

# P&I COVERAGE FOR QUARANTINE EXPENSES RELATING TO SEVERE ACUTE RESPIRATORY SYNDROME<sup>1</sup>

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## I. INTRODUCTION

According to the World Health Organization and the Centers for Disease Control, Severe Acute Respiratory Syndrome (“SARS”)<sup>3</sup> has sickened over 8,400 people since it first rose to worldwide prevalence during the five-month period from February 2003 through July 2003.<sup>4</sup> Fortunately, the pandemic disease has since been virtually contained; however, new isolated cases continue to periodically surface, primarily in Asian countries.<sup>5</sup> Moreover, some experts feel that last year’s outbreak was simply a

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<sup>1</sup> This article was originally presented at the Maritime Law Association’s Fall 2003 meeting in Boca Raton, Florida as part of the meeting’s CLE curriculum.

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<sup>3</sup> SARS is a viral respiratory illness caused by a coronavirus known as “SARS-associated coronavirus” (SARS-CoV). The disease was first reported in Asia in February 2003, although some confirmed cases in China have been traced back to November 2002. (The secrecy under which the early Chinese cases were handled has led to some uncertainty as to exactly when the first true SARS case surfaced.)

In general, SARS symptoms begin with a high fever (temperature of greater than 100.4 degrees F). Other symptoms may include headache, an overall feeling of discomfort and body aches. Some people also experience mild respiratory symptoms at the outset. About 10% to 20% of patients have diarrhea. After 2 to 7 days, SARS patients may develop a dry cough. Most patients eventually develop pneumonia. The primary means by which SARS seems to spread is by close person-to-person contact. The virus which causes SARS is believed to be transmitted most readily by respiratory droplets produced when an infected person coughs or sneezes. Droplet spread can happen when droplets from the cough or sneeze of an infected person are propelled a short distance (generally up to 3 feet) through the air and deposited on the mucous membranes of the mouth, nose or eyes of persons who are nearby. The virus can also spread when a person touches a surface or object that has been contaminated with infectious droplets, and thereafter touches his or her mouth, nose or eye(s). In addition, it is possible that the SARS virus might spread more broadly through the air (airborne spread) or by other ways that are not yet known. There is no known treatment for the disease, although the National Institutes of Health is currently attempting to develop a vaccine. Additionally, researchers in Hong Kong are attempting to treat SARS with Kaletra, a drug historically used to treat HIV patients. *See Hong Kong To Use HIV Drug To Treat SARS*, (September 25, 2003), at [www.cnn.com](http://www.cnn.com) (quoting Hong Kong Hospital Chief William Ho). For more information on SARS, go to [www.cdc.gov](http://www.cdc.gov) and [www.who.int](http://www.who.int).

<sup>4</sup> Of these people, over 900 have died as a result of the disease.

<sup>5</sup> *See Singapore Finds New SARS Case*, Hous. Chron., Sept. 9, 2003, at A-10.

harbinger of things to come, and predict the number of new cases will soon increase as the winter season approaches and temperatures around the world continue to decrease.<sup>6</sup>

This article addresses the effects that SARS has had upon the worldwide insurance market to date, as well as possible emerging trends concerning protection and indemnity cover for the disease as it pertains to quarantine expenses claimed by vessel owners. This article further examines P&I cover for personal injury claims asserted by those unfortunate peripatetic seafarers who become infected while working aboardship.<sup>7</sup>

Based on the limited information currently available, it *does* appear coverage for a vessel owner's SARS-related quarantine expenses, and for its maintenance and cure obligations related to seamen who become infected with the disease while in the service of the vessel, will continue to be afforded under the typical<sup>8</sup> P&I policy, as shipowners and underwriters continue to grapple with the age-old interplay between ships and disease.<sup>9</sup>

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<sup>6</sup> See *Health Officials: SARS Could Come Back*, (September 26, 2003), at [www.cnn.com](http://www.cnn.com) (quoting Dr. Judy Gerberding, Director of the U.S. Centers for Disease Control and Prevention); see also *Experts: SARS Return Possible This Fall*, (September 4, 2003), at [www.cnn.com](http://www.cnn.com) (quoting Karen Monaghan, the World Health Organization's Acting National Intelligence Officer for Economics and Global issues).

