

The Marine Insurer

NAVIGATING NEWS & ANALYSIS IN THE MARINE MARKETS

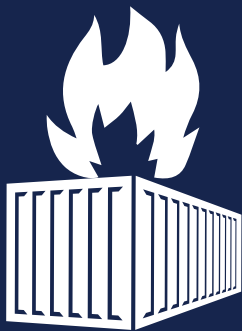
2023 in review
Special Issue



Geopolitics: The unintended consequences for shipping



● Star Antares:
One step further en
route to clarification



● Fire:
Claims on
the rise



● Power of
technology: Using
technology to
support, not replace



● Claims trends:
Reviewing the major
events of 2023



● People:
Shipping is a people
business

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Happy New Year, or is it?

AS WE took a look back at 2023 and forward to 2024, we can see a clear path for the shipping sector? Or is it?

Take geopolitics. We have one war in Ukraine and, as at the time of writing, a second in Gaza. Both events have real implications for shipping and its insurers. The confusion around war and terrorism cover, the risk of attacks in neighbouring waters and simply the disruption in supply chains is all playing a part.

But these days, war is not a battle fought on the ground, on water or in the air but by politicians wielding the sanctions pen and by technology with cyber-attacks, both reaching far beyond the immediate conflict. And all of this has to be factored into the risk management and insurance programmes.

Technology too is a topic that will inevitably angst people through 2024 as the risks emanating from artificial intelligence (AI) are measured. Incorporating AI into everyday business life will happen and will present as many opportunities as risks...the question is whether the board sees it as risk or opportunity and how that is reflected in the business plan.

However much technology is helping, people remain essential and the shipping sector is full of larger than life characters who help shape the industry. But people also bring claims and, in this issue, we look back at the claims through 2023 and try to use the crystal ball to look ahead into 2024.

Yet again we can see familiar trends: the Ukraine war; fire; economic downturns; and technology dominated the 2023 claims landscape and are likely to do so again in 2024.

The jury is still out on whether electric vehicles and lithium-ion batteries really will result in more on-board fires. I am sure that is a trend the industry would like to see in reverse in 2024 but if it continues, then some clarity would help in terms of risk prevention and that in itself would be a win for insurers.

It's been a busy year yet again and sadly, with another war to add to a long list of conflicts. Let's hope 2024 is a more peaceful year with calmer seas. So let me wish you a Happy New Year and favourable winds ahead.

Liz Booth Editor, *The Marine Insurer*

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The Russian Oil Price Cap Scheme – what next?



Mike Salthouse, Head of External Affairs North Standard, explains why the Russian Oil Price Cap Scheme

enjoyed some success since introduced in February of 2022, but needs to adapt if it is to really prevent Russia from profiting from its war of aggression in Ukraine



Since July 1 2010, when the US Comprehensive Iran Sanctions Accountability and Divestment Act (CISADA) entered force, sanctions have been the foreign policy tool of choice.

On that date and for the first time a sanctions programme sought to prohibit not just the primary trade - in that case the carriage of refined petroleum products into Iran - but also the service providers such as the banks, flag states, classification societies and insurers that provided services to the sanctions breaking trade.

Programmes targeting trade from the DPRK, Iran, Syria, Venezuela and now Russia have subsequently been rolled out with monotonous regularity to create a degree of legal and



factual complexity that frankly is difficult for even the most determined professional to master.

The most recent programme targeting Russia is unprecedented in terms of scale. At the heart of the Russian sanctions enacted since February 2022 is the Russian Oil Price Cap Scheme the objective of which is not to prevent a trade, but to control the price of one of the worlds most widely traded commodities – Russian oil.

UNDERSTANDING IS ALL

As the Scheme was being designed, throughout the summer and autumn of 2022, there was an appreciation within the EU/G7 Price Cap Coalition that the Scheme could only work

if the coalition engaged with industry to better understand shipping markets and understand the level of knowledge held by the various parties to the sale and export of oil.

That engagement was welcomed by industry and the coalition, for their part, accepted that shipowners and their financial and technical service providers to ships did not have access to knowledge of the price paid for an oil cargo and should therefore be considered Tier III actors.

As such, provided a shipowner and its service providers obtained an attestation from their contractual counterparty that the cargo was shipped below the price cap and conducted customary due diligence on the parties involved in the shipment, they could avoid prosecution or other sanction if it subsequently transpired that the oil carried had in fact been sold above the price cap.

Even when the reported sale price started to trade above the crude oil price cap of US\$60 the coalition states publically maintained the position that possession of an ostensibly valid attestation and the performance of customary due diligence was all that was required to access the so-called safe harbour from prosecution. This position was restated by coalition representatives as late as September during London International Shipping Week.

In fact, the whole operation of the scheme is built around this position because in circumstances in which a shipowner does not know and cannot find out the actual price of the cargo, reliance on an ostensibly valid attestation becomes sacrosanct. Undermine a party's ability to relay on that attestation and shipowners, insurers, classification societies, flag registries and banks would have no choice but to stop performing price cap trades.

IS IT WORKING?

So, 12 months on, is the scheme working?

Certainly, until very recently (September) the public

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trade, but to control the price of one of the worlds
most widely traded commodities – Russian oil.”**

**Mike Salthouse,
NorthStandard**

utterances of the coalition suggested that the scheme was viewed as a success. Since it was introduced on December 5 2022, Russian crude oil has consistently been priced at a discount off some 20% – 25% to Brent crude.

On May 18 2023 OFAC published a Russian Oil Progress Report listing the scheme's success reducing revenues generated by Russia from its oil sales despite increasing the volume of its exports. This achieved its twin goals of maintaining world oil supply whilst at the same time preventing Russia from manipulating oil markets to finance its war in Ukraine.

However recent comments suggest a rather different view may be forming within the coalition. In a recent visit to London the Deputy Secretary of the [US] Treasury, Wally Adeyemo, addressed the Royal United Services Institute and acknowledged what had been obvious for some time – namely as soon as a sanctions programme is introduced the target of those sanctions will seek to find ways to circumvent its effects.

Since May, OFAC has issued an alert (concerning the deceptive use of AIS off Russian's eastern seaboard) and then in October it made the first price cap designations for price cap infractions.

The use of secondary sanctions was based on non-coalition entities engaging US service providers while carrying crude oil sold at a price above the cap. The move was interesting because in the early days of the scheme US officials had said publically that whilst secondary sanctions were not "off the table" there was no obvious need for them to be used at that time. Logically then something has happened to change that view.

“Some states have expressed concern about the regulation of tankers which comprise the parallel fleet. One such vessel – the *Pablo* – suffered a catastrophic explosion on May 1 2023 killing one person. financed in jurisdictions that are not subject to coalition sanctions.”

Mike Salthouse
NorthStandard

SEVERAL FACTORS

This change of view seems to be based on several factors.

i) The growth of the so called shadow or parallel fleet has been an entirely predictable consequence of the Russian sanctions programme yet seems to have caught the coalition by surprise. The parallel fleet is comprised of vessels that are flagged, insured, classed and financed in jurisdictions that are not subject to coalition sanctions. Nobody really knows how large it is. But some estimates suggest that as of today up to 70% of Russian oil cargoes are being carried by such vessels whose owners and service providers are domiciled in jurisdictions which are not subject to the laws of the coalition states.

ii) Some states have expressed concern about the regulation of tankers which comprise the parallel fleet. One such vessel – the *Pablo* – suffered a catastrophic explosion on May 1 2023 killing one person. It remains unclear how the vessel's flag state and insurers responded to the casualty and the resulting claims.

iii) Several influential commentators have observed publically that the price cap is no longer working as planned – including the US Treasury Secretary Janet Yellen. A recent World Bank Commodity report published in October 2023 observed a narrowing of the gap between Brent, and Urals trading prices and then went further commenting: “The price cap on Russian crude oil introduced in late 2022 appears increasingly unenforceable The cap has not created significant supply disruptions, with the volume of Russian oil production and exports remaining relatively constant, in part reflecting the redirection of Russian exports from EU and G7 countries to China, India, and Türkiye.... It seems that by putting together a “shadow fleet”, Russia has been able to trade outside of the cap; the official Urals benchmark recently breached the cap for more than three months, averaging \$80 per barrel in August.”

WHAT NEXT?

None of this should come as a surprise. The International Group repeatedly highlighted that shipowners and their Tier III financial and service providers have no means of access to the actual price paid for a cargo and are as a result entirely reliant on the attestation provided to them with no means of checking whether it is true or false.

So, what should the coalition do next?

Well, what it shouldn't do is to ramp up enforcement efforts against shipowners, flag states, class and insurers currently engaging in good faith in price cap trades. Why focus enforcement on that section of the shipping sector that is trying to make the unworkable work while ignoring the 70% or so of cargoes shipped on the parallel fleet?

By and large coalition shipowners are doing their best to comply with the requirements of the scheme, but they have



“The growth of the so called shadow or parallel fleet has been an entirely predictable consequence of the Russian sanctions programme yet seems to have caught the coalition by surprise. ”

no means of verifying the price information contained in the attestation. Many have now withdrawn from scheme participation altogether understandably concerned about the credibility of the attestation which the scheme expects them to accept at face value.

It follows that unless the coalition wishes to stop the participation of coalition ships then it is difficult to reach any other conclusion that those involved are doing their best within the design imperfections of the scheme. Instead, enforcement should focus on those actively trading and transporting cargoes above the \$60 cap.

The following choices are available:

i) The coalition could simply ban vessels and service providers subject to the jurisdiction of the coalition from carrying Russian oil. The growth of the parallel fleet may now mean that there is sufficient capacity to ensure a continued supply of Russian oil to world markets, but such action would risk allowing Russia to charge more for its oil and potentially influence those markets by controlling the amount of oil it supplies.

ii) If the scheme is to be maintained, then enforcement action should be targeted at those responsible for misrepresenting the true price of the cargoes specifically.

a) The seller and shipper; and

b) The buyer.

This would require new legislation expanding the scope of the sanctions to apply to parties that are not subject to the jurisdiction of the coalition. However public designations of parties involved in such shipments would help coalition ships and service providers avoid parties known to be breach.

iii) OFAC and OFSI should be encouraged to adopt a less confrontational and more collaborative approach to shipowners and service providers within their jurisdictions as the vast majority of which are simply trying to do the right thing. Coalition shipowners have no interest in seeing often lucrative business going to competitors who do not necessarily go to the expense of maintaining their vessels to the standard required of them by their oil major customers. Indeed, if the parallel fleet is allowed to grow unchecked much of the last 50 years of work by the IMO to improve safety risks being undermined.

