

Headlines: Robberies in the South China Sea; USCG establishes Suspension and Revocation NCOE; Bill introduced to modify tonnage tax; Bill introduced to improve port safety and security; Collision in China invokes forum non conveniens; USCG immune from liability for vessel inspections; New York – cruise ship temporarily detained due to safety concerns; California – allisions under investigation; Alaska – crewmember missing, presumed lost; TWIC update; Canada – amendments to Marine Liability Act; Mandatory insurer reporting of payments to Medicare beneficiaries; and Hurricane contingency plans.

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## Bryant's Maritime News

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*Note: This newsletter is one section of the [Bryant's Maritime Consulting](http://brymar-consulting.com) website. Visit the site for more extensive maritime regulatory information. Individual concerns may be addressed by retaining [Dennis Bryant](mailto:dennis.l.bryant@gmail.com) directly. Much of the highlighted text in this newsletter constitutes links to Internet sites providing more detailed information. Links on this page may be in PDF format, requiring use of Adobe Acrobat Reader. Comments on these postings are encouraged and may be made by email to the editor or by going to the blog page on the website and clicking the envelope that appears at the end of each posting. Be aware that the daily newsletter is a single posting, even though it contains a number of individual items.*

### ReCAAP – robberies in the South China Sea



The ReCAAP Information Sharing Centre issued an **incident alert** stating that an LPG carrier was boarded on June 27 by six men who stole equipment and cash while the ship was underway in the South China Sea. The master, second officer, and a seaman were tied up, but otherwise unharmed. A **second incident alert** states that, on June 28, six men boarded a general cargo ship underway in the South China Sea and stole money. Masters are urged to exercise vigilance while in these waters.

### USCG – establishment of Suspension and Revocation NCOE



The US Coast Guard issued a technical change to its regulations to provide for establishment of the new Suspension and Revocation National Center of Excellence (S&R NCOE) in Martinsburg, West Virginia, effective immediately. The S&R NCOE is responsible for performing suspension and revocation

functions regarding Merchant Mariner Credentials. [74 Fed. Reg. 30935](#) (June 29, 2009).

### Bill introduced to modify tonnage tax



Representative Blumenauer (D-OR) introduced a bill (H.R. 3049) to amend the Internal Revenue Code of 1986 to modify the application of the tonnage tax on vessels operating in the dual United States domestic and foreign trades, and for other purposes. Official text of the bill is not yet available. (6/25/09).

### Bill introduced to improve port safety and security



Senator Lautenberg (D-NJ) introduced a bill (S. 1385) to amend title 46, United States Code, to improve port safety and security. Official text of the bill is not yet available. (6/25/09).

### Collision in China invokes forum non conveniens



The US Court of Appeals for the Fourth Circuit upheld the trial court's application of the doctrine of forum non conveniens in a lawsuit filed in the United States by a Dutch dredge owner against a Panamanian shipowner involving damages from a collision that occurred in Chinese territorial waters. The appellate court did, though, modify the lower court ruling to provide that any applicable statute of limitations or defense based on a missed deadline may not be affirmatively asserted in the Chinese proceedings. One judge dissented, arguing that the trial court erred in granting the motion to dismiss without first concluding that an alternative forum was available. [Compania Naviera Joanna v. Koninklijke Boskalis Westminster](#), No. 08-1031 (4th Cir., June 26, 2009).

### USCG immune from liability re vessel inspections



The US Court of Appeals for the Fourth Circuit ruled that the US Coast Guard is immune from liability with regard to certifications issued as part of its vessel inspection program. In the instant case, the owners of a double-pontoon vessel brought suit against the Coast Guard subsequent to the capsizing of the vessel in Baltimore Harbor in which five passengers on board died. The Coast Guard had inspected the vessel and certified it to carry no more than 25 persons. The certification was based in part on a stability proof test that had previously been conducted on a sister vessel. Evidence showed that the stability proof test on the sister vessel had not been conducted in accordance with the procedure

recommended by the USCG Marine Safety Manual. Plaintiff vessel owners and insurers contended that failure of the USCG marine inspector to employ the recommended test procedure constituted negligence for which the government should be liable in damages. The court held that the test procedure was recommended, not required. Thus, the test utilized was within the discretion of the marine inspector and, as such, protected by the discretionary function exception of the Suits in Admiralty Act. **Indemnity Insurance Co. v. United States**, No. 08-2148 (4th Cir.. June 25, 2009).

