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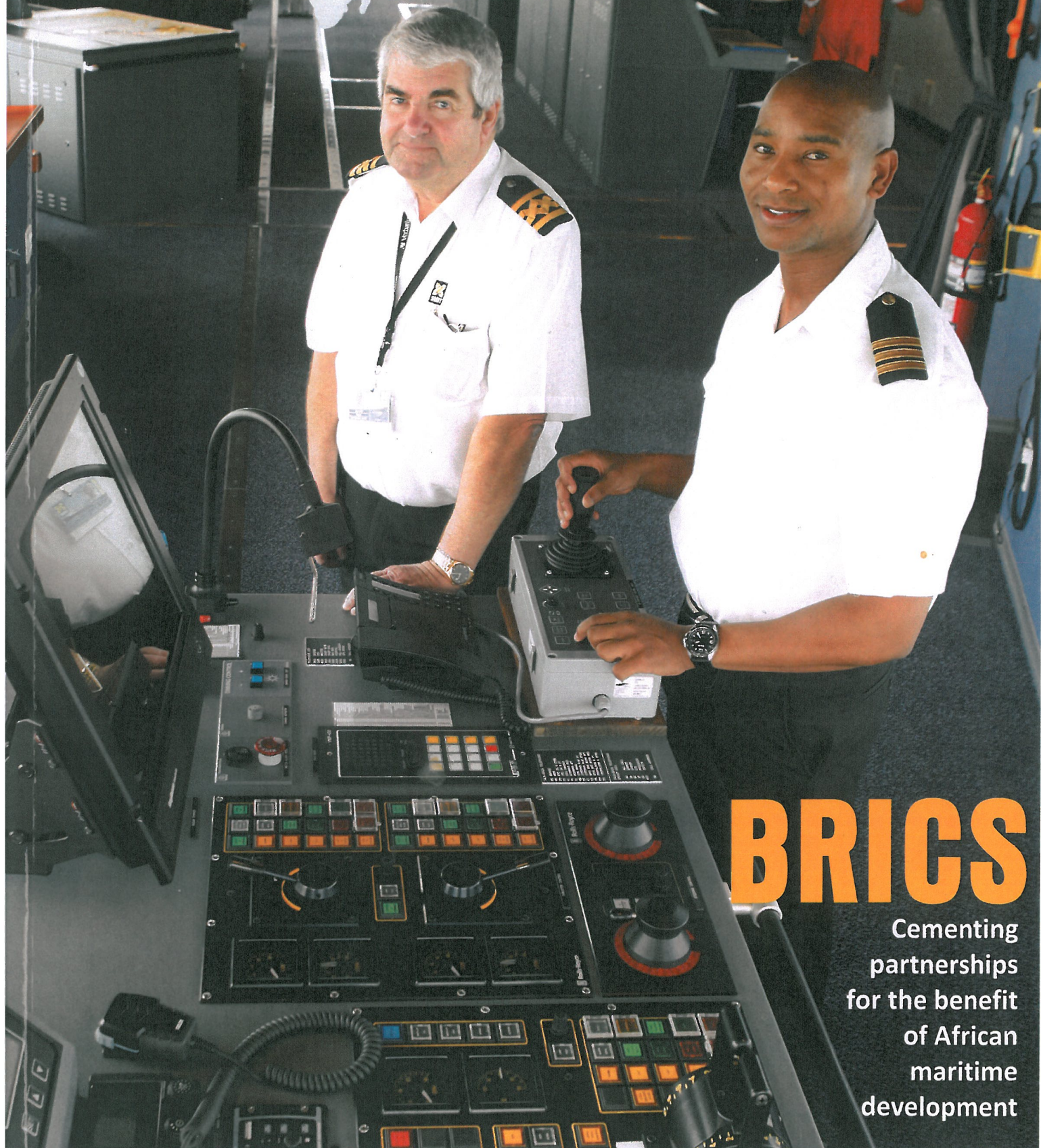
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Counting the costs of a bunker spill

We have investigated a number of incidences where bunker fuel has been spilled into the harbour. Many of these cases could have been quite easily avoided had the various parties in the bunker stem process exercised greater vigilance.

