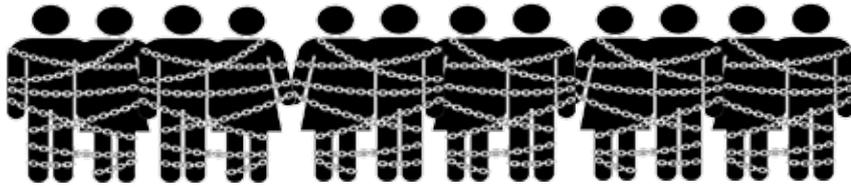


Chained to the Partners



ON 7 November 2015 BHP Billiton announced that RivTow had been awarded the entire task of providing towage services in Port Hedland. In an ambitious timeframe, the transition from Teekay Shipping to RivTow is scheduled to be completed by April 2016.

RivTow is proposing to engage tug crews under Partnerships as opposed to conventional employment arrangements. Partnerships in Western Australia are governed by the *Partnership Act 1895* as opposed to the current employment of Teekay tug crews which is regulated by the *Fair Work Act 2009*.

You probably don't have to be a lawyer to judge which is the far better option from the perspective of the Marine Engineers offering their services aboard a tug.

Nevertheless the Institute arranged for Perth-based lawyer Cory Fogliani from WG McNally Jones Staff & Co to visit Port Hedland 16 December 2015 to provide the lay of the land.

What follows is a summary of the key issues and underscores why AIMPE is urging all members to avoid engaging in the grossly unfair Partnership model.

As is a recurring theme, the elephant in the room with the Partnership model is the issue of liability in the event of an incident on the water-or even ashore* if a Partner is conducting the business of the Firm (the Partnerships).

What was anticipated with grave concern is that RivTow is not providing indemnification to Partners. So, if someone sues the Partners after oil goes over the side or the grounding of a ship, the Partners must finance their own legal defence and pay any Court-imposed fines or orders for damages.

Moreover, what was a very unpleasant surprise was the news that anyone contemplating a move over to RivTow should be on alert to ensure that they are not being required, along with other Partners, to indemnify RivTow in the event of a claim against RivTow by third

parties seeking economic damages over an incident involving the Partnerships.

Combined (or separately) the litigation could give rise to financially crippling outcomes in circumstances where you were tucked-up in bed in the Port or on leave on the other side of the Continent-but may well be held liable for the incident, in any event.

That's because decisions, actions and omissions of one Partner bind all the other Partners as Partners are deemed at law *to act in common*.

And if that's not the final straw, add to the heady mix the blending in by RivTow of current Teekay Seafarers with non-Teekay Tug personnel into the Partnerships.

There have been instances where the proposed Partnership composition put forward by current Teekay tug crews has been altered by RivTow-exposing the whole process as the farce that it is-by the removal of some proposed Partners with a Teekay background and in their stead, RivTow nominated personnel.

The liability burden is the albatross-around-the-neck for the Partners even with the most competent of Mariners.

But the insertion of personnel of an unknown competency, renders the Partnership model the house of cards in the making; all set to come tumbling down-and with you potentially holding the can.

*As an illustration for a shore-based incident, Cory cited a Partner driving for business purposes a Partnership-owned vehicle impaired as a result of the consumption of alcohol.

Colliding with another vehicle the other driver is killed. Criminal proceedings aside, the spouse of the deceased embarks upon civil proceedings and all the Tug Partners are co-respondents to that litigation and liable for the inevitable awarding of compensation to the spouse of the deceased. ■

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