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The Navigator

April 2014

What should we do with the drunken sailor? - Alcohol and Pleasurecraft

In addition to the obvious exclusion for damage to the boat when towed whilst the driver (any driver) is under the influence of drugs or alcohol, a similar exclusion applies to loss or damage incurred when the boat is under the control of an intoxicated person. Drinking alcohol is not specifically covered by maritime legislation, or bylaws, although local bylaws do allow for an instant fine if a skipper is drunk (Queenstown, for example) and the Maritime Transport Act has provisions for endangerment and causing risk.

However, there is no standard of proof, test or level specified. Any specific provision for alcohol consumption by recreational boaties is a national legislative consideration. Because of the cost of policing this aspect, the NZ Government is leery of introducing laws that are difficult to enforce. Under the Maritime Transport Act 1994 recreational boaties can be fined up to \$10,000 or sentenced to up to 12 months' jail for causing unnecessary danger or risk to persons or property, and whilst there is nothing specific relating to recreational boaties and alcohol, prosecutions have been brought by Maritime New Zealand for risk or endangerment involving drinking.

Vero Marine now handles most of the pleasurecraft claims for Vero (AMP and ANZ being two exceptions). "Our Claims team here at Vero Marine take this issue very seriously," said Jordan Selby, Vero Marine's specialist pleasurecraft underwriter "and we investigate. We understand there is a difference between drinking – sensibly - and being drunk, but every year we see and hear of a few sorry incidents where the consequences are more than a mere headache."

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Changes for our Seafaring Clients

SeaCert is new system of seafarer certification for New Zealand that gradually transitions into New Zealand's maritime work environment. From 1st April 2014, all seafarers have either had their current certificates (under the expiring QOL system) deemed to be new certificates, or will need to obtain a new certificate through the transition process. Current certificates continue until their expiry or up until the 31st March 2019, whichever is soonest.

SeaCert sets out where seafarers can operate in local and international waters. Seafarers should visit maritimenz.govt.nz/seacert to see how their certificates transition or are to be confirmed under SeaCert, and where their operational limits are now set.

For insurers, it is a material fact that hull risks have the correct manning and crew qualifications. SeaCert's seafarer licensing framework for national and international waters sets out the current law more clearly and precisely than stated in the past. The safe operation of a commercial vessel by persons properly qualified under Maritime Rules Parts 32, 34 and 35 is overseen by Part 31, Crewing and Watch keeping, and the vessel operates in operating limits set out in Part 20.

MOSS (Maritime Operator Safety System) commences its replacement of the Safe Ship Management (SSM) system on 1 April 2014, as Maritime NZ requires three months to process the transition. MOSS is wider in scope than SSM, as it looks at the marine operation, but still concentrates on the vessel. MOSS is designed to cover most commercial operations in New Zealand waters, including those using barges carrying passengers, fishing ships, RHIBs, large vessels, foreign charter fishing vessels and non-SOLAS foreign-flagged vessels. If the operation is not covered by ISM, or an SOP, safety case or Barge Safety Certificate, it will be covered by MOSS. Legally, the 'operator' will be the person who has overall responsibility for a maritime transport operation. For much of New Zealand's domestic commercial fleet, this is likely to be the person behind the wheel of the vessel. In larger operations, this is likely to be the company or organisation - but the person behind the wheel will always have a key role in making sure safety systems are put into practice. Under Part 5 of the Maritime Transport Act 1994, individuals who exercise control over the operation are required to be Fit and Proper Persons. These may be skippers, owners, or those in charge of crewing requirements. Under the new regime, vessel certification is not provided by a SSM surveyor, as SSM companies cease to have a statutory role under the new maritime rules. In part these changes were brought about by the varying standards of the SSM surveyors; now, there's more central control of standards.

There is extensive documentation on [Maritime NZ website](#).

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Disclosure Requirements for Contract Terms and Conditions

Below is a summary of a commentary on a (Western Australian) law case from DLA Piper's Insurance Review, January 2014. This case highlights the importance of bringing terms and conditions to the attention of the customer prior to entering into the contract.

As this case could set a precedent for any future liability claims in New Zealand or Australia it should be brought to the attention of your liability clients (i.e. Ship Repairers, Freight Forwarders, Carriers, Boat Builders, Marina Operators, etc).

La Rosa v Nudrill Pty Ltd [2013] WASCA 18 – Summary

Mr La Rosa had an ongoing contractual relationship with Nudrill Pty Ltd having been engaged on many occasions over a ten year period to carry goods. Mr La Rosa's practice was to provide a verbal quote and invoice Nudrill for the work performed. The terms and conditions were noted on the reverse of the invoice.

The terms and conditions included an exclusion clause stating "all goods are handled, lifted or carried at the owner's risk". On this particular occasion a drill rig was being transported on a low-loader semi-trailer from Perth to Kalgoorlie. When Mr La Rosa was negotiating a roundabout, the wheels on one side of the vehicle lifted and the drill fell and was damaged.