There are a few recorded cases where an oil spillage has occurred due to equipment failure and, although some may consider these incidences to be non-negligent acts, one has to probe further and consider whether the failure was due to either the vessel or the bunker barge failing to maintain their equipment. Failure to maintain equipment would, in the writers' view, be negligent and would render the party involved guilty of an offence under the South African oil pollution legislation.

Procedures

As soon as a spill has occurred within any of our ports, the various parties concerned must notify Port Control and must also notify the South African Maritime Safety Authority (SAMSA).

The vessel or barge should take immediate proactive steps to minimise and control the spill.

This action is particularly important if one of the parties is found to be liable in terms of the oil pollution legislation. SAMSA, will look at the manner in which the parties responded to the spill and steps taken to mitigate and control the spill.

The maximum fine that a vessel can currently be penalised under the oil pollution legislation is R500,000. This figure equates to be about USD60,000. Many believe that the level of fines imposed in South Africa are too low when compared to the level of fines across the world for oil pollution incidents. In the United States, for example, a fine for oil pollution can run into millions of dollars.

Additional costs

I am aware that SAMSA is busy looking at the fine thresholds and believes that the level of fines should be adjusted in order to bring South Africa in line with the oil pollution fines in European waters.

A fine is not the only cost that a guilty party will have to bear. Oil pollution does form part of a ship owner's liability insurance.

The cleaning costs, depending on the amount of oil spilled and the extent of the spillage, can be very high.

For example, if other vessels in the vicinity of the spill are tainted then those vessels will also have to be cleaned. If

any of those vessels were to sail with oil on them, then they themselves could be fined if they arrived at another port tainted with oil. Should any of these stained vessels happen to be loading then loading operations may have to be suspended to avoid the oil stain disappearing under the water level. As a result these vessels could be placed off hire depending on the facts. The financial repercussions can easily increase quite rapidly.

SAMSA will carry out a detailed investigation into the cause of the spill and will collect all the evidence. Once they have completed their enquiry, they will raise a fine against the vessel and the master will be asked to sign an admission of contravention of the relevant oil pollution legislation.

The master of the contravening vessel can refuse to sign the admission of contravention but, will then have to be arrested and brought before the courts as the ship owner's representative in order to stand trial.

A criminal matter

Remember, that this is a criminal matter. The master will be granted bail, but it will mean that the owner of the vessel will have to send out a replacement master, which further drives up the costs. At the end of the day, the court may impose a higher fine than the one contained in the admission of contravention.

If the crew on the vessel or barge were quick to respond to the incident and chose to handle the matter diligently then

these factors could help persuade SAMSA to be more lenient on the guilty party when considering the level of the fine to be imposed. The guilty vessel may also be detained by SAMSA pending the enquiry and clean up costs. The detention fee can be as much as R50,000.

SAMSA will look at the reaction and manner of the crew in dealing with the oil spills. They will also look at the extent of the spill and whether by their actions, the crew were able to control the spill.

Further, SAMSA will also look at the clean up procedures. It is therefore imperative that the vessel carries anti-pollution equipment and that the crew are equipped and trained in how to react to oil spills.

The use of dispersants is very strictly controlled in South Africa by the Department of Environmental Affairs and Tourism (DEAFT) and dispersants should only be used with prior authority from DEAFT and/or SAMSA.

In many of the cases that we have seen, the actual clean up costs often exceed the level of the combined fine and the detention fee and these costs can run into millions of Rands.

One should also bear in mind that whilst South African harbours are commercial ports, they are also recreational areas and are used by fisherman as well as private boat owners.

It is against this background and caring for the marine environment that SAMSA is looking to increase the level of fines. If a bunker barge or ship owner negligently dumps oil in a port or along our coast, the taxpayer rightly expects that the ship owner will be fined.

Michael Heads, P&I Associates

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