

No. 9 - Criminal Enforcement of Oily Water Separator Related Offences and Club Cover

December 2004

Dear Sirs

Criminal Enforcement of Oily Water Separator Related Offences and Club Cover

Members should be aware that a determined clamp down on pollution offences is taking place, especially in the USA. In the United States, port state control inspectors are paying special attention to the operation and maintenance of Oily Water Separators (OWS) and the accuracy of oil record book entries when carrying out ship inspections on all categories of vessel, including tankers, bulk carriers, container and reefer vessels. Members should be aware that in addition to the civil penalties which historically have been imposed for MARPOL violations, shipowners and managers, as well as crewmembers, shore based employees, and ship operating companies are also increasingly likely to face prosecution for a range of offences. Prosecutions may be brought for accidental as well as deliberate acts.

Under the US Act to Prevent Pollution from Ships, a deliberate breach of MARPOL by an individual is punishable by a term of imprisonment of up to 10 years and a fine not exceeding US\$250,000. Companies may be fined up to US\$500,000 and the vessel may be sold to meet any penalty imposed. Recent experience in the US indicates an increasing tendency to bring multiple charges under a variety of Acts and to impose cumulative fines to the highest levels available against individual crew members, corporate officers and ship operating companies.

In September 2004, the Club issued Loss Prevention Bulletin 1/2004/05 (available on the Club's website) giving examples of cases in which sentences of imprisonment and/or substantial fines have been imposed in respect of OWS offences in the USA. The Bulletin also makes specific recommendations aimed at avoiding any infringements. Members are urged to ensure that all personnel whether on board ship or ashore who may have responsibility for the operation, maintenance, monitoring and repair of OWS are fully familiar with the Bulletin.

Members' attention is also drawn to the fact that any fine or penalty imposed may not be covered by the Club if the discharge of oil was not accidental or if the Member disregarded or failed to take reasonable steps to prevent the incident or activity or any other circumstances on board the entered vessel leading to the imposition of a fine. Fines imposed may be recoverable on a discretionary basis only, each case being reviewed in the context of its own particular circumstances.

Yours faithfully

**The West of England Ship Owners
Insurance Services Limited**
(As Managers)

M D Kelleher
Director