CONCLUSION

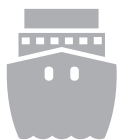
During its one year of operation the Price Cap Scheme enjoyed some success but will now need to adapt if it is to remain an effective mechanism to prevent Russia from profiting from its war of aggression in Ukraine. Enforcement action should be targeted at those that misstate or hide the true price of Russian oil rather than those who have been misled by such statements. Finally, states should be encouraged to ensure that vessels trading to their shores or flying their flag comply fully with the statutory requirements of the applicable IMO conventions.



People remain the key element



Simon Peacock, CEO of the Shipowners' P&I Club explains that, despite the complexities of modern business and rise of AI, people remain the most important element



When I was asked to contribute to this, the first issue of *The Marine Insurer* for 2024, the remit was to consider "a year in review/a year in preview". I think, therefore, that what we are looking for is a bit of a look in the rear-view mirror and a bit of a look into the crystal ball.

Last year was quite a year for me personally and, more generally, for the Shipowners' Club (SOP) and the P&I industry in its widest sense. This year promises to be no less interesting.

THE REAR-VIEW MIRROR

Before I do the 2023 review, allow me to cast the review back a little further. It was a good eight years ago when I first came across SOP. A phone call was taken from the search firm, Odgers, and I was asked whether I would be interested in considering the CFO role at Shipowners. "You won't have heard of them," said Odgers, "but having met the people there we think you will enjoy meeting them".

So, there was the hook – the people. Yes, SOP had a great product, a good reputation, was financially strong etc. All those boxes that one looks to tick when considering a potential move were duly ticked. But it was 'the people' that acted as the hook.

Of course, one of those people was Simon Swallow, the then CEO and someone who was (is) synonymous with SOP. Having met him and having met so many other colleagues in the run-up to joining the Club, it is no surprise that I was sold on the idea of joining the team. We all make decisions in life and a few weeks later we wonder, if we knew then what we know now, would we make the same decision...?

With my decision to join SOP there was no doubt.

We then fast forward to 2023 and it was an honour to be asked to take on the CEO role as Simon took his well-earned retirement, after 32 years with the Club.

The intervening months have been something of a whirl, with so many meetings with so many of our members and our other key business partners. The message I receive is almost invariably the same – recognised niche in the smaller and specialist vessel space for P&I insurance, recognised expertise in that niche, first class service, whether it be on the underwriting side, the claims side, the loss prevention side, all delivered by first class people, wherever they are in the world.

We are incredibly honoured and we are delighted to receive that feedback. We will never be complacent about it and we will always do our best to keep earning it. For me, the well-known phrase of "you are only as good as your last game" can quickly become "you are only as good as your next game".

The past year has seen a great deal of change and a great deal of challenge. I think we can safely say that the P&I market has responded well, especially the International Group of P&I Clubs which provides such vital service to ship owning members across the globe, protecting them, and protecting all others that have actual or potential contact with them, with unsurpassed breadth and depth of cover.

SOP is proud to be part of that protection and is proud to ensure that peace of mind for our members. Therefore, we will continue to focus on that next contact, that next piece of service that we are asked to deliver and we will continue to focus on delivering it to the best of our ability.

THE CRYSTAL BALL

That leads nicely to a year in preview. What does this year look like and what will those next contacts with our business partners be?

The P&I product is relatively mature and that helps with knowing what this year will bring. However, the geo political turmoil that we have seen in recent times shows no sign of abating. We can therefore continue to expect to be supporting our members as they pick their way through the risks and opportunities that such turmoil brings.

Sanctions will continue to be a feature of our world and we, as an industry, will continue to provide support with interpretation and implementation and, where appropriate, we will seek to influence the setters of those sanctions, ably supported by the International Group.

TOWARDS NET-ZERO

We will also seek to support our members and other business partners with the challenges and opportunities that come from the move towards net-zero. As just one example, as a smaller ship P&I specialist, the recent announcement in Singapore that all new harbour craft must be fully electric or net-zero capable by 2030 presents an immediate challenge to our Singaporean members that operate in that space.

They are not alone with having such challenges. The market will change in response to the net-zero challenge and the risks that we seek to protect will change as well.

One other area that will continue to change is technology. At the Shipowners' Club we have invested in technology for many years, not least to ensure that we can deliver our 8,500-plus members with their insurance documentation with speed and accuracy.

We will continue to do that and we will continue to roll-out our P&I Online facility, which allows increasing levels of automated document generation and increasing levels of straight-through processing, where that is helpful for our members' brokers. That will help us to retain our existing business and to grow.

Responding to sanctions, responding to decarbonisation, delivering technological change and delivering a first-class



“Responding to sanctions, responding to decarbonisation, delivering technological change and delivering a first-class underwriting, claims and loss prevention service all have one common requirement. People.”

*Simon Peacock,
Shipowners' Club*

underwriting, claims and loss prevention service all have one common requirement. People.

We are no different to any other company, to any other insurer. It takes people to design and operate the systems and the processes, it takes people to design and generate the data, it takes people to understand a risk and to provide a bespoke underwriting solution, it takes people to understand the complexity of the claims that we receive each day and to respond in supporting our members with those claims.

It was the people that drew me to the Shipowners' Club in the first place. If you have read this far, hoping for that final '2024 preview', I am about to make an incredibly bold projection into the future. It will be our people who will deliver that first-class service I spoke of earlier, in 2024 and beyond.

Amazing prediction, I know. Time to give the crystal ball a rest.



A Year in review: The highs and the lows



As we enter 2024, Amy Eaves, Chair of the Joint Marine Claims Committee (JMCC), reflects on some of the key factors that have driven claims activity in the

market and looks at how the landscape might change in 2024

RUSSIA–UKRAINE CONFLICT

The conflict between Ukraine and Russia has had a significant effect on the marine insurance industry throughout the course of 2023, with several vessels and cargo remaining trapped and/or stranded in Ukrainian ports.

Marine war risk insurance caters for this particular scenario, providing cover for vessels that may be in a position whereby they are trapped and unable to leave the port for an agreed duration. War insurers have responded to several total loss claims in 2022 for vessels and / or cargoes which have been detained in excess of a six-month detention period and, while more than 1,000 ships have been able to escape detention under the auspices of the Black Sea Grain initiative, February 24th 2023, marked the anniversary of Russia's invasion of Ukraine, prompting further total loss claims

for those vessels / cargoes with a 12-month detention period prescribed by the policies.

These total loss claims prompted a concerted search for buyers of the vessels now essentially owned by insurers and this race to market led to something of a 'buyer's market', arguably diluting the value we were able to secure for the salvaged asset.

The complex geo-political environment presented several challenges to the insurance claims market. These challenges were met by Insurers through effective collaboration with various intelligence entities, to accurately assess risk exposure, with insureds, through the provision of guidance on loss mitigation, while also working with surveyors to ensure that loss prevention measures were in place at the earliest opportunity. Emphasis was also placed on proactive and timely claims management, notwithstanding the inevitable issues posed by the imposition of sanctions by many Western governments.

The supply of commodities such as grain has been severely disrupted as a result of the conflict and will continue to have implications on the global market, in 2024. While insurers have shown their ability to adapt in uncertain times, as the situation evolves, they will need to remain vigilant until the environment stabilises.

FIRE LOSSES

2023 saw an increase in significant fire losses, with car



“2023 saw an increase in significant fire losses, with car carriers acquiring greater prominence due to issues posed by the presence in electric vehicles of lithium-ion batteries, which are considered to be more volatile than other battery types.”

carriers acquiring greater prominence due to issues posed by the presence in electric vehicles (EVs) of lithium-ion batteries, which are considered to be more volatile than other battery types. EV sales have reportedly increased by approximately 35% year-on-year with an outlook of global car sales currently representing 18% of the market.

While it is understood that to date, fires that have occurred on car-carriers have not been directly caused by new EVs, the transportation of these vehicles still raises certain risks. Vessels not being equipped with fire suppression systems that are effective enough to cool the batteries once thermal runaway has been initiated, does have potential for damage to be exacerbated. This poses a significant challenge when assessing which fire prevention methods are most suitable.

Through engagement with technical experts in the area, insurers have demonstrated greater awareness of the risks associated with this specific type of battery. The need for industry-wide, increased fire suppression capability has prompted the insurance market to take a leading role in stakeholder engagement.

As the global demand for electric vehicles increases, this will inevitably increase the appetite for more research in this area. 2024 will no doubt see insurer's already established working groups placing particular focus on EV related fire safety.

GLOBAL ECONOMIC ENVIRONMENT

The marine insurance market has experienced more positive

INSET PHOTO: DUTCH COAST GUARD

global premium growth in the last two years. According to the latest International Union of Marine Insurers statistics, this has been particularly favourable for hull and cargo classes of business, increasing by 8.3% and 5.7% respectively. The post Covid-19 increase in global trade has been a key driver behind the growth in the cargo sector. The growth in the hull sector appears to stem from a combination of vessel value increases and reduced market capacity.

While the environment is starting to show signs of stabilising, global claims inflation remains an issue, with costs of material and labour still increasing. The insurance claims sector has focused on obtaining a clearer understanding of the issues posed by variations in claims inflation determined by geographical area and the need to adapt claims reserving models accordingly. A lack of adequate consideration to the impact of claims inflation could potentially expose insurers to inaccurate reserves and multiple challenges when adjusting claims.

One significant difficulty insurers are faced with is reserving, with the position exacerbated by the lack of clarity in relation to where, the responsibility for factoring in claims inflation falls. For example, has the surveyor already made allowance for inflation in their preliminary estimate and is there a shared view of inflation across the underwriting, claims and actuarial disciplines? As we move into 2024, it will be essential that there is a continued focus in this area to develop best practice and ensure a consistent approach is adopted.

SHAPING THE FUTURE

The insurance industry is having to adapt to the advantages offered by the technological advancements of recent years. Companies more than ever are using technology and data to streamline processes and effectively manage risk and exposure. This has the potential to present challenges to the claims sector and the role it plays in an organisation. The more technology advances, the more it will encourage competition and it is this that has encouraged the insurance market to analyse the roles and responsibilities currently embedded within a claims function to consider and determine what the claims workforce of the future should look like. While artificial intelligence, technology, data and analytics will all play a role in improving the claims experience for the customer, technical knowledge and customer service is still at the forefront of the value that the claims function can add.