<sup>7</sup> It should be noted at the outset of this paper that SARS is obviously a newly-discovered disease; therefore, as of this writing, there have been no reported U.S. or U.K. court opinions of any kind relating to the illness, and the opinions expressed herein are the author's best predictions as to how the disease will impact the law of quarantine and marine P&I insurance.

<sup>8</sup> It is highly questionable as to whether any marine policy of insurance is so straightforward as to be accurately labeled as "typical." However, for the sake of brevity, this appellation will be used throughout this article for purposes of discussion, and should be read to include fixed premium P&I policies.

<sup>9</sup> The conclusions expressed herein concerning P&I coverage as it relates to SARS and SARS-related expenses are of a general nature, as it is probably safe to say that no two marine policies are drafted precisely the same. As one esteemed admiralty practitioner has cogently noted,

Even with the extensive use of form policies there are the inevitable variations, sometimes small, sometimes substantial, negotiated by the parties. The fact patterns surrounding claims inevitably vary. The decisions of our courts are refracted through these differences and the skill with which the issues are presented. In light of these inherent differences and of the normal vicissitudes of any case, there is simply no substitute for a thorough review of the particular insurance policy in dispute and the manner of its negotiation and placement.

## II. THE EFFECTS OF SARS ON MARINE P&I INSURANCE

### A. **Brief Overview of SARS' Immediate Effects on the Insurance Industry in General:**

Given the relatively recent emergence of SARS, not much information is known about how the disease will impact the worldwide insurance markets in general, let alone how it will affect coverage under marine P&I policies (if at all). However, some trends appear to be emerging and, as is set out in greater detail below, it remains relatively clear that a member's P&I cover for quarantine expenses and its crewmembers' personal injuries will remain unaffected by the SARS outbreak.

#### 1. ***"Event Cancellation" Policies***

Exclusions for damages caused by SARS are now fairly common in "event cancellation" policies,<sup>10</sup> but such exclusions have yet to be seen in other lines of coverages. An "event cancellation" policy is akin to a "*force majeure*" type of policy, which in effect means that anything beyond the control of the owner or promoter of an event would normally be covered. Therefore, the sole manner by which an underwriter may avoid SARS-related claims is to *specifically exclude* them under the policy terms. However, from a practical standpoint, the nature of "event cancellation" coverage requires the applicable policies to be written well in advance of the event; therefore, there

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Raymond P. Hayden and Sanford E. Black, *Marine Insurance: Varieties, Combinations, and Coverages*, 66 TUL. L. REV. 311, 313 (1991). This is sage advice, and the author urges the maritime practitioner to thoroughly review a particular policy's terms before arriving at any conclusion regarding P&I cover or lack thereof.

<sup>10</sup> While such insurance is not really relevant to the marine insurance industry, it is the only type of coverage which the author was able to identify that has been immediately affected by the advent of SARS. An example of how SARS could possibly impact an event would be if event organizers for a trade show in Canada or China planned for attendance to be 20,000, but only 5,000 actually showed up for fear of contracting SARS. The damages associated with the diminished attendance would obviously not be covered under an "event cancellation" policy with a SARS-related exclusion.

are likely many “event cancellation” policies currently in effect which do not exclude SARS.<sup>11</sup>

## **2. *Liability Policies***

As of this writing, the author has discerned no other situation wherein a SARS exclusion has crept into other types of policies, including the typical liability policy (most likely because SARS does not meet the definitions of “accident” or “occurrence”).<sup>12</sup> However, as is discussed in greater detail below, coverage for SARS and SARS-related quarantine expenses and crewmember injuries should still be afforded under a vessel owner’s P&I policy, in accordance with the policy terms and also in combination with the vessel owner’s ancient obligation to provide maintenance and cure benefits to those crewmen who fall ill or are otherwise injured while in the service of the vessel. Each type of coverage is addressed separately below.

### **B. SARS’ Possible Effects on Coverage Under P&I Policies:**

Because the primary coverage issues facing vessel owners with regard to SARS will likely be those associated with quarantine expenses and maintenance and cure obligations, the following discussion will be limited to those areas.

#### **1. *P&I Policies In General***

An in-depth examination of P&I insurance policies and terms is far beyond the scope of this article, and the number of court opinions and law review articles addressing P&I insurance are legion.

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<sup>11</sup> Such policies are typically written up to 12 months in advance; therefore, the underwriters cannot do anything about those.

<sup>12</sup> A claim for SARS under a typical liability policy would be akin to the insured seeking coverage because he or she caught the flu or a virus. Such claim would not generally fall within the four corners of most liability policies.

