New fuels, same old conventions?

By the INTERNATIONAL GROUP OF P&I CLUBS

With IMO's 2050 decarbonisation targets for the shipping industry looming large on the horizon, the number of ships on the water or ordered with a capability to run on a low-carbon or carbon-free fuel continues to rise. But will the liability and compensation regimes designed to deliver swift and easy access to compensation when bunkers are spilt keep pace?

Changing fuels - but to what?

Figures from DNV highlight that whilst only a tiny part of the current fleet are equipped to burn low or carbon-free fuels, the numbers are set to grow exponentially. Already, 21% of the newbuildings contracted in the last twelve months are dual-fuel, with methanol and LNG (not itself a carbon-free alternative but one of the so-called "bridge fuels" facilitating the transition from conventional fossil fuels to renewable energy sources) leading the pack in terms of an alternative to IFO or MDO.

Other fuels – like ammonia, hydrogen and LPGs – are also contenders but there is as yet no clear sense of direction of in which technology shipowners will invest their capital. The same sense of uncertainly also surrounds the bunkering market, where the absence of a clear sense of direction behind one or other of the potential new fuels discourages investment in port handling and bunkering facilities for fear of making the wrong bet.

Known knowns – bunker spills today

Currently, the spillage of bunkers, whilst undoubtedly messy and often a cause of environmental damage, is at least a largely known threat. It creates a toxic pool in the marine environment which needs to be cleaned-up, but which often gets washed ashore and causes harm to people's livelihoods. But unless it is directly ingested there is little risk to human life, it typically doesn't catch fire very easily and over the last half a century or so a global network of responders have developed effective means of clearing it up.

More importantly, for most of the world there is an internationally accepted and well-tested liability and compensation regime that has delivered efficient funding for clean-up and compensation to those impacted by spills: the 1992 Civil Liability (CLC)/Fund Conventions for the spillage of persistent oil from tankers (including their bunkers in certain circumstances) and the Bunkers Convention 2001 for bunker spills from other types of ship. These will hopefully be joined in the not-too-distant future by the Hazardous and Noxious Goods Convention 1996 (HNS) for spills of other harmful materials, so creating a complete liability and compensation regime for any ship-source spill.

New liability perspectives

But what happens if there's a leakage of a new type of fuel, methanol or LNG say?

The knowledge and frameworks we've relied upon for decades may suddenly be obsolete. With the exception of biofuels, there's very unlikely to be anything in the water to be cleaned-up. Instead there could be a gaseous cloud, potentially toxic or explosive in nature, and which represents a very real threat to the ship's crew, the port and its workers, and perhaps even the surrounding population.

The existing IMO conventions will offer little help. Both CLC and the Bunkers Conventions are predicated on the pollutant being a hydrocarbon mineral oil so will not apply and other liabilities like death or personal injury are not compensable losses under these conventions anyway because they fall outside their definition of pollution damage.

This is not to say of course that compensation will be unavailable for the consequences of spilling one these fuels. No doubt the shipowner will be liable under local law in the jurisdiction where the spill occurred. But the IMO conventions confer significant benefits on claimants:

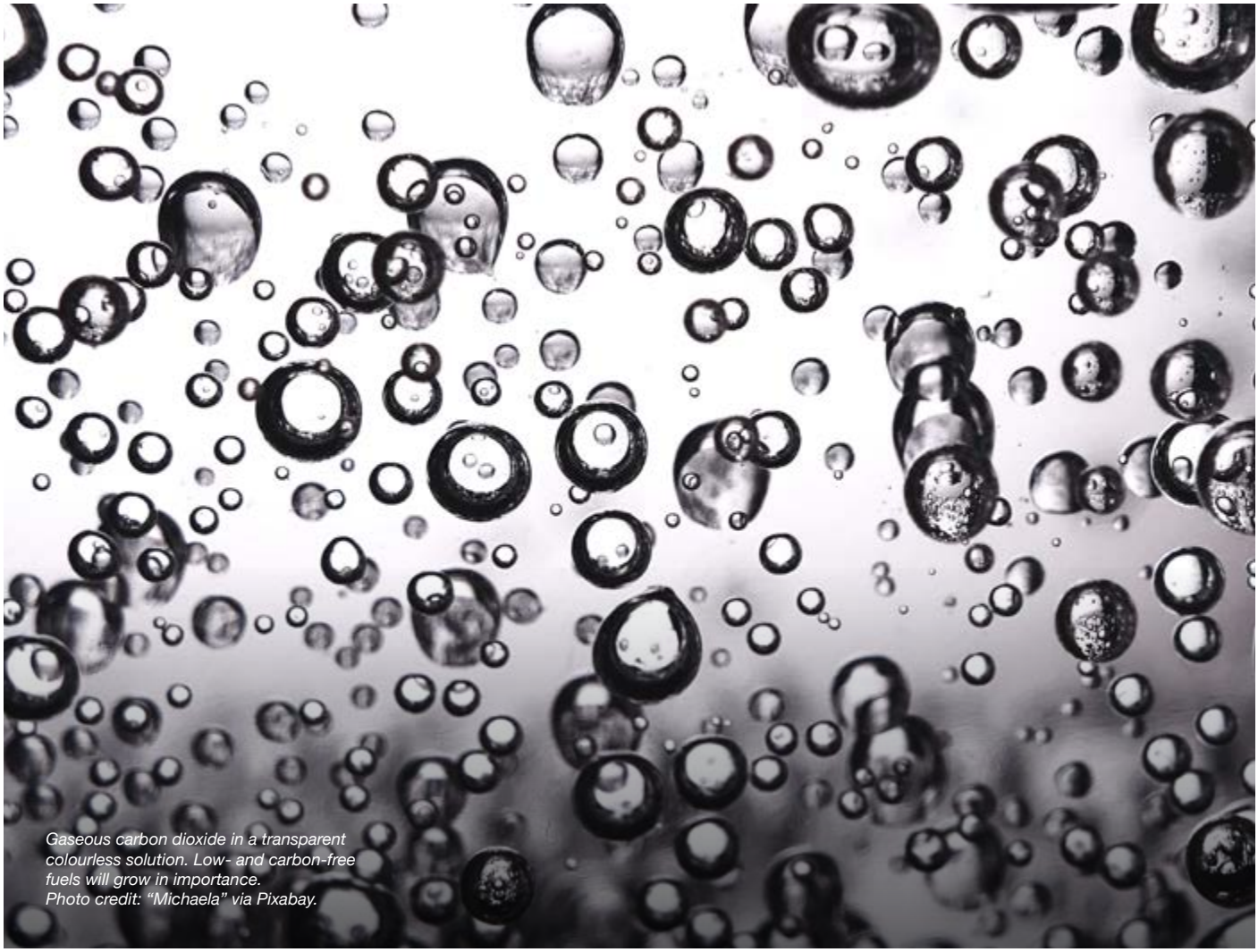
- It's a strict liability regime regardless of fault, so the claimant does not have to prove negligence to recover
- The insurer is directly liable in case the shipowner is unable or willing to pay
- Pure economic loss (not normally recoverable in many jurisdictions without accompanying physical damage) is allowable.

None of these features are likely to be universally available with spills of these new fuels, meaning that claimants face the need to prove negligence and to try to secure their claim against any of the polluter's asset, since there will probably not be any right of direct action against the insurer.

Clearly then the lack of an established liability compensation regime similar to that which exists for hydrocarbon oil spills could make recovery challenging for claimants, especially if the ship – the shipowner's only asset in the jurisdiction – has been destroyed.

Looking for solutions

The International Group of P&I Club's Pollution Committee established an Alternative Fuels Working Group to consider the options for addressing this issue, especially in terms of potential



Gaseous carbon dioxide in a transparent colourless solution. Low- and carbon-free fuels will grow in importance.
Photo credit: "Michaela" via Pixabay.

action by states at IMO. There seem to be three options but none are straightforward or, in the short term at least, would deliver the kind of benefits to claimants offered by CLC or the Bunkers Convention.

Firstly, the Bunkers Convention could be amended. As a minimum, a change to the definition of "Bunker oil" from being limited to hydrocarbon mineral oil to, perhaps, "any substance used or intended to be used for the operation or propulsion of the ship" might be a good place to start. Elegantly simple but limited in its impact, because the definition of pollution damage under the Convention is too narrow to encompass the kinds of losses which might arise in a spill of a new fuel. Opening up that definition would be a far bigger job.

Another option and one seemingly offering more scope is the HNS Convention, which already allows recovery for those wider types of losses including illness and injury. However, it only applies to spills of commodities carried as cargo not as bunkers and so would require amendment. HNS has had a long and challenging gestation period since first being promulgated in 1996, requiring a new Protocol in 2010 in an effort to address some of the issues. It continues to move slowly towards meeting the qualifying criteria to finally come into force and it is very unlikely that states would want to delay that process by putting forward more yet amendments to bring bunker spills within scope.

The third option is a new, standalone liability and compensation convention governing the spills of non-hydrocarbon bunker fuels. But that would not be a quick process and could be many years, perhaps decades, in the making, even if states had the will to start the process.

Insurance cover to the rescue

Despite the lack of a formal regime, insurance cover for these liabilities is already in place. P&I cover responds to incidents when these commodities are carried as cargo and will do the same when carried as bunkers. The Clubs have decades of experience in insuring and handling these types of claims so are well placed to help shipowners meet their liabilities at law in the local jurisdiction when an event occurs, notwithstanding the lack of any IMO convention.

But as we have seen from the Torrey Canyon onwards, new pollution legislation often follows swiftly after a major catastrophe. Let's hope that it doesn't take a serious incident with one of these new fuels to force a solution. To help avoid that scenario, the IG co-sponsored a paper put forward by fourteen states including Australia, New Zealand and Canada at the IMO's Legal Committee in March 2025 proposing that work be undertaken to assess the liability and compensation gap around alternative fuels and what solutions might be available to provide a comprehensive solution. That work is ongoing and the IG is pleased to be working alongside Australia and other states as well as industry partners to see if an agreed route can be found to create the next generation of global liability and compensation regimes to meet the growing use of these new fuels.