The Lloyd's Market Association's (LMA) NexGen Claims Group's current key initiatives involve mapping the skills of the future and ascertaining how technology can assist us in driving positive change. In 2024, the LMA will continue to encourage the use of technology, and concentrate on upskilling practitioners to enhance their professional skills and fine-tune and influence the more complex matters. 

70+ Countries.
5 Oceans.
1 Network.



As a leading global marine insurer we know the risks businesses face. Our global solutions and expertise help our clients to face them with confidence.

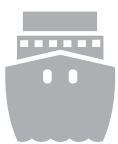
AIG's marine team has decades of experience in underwriting, loss prevention and claims handling across the globe. We put our experience and expertise to work every day for our clients, assisting them to protect their assets, maintain business continuity and retain their customers' loyalty. To let us help you to face your risks with confidence visit aig.com

Insurance and services provided by member companies of American International Group, Inc. Coverage may not be available in all jurisdictions and is subject to actual policy language. For additional information, please visit our website at www.aig.co.uk

Fire is Fire?



Gianpiero Priano, Global Head of Claims, Cambiaso Risso Group, analyses the complexities involved with fire claims onboard



Last year has unfortunately again seen an increase in the number of fires on vessels. Fires do not occur very frequently compared with other types of marine claims. They represent about 3% of total, with other types of damages such as machinery damages at 44%, collisions/contacts at 27% and groundings at 8%.

But the impact of a fire on board a ship is frequently far more devastating in terms of damage to the property accounting for nearly 20% of the total cost of all damages and regretfully, in some cases, in terms of loss of lives. It is therefore a less common but more severe peril.

The highest frequency of fires and explosions occurs on roll-on/roll-off (including car carriers) and container ships.

Most of the time this type of incident may originate in the engine rooms, the dominant cause being lube oil or fuel oil mist spraying onto hot surfaces.

However, on container vessels and RoRo's, it is not uncommon for fires to originate in cargo holds and garage decks from transported cargos or vehicles. This is due to many causes - self-heating cargos, electrical issues, cargo lights, hot works, fumigants, mis-declared container content, bad weather or bad stowage.

Fires can also originate outside of the vessel. In past editions of the English clause, it was expressly said that fire was covered "if originated on board or elsewhere". This is no longer the case, but it does not mean it is a coverage restriction.

NAMED PERIL

Simply the additional wording was deemed unnecessary: if fire is named as a peril, it is covered wherever originated insofar as it results in a damage to the ship. In fact, in some important cases, fire ignited into the shore loading lines which were pumping oil or chemical products to the ship and this was thus considered an insured peril as soon as flames reached the ship, or the ship's tanks through the lines.



“From an insurance perspective, fires may be very complex claims and often come with a “full package” of physical damages with expensive costs of repairs or even total losses, general average, salvage claims and liabilities towards third parties.”

*Gianpiero Priano,
Cambiaso Risso*

From an insurance perspective, fires may be very complex claims and often come with a “full package” of physical damages with expensive costs of repairs or even total losses, general average, salvage claims and liabilities towards third parties.

No doubt fire is a typical covered risk under marine insurance conditions, being mentioned as a “named peril” in most international policy conditions (English as well as American conditions) or covered under “all risks” insurance policies (Nordic or German).

In the English system, Institute Time Clauses - Hull 1/10/83 (which are still the most used) fire is an insured peril at clause 6.1.5. Hence, facing a fire claim as a hull broker may appear quite simple at least as far as the cause of damage is concerned. The assured should need to prove that the proximate cause of the damage is the fire and the insurer should reimburse the cost of the repairs (including general average and salvage) with no need for deep investigations.

NOT SO STRAIGHTFORWARD

However, in practice, the above is not always such a straightforward exercise.

Even if it is often said that “fire is fire”, meaning that since fire is a named peril, all damages are automatically covered, in many cases other considerations also apply.

Despite fire being a named peril, quite often insurers investigate the cause and/or origin of the fire as any other claim, if necessary, by way of a fire expert, for three

main reasons:

(i) to make sure that a policy exclusion does not come into play. In theory, there might be cases where the fire was due to the vessel’s unseaworthiness (with owners’ privity) or attempted scuttling.

(ii) because of the catastrophic consequences of fire for all parties involved in the maritime adventure, including cargo if on board, its handling may easily develop into quite a complicated matter giving rise to a complex general average procedure under the direction of a general average adjuster, separating the damage directly caused by fire and the damage caused by extinguishing operations. The latter, being for the common safety, are general average sacrifices and should be shared among the interests of the maritime adventure. An agreed assessment of damage caused by fire only and damage caused by water is therefore necessary to calculate the part of damage which will be ultimately payable by the hull policy. It may also become necessary to expand the investigation to the origin of the fire and relevant liabilities.

(iii) in a considerable number of cases, a fire might have originated from a container or a vehicle onboard. In this case, investigations as to the causes of fire might be crucial to pursue a recovery action against a third party (eg charterers, owners of the vehicles and the like) and establish any contributory negligence by the crew in the firefighting activities (which is irrelevant in the insurance cover but might have weight vis-à-vis third parties).

Other important aspects which might complicate the claim adjustment, also in apparent straightforward fire cases, are the local administrative or criminal investigations.

In these cases, insurers may initially be reluctant to close the file with the risk that said investigations might ultimately find some relevant issues or facts which might affect cover.

But there’s more. There may be doubts about the extent of the damage itself which can be said to have been caused by fire. Criminal investigations often require time and often make it impossible to apply preservation measures to machinery damaged by fire or to effect normal overhauling to other ship’s parts.

This can easily result in increasing damage beyond the direct consequences of fire, or in creating damage to parts unaffected by fire. Are all these further damages recoverable as a part of the fire which brought about the investigations?

In practice the reply would be negative, at least for additional damage to parts unaffected by fire because such damage is not proximately caused by the fire. The matter is then more questionable for increased damage to parts affected by fire which was not permitted to be treated with preservation measures because of the pending investigations. In some important cases at least, the latter have been agreed as recoverable as a part of the fire claim which, in the circumstances, it was not possible to avoid.

So, “fire is fire” but investigations are indeed required.

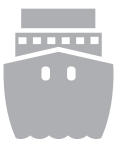




Two sides of the same coin ▶



Bozidar Ljubisavljevic, Executive Director in the marine department at Howden Specialty Asia Pacific in Singapore, reviews the recent performance of the marine hull insurance market, outlining medium-term outcomes of Lloyd's of London under its Decile 10 programme and the rise of alternative insurance centres to meet the needs of insurance buyers



Lloyd's CEO John Neal said that the market's results reported at mid-year 2023 represented: "Our market's best underwriting performance since 2007."

Astrid Seltmann, Vice-Chair of International Union of Marine Insurance's facts & figures committee, commenting on the Autumn 2023 IUMI marine statistics report, stated "[Growth in premiums] has translated into a much better performance in terms of loss ratios, specifically for hull".

LET'S BACKTRACK.

Decile 10, the market's plan to address deteriorating underwriting performance, which included three marine classes of insurance in its review – hull, cargo and yachts – was a tumultuous event, not unprecedented in ambition but more sweeping and impactful than many stakeholders anticipated.

Lloyd's continues to provide a substantial platform for

trade, and continues to be a vital insurance market for the placement of complex marine risks.

The heavy-handed outcome resulted in two things from a marine insurance perspective: Driving certain marine business to be insured in other marine insurance centres, and, for what seemed like a really long time (five years, so not actually a long period by marine insurance standards), improve profitability across the marine class of business at Lloyd's.

One wonders however at what cost. And therein lies the observation: "Two sides of the same coin".

COST OF REMEDIATION

In the 12 months to January 2023, Lloyd's reported a 92% combined ratio. Hurricane Ian (CAT 5) in September 2022, the third costliest on record, combined with the Ukraine conflict resulted in a 12.7% combined ratio impact.

Without these one-offs (in broker speak, an "as-if" analysis) the combined ratio for the market would have been ►

"According to IUMI statistics for the last three years, the frequency of reported claims has been the lowest in the last 10 years, both for partial loss as well as for total loss claims. In the same time period, claims severity is starting to increase, despite still sitting at historical average lows."



an outstanding 80%. In the six months to mid-2023, the combined ratio had indeed reduced to 85% and the paper investment losses had rebounded.

Flipping the coin, one needs to ask the question: Why does this not lead to Lloyd's syndicates being more aggressive in writing profitable marine hull business?

Looking at a granular per-syndicate analysis, the 10 syndicates reporting the best improvement in combined ratios only marginally underwrite marine risks. Only two out of the 10 underwrite a small amount of hull war insurance.

However, the 10 syndicates reporting the biggest deterioration in combined ratios are a different story. Seven out of these 10 syndicates have a substantial marine insurance offering.

It seems unfortunate (unfair?), therefore, that, while the market as a whole can report outstanding results, underwriters for some of the largest marine insurance providers still have to be rather careful in how they manage their insurance portfolios for fear of being singled out once again.

CLAIMS DEVELOPMENTS

CEFOR (the Nordic Association of Marine Insurance) results however are different. Going back to 2018-19, insurers that are part of CEFOR accepted new clients leaving Lloyd's because of the unavailability of renewal terms.

According to IUMI statistics for the last three years, the frequency of reported claims has been the lowest in the last 10 years, both for partial loss as well as for total loss claims.

In the same time period, claims severity is starting to increase, despite still sitting at historical average lows. IUMI reports, however, that as at mid-2023 claims severity is starting to cause concern as the impact is higher than for the last four years.

Inflation, according to statistics, is not yet prevalent over a long-enough time period for accurate assessment, although now features as a discussion among underwriters and claims practitioners.

While fire claims ebb and flow with significant periods of spikes, especially in recent years (battery related), the average cost of other claim types has not shown significant change in the last 10 years.

ANNUAL DISCUSSION

In fact, as a slight counter-argument to what seems to be an annual discussion between brokers and underwriters, the average cost of machinery damage claims is not showing the continued rise that might perhaps have been anticipated.

The cost of very large claims in excess of \$10m has also continued to drop and sits at significantly lower levels than in previous years.

Finally, the availability of quality local hull insurance and reinsurance capacity outside of Lloyd's marketplaces



“In the 12 months to January 2023, Lloyd's reported a 92% combined ratio. Hurricane Ian (CAT 5) in September 2022, the third costliest on record, combined with the Ukraine conflict resulted in a 12.7% combined ratio impact.”

worldwide and outside of Scandinavian countries cannot be understated.

Locally incorporated insurance companies within significant maritime centres can and do operate profitably, tend to employ highly skilled and capable underwriters and continue to offer tempting propositions that many clients will find at the right intersection between price and security.