P&I insurance provides liability coverage for those vessel owner members who are entered with the particular P&I club. Following a marine casualty, the club's obligation to pay is on an indemnification basis; that is, the member must have paid the obligation in question before the club's liability to the member is triggered.<sup>13</sup>

P&I insurance covers claims that arise in direct connection with the operation of the enrolled vessel, and members may insure vessels they own, operate or charter.<sup>14</sup> Typical coverage provided to a club member will include personal injury and death claims, passenger liability (including luggage), liability for cargo loss and damage (including extra handling costs), collision, wreck removal (where necessitated by law), pollution, loss of property on the insured vessel, damage to fixed or floating objections, towage and general average.<sup>15</sup>

The most likely SARS-related losses potentially facing vessel owners will pertain to quarantine expenses and crewmembers' personal injury claims.

## **2. *P&I Cover for Expenses Incurred Following a SARS-Related Vessel Quarantine***

Due to the transient nature of their profession, seamen are obviously at an increased risk for exposure to communicable diseases, including SARS, as they travel from port to port, country to country. Consequently, vessel owners, operators and underwriters may find themselves facing issues concerning maritime quarantine as the result of SARS exposures, particularly with regard to the member whose vessels ply Asian waters.

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<sup>13</sup> See, e.g., *Diesel Tanker A.C. Dodge, Inc. v. A.B. Stewart*, 262 F.Supp. 6, 8-9 (S.D.N.Y. 1966), *aff'd*, 376 F.2d 850, 851 (2<sup>nd</sup> Cir.), *cert. denied*, 389 U.S. 913 (1967).

<sup>14</sup> See HAYDEN, *supra* note 9, at 326-27 and accompanying citations (providing a more extensive discussion of P&I cover generally afforded members).

<sup>15</sup> *Id.*

In those situations where a member's vessel is subject to quarantine, would the P&I policy cover the expenses associated with the quarantine? Before this question is addressed, a brief history of the law of quarantine is in order.

**a. Development of the Law of Quarantine**

It has been said that “[t]he history of pestilence is the history of quarantine.”<sup>16</sup> Indeed, measures to prevent the spread of dangerous communicable diseases and to provide for the isolation and segregation of those diseased are practically as old as history.<sup>17</sup> However, the underlying principles behind the law of quarantine have not changed significantly over the centuries.

As the amount of international maritime commerce increased at the turn of the century, so did the spread of infectious diseases on a worldwide basis. Most of the early cases that addressed the law of quarantine involved infected vessels that were attempting

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<sup>16</sup> *Rock v. Carney*, 216 Mich. 280, 297-8, 185 N.W. 798, 799 (1921).

<sup>17</sup> The Law of Moses segregated the lepers, and their forced cry of “unclean, unclean” was the forerunner of the modern warning placard. *See Rock, supra* note 16, at 297-8. Ancient Rome and Greece had their own quarantine systems, under which those infected with leprosy were separated from the healthy. *Id.* In 1448, the senate of Venice instituted its own code of quarantine, and a few years earlier, a regularly organized *lazaretto*, or penthouse, was established. *Id.* The Republic of Venice also established the first board of health, which consisted of three nobles and was known as the “council of health.” *Id.* This council was ordered to investigate the best means of preserving health in the city and preventing the introduction of diseases from abroad. Its efforts not having been entirely successful, its powers were enlarged in 1504 so as to grant it “the power of life and death over those who violated the regulations for health.” *Id.* No appeal was allowed from the sentence of this tribunal.

The first quarantines are reported to have been implemented in Venice in 1484. BLACK'S LAW DICTIONARY 1119 (5<sup>th</sup> ed. 1979). Supposedly, the word “quarantine” means “forty” in Italian and was derived from the practice at the port of Venice to detain ships at anchor for 40 days before they were permitted to dock. The idea behind this procedure was apparently to keep the plague aboard the ship and out of the city; however, unbeknownst to the city leaders at the time, it was the rats, and not the sailors, who were bringing in the infection, and the rats were able to survive the 40 days. (Special thanks to Maritime Law Association Young Lawyer Committee Chairman Larry Kahn for providing his perspective on the origins of the word.)

