

## "SARNIA NEWS" CIRCULAR

(Ref: 310/17/VAR)

TO ALL SHIPOWNER CLIENTS

9<sup>th</sup> March 2017

### **Re: CREWMEMBERS USE OF PROTECTIVE CLOTHING & EQUIPMENT - BRAZIL**

A relatively minor personal injury sustained by a crewmember in Brazil recently, was exacerbated **by the lack of protective clothing in use at the time**, resulting in a formal enquiry which was instigated by the Harbour Master, the effects of which could be far reaching for owners.

Local P&I correspondents advised that the purpose of the enquiry was to 1) define the nature, cause and extent of the fact and its circumstances; 2). to establish the liability for the accident and impose eventual sanctions under the corresponding legal framework; and 3). to ascertain preventive measures going forward. The enquiry involves the collection of documentary evidence, a survey on the site and taking of personal depositions from witnesses.

**The penalties or sanctions can vary from a simple reprimand or a small, symbolic penalty fine to, in the worst case scenario, the banning of the party at fault from professionally navigating Brazilian waters for a certain period of time.**

Under the relevant law, the enquiry must be concluded within ninety days, but the Port Captancy can obtain successive time extensions for equal periods of time depending on the circumstances and complexity of the case under investigation. On average, an enquiry would take six months.

Following the conclusion of the enquiry, the party(ies) eventually found responsible for the incident are formally summoned to produce a facultative, preliminary defence within ten days, after which the records of the enquiry are forwarded to the Maritime Tribunal - Admiralty Court in Rio de Janeiro where the case is reviewed by the Navy Special Prosecutors who may or may not uphold Port Captancy's findings and bring administrative charges against whoever was found responsible. Thereafter, the panel of judges of the Tribunal will summon the accused party to defend himself through his appointed lawyer. The duration of the administrative proceedings at the Maritime Tribunal depends on a number of factors, but on average it takes two years or thereabouts until the rendering of a final decision which cannot be appealed.

As can be noted from the above, the consequences of crewmembers not wearing or utilizing the proper safety clothing and equipment, can result in lengthy and costly proceedings, which could not only cause delay to the vessel, but potentially result in a temporary ban from trading in Brazilian waters.

We would suggest this information is distributed to the relevant personnel, as well as being sent to the Master(s)/Chief Officers(s) of your vessel(s) to enforce the use of protective clothing and equipment at all times.

NOTE:

*If a vessel is outside of the agreed trading warranty, underwriters have the right to decline any claims that may arise.* It is therefore imperative that owners check their trading warranty when negotiating a fixture and if the vessel will be trading outside of the agreed trading area, please inform Sarnia Marine immediately, so we may **request** your underwriter to provide an extension for the intended voyage, noting that ***underwriters must approve this request prior to the voyage taking place.***

With kind regards,

The Loss Prevention Team