We therefore today have large, international and skilful insurance markets, offering choice for risk managers and insurance buyers. The choice is ample, the cost of capital requires increasing returns for insurers and the time for a review of existing hull insurance arrangements for assureds cannot be better.

We must all do our part.





Marine Insurance London

22 March 2024

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Launched in 2018 and now in its seventh year, **Marine Insurance London** is Cannon Events' flagship conference. With Lloyd's at its heart, London is a global hub for marine insurance and Marine Insurance London regularly attracts global heads and c-suite executives from across the marine industry to the speaker faculty. Our aim is to bring together insurers, reinsurers, brokers, shipping companies, service providers and others from the marine world to examine the current state of the marine insurance market and in this case, London's role in it. We achieve this through a mix of conference presentations (keynotes, panels, workshops and fireside discussions) and one-to-one meetings organised through our meetings program. Ample networking breaks are also provided where delegates can meet with our exhibitors and learn about the latest products and technologies on offer.

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22nd March 2024



Friday 22nd March 2024, London

07:50 - 9:00 : Delegate Registration and Refreshments

09.30-10.10: PANEL DISCUSSION:

War Risks – Can the Market Learn More from the Past?

The London market responded amazingly well to the Russian invasion of Ukraine and beat most international markets in providing cover and allowing markets to continue. Has it been the same for Israel-Gaza? Can the London market learn from these events and do better?

Moderator: Neil Roberts, Head of Marine and Aviation, Lloyd's Market Association

10.10-10.30: PRESENTATION: From Just in Time to Just in Case – What this Means for Hull Insurers

After the pandemic and subsequent supply chain nightmares, combined with the drive for greener solutions, we discuss how global trading patterns are changing and what that might mean for fleets and their insurers in the coming decades.

Presenter: Ilias Tsakiris, Chief Executive Officer, Hellenic Hull

10.30-11.00: COFFEE AND NETWORKING BREAK

11.00-11.30: FIRESIDE CHAT: Can More be Done to Improve Human Rights at Sea?

The drive to improve human rights for all those working at sea has been ongoing for many years. In this session, we hear from David Hammond about his charity's work and how the conversation about workers' rights has changed in the past few years.

Presenters: David Hammond, Chief Executive Officer, Human Rights at Sea

11.30-11.50: PRESENTATION: The Northwest Passage – Insuring Thin Ice

As climate change takes hold, the ice of the Northwest Passage is visibly thinning, providing new opportunities for trade routes. As James Vavasour explains, this is a huge area of interest for the maritime traders, particularly the Chinese who are looking for new ways to access their customers. We hear of the challenges and opportunities ahead for the insurance market as this becomes a viable option.

Presenter: James Vavasour, Business Stream Director Marine Warranty Survey, Global Maritime

11.50-12.10: KEYNOTE ADDRESS: Can Politics and Shipping Mix?

Too often, the shipping sector is the victim of politics, from war to sanctions. Political volatility can play havoc with plans and result in massive claims for insurers. This keynote considers what insurers can change to drive the narrative and increase the understanding among politicians about the vital role shipping and its insurers play in keeping the world moving.

Presenter: Mike Salthouse, Head of External Affairs, NorthStandard

12.10-13.00: PANEL DISCUSSION: The F** Word**

The London marine claims market knows a scuttling when they see one. However, fighting these cases isn't always what you know; it's what you can prove in court. With millions of dollars and reputations at stake, insurers have to tread carefully when daring to mention 'the F word', but do we need to become braver in fighting fraudulent hull losses?

Moderator: Charles Fernandez, Global Head of Marine, Canopus

Panellists: Jenna Hales, Marine Energy and Specialty Claims Manager, Hiscox, Alex Kemp, Partner, HFW

13.00-14.00: LUNCH BREAK AND NETWORKING

14.00-14.20: PRESENTATION: How to Match ESG Demands with Lower Cost Repairs

14.20-14.40: PRESENTATION: The Insurer of Last Resort?

Presenter: Wilco Alberda, Commercial and Claims Manager, SMIT Salvage

14.40-15.20: PANEL DISCUSSION: P&I Update

Moderator: Nick Shaw, Chief Executive Officer, International Group of P&I Clubs

Panellist: Liv Irene Loland, Secretary of the Board, ACPII P&I

15.20-15.40: NETWORKING BREAK

15.40-16.00: CASE STUDY: A Victory for Insurers – Changing Market Practice on Mortgage Interest

Presenter: Jonathan Evans, Partner, Kennedys

16.00-16.40: PANEL DISCUSSION: How do Sanctions Impact Leaders and Followers?

We have all been living with economic sanctions for some years as politicians often resort to financial weapons rather than war. However, as the world becomes ever more polarised politically, there are growing concerns that sanctions are splitting the insurance industry, too, making it difficult for some carriers to operate while others are free to do so. We take a look at some hypothetical examples.

Moderator: George Tsavlis, Non-Executive Chairman, Oneglobal Broking, Greece & Cyprus.

16.40-17.00: PRESENTATION: Should Leaders Charge for Oversight of Complex Claims?

In the summer of 2023, the limits for oversight under the Lloyd's Complex Claims Scheme changed. With the limit rising to £2m before anyone other than the leader has oversight, there is more pressure on leaders. The question for this session is whether leaders charge an oversight fee, as done in the Scandinavian market.

14.20-14.40: PRESENTATION: Cyber – An Ever-Present Threat

14.40-15.20: PANEL DISCUSSION: Adding Up the Risks

15.20-15.40: NETWORKING BREAK

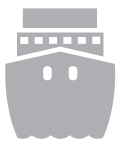
15.40-16.00: PRESENTATION: The Challenges of Ship Fashions – No Two Alike

Presenter: Capt. Jorge Pecci, Director Marine Engineering, National Cargo Bureau

17.05: Close of conference



Sophie Parsons, Head of Marine at Hawkins, suggests that the mass acceptance of AI in the marine world needs to be tempered by a level of caution. Real-world examinations and analysis remains critical in her view



Summarising what has happened in the marine industry during the last 12 months is challenging because of the multiple facets of this sector and the fact that as a forensic investigator I am positioned mostly within the remit of claims.

However, being a forensic investigator also means that I'm naturally inquisitive and, as someone who is growing older, I have experience on my side to take a step back and observe the changing world and consider how this affects the beautiful spectrum that is shipping.

BRAVE SEAFARERS

I have watched the industry exit the Covid-19 pandemic and in doing so, focus heavily on the importance of mental health, particularly that of our brave seafarers who do so much for us. This has permeated into the office work spaces and people in general became kinder and more accommodating.

There was increased recognition of the importance of work/life balance, and the industry pace was certainly moderate. However, it seemed that rather swiftly, the pace quickened, with little to no transition, and it felt like the industry pace was elevated relative to its position pre-pandemic.

During this time, I noticed an influx of technological enhancements in the workplace with the onset of artificial intelligence (AI) and ChatGPT, as well as a growing role of digitisation in the global supply chain.

I am often reminded by the younger people within our network to stop rejecting digitisation and AI. However, I am a genuine luddite and, while I see the benefits of technological growth, we need to be selective by embracing those advancements which add value to our industry and identify those which have the potential for an adverse effect on how we conduct our forensic investigations.

MOTHER EARTH

I appreciate and respect Mother Earth, and therefore I consider it critical to find better ways of being more sustainable within the shipping industry. As a Chartered engineer, I am obligated to promote sustainability in all my walks of life.

The digitisation of the shipping supply chain, among



The beautiful spectrum that is shipping

many other contributions, is considered a reasonable starting pathway for achieving this. Environmental, social and governance (ESG) and its application to the shipping industry recently became a very big buzz word, as it measures how well a company is doing in terms of sustainability and making a net-positive contribution to society.

The shipping industry, which is responsible for almost 3% of global greenhouse emissions annually, has been significantly affected by the introduction of ESG. Recent advances in AI and maritime technologies, as well as investing into alternative fuels, should provide the tools needed to facilitate the sustainable future in compliance with ESG guidelines.



Notwithstanding our appreciation of ESG and the role that AI and marine technologies plays in supporting this, as a forensic investigator there are still basic and fundamental activities that we must undertake in order to comply with our clients' requirements. This may affect how the industry perceives experts.

HUMAN TOUCH

I am a failure analyst and a cargo expert and if I need to determine the mode of failure of any structure on board a ship, I need to be there in person to examine it, photograph it, measure it, and then think about next steps such as laboratory analysis.

This also applies to cargo. It is not possible to determine the integrity of cargo unless I can examine it in person. This means that we do need to travel to the ship and/or the port to do our work on behalf of our clients, and it will affect our carbon footprint.

Being able to physically examine our evidence is fundamental to the nature of our forensic work, and this cannot change.

ARCHIMEDES PRINCIPLE

The first forensic investigation documented in history was conducted by Archimedes in 265 BCE when he was instructed to determine if the golden crown cast for King Hiero

“Being able to physically examine our evidence is fundamental to the nature of our forensic work, and this cannot change.”

*Sophie Parsons,
Hawkins*

of Syracuse was in fact counterfeit.

Archimedes examined the crown, and after an epiphany in the bathtub, realised that he could use water displacement methods to determine if the density of the material used in the construction of the crown was within specification.

Forensic methods fundamentally have not changed since Archimedes held that crown and wondered quizzically how to approach the case.

A forensic investigator needs to examine the incident item in person and, through applying internal problem-solving algorithms, determine what happened and present our findings to our clients alongside any supporting evidence.

Critical aspects of human behaviour such as curiosity and personality, which drive an investigator's mind, cannot be artificially replicated. We can enhance our efficiency and minimise our carbon footprint by being more mindful about how we conduct our work and how we handle the logistics of our travels. And mindfulness enables us to jump hurdles not only in shipping, but in every walk of life and can make the world a better place.

While the pandemic prevented a great deal of travel and favoured the remote inspection via a local surveyor, this trend is wavering and we can, and should, allow experts to travel to site to conduct forensic work in compliance with our codes of conduct.

Our duty is to the court and its procedures and, if we are to stand up to scrutiny under cross examination, our evidence is stronger if we can confirm that we have examined the evidence in person rather than solely rely on digital images or via a third person with less expertise.

My final observation for this year in review is the growing and unfortunate series of lithium-ion battery fires that have occurred at sea, and also on land.