During the plague in London in 1665, the magistrates consulted to devise a means by which to stop, or at least impede the progress of the dread disease. *Rock, supra* note 16, at 297-8. The result of their deliberations was a series of orders which appointed commissioners, searchers, surgeons and buriers to each city district. *Id.* These persons, acting under certain regulations and pursuant to an old act of parliament deemed to still be in effect, closed and quarantined all houses which appeared to contain any infected person. Each house “visited” by those orders was marked with a foot-long red cross in the middle of the door. *Id.* Fortunately, the law of quarantine has never conferred upon the boards of health the old-time customs of the Samnites of examining the conduct of the young people, or (luckily for seamen) of holding general inquisitions for the discovery of venereal disease. *Id.*

entry into U.S. ports. Some of the diseases that were carried aboard these ships included yellow fever, malaria, smallpox, cholera, the plague, or a combination of these.<sup>18</sup>

**b. The Advent of SARS**

Given the contagious nature of SARS, there is no reason to believe that it would be treated any differently than yellow fever, malaria, smallpox, cholera or the plague for purposes of quarantine. Consequently, if one or more crewmembers begin exhibiting SARS-like symptoms during a voyage, then a temporary quarantine may be placed on the entire vessel in order to protect the public's health from the spread of further infection of contagion.<sup>19</sup> During the period of the quarantine, the vessel would not be allowed to leave a protected point, whether that point is at berth or at a location somewhere offshore.<sup>20</sup> The ship would remain isolated, and no person on board would be permitted to land or make direct contact with any other person outside the vessel.<sup>21</sup> While the vessel and its crew are so quarantined, the "Q" flag would be hoisted and would remain

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<sup>18</sup> See generally *State of Texas v. State of Louisiana*, 176 U.S. 1, 20 S.Ct. 251, 44 L.Ed. 347 (1900) (quarantine because of yellow fever); *Morgan's Steamship Company v. Louisiana Board of Health*, 118 U.S. 455, 6 S.Ct. 1114, 30 L.Ed. 237 (1886) (quarantine because of cholera); *Cheek Neel Coffee Company v. Osaka Shosen Kaisha*, 36 F.2d 256 (E.D.La. 1929) (quarantine because of bubonic plague); and *Sumner, et al. v. Philadelphia*, 23 F.Cas. 392 (C.C.P.A. 1873) (No. 13,611) (quarantine related to yellow fever, malaria and small pox).

<sup>19</sup> With regard to a possible SARS-related quarantine in the United States, President Bush signed Executive Order 13295 on April 14, 2003, which added SARS to the list of communicable diseases that are regulated pursuant to section 361 of the Public Health Act. (The other listed diseases are cholera, diphtheria, tuberculosis, plague, small pox, yellow fever and viral hemorrhagic fevers such as lassa, marburg, ebola, Crimean-Congo, South American and other not yet isolated or named hemorrhagic diseases.) The Public Health Act allows the U.S. government to apprehend, isolate and conditionally release individuals to prevent the further spread of SARS. The federal government has stated that this power would only be used if someone posed a threat to public health and refused to cooperate with a voluntary request. See Department of Health and Human Services News Release, April 4, 2003, quoting Tommy G. Thompson (spokesman for the Department).

<sup>20</sup> 8 BENEDICT ON ADMIRALTY Tech-60 (7<sup>th</sup> ed. 2002).

<sup>21</sup> DICTIONARY OF MARINE INSURANCE TERMS AND CLAUSES Q2 (5<sup>th</sup> ed. 1989).

displayed until a *pratique certificate* is issued by the local health authority, confirming the health hazard has passed.<sup>22</sup>

Once a vessel and its crew have been quarantined, the question then becomes whether the vessel's P&I policy provides cover for the expenses attendant to the quarantine. Generally speaking, quarantine expenses *are* recoverable under the P&I policy if incurred because of the outbreak of an infectious disease on board, including an order that the ship be disinfected.<sup>23</sup> The club's liability in this situation would be limited to net expenses; *i.e.*, those expenses remaining after deductions for the costs which would have been incurred by the vessel anyway, despite the quarantine.<sup>24</sup> The costs and expenses usually contemplated are bunkers, insurance, wages, stores, provisions, victualling and port charges that are incurred as the result of the quarantine.<sup>25</sup>

**c. Typical P&I Policy Provisions Relating to Coverage of Quarantine Expenses**

The typical P&I policy *will* customarily provide cover for quarantine expenses, subject to limited exceptions. Presumably, such cover would be provided in relation to the expenses associated with a quarantine following a SARS outbreak aboardship, as there is no reason to believe SARS would be treated any differently than other communicable diseases.

