that cargo has any suspicious substances, living organisms, bodies which affect the cargo condition and create a risk of cargo claim at the port of discharge P&I surveyor should recommend to Master to keep Owners/Managers duly informed and arrange the fumigation with issuance the Fumigation Certificate, deratization and screening the cargo in order to remove the dead bodies and prevent the penetration bodies inside the cargo;
- All safety measures should be arranged properly onboard during the fumigation process. Vessel's holds would need to be fully ventilated for at least 24 hours before they can be declared gas-free. Crew should be equipped with gas detecting equipment that can detect gas levels to make sure it is safe to enter the holds after the ventilation period. If the crews do not have gas



monitoring equipment and the holds will be ventilated while in port, P&I surveyor should have the appropriate gas equipment to check the gas levels in the holds before anybody enters;

- Fumigator to have provided additional documentation with detailed instructions regarding to the ventilation of the holds after the fumigation exposure period, any additional documentation should be obtained by Master. In the absence of the documentation the Master needs to consult the IMSBC code which describes the "Recommendations on the safe use of pesticides in ships applicable to the fumigation of cargo holds";

- P&I surveyor should be onboard constantly in order to monitor the loading operations and assist Master till the loading completion.

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

Odessa 06/2016