The most disturbing aspect of these incidents, aside from the horror of the casualty itself, is what happens on social media after each car carrier catches fire. The spread of rumour and misinformation in social media creates unnecessary challenges and can shed doubt on factual information backed by science. While lithium-ion batteries have their scientific advantages and disadvantages, what we must uphold within the remit of our code of conduct is to base our forensic findings on the evidence during an investigation, rather than speculation.





Underwriters face growing pressure to be more efficient despite increasing complexity in their jobs. Endless compliance checks, increasing

levels of emails, keeping up to speed with current news, remaining aware of market trends – these are all activities that are essential to be effective in their role, but challenge your efficiency. Indeed, after you’ve done all the activities imposed on you, you’ve barely got time to do ‘your job’. Andrew Yeoman, CEO at Concirrus, believes that the rise of artificial intelligence isn’t going to ‘steal your job’ – quite the opposite. This new technology can ‘unlock’ hours per day by automating many aspects of your work, leaving you more informed and freer to work on what makes the difference – using your experience



Where did all my ‘free time’ go?



Digital transformation has left no workplace untouched. Many luddites assume this means a negative change – as the age-old adage ‘automation is coming for your job’ states.

However, in most cases, this is simply not true.

After all, technology has historically always created more jobs than it has taken and usually in ways that are nearly impossible to predict. The Apple App Store, for example, has generated more than 1.5 million jobs since its initial release in 2008.

New developments, such as artificial intelligence (AI) and large language models (LLMs) such as ChatGPT and its

equivalents, when used effectively, provide two clear benefits for the insurance industry.

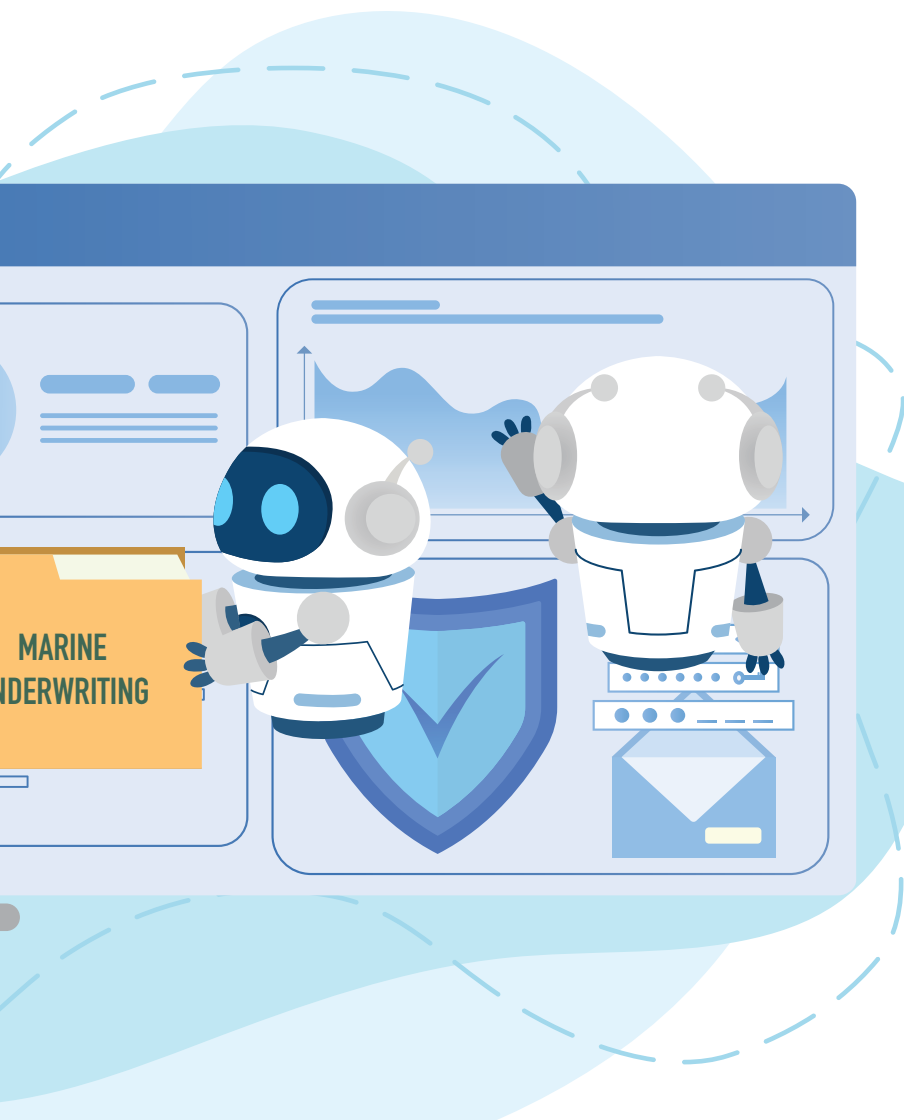
Firstly, it can automate admin work, such as the collection and analysing of emails, and turn this into wisdom that can inform future decisions – making them more accurate and faster to arrive to.

Secondly, the right digital tool can turn any wisdom gained, such as that belonging to your best underwriter, into collective knowledge for your whole company - effectively collectivising gut intuition and experience.

WHY MARITIME AND SHIPPING INSURANCE

Technology can provide many benefits for those who know how to use it and for companies and industries that embrace it in its correct format. This is particularly true of the insurance industry, that relies on a huge amount of admin work. This need is only exacerbated by the shortage of experienced candidates for marine underwriting roles.

The stakes only grow higher within marine insurance, which deals with vast sums of capital in an environmental and geopolitical context that is always changing. No period of time has proven the need for more effective automation more than the last few years – as the war in Ukraine has and is still creating



challenges for those in the industry.

In 2022, Russia impounded around 400 foreign-owned planes it had originally leased – at a cost of \$10bn worth of claims. Western powers have been confiscating yachts and private vessels attributed to Russian oligarchs since the war began.

Today, merchant shipping is feeling the sting with insurers reviewing their cover for any ships travelling to Ukraine's Black Sea ports after Russia continues to threaten the safety of any ships making that journey. In the near future, we may see a similar situation between the US and China in the Straits of Taiwan.

TECH HASN'T ALWAYS FREED UP TIME...

Essentially, new technologies haven't always made our jobs quicker, simpler, or more productive. They can often provide more questions than answers and add admin to the growing body of work we need to complete. Since the very first IBM machines entered the office, new additions to a business's tech stack means learning new tasks and more questions.

This is, again, specifically true of the insurance industry. Real time data, the Internet of Things (IoT), big data and other Industry 4.0 innovations have given insurers and reinsurers access to a massive amount of current and historical data from

which to make future predictions. The vast number of data points in an increasingly complex world aren't always joined up into helpful conclusions and data without wisdom is, at best, unhelpful and at worst, cumbersome.

...BUT IT CAN NOW

For example, the right software doesn't just scan and collect meteorological and environmental data to provide accurate shipping weather forecasts, it also analyses historical data to see how such weather impacted past maritime insurance claims. Here, technology turned a lot of admin into clear, concise and useful answers.

Submissions is another noteworthy example. The sheer volume of email submissions that insurers receive each year is staggering, with only a fraction of them receiving attention and a minuscule percentage resulting in quotes.

This leaves underwriters with limited capacity to assess risks effectively. While automation solutions have emerged, they require extensive training and labelling efforts, diminishing their benefits for insurers.

It is for this reason that we have streamlined the process through automation and addressing privacy issues by developing a simple workflow that integrates with a customer's pricing engine. This solution enables faster decision-making and empowers underwriters to focus on writing the submissions that matter most.

We are nearing a point that the subsequent tasks and possibilities that new tech provides can be automated. At the core of this is AI. This does not mean that our jobs will not be affected, but it does mean that our roles will have to dramatically change. For example, one essential task for businesses to tackle in the coming decade is teaching people how to prompt AI to effectively find the right information.

It does mean though that our jobs will get easier and the work we do will be more effective. We can spend more time working 'on' our business rather than 'in' the business. If public and private policy manage these evolutions correctly, it could and should mean people have more time – whether leisure time at home, or time at work to perfect their craft and the service they provide.



“If public and private policy manage these evolutions correctly, it could and should mean people have more time – whether leisure time at home, or time at work to perfect their craft and the service they provide.”

AI to play key role in marine claims handling



Ronny Reppe, (left) CEO, and Arne Andreas Gjølme, (bottom left) Head of Advisory at Noria, discuss the challenges and opportunities faced by claims handlers in the AI world



Spare a thought for claims handlers. Day after day, they face a myriad of challenges from sifting through lengthy, intricate documents to extracting crucial information while ensuring nothing is overlooked. They must manage data with care, ensure information is not lost through multiple touchpoints, stay compliant and keep their stakeholders satisfied.

The complexity and time-consuming nature of this task have traditionally demanded extensive manual effort and expertise. However, the advent of AI technology is set to revolutionise the landscape, introducing tools that can assist claims handlers by searching documents, extracting information, writing summaries and suggesting responses to stakeholders.

Claims handling AI is part of a wider trend where we can

soon expect to see an AI assistant embedded in every workplace tool. Microsoft, for example, has very recently launched CoPilot, an embedded AI assistant for Microsoft Teams, Outlook, Word, Excel, and PowerPoint. Embedding AI assistants in claims handling tools is the logical next step.

MUST-HAVE ATTRIBUTES

Drawing on our own journey in creating Noria's "ClaimsBuddy" AI Assistant, we'd like to share some of the essential attributes for marine insurers to look for when building or selecting an AI claims handling assistant.

First, an effective AI claims handling assistant should excel in efficiently parsing through extensive documents, extracting essential information and offering summaries.

Look for a tool that simplifies and expedites the process, minimising the time spent on reading and analysing



complex data. For example, the assistant should be able to search a lengthy document to create a one-page summary of a ship's maintenance history. Early data indicates our ClaimsBuddy creates efficiency savings between 25% to 50%, benefiting both the insurer and the customer.

HUMANS STILL IN CHARGE

Second, human oversight and collaboration remains key.

While AI greatly enhances efficiency, its role at present should be to function as an assistant, not a replacement, and should require human validation and review. We would caution against engaging with any software provider that asserts that their claims handling solution can completely automate claims handling, as mistakes are expensive to correct.

THIRD, EASE OF USE IS CRITICAL

The user experience of the AI assistant should be intuitive, requiring minimal to zero training. However, we would not suggest that easy UX means any layperson can use a tool built for such a specific use-case.

For now, AI claims handling assistants still need skilled, knowledgeable and experienced human oversight. Ease of use will convince even the most traditionally-minded claims handler to adopt the tool rather than continuing with inefficient ways of working.