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<sup>22</sup> 8 BENEDICT, *supra* note 20, at Tech-59.

<sup>23</sup> CHRISTOPHER HILL, ET AL., INTRODUCTION TO P&I, 84 (2<sup>nd</sup> ed. 1996); *see also* LESLIE J. BUGLASS, MARINE INSURANCE AND GENERAL AVERAGE IN THE UNITED STATES 412 (3<sup>rd</sup> ed. 1991); ASSURANCEFORENINGEN SKULD (GJENSIDIG), INTRODUCTION TO P&I INSURANCE § 35, at 132-33 (1975); and ROBERT H. BROWN, DICTIONARY OF MARINE INSURANCE TERMS AND CLAUSES Q1-2 (5<sup>th</sup> ed. 1989).

<sup>24</sup> HILL, *supra* note 23, at 84.

<sup>25</sup> *Id.*



In this regard, the typical quarantine provision in a standard P&I policy reads as follows:

The liabilities, costs and expenses against which Members shall be entitled to Protection and Indemnity in the Club are limited to the following and are subject to such deductibles as may be applied [under the policy]:

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xxii quarantine expenses and extraordinary expenses incidental to the outbreak of infectious or contagious disease upon an entered ship incurred for or by way of:

a. the disinfection of the entered ship or of persons on board her under quarantine or public health enactments, regulations or orders, including the cost of taking in fuel in quarantine, and of loading and discharging cargo and of the victualling of the crew and passengers after deducting the ordinary expenses of loading, discharging and victualling;

b. fuel consumed or towage in proceeding to and from and lying at a special station or place in accordance with such enactments, regulations or orders;

c. expenses directly consequent upon bearing up for, or putting into a port or place of refuge and resuming the voyage thereafter by reason solely of the outbreak of infectious or contagious disease upon an entered ship;

*provided always that:* there shall be no recovery under paragraph xxii of this Rule if the entered ship was at the time such expenses were incurred, chartered to proceed to or under orders from the Member or her Managers to proceed to a port at which it was known or should in the determination of the Directors have reasonably been anticipated that she would be quarantined.<sup>26</sup>

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<sup>26</sup> See 2003 “P&I Class Rules and Correspondents” for The Steamship Mutual Underwriting Association (Bermuda) Limited (emphasis added). Other P&I Clubs have similar quarantine provisions. For a further sampling of such provisions, see 7A BENEDICT ON ADMIRALTY §§ 1.01-1.22 (Simon Harter ed., 7<sup>th</sup> ed. 2002).

Thus, following a SARS outbreak aboardship, the net expenses associated with the quarantine of the entered vessel would be covered under a standard P&I policy, assuming the vessel has not breached any policy provision by proceeding to a port where it, its owners or its managers know, or should know, that the vessel will be subject to the SARS-related quarantine.<sup>27</sup> Indeed, most P&I Clubs will reimburse the additional costs incurred when a vessel is forced to comply with a quarantine order by the local health authority even though there may be no ill person on board. Furthermore, as it is theoretically possible for health authorities to fine an owner or individual for bringing a disease to a port, P&I coverage will generally be available to cover such fines, absent a showing of recklessness by the owner or, as mentioned above, that the vessel made intentional illegal calls at a quarantined port.<sup>28</sup>

*Query:* Could the directors of a P&I club simply declare under the club's rules that a particular port is quarantined and that the club's members will have no coverage if they choose to direct their vessels there?

### ***3. P&I Cover for the Vessel's Maintenance and Cure Obligation to SARS-Infected Seamen***

Most commentators who have examined the issue feel that P&I cover for those crewmembers exposed to SARS will not be affected. In other words, a seaman who becomes ill with SARS during a voyage will continue to be entitled to maintenance and

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<sup>27</sup> Interestingly, and as a completely unrelated aside, it is likely that in the event multiple people contract SARS at a single land-based location, the U.S. government would likely order the facility closed until it could be thoroughly inspected and, if necessary, decontaminated. While no U.S. court has specifically addressed coverage for SARS in this situation, several courts have ruled that no coverage exists under CGL policies for other viruses or bacteria such as Legionnaire's disease and E. Coli, as they constitute "pollutants" and are excluded by the standard ISO pollution exclusion. See *Michigan Mutual Insurance Company v. Mitco, Inc.*, No. 98-11745 (Minn. Dist. Ct., Aug. 27, 1999); *East Quincy Service Distribution v. Continental Insurance Company*, 864 F.Supp. 976, 979-80 (E.D.Cal. 1994); and *Employers Mutual Casualty Co. v. DFX Eners., Inc.*, No. 20D03-9505 (Ind. Super. Ct., Apr. 24, 1997).