### **New York – cruise ship temporarily detained due to safety concerns**



The US Coast Guard issued a **news release** stating that it temporarily detained a cruise ship after a safety inspection revealed minor hull damage and several maintenance deficiencies. (6/26/09).

### **Port Hueneme – allision under investigation**



The US Coast Guard issued a **news release** stating that it is investigating a marine casualty in Port Hueneme, California in which a freighter allied with a pier, causing framing and structural damage to the ship and damage to the pier. (6/26/09).

### **San Francisco – allision under investigation**



The US Coast Guard issued a **news release** stating that it is investigating a marine casualty in the San Francisco Bay area in which the upper portion of the navigational mast of a tanker made contact with two bridges while transiting from Martinez to anchorage. Damage to the bridges appears to be minor and cosmetic in nature. Damage to the ship also appears to be minor. (6/26/09).

### **Alaska – crewmember missing, presumed lost**



The US Coast Guard issued a **news release** stating that it is searching for a crewmember presumed to have fallen overboard from a container ship in the North Pacific Ocean approximately 754 miles southwest of Kodiak. A **second new release** states that efforts to locate the crewmember have been suspended following an extensive search. (6/26/09).

### **TSA – TWIC update**



The Transportation Security Administration (TSA) issued an update to its status report on the implementation of the Transportation Worker Identification Credential (TWIC) program. The **TWIC Dashboard** shows that (as of 24 June) 1,256,045 maritime workers have enrolled for a TWIC and that 1,096,863 cards have been activated. (6/25/09). *Note: This will be the last regular TWIC update in this newsletter. The TWIC program has achieved steady-state and further incremental reports are not particularly enlightening. TSA and its contractors are to be congratulated for persevering through numerous technical and bureaucratic challenges. The focus now shifts to two fronts: keeping the program effective over the long haul and implementing the card reader portion of the program. These present difficult issues requiring close attention and continuing efforts by concerned stakeholders.*

### WHO & CDC – Influenza A (H1N1) updates



The World Health Organization (WHO) issued an **update** stating that, as of 0700 GMT, 26 June, there have been 59,814 confirmed cases of influenza A (H1N1) infection, including 263 deaths. The US Centers for Disease Control and Prevention (CDC) issued an **update** stating that there have been 27,717 confirmed and probable cases in the United States, including 127 deaths. (6/26/09).

### Canada – amendments to Marine Liability Act



Transport Canada issued a **media release** stating that legislation amending the Marine Liability Act has received royal assent. The legislation will increase the potential liability for oil spills, allowing Canada to ratify the Supplementary Fund Protocol of 2003 to the 1992 International Oil Pollution Compensation Fund and the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. It will also allow Canada to adopt regulations to require commercial passenger vessels to carry liability insurance to compensate passengers in the event of injury or loss of life. The legislation creates a new maritime lien for Canadian businesses that provide supplies to ships (chandlers), putting Canada on a par with the maritime lien regime in the United States. The various changes will come into effect on September 21, except for the changes in the limits of liability and compensation, which will come into effect when Canada ratifies the two international conventions. (6/25/09).

### HHS-CMS – mandatory insurer reporting of payments to Medicare beneficiaries



Just when you thought things could not get more complicated, the federal government has risen to the challenge and instituted a new reporting requirement. The Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS) has established a **Mandatory Insurer Reporting** website. Businesses that pay a settlement or judgment to a personal injury or wrongful death claimant who is also a Medicare beneficiary must electronically report such payment to HHS-CMS. Most such payments are handled by insurance providers, but many businesses are self-insurers (such as with regard to Jones Act claims). The reporting requirement comes into effect on July 1, 2009, but reporting entities must pre-register. This is a complex program, which was below my radar until pointed out to me by a long-suffering reader of this newsletter. I do not pretend to be an expert regarding this new program, but take care as it can bite you in the behind, having potential civil penalties of \$1,000 per day of noncompliance per claimant. Few employees of maritime companies (and fewer active mariners) are likely to be Medicare beneficiaries, but the same cannot be said regarding business guests and passengers. Be warned.

### **USCG hurricane contingency plans**



With the onset of the Atlantic hurricane season, it seemed timely to collect various hurricane and heavy weather contingency plans promulgated by sundry US Coast Guard Sectors. The plans that I have been able to locate on the Internet may now be found on my **Website**. Please advise me if I have missed any.

If you have questions regarding the above items, please contact the editor:

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