As more companies adopt AI assistants, candidates are likely to gravitate towards the AI-haves at the expense of the have-nots.

TRAINING IS ALL

Fourth, the right training is essential. Ensuring that the

system has undergone extensive and industry-specific training greatly influences its capability to accurately extract pertinent information.

A well-trained AI assistant, built on a foundation of comprehensive and relevant data, ensures its precision in understanding and processing the intricate details within marine insurance claims. The depth of training impacts the system's ability to deliver accurate, efficient, and industry-specific support to claims handling professionals.

Constant learning and improvement is also key. An adaptable assistant should continuously improve with additional training and input, becoming more precise and accurate in providing responses and extracting crucial data. With the right human oversight, this learning capability will enhance the system's accuracy over time.

HOLISTIC SUPPORT

Holistic support and assistance is also important. An ideal assistant goes beyond mere extraction of information. It should assist in providing responses, recommendations and valuable insights to aid decision support.

Industry relevance and specificity is another area to be taken into account.

For the marine insurance industry, the AI claims assistant should be capable of understanding industry-specific context, language, nuances and challenges.

Look for a tool tailored to the specific needs and intricacies of the marine insurance sector and compare its outputs with that of a generalised model such as ChatGPT.

A clear path to evolution and integration must also be taken.

An AI assistant should provide a clear path for its integration with existing claims handling systems. It should also showcase potential for evolution and adaptation, integrating new functionalities and updates seamlessly.

LOOK INTO THE FUTURE

And, future compatibility and use cases must be taken into account.

Talent recruiters tell us that the best human hires score high in adaptability and willingness to learn. We would suggest the same criteria should be applied to any AI tool. Seek an AI assistant that is capable of adapting to future trends in claims handling.

Look for tools that promise future integration and extension to other areas, enabling adaptability to evolving needs and technologies.

As for future use cases in banking and insurance, we can expect AI support across customer communication, credit processes, decision support, advanced automation, sales support, as well as document control and verification.

We would stress again that the AI tool should not replace but complement human claims handling expertise, serving as an aid rather than an automation solution. Assistive AI

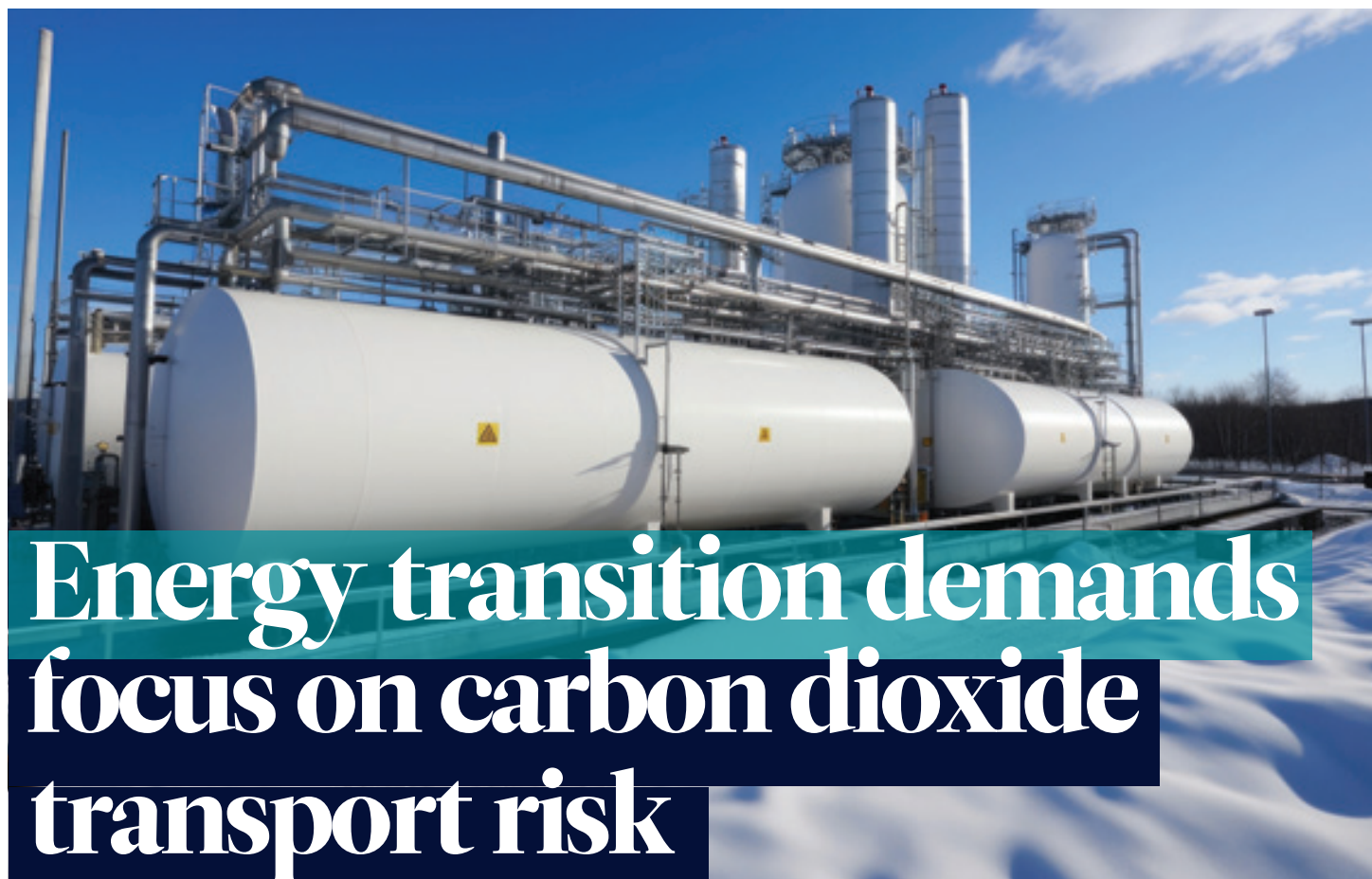


“Talent recruiters tell us that the best human hires score high in adaptability and willingness to learn. We’d suggest the same criteria should be applied to any AI tool. Seek an AI assistant that is capable of adapting to future trends in claims handling.”

improves quality and efficiency and lets you use your human skills where they matter most.

By choosing a solution with these attributes, the right AI claims handling assistant has the potential to become an indispensable ally, enhancing efficiency, accuracy, and overall quality, while upholding the expertise and oversight that only a human touch can provide.





Energy transition demands focus on carbon dioxide transport risk



Neil Henderson of Gard reviews the challenges, risks and opportunities associated with the carriage of CO₂



The capture and storage (CCS) of carbon dioxide (CO₂) is a long-established technology that has most often been used for the enhanced recovery of oil from depleted reservoirs.

More recently, its profile has grown as a necessary solution to achieve the rapid decarbonisation of hard to abate industries such as energy, cement and steel production.

Shipping can be added to this, as onboard carbon capture is likely to be required as alternative zero emission fuels are unlikely to be available in the necessary quantities and prices to achieve the IMO's 2050 and interim targets.

That captured CO₂ will need transporting from the capture site (whether that be an industrial installation or onboard a vessel) to the injection site, where it will be permanently stored in a subterranean or subsea geological formation.

OPPORTUNITY KNOCKS

It is estimated that global CCS capacity must increase 120 times from current levels by 2050, rising to at least 4.2 gigatonnes per annum, for countries to achieve their net-zero commitments.

While pipelines will generally offer a more cost-efficient option where there is sufficient scale and regularity of supply of CO₂, carriage by sea is more appropriate for longer distance transport (over approximately 350km), flexibility of quantity, source and injection locations.

Estimates of global offshore storage capacity range from 2,000 to 13,000 gigatonnes of CO₂. Regions such as Korea, Japan and the North Sea, which have subsea storage locations and coastal-based emissions, are likely to be suitable for seaborne carriage of CO₂.

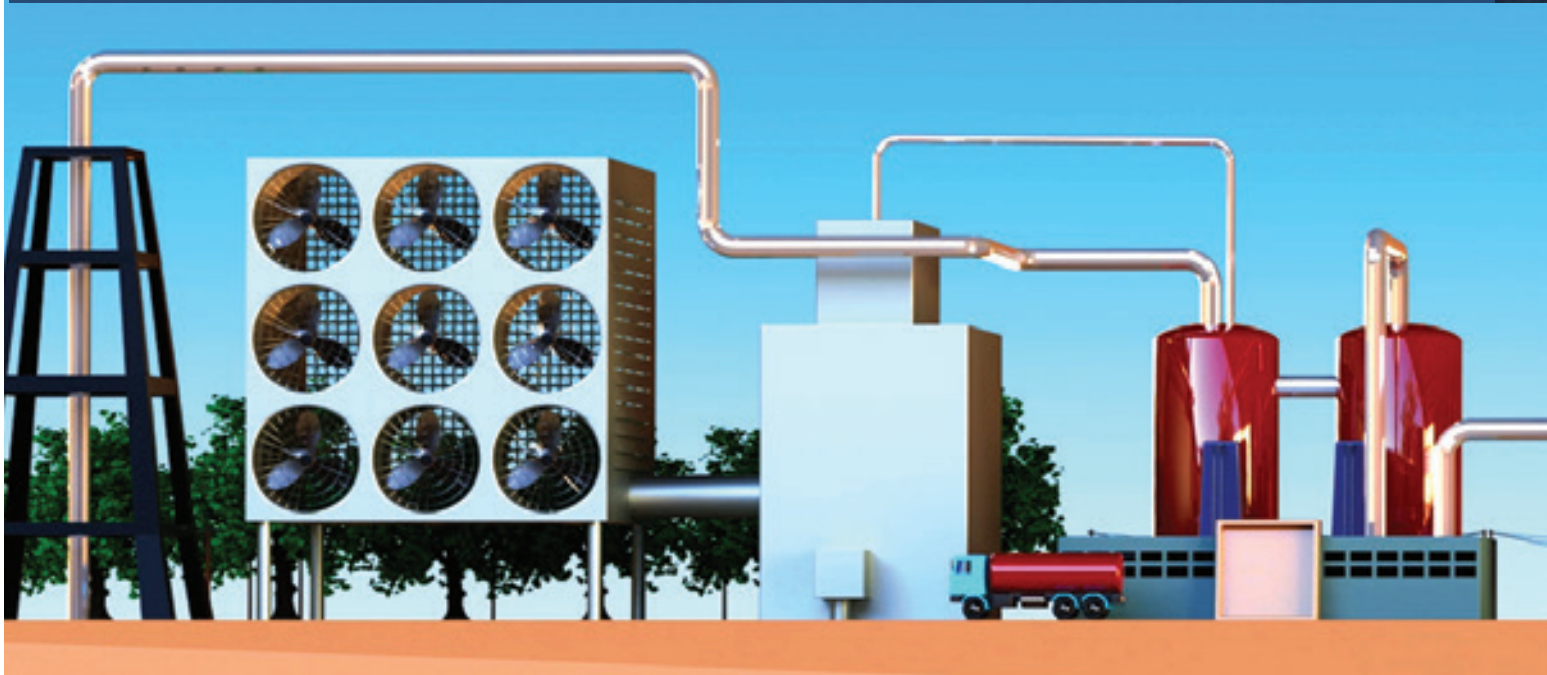
If onboard carbon capture is widely adopted, this will require carriage by sea from temporary port-based to permanent storage locations.