<sup>28</sup> See BENEDICT, *supra* note 26, at §§ 1.01-1.22.

cure from the vessel owner or owner *pro hac vice* under the owner's P&I policy. A detailed discussion on the general maritime law principle of maintenance and cure is beyond the scope of this article; however, the following is a brief summary of the principle and its possible application in SARS cases.

In *The Osceola*,<sup>29</sup> Justice Brown provided what he believed to be the settled law on the ancient remedies of seamen:

That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.<sup>30</sup>

The federal judiciary has further elaborated on the inviolate nature of the vessel owner's duty to provide maintenance and cure:

The obligation to provide maintenance and the accompanying duty to provide cure, *i.e.*, medical cure, to an ill or injured seaman is 'among the most ancient and pervasive of all the liabilities imposed on a shipowner.'<sup>31</sup>

This ancient duty of a vessel owner to provide maintenance and cure to a seaman who becomes ill or injured while in the service of the vessel arises from the context of the employment relationship, and not from any negligence or fault of the vessel owner or owner *pro hac vice*.<sup>32</sup>

In cases of SARS (as in all maintenance and cure cases), it would not be necessary for the seaman to establish a causal relationship between his employment and the illness or injury, or that the illness or injury occurred while the seaman was working

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<sup>29</sup> 189 U.S. 158, 23 S.Ct. 483, 47 L.Ed. 760 (1903).

<sup>30</sup> *Id.* at 175.

<sup>31</sup> *Caufield v. A. C. & D. Marine, Inc.*, 633 F.2d 1129, 1131-32, 1982 A.M.C. 1033, 1035 (5<sup>th</sup> Cir. 1982) (quoting *Oswalt v. Williamson Towing Co., Inc.*, 488 F.2d 51, 54, 1974 A.M.C. 1311, 1113-14 (5<sup>th</sup> Cir. 1974)).

<sup>32</sup> *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 527, 58 S.Ct. 651, 82 L.Ed. 993 (1938).

or even was aboardship, in order for him or her to be entitled to maintenance and cure benefits. Indeed, the injury or disability can arise while the crewmember is on shore leave, so long as he or she is obligated to return to the vessel if called for service; *i.e.*, he or she remains “generally answerable to the call of duty.”<sup>33</sup> Moreover, “bluewater” seamen on shore leave are considered to be in the service of the vessel while on leave in foreign ports.<sup>34</sup>

Maintenance and cure benefits are due for illnesses or injuries, irrespective of any negligence or other fault on the part of the employer. The remedy includes illnesses which first manifest themselves during the subject employment, injuries occurring ashore and even prior injuries or illnesses which reoccur during employment.<sup>35</sup>

Although there are not yet any direct court opinions relating to P&I cover for maintenance and cure *vis-à-vis* SARS, it does appear such obligation would be covered under well-settled general maritime law principles, assuming the seafarer becomes infected with the disease while in the service of the vessel.

### **C. Other Potential SARS-Related Losses of an Owner:**

In addition to quarantine expenses and maintenance and cure obligations, a vessel owner may face other potential losses as the result of a SARS outbreak, including but not limited to (1) the cost of repatriating or substituting crewmembers; (2) liability for illness

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<sup>33</sup> See, e.g., *Farrell v. United States*, 336 U.S. 511, 516, 69 S.Ct. 707, 93 L.Ed. 850 (1949), 1949 A.M.C. 613 (1949); *Waterman Steamship Corp. v. Jones*, 318 U.S. 724, 63 S.Ct. 930, 87 L.Ed. 1107 (1943), 1943 A.M.C. 451 (1943); *Macedo v. F/V Paul & Michelle*, 868 F.2d 519, 1990 A.M.C. 1368 (1<sup>st</sup> Cir. 1989); *Vincent v. Harvey Well Service*, 441 F.2d 146, 1971 A.M.C. 2541 (5<sup>th</sup> Cir. 1971); *Williamson v. Western Pacific Dredging Corp.*, 441 F.2d 65, 1971 A.M.C. 2356 (9<sup>th</sup> Cir. 1971); *Koistinen v. American Export Lines*, 1948 A.M.C. 1464 (2<sup>nd</sup> Cir. 1948); and *Palmer v. Edith L. Boudreaux, Inc.*, 233 N.E.2d 919, 1967 A.M.C. 745 (Mass. 1967).