The District Court of Western Australia found that Mr La Rosa had failed to exercise the reasonable care and skill expected of a driver in that the semi-trailer was driven at an excessive speed and this caused the damage. Therefore he was liable in contract, negligence and bailment for the damage caused.

Mr La Rosa then appealed to the Western Australia Court of Appeal. His argument was that although the exclusion clause has not been specifically mentioned in the oral quote, the two parties had been dealing with each other consistently over a period of time which indicated that Nudrill accepted the terms and conditions on the back of the invoices.

The Appeal Court judges dismissed the appeal. They considered that the invoice was a request for payment rather than forming a part of the contract. There was no evidence that Nudrill had read the terms and conditions or even that they had ever been brought to Nudrill's attention during this or any previous dealings. The Court held that the terms were therefore not incorporated into the contract.

The conclusions to be drawn from this case are:

- Previous dealings without evidence of receipt and acknowledgement of terms and conditions are insufficient to incorporate these terms and conditions into a contract.
- In order to be effective, terms and conditions must be able to be shown to have been brought to the customers' attention prior to entering into the contract (whether the contract is written or verbal).

To see the full judgement, please click [here](#)

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Carrier's Liability – increase in Limitation of Liability value

Carrier's Liability policies provide cover for a carrier's legal liability under the Carriage of Goods Act 1979 (CGA79) and any subsequent amendments. Goods carried within New Zealand are subject to CGA79 in which carriers can have a strict legal liability and duty of care for those goods. Carriers involved in the movement of import/export goods should also be aware that CGA79 applies to all carriage within New Zealand, regardless of whether the transit commenced within New Zealand or overseas. It is not compulsory for a carrier to insure their liability.

On December 17 2013 the Carriage of Goods Amendment Act 2013 was given Royal assent. This amendment increases the liability limit of a unit of goods from \$1,500 to \$2,000.

There has been some uncertainty amongst some insurers around the effective date of this change, however the Consumer Affairs department has confirmed the amendment will take effect from **17th June 2014**.

Vero Marine will automatically increase the limit under our Carrier's Liability policy to \$2,000 per unit as per this legislative change. Furthermore, despite the increased exposure Vero Marine will not be charging an additional premium mid-term. We may however review our pricing of individual risks at renewal if required.

Additional information:

- The limit of \$2,000 per unit is inclusive of GST.
- The limit of \$2,000 per unit only applies to Limited Carrier's Risk (LCR) term contracts of carriage.
- As the Carriage of Goods is a liability regime, for the increased unit limit to apply the following **both** need to occur on or after 17 June 2014:
 - a) The contract is formed; and
 - b) The contracting or actual carrier assumes responsibility for the goods, as this is when the contracting carrier's liability begins. Usually this is by physical collection at origin by the carrier, so the goods are then in the carrier's possession.

Additional features of Vero Marine's Carrier's Liability policy include some cover for goods carried at Owner's Risk, Debris Removal and Clean-up Costs, Expediting Expenses, Consequential Loss cover, and (in certain circumstances) waivers for intoxicating liquor or drugs and inappropriate licences. For the full outline of Features and Benefits, click [this link](#) or ask to your Vero Marine Underwriter.

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Expanding the Panama Canal

The first official transit when the Panama Canal opened for commercial traffic was on 15 August 1914. Celebrations were cancelled because of the outbreak of World War I.

Now, 100 years later, the Canal is undergoing a major expansion. Not unlike at its creation, the recent major project to build a third set of locks has had its financial crises. A major dispute erupted in 2013 over costs between the Panamanian building consortium in charge of construction and the Spanish and Italian contractors, as the project costs overran to the tune of USD 1.6 billion, with ongoing disputes on further financing. Work ceased for a while, but recently a deal has been put in place which might see completion in 2016. In 2009 the Spanish-led consortium had underbid its rivals by USD 1 billion, backed by the Spanish government.

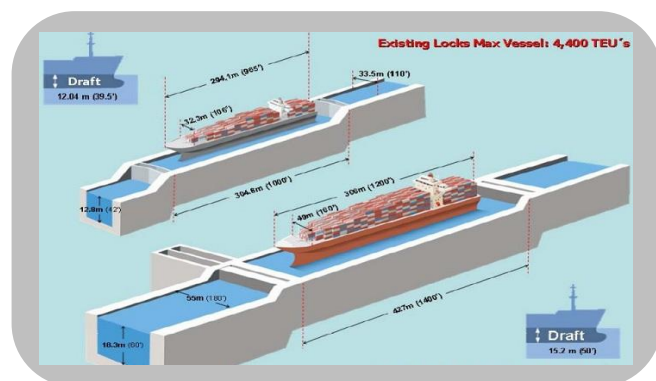
The delay in the new locks means that new larger ships are being delayed from using the route. As technology has advanced, the US has developed its shale oil deposits, delivering large volumes of natural gas energy as by-products. US exporters of Liquefied Natural Gas (LNG) want to ship from the Gulf to a post-Fukushima Asia. When the Canal does open for this traffic, it may render many high cost Australian LNG projects uneconomic, making Australian ambitions to overtake Qatar as market leader in global LNG exports look increasingly wishful. However, as gas consumption has risen, demand has kept gas prices relatively high, but with the consequence that coal shipments worldwide have increased, despite it being so pollutive. Because of the delay, LNG tankers that were built to use the Panama Canal's new locks are in short supply, and thus command high daily rates, as the route currently remains longer by some 17,000 nautical miles.