One of the leading CCS schemes is the Norwegian government-sponsored Longship project. This includes capturing CO₂ from industrial sources in the Oslo-fjord region (from cement, chemicals and energy) and shipping liquid CO₂ from these industrial capture sites to an onshore terminal.

From there, the CO₂ will be transported by pipeline to

“Although CO₂ has been carried by sea since the late 1980s, there are currently only four CO₂ vessels. All are operated by Larvik Shipping, a Norwegian company. These vessels trade on short-haul routes within Europe, carrying food-grade CO₂. ”

*Neil Henderson,
Gard*



an offshore subsea storage location in the North Sea. It has recently signed contracts to receive about 1.2 million tonnes CO₂ annually from the Netherlands (Yara Sluiskil) and Denmark (Orsted power stations).

Northern Lights is responsible for developing and operating the CO₂ transport and storage facilities for the project. Phase one is due to be operational in 2024 with an annual storage capacity of up to 1.5 million tonnes of CO₂.

LIMITED FLEET

Although CO₂ has been carried by sea since the late 1980s, there are currently only four CO₂ vessels. All are operated by Larvik Shipping, a Norwegian company.

These vessels trade on short-haul routes within Europe, carrying food-grade CO₂. The quantities carried are modest; the largest vessel can carry only 3,600 cubic metres (cbm), approximately 1,770 tonnes.

Globally, there are reported to be five vessels on order. Three ships, each of 7,500 cbm, are being built at Dalian shipyard, PRC, for the Northern Lights project. Capital Gas

Ship Management has speculatively ordered two far larger 22,000 cbm CO₂ carriers which are also designed to be able to carry LPG and ammonia.

These are being built at the Hyundai Mipo shipyard, South Korea with anticipated delivery in 2025-2026. Since they have no specific CCS project to fulfil, their multi-capability means they will have the flexibility to undertake carriage of other liquified gases.

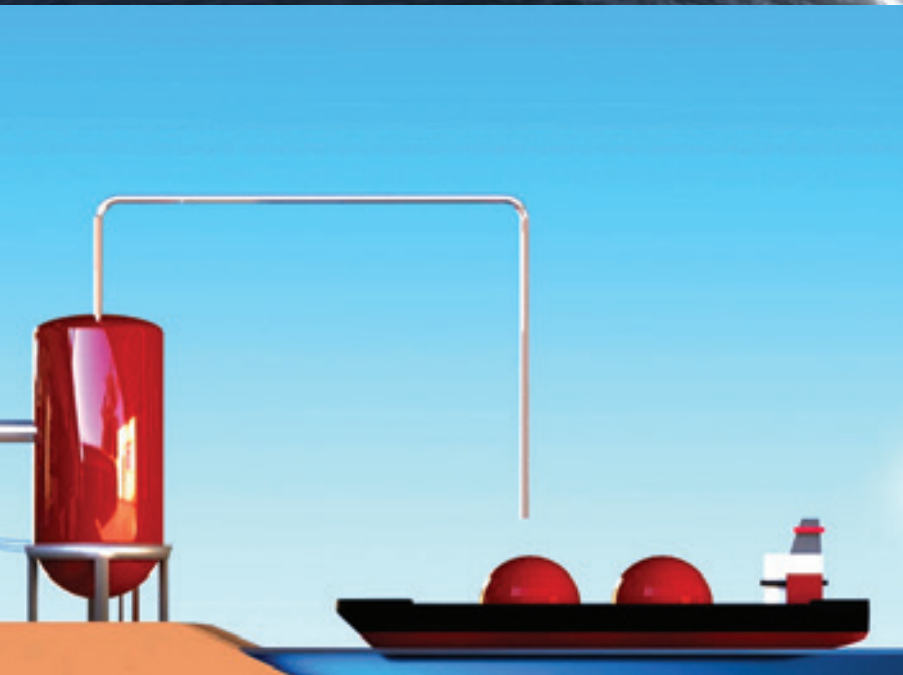
CARRIAGE RISKS

CO₂ has unusual characteristics which makes it a challenging cargo to carry. It requires both pressure and refrigeration to be carried in liquid form. The higher the temperature, the higher the pressure required, and vice versa.

The most efficient option, in terms of technology and cost, for transport is in a compressed liquid state, close to the so-called 'triple point' (-56.60C, 5.18bar): the temperature and pressure at which solid, liquid, and gaseous forms of CO₂ coexist in thermodynamic equilibrium. This brings with it the risk of freezing during operations and so safer handling may



LARVIK SHIPPING



dictate a slightly higher temperature and pressure.

Carriage of the larger-scale quantities of CO₂ for CCS will draw upon knowledge acquired from the shipment of LPG, LNG and the smaller quantities of food-grade CO₂. But there are material differences.

Larger quantities of the gas will likely be carried at lower pressures, requiring correspondingly lower temperatures. Unlike food-grade CO₂, industrial CO₂ emissions may contain impurities which can give rise to complications. Sampling and testing protocols to minimize contamination have not yet been fully developed.

Free water is an unwanted impurity capable of producing operational and technical challenges such as hydrate formation and subsequent blockages. Impurities in the form of NO_x, SO_x and oxygen pose risks of corrosion to equipment.

Boil-off is another challenge to manage. This occurs during handling, and by motion and ambient heat during carriage. The rate of boil-off, affected by the distance travelled, level of impurities, and tank pressure, is predicted to be 0.15%/day

based on LNG carrier rates. Boil-off can be managed through re-liquefaction, similarly to LNG and LPG carriers.

Despite being non-flammable, the risks associated with a leakage of CO₂ are not insignificant. A 2005 report by the Intergovernmental Panel on Climate Change stated that, as well as the possibility of hydrates and ice forming in the seawater, if not rapidly dispersed gaseous CO₂ might lead to asphyxiation of the crew and stop a vessel's engines.

If the leakage were to occur in port, the risk to the local population would be serious. In 2008 approximately 15 tonnes (8,200cbm) of CO₂ leaked from a fire extinguishing installation in Mönchengladbach, Germany, causing the intoxication of 107 and hospitalisation of 19 people. The UK Health and Safety Executive found that the hazard distance for an unplanned discharge from a vessel could be up to 400 metres.

LOSSES AND LIABILITIES

Marine insurers are already providing cover for the carriage of CO₂, but the limited nature and scope of its carriage to date means that there is little direct claims data upon which to assess and price the risks.

Leakage of CO₂ gives rise to several challenges. The escaped CO₂ will have a financial value which may be linked to the market price of CO₂ credits or allowances or be contractually designated by the CCS project. State-run CCS projects may give rise to differing risk profiles to purely commercial projects.

The CO₂ may also be treated as a pollutant, with corresponding penalties or fines. There are unlikely to be clean-up costs as there are with oil and other non-gaseous pollutants. Depending on the nature and extent of the leakage there may also be personal injury and property damage claims.

There is the potential risk of contamination claims caused by impurities in previous CO₂ cargoes. Impurities could also result in claims for corrosion damage to a vessel's equipment. There may be difficulties identifying the source of the contamination for any recourse action.

Liquefied CO₂ is classified as a dangerous cargo under the International Maritime Dangerous Goods Code (IMDG Code). It may also come under the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code).

Currently, a shipowner will have strict liability for environmental damage resulting from the carriage of CO₂ under the EU's Environmental Liability Directive (ELD) if this occurs within the territorial jurisdiction of an EU state. Otherwise, liability is governed by national regulation and tort law.

If, as expected, the 2010 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (2010 HNS Convention) comes into force, this will impose strict liability on the carrier.



Safe handling of fish meal to avoid cargo claims



By **Mehdi Kaveh**, Marine Surveyor,
Nordic Marine Solutions



Agricultural and processed cargoes such as fish meal exhibit extreme sensitivity to temperature variations, necessitating additional precautions to mitigate the risk of heat-induced damage and thereby minimise the likelihood of subsequent claims.

According to Britannia P&I Club, certain types of agricultural cargo may suffer heat damage even at lower temperatures of 40°C to 55°C. A significant number of claims have been linked to heat-sensitive agriculture products such as soya bean, grains, sunflower pellets, soybean meal as well as fish meal. The International Forwarding Association (IFA) explains 14% of damages occur due to incorrect temperature.

SAFE HANDLING

This article will concentrate on the safe transportation of fishmeal and secure handling to prevent potential cargo damage. Implementation of the recommended safe transportation measures will mitigate the risk of further cargo claims.

Fishmeal as a processed cargo exhibits heightened moisture and oil content, making it more susceptible to microbiological activity and self-heating. This commercial product, derived from fish along with the bones and offal of processed fish, typically is brown to light brown powder or cake.

The production process involves drying the fish or fish trimmings, often post-cooking, followed by grinding. Fish meal's primary application is diet for domestic animals, or as fertilizer when the fish meal is damaged as it is an easily stored



feed ingredient, rich in nutrients and high in protein. Fishmeal can be transported in bags or in bulk.

Handling fish meal in bags is the core challenge. The International Maritime Dangerous Good (IMDG) code classifies fishmeal as hazardous cargoes class 4.2, substances liable to spontaneous combustion and class 9 miscellaneous dangerous substances (UN Nos. 1374 and 2216.)

Fishmeal, with proper shipping names FISH MEAL, UNSTABILIZED, or FISH SCRAP, UNSTABILIZED, with UN No. 1374, will be classified as hazardous cargo with a medium level of danger if characterized by unrestricted moisture content and fat content exceeding 12%, or exceeding 15% by mass and anti-oxidant treated, it adheres to the requirements outlined in packing group II of the IMDG code.