<sup>34</sup> *Aguilar v. Standard Oil Company*, 318 U.S. 724, 63 S.Ct. 930, 87 L.Ed. 1107 (1943), 1943 A.M.C. 451 (1943).

<sup>35</sup> *Sana v. Hawaiian Cruises, Ltd.*, 181 F.3d 1041, 1999 A.M.C. 1831 (9<sup>th</sup> Cir. 1999); *Sammon v. Central Gulf Steamship Corp.*, 442 F.2d 1028, 1971 A.M.C. 1113 (2<sup>nd</sup> Cir. 1971).

or death to passengers; (3) vessel deviation costs; (4) delay or contamination-related cargo claims; (5) loss of time, profit or a commercial fixture, or other consequential losses. Each of these potential losses, and whether P&I coverage would likely be afforded thereto, is discussed separately below, albeit it in a cursory manner.

**1. *Crew Repatriation and Substitution Costs***

Typically, the P&I club will indemnify the member for the necessary repatriation and substitution costs associated with crewmembers who are detained as part of a quarantine.<sup>36</sup> Repatriation costs may include additional medical treatment rendered at sea or on land. Also, the club will customarily cover the expense of medically-qualified transport escorts, such as traveling doctors or nurses, where required.<sup>37</sup>

**2. *Illness or Death to Passengers***

Depending upon the policy terms, a P&I club may be called upon to respond to medical charges incurred by passengers, including any precautionary examination, hospitalization or prescriptions.<sup>38</sup> Cruise and ferry operators are generally aware of disease issues, and usually have routines in place for contacting not only passengers on board a vessel, but also those who may have recently been aboard, or are scheduled to go aboard. It is important to note that most P&I policies do not cover prospective commercial losses with regard to cancelled cruises, etc.<sup>39</sup>

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<sup>36</sup> Note from UK P&I Clubs to Members, 2003 Policy Year, P&I Insurance Aspects of Contagious Disease Outbreak or Vessel Quarantine (2003); *see also* Hayden, *supra* note 9, at 326-27 and accompanying citations (providing a more extensive discussion of P&I cover generally afforded to members).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

### 3. *Vessel Deviation Costs*

A vessel may be forced to deviate from its intended voyage in order to provide medical treatment to a crewmember, passenger or other person aboardship. A P&I club will usually indemnify an owner's net loss over and above expenses that would otherwise have been incurred, but such indemnification is limited to the cost of fuel, insurance, wages, stores, provision and other necessary port charges.<sup>40</sup> The P&I policy will likely not cover commercial losses arising from any such deviation, or where a port is cancelled.<sup>41</sup> Some cargo or passenger forwarding costs may fall within the scope of coverage, depending upon the policy's terms.<sup>42</sup>

### 4. *Delay- and/or Contamination-Related Cargo Claims*

As a practical matter, cargo-related losses are unlikely as a result of quarantine. It is theoretically possible that an owner could face a claim related to (i) delay in delivering or loading; (ii) loss of or reduction in value of cargo as a result of a quarantine order by local health authorities; or (iii) inability to deliver to a named port because of a ship's quarantine, or because of the actual closure of a port.

Generally, under the terms of the bill of lading and any applicable convention (such as the Hague-Visby Rules), the vessel owner has full defenses to delay claims. The rapid spread of disease leading to quarantine would generally be considered a *force majeure* event, as it is beyond the owner's control. In these limited situations where the

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

shipowner is held liable for delay-related cargo losses, the P&I underwriter may respond, unless the owner had intentionally breached quarantine or port closure orders.<sup>43</sup>

Depending upon the type of cargo and the type of disease, the cargo may be destroyed or at least reduced in value. As with delay, the shipowner should have full defenses to these sorts of claims. Nevertheless, should the owner be found liable, P&I cover would typically respond.<sup>44</sup> In an extreme scenario where a port is totally closed and cargo is required to be transhipped, P&I cover may respond to the extent that an owner is legally liable to do so.<sup>45</sup> Again, the policy's terms and the club's rules would govern this obligation (or lack thereof).