Panama Canal: New Locks for Its Anniversary
<http://news.thomasnet.com>

Whilst the largest containerships (18,000+ TEU) are confined by their size to Asia – Middle East – Europe, the Panama Canal will be able to allow 13,000 TEU vessels to transit its 80 km waterway. Currently the largest vessels that can transit are 5,000 TEU, with a more average size being 3,000 TEU. This increase in vessel size won't happen in a rush, as many ports need to deepen their channels and introduce container cranes that can reach across these wider vessels. However, the projected savings for the shipping lines able to move larger fully-loaded vessels from Asia to the East Coast, USA are in the region of 30%. This may probably mean that ports on the West Coast of North America – Long Beach, Los Angeles, Oakland, Seattle – are in danger of being bypassed, as well as affecting traffic

through Singapore and the rival Suez Canal. LA, the busiest US port, is spending more than USD1m a day to improve its infrastructure during the next 5 years to defend its market share. On the East Coast, the Port Authority of New York and New Jersey is raising the Bayonne Bridge, Savannah plans to deepen its river by 2 meters, and Miami has budgeted USD2m to modernise its port.



Comparison of existing and new Panama Canal locks

<http://maritime-connector.com/wiki/panamax/>

What this means for NZ and our ports is that our shipping routes will change, and the size of ships that carry our cargo will change, even to our largest markets of China and Australia. For a small country with relatively small cargo volumes, it may mean more transshipments and all the hazards that introduce, particularly for chilled and perishable cargo.

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Language of the British Merchant Seaman

Another sea-faring expression from the book 'All Hands and the Cook' by Captain Barry Thompson:

Ringbolt

To Ringbolt meant to travel illegally in New Zealand coastal ships between ports as a non-fare paying passenger. Usually concealed by the crew on their own initiative, or sometimes as part of a well-organised illegal operation with their acquiescence, the term was also used as a noun.

'All Hands and the Cook - The Customs and Language of the British Merchant Seaman 1875-1975' by Captain Barry Thompson is available for purchase by contacting shipmaster@ihug.co.nz.

Anthony Smith Hanging up his Boots



"The National Hotspurs" - Circa 1973-74
A few formerly familiar insurance folk are also lurking here, see Smith front row 2nd from the left.

After an insurance career spanning almost half a century, Anthony Smith has decided to retire.

Working Life:

- 1965 - Left school and began working for Dominion Insurance/Sun Alliance Insurance.
- 1967 - Joined civil service, Department of Health & Social Security.
- 1970 - Bus conductor before immigrating to New Zealand in September and working for the National Insurance Company of New Zealand.
- 1975 - Joined Thomas Macky & Co (Marine Insurance Company), becoming New Zealand manager, in 1979 and was responsible for designing the in-house computer system now known as Xena.
- 1987 - Joined Security & General (Lumley), before becoming Marine Manager in 1989.
- 2000 - Following the formation of Australis Underwriting Agency, joined IMIA (now Vero Marine) as a senior claims officer.

One of our Highlights:

For a number of years, Anthony was responsible for receiving nominations and awarding the prestigious "Shaggy" award at Vero Marine, unfortunately he was not immune to nomination or reception. Here's one of our favourites:

Anthony was invited to an evening function down in Wellington. He flew to Wellington, got himself all spruced up for the do and then spent around 60 minutes walking up and down the street looking for the function. He couldn't find it. He was definitely on the right street but just couldn't find the restaurant. Feeling thoroughly annoyed (and hungry), he went back to the hotel for dinner, only to be told the hotel restaurant was closed. He ended up getting a dodgy Thai takeaway and sulking in his hotel room for the rest of the night. The funniest part of the story is that the next day in work, everyone was coming up to him asking how the function was and he had to tell everyone that he simply couldn't find it.



The Prestigious "Shaggy" Award

For the Years Ahead:

The proud father of two and grandfather of three, on finishing with Vero Marine on May 20th, is set to take a well earned 9 week vacation to the UK and Europe, with partner Madeleine.

Anthony has been a stout Rugby League and Football supporter for many years and will undoubtedly continue his unwavering support for the Warriors and Brighton & Hove Albion.

Anthony's other interests include reading, history, photography/photo restoration and vintage motorcycles.

We wish Anthony all the best for his retirement and extend our thanks to him and his family for the many great years spent here.

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