“It is crucial for the shipper and/or manufacturer to provide accurate information about the product to all relevant parties, including the carrier, consignee, and nominated surveyor.”

***Medhi Kaveh,
Nordic Marine Solutions***

This product is hazardous for all modes of transport.

However, if fishmeal moisture content is more than 5%, but not more than 12% by mass and fat content and it is not anti-oxidant treated it is also classified as hazardous cargo but with a low level of danger. It adheres to the requirements outlined in packing group III of the IMDG code. This product is also hazardous for all transportation models.

This consignment must be accompanied by a certificate issued by a recognized authority, specifying moisture and fat content packing details and total mass of the consignment as well as temperature of the fishmeal at the time of dispatch from the factory and date of production. The remaining requirements for this product are identical to those specified for the high-fat consignment.

If the FISH MEAL (FISH SCRAP), STABILIZED is anti-oxidant treated with at least 100 ppm of antioxidant (ethoxyquin) at the time of consignment, and the moisture content is greater than 5% but not exceeding 12% by mass, with the fat content not more than 15%, it will be classified under IMDG code Class 9 assigned with UN nr. 2216, subject to packing group requirement III.

LOW LEVEL RISK

This product will be considered as miscellaneous dangerous substances with low level of risk or hazard. however, it shall not be transported if the temperature at the time of loading exceeds 35°C or 5°C above the ambient temperature, whichever is higher.

This regulation applies exclusively to sea transportation. This consignment must be accompanied by the details regarding the anti-oxidant treatment for meals aged beyond six months and assurance of the anti-oxidant concentration at the time of shipment, which must surpass 100 mg/kg. This provision specifically refers to material characterised as the brown to greenish-brown residue of fish, obtained through the process of heating and drying.

Nevertheless, it should be emphasized that the above provisions are not applicable to shipments of fishmeal manufactured from “white” fish with a moisture content of not more than 12% and a fat content of not more than 5% by mass that undergo acidification.

They are also not applicable if fish meal has a water content exceeding 40% by mass, regardless of other considerations. Such shipments must be accompanied by a certificate issued by a competent authority from the country of shipment, affirming that the consignment, when transported in bulk, does not exhibit self-heating properties.

PRECAUTIONARY MEASURES

Conducting a pre-loading inspection of the cargo compartment by a surveyor is essential to verify cleanliness and weathertightness. Additionally, both the surveyor and the ship’s crew should ensure the proper functioning of the hold ventilation.

Fish meal temperature should be controlled at the time of loading so that it shall not be transported if the temperature at the time of loading exceeds 35°C or 5°C above the ambient temperature, whichever is higher.

Fish Meal UN nr. 1374 and 2216 are permissible for stowage either on or below deck, provided it is shielded from heat sources. The International Maritime Solid Bulk Cargoes Code (IMSBC) identifies the following as heated ship structures: Steam pipes, heating coils, top or side walls of heated fuel and cargo tanks, and bulkheads of machinery spaces. A heated ship structure is where the surface temperature is liable to surpass 55°C.

It is strongly advised to monitor the cargo temperature thrice daily throughout the voyage and document, any instances where the cargo temperature surpasses 55°C and shows a continual upward trend.

In the event of escalating self-heating, ventilation to the hold should be stopped. If the self-heating persists, the introduction of carbon dioxide becomes necessary. The vessel must be equipped with the requisite facilities for introducing carbon dioxide.

The temperature of the cargo should be assessed on discharge and damaged and seemingly intact cargo must always be segregated during the unloading process.

According to the IMSBC code, fishmeal in bulk shall be kept as dry as practicable. This cargo shall not be handled during precipitation. During handling of this cargo all



“A significant number of claims have been linked to heat-sensitive agriculture products such as soya bean, grains, sunflower pellets, soybean meal as well as fish meal (inset).”

non-working hatches of the cargo spaces into which this cargo is loaded or to be loaded shall be closed.

DON'T UNDERESTIMATE RISK


The potential danger and risk associated with loading and transporting fish meal may be underestimated. Carriers, producers, consignors and freight forwarders must implement measures to mitigate the potential for damage.

It is crucial for the shipper and/or manufacturer to provide accurate information about the product to all relevant parties, including the carrier, consignee and nominated surveyor.

This facilitates a comprehensive understanding of the consignment’s characteristics throughout the entire transshipment process, from vessel nomination, pre-loading preparations, loading procedures, until discharge at the destination port.

It is strongly recommended that vessels consult the provisions scheduled by IMDG code and IMSBC code for stowage precautions for any type of fish meal as well as Krill Meal which is classified as DG cargo class 4.2 designated UN Nr.3497.



The image shows a large oil tanker ship on the ocean. In the foreground, the silhouettes of two people are visible, looking out at the ship. The ship is a large, multi-decked vessel with various structures and cranes. The ocean is choppy with small waves. The sky is a pale blue.

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to help stop a
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Cargo Insurance London

21st March 2024

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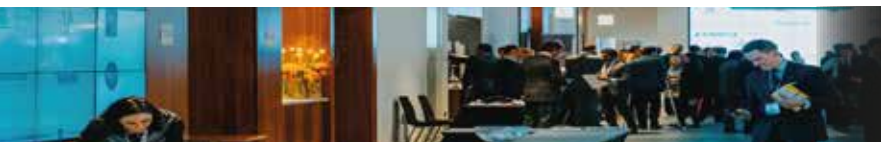
March 21st 2024, etc. Venues'
8 Fenchurch Place, London

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Thursday 21st March 2024



Thursday 21st March 2024, London

08:15 - 8:55 : Delegate Registration and Refreshments

09.00-09.20: KEYNOTE ADDRESS: TBC

**09.20-10.10: PANEL DISCUSSION:
State of the Market – End to End**

Having just completed the 1/1 reinsurance renewals, we take the opportunity to review the state of the insurance market, end to end. We pick out the hotspots such as excess of loss cover and sum up the market mood for the year ahead.

Panellists: Richard Goulder, Head of Marine Cargo, Tokio Marine HCC, Richard Hill, Senior Broker, CR International, Christopher Hicks, Marine Cargo Underwriting Manager, Liberty Global Group

10.10-11.00: PANEL DISCUSSION: Coverage Creep – The Slippery Slope

The cargo market has enjoyed greater clarity on wordings and clauses in recent years, however market pundits have been highlighting some coverage creep coming back into the market. We question whether this is the start of a slippery slope and why it is happening.

Moderator: Andrew Corton, Project Cargo Underwriter, Starr Insurance Companies

Panellists: Donna Young, Head of Cargo, Canopus, Aimee Nolan, Line Underwriter, Cargo, Hiscox, Philip Clark, Executive Director, Price Forbes

11.00-11.30: COFFEE AND NETWORKING BREAK

11.30-11.50: PRESENTATION: TBC

11.50-12.10: PRESENTATION: Adding up the Aggregation

Aggregation remains really worrying for the cargo insurance market, as cargo insurers struggle to keep up to date with where a cargo is at any given time. The risks associated with not having full visibility on cargo movements is leading to concerns from senior management about levels of exposure for the insurers, as we uncover in this session.

Presenter: Andy Yeoman, Chief Executive Officer, Concirrus

12.10-12.50: PANEL DISCUSSION: Bytes to Benefits: Navigating the Impact of Data in Cargo Insurance

In a world of cutting-edge technologies and limitless data, how is the cargo insurance industry poised to innovate and transform the overwhelming volume of collected data into practical advantages for everyone involved? Join our panel discussion with industry experts to explore how technology is reshaping processes and positively impacting all stakeholders, from logistics and brokers to insurers.

Panellists: Ed Colclough, Class Underwriter, Parsyl, Arne Klockmann, Director, Hapag-Lloyd- AG

12.50-13.50: LUNCH BREAK AND NETWORKING

13.50-14.10: KEYNOTE ADDRESS: Moving from E to S

There has been growing worldwide pressure for companies to delivery on net zero targets and ESG, but does that work for everyone? What about the smaller traders in far-flung places where ESG is not a serious consideration as yet? When launched, the balance between ESG was E 30%, G 30% and S 40%, but have we forgotten that and abandoned the S just at a time when we should be doing more?

14.10-14.50: PANEL DISCUSSION: Two Sides to Every Story – The Cargo and Hull Perspectives

Hull underwriters may not have obvious connections to cargo risks, however if a ship fails or if a cargo causes the vessel to capsize, then both the hull and cargo insurers will be involved in the claim. In this session we hear from both markets, as well as a claims expert on how improved communication could help prevent accidents. We will also learn about the efforts to get the LOF clause written into H&M policies.

**14.50-15.10: CASE STUDY:
The Fremantle Highway – What Happened Next?**

With so much focus on electric vehicles and lithium batteries and the risk of fires, in this session we hear from a salvor about the reality of handling an onboard fire. They will provide a case study of the Fremantle Highway and share their experiences of handling fires involving electric vehicles.

**15.10-15.30: PRESENTATION:
What next? Cargo Fire Solutions Analysed**

From drenching burning cargo in water to heaving burning vehicles over the side, the hull market is working hard on possible solutions for cargo fires. In this session we ask whether there are any viable solutions out there and whether cargo insurers are having enough of a say when it comes to redesigning vessels to reduce the risk.

Presenter: Neil Roberts, Head of Marine and Aviation, Lloyd's Market Association

15.30-15.50: COFFEE AND NETWORKING BREAK

**15.50-16.10: PRESENTATION:
Climate Change – Always on My Mind**

The threat from climate change is hard to ignore, along with the growing number and severity of natural catastrophes around the world. Wildfires have been a particular risk this year from California and Canada, to Greece and Spain. Insurers are now having to ask questions about whether certain risks remain insurable, as we examine in this session.

**16.10-16.30: PRESENTATION:
Up, Up and Away – Inflation Continues**

We have all suffered with rapidly rising prices and the cargo market has been no different, but has the rapidly rising inflation been matched by disciplined underwriting? At the same time, we ask whether ESG considerations are fuelling price rises still further. Is there a very real danger of under-insurance among clients?

**16.30-17.00: FIRESIDE CHAT:
Cyber – It's All in the Word(ing)**

Cyber threats are indisputably on the rise worldwide and sadly, the cargo market is often targeted by criminals. For some years, cyber risk has been excluded as a matter of course by insurers, however there are now signs of a thaw in the hardline approach. The market now has access to new excess of loss wordings, which aim to clarify coverage for this area of the market. We consider how these clauses work in practice and whether they have been welcomed by underwriters.

Participants: Howard Potter, Head of Marine & Cargo, Aviva

18.00