CURRENTS

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To the left and page 22-23:

The Merchant Seafarer's War Memorial, Cardiff Bay, Cardiff. Designed and Sculpted by Brian Fell (1996).

One side of this sculpture is the beached hull section of a merchant ship , while the other features a human face at rest, incorporated into that same hull section. The hull rests on a circular mosaic by artists Louise Shenstone and Adrian Butler. Inscribed around the edge of the mosaic are the words:

"IN MEMORY OF THE MERCHANT SEAFARERS FROM THE PORTS OF BARRY PENARTH CARDIFF WHO DIED IN TIMES OF WAR"

MANAGEMENT CHANGES

THE FOLLOWING APPOINTMENTS HAVE BEEN MADE TO THE STAFF OF SHIPOWNERS CLAIMS BUREAU, INC., THE MANAGERS:

NEW YORK

LUCA BRUGA	Staff Surveyor
SHAUN F. CARROLL	V.P.-Legal Special Projects
SHARON A. DOYLE	Accountant
MARIO LASPISA	IT Support Specialist
CHARLEANE T. SALSTEAD	Accounts Receivable

GREECE

JOANNA KOUKOULI	Claims Executive
ALEXANDROS LAMPRINAKIS	Claims Executive

THE AMERICAN CLUB 1917

Cover Art:

The cover is a rendering of the passenger liner *SS UNITED STATES* that was entered with the American Club for more than 17 years between June 1952 and December 1969. The vessel was the last of the great passenger liners built solely in the United States.

The *SS UNITED STATES* still retains the honors of being the largest ocean liner ever constructed entirely in the U.S., and the fastest ocean liner to cross the Atlantic in either direction, retaining the Blue Riband given to passenger liners that crossed the Atlantic Ocean in regular service with the highest recorded speed.

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CONTEMPORARY ORACLES OF PYTHIA: **SEAMEN'S CONTRACTS OF EMPLOYMENT**

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PROLOGUE

I'd like to begin by making two observations: First, that maritime lawyers are legal counselors specialized in maritime law who, under this capacity, cannot and should not captain a vessel. Second, that captains are persons with a certificate to command sea-going vessels and that, *prima facie,* their seaman's background or captain's license do not make them eligible to provide legal counseling on maritime legal issues.

These admissions may sound like clichés but, to the best of my experience, are not always certainties in our industry: No sane shipowner would consider hiring a maritime lawyer to command his vessels—not even a rowing dinghy under the present officer manning crisis! Nevertheless, there are very sane shipowners who use the services of captains to deal with serious legal issues that many lawyers find themselves having to unwind thereafter.

A very common aspect of this 'not-so-uncommon practice' is the use by shipowners of *contracts of employment* (CoE) and *manning agreements* (MAs) governing the crews' work on board without having consulted a qualified lawyer to guide them in ensuring the contracts and agreements do not unduly put them at risk.

THE PITFALLS OF DRAFTING EMPLOYMENT CONTRACTS

Many owners do not assign this *ipso facto* legal job to their lawyers but enter into contracts drafted by their crewing directors, superintendants, port captains (most of who are formerly or currently employed captains). Many CoEs are "ready-made" or of unidentified origin. Others are drafted by the manning agents themselves (based on MAs that are also drafted by them) and thereafter signed by the shipowner without any legal advice or further negotiation as to the clauses contained in the contract or agreement.

When a serious injury or illness occurs onboard, then reality strikes when one has to deal with million-dollar personal injury claims resulting from "monstrous" contracts which do not provide a safe legal platform to protect the shipowner.

Such CoEs that are drafted with the intention to protect owners' interests do in fact serve the opposite parties by not ensuring the necessary provisions are included to defend the owners and the P&I club's interests. The simple truth is that those drafting these CoEs and MAs are not jurists with a knowledge and understanding of the legal pitfalls that can befall shipowners.

As did Ulysses in the *Odyssey* confront many monsters, I feel that I have seen as many, if not more, CoEs and MAs "monsters"! I have come across CoEs and MAs containing no provisions whatsoever for applicable law and jurisdiction. I have seen CoEs for employment for open registry flagged vessels

(i.e. flags of convenience (FoCs)), containing a clause titled "jurisdiction clause" but in the place where one expects to find the selected country the line is blank. By then, that information cannot be suitably filled in. The result is that in the event of a writ of action, the court of litigation most probably will refer the case, instead of the desired FoC forum, to the national jurisdiction the owners supposedly wanted to avoid.

I have seen contracts without any clause whatsoever regarding compensation for injury or death and MAs clauses contradicting those of the CoE and vice versa. I have seen opposing provisions contained in the same document. I have seen other contracts that, supposedly, were made to protect the shipowners' interests, but eventually over-protecting the manning agents or the seamen's unions. CoE's for ships under FoC providing entitlements and remunerations higher than the national legislations.

In a recent personal injury case for seaman from a developing country employed on board a Greek-owned FoC flagged vessel, the Owners paid on the basis of the MA, sick pay calculated on the basis of the seaman's total wages for an undefined unlimited time. Whereby, under the Greek Collective Agreement, they would have to pay a maximum of just 4 months basic wages.

In another case the Owners had to pay, by virtue of the MA, severance compensation that was 3 to 4 times more than the amount stipulated under Greek law.

These documents are often drafted in hybrid or idiosyncratic English, thus further complicating matters. But this may not be, after all, such a nuisance, if you consider that the clauses of many CoEs and MAs bear a resemblance to the Oracles delivered by Pythia: the priestess at the Temple of Apollo at Delphi. Their contents may be interpreted in various alternative and conflicting ways. As a result, even in cases where the outcome seems obvious, the court of litigation may validly interpret these clauses in the most unpredictable or unfavorable manner for owners and the P&I clubs.

The legal uncertainties caused by badly drafted contracts may be extremely costly and dangerous because whenever a claim arises, one cannot be sure whether it is better to proceed to litigation or just settle the matter quickly in order to avoid the litigation costs and the stress of an unpredictable verdict.

Under these circumstances many CoEs and MAs do not serve their primary goals which are to protect shipowners and seafarers effectively under established laws.

THE MLC 2006 PROSPECT

Yet there is some hope within sight with the future entry into force of the Maritime Labour Convention (MLC), 2006. The MLC 2006, which was adopted by the International Labour Organization (ILO), establishes international requirements for comprehensive rights and eprotections for all seafarers including minimum terms to be applied to seamen's CoEs.

A significant part of the MLC 2006 is devoted to compliance and enforcement including inspections of conditions on all ships as well flag State certification and port State inspection of labor conditions. The MLC 2006 could come into force as early as 2012, whereby the maritime community will be obliged to use better and more definitive wordings in their Contracts of Employment relatively soon.

CONCLUSIONS

Until the MLC 2006 comes into force, some simple advice for shipowners:

(a) *do not enter into "ready-made" CoEs and MAs.* This may be the starting point of a costly legal odyssey that could be avoided.

(b) trust your lawyers to draft or supervise these tricky legal documents from the beginning to suit your needs and minimize your perils. *Please do not call your lawyers to decipher the CoEs and the MAs after a claim.*