#### **5. *Loss of Time or Commercial Losses***

P&I cover generally does not indemnify an owner for loss of time or loss of hire. For example, P&I cover does not indemnify an owner for lost hire while a vessel is detained at a quarantine anchorage, though P&I cover does respond to additional running costs as outlined above. Similarly, P&I cover does not indemnify owners for commercial losses. For example, if a vessel is detained due to quarantine and misses a lay/can date for its next fixture, the P&I club would not indemnify an owner for loss of profit or other commercial losses.<sup>46</sup> However, the prudent vessel operator will have procured a trade delay insurance policy (sometimes called "strike and delay" insurance), which would possibly cover these types of business interruption/trade delay losses.<sup>47</sup>

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> It remains entirely foreseeable that vessel owners may be unwittingly drawn into the battle to prevent the spread of SARS, so procurement of strike and delay insurance will probably become more and more important as the

**D. Possible Coverage for SARS as an “Occupational Disease”:**

Another consideration with regard to SARS coverage under P&I insurance deals with whether or not SARS would be considered to be an “occupational disease” under the policy. In the land-based context, most commentators believe that SARS would not be considered an “occupational disease,” at least for purposes of workers’ compensation coverage, as it is not necessarily characteristic of any type of employment. However, occupational diseases caused or aggravated by successive exposures to deleterious substances, such as asbestosis, silicosis and some forms of cancer, may raise an issue as to whether an insurer bears the loss where several policies of insurance provided coverage to the insured during the time period when the injured worker was exposed to the substance at issue. In those cases involving jointly and severally liable insurers, at least with respect to coverage under CGL policies, the courts have developed the rule that each insurer bearing loss as a result of joint and several liability has a right of contribution against the other insurers also having liability for an apportioned share of the loss.<sup>48</sup>

With respect to P&I policies, several federal district courts have addressed this issue and have determined that the last insurer is the only insurer directly liable for such claims. However, the claims in those specific cases were filed under Louisiana’s direct action statute, and the policies implicated in those cases contained clauses which

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disease spreads and governments take a more proactive approach in arresting this spread. Situations wherein such insurance may prove helpful to a vessel owner include, *inter alia*, business interruption delays occasioned by a SARS-related quarantine, strikes by crewmen or officers who refuse to travel to a port where SARS has been reported, delays and losses caused by pilots’ or shore gangs’ refusal to embark a vessel that has just traveled from a SARS hotspot, or cases where there is a border closure and the member’s vessel is delayed or prevented from entry and diverted to another port. The losses caused by these sorts of business interruptions would arguably be covered under a trade delay policy.

<sup>48</sup> See *Keene Corporation v. Insurance Company of North America*, 667 F.2d 1034 (D.C.Cir. 1981).



expressly provided that the policy in effect on the last day of exposure would provide coverage.<sup>49</sup>

Of course, as set out in greater detail above, since liability for maintenance and cure claims arises at the time the seaman departs the vessel due to disability, illness or the need for medical care becomes apparent, the underwriter at risk as of the day of the triggering event would be responsible for coverage. Therefore, even if SARS is somehow held to be “occupational” in nature, the P&I underwriter for the voyage during which the seaman falls ill with the disease would be obligated to provide cover for the seaman’s maintenance and cure benefits.

### **III. CONCLUSION**

SARS insurance exclusions are becoming somewhat common in “event cancellation” policies, but not, as yet, in other classes of liability insurance (including P&I policies). As far as liability classes are concerned, SARS could possibly be defined as an “occupational disease,” though this is deemed unlikely by most brokers and underwriters, since the disease is not characteristic of any type of specific employment.

Cover for a vessel owner’s maintenance and cure obligations under the P&I policy will almost certainly remain with regard to the SARS-infected seaman who becomes ill during the voyage, and the seafarer will be entitled to recover his benefits under that well-settled principle of the general maritime law.

Finally, the P&I underwriter will also typically be liable to respond to quarantine expenses under most policies, including but not limited to bunkers, insurance, wages, stores, provisions, victualling and port charges incurred as the result of the quarantine.

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<sup>49</sup> See *McMillian v. Coating Specialists, Inc.*, 427 F.Supp. 54, 1978 A.M.C. 690 (E.D.La. 1976); see also *Froust v. Coating Specialists, Inc.*, 364 F.Supp. 1154, 1974 A.M.C. 204 (E.D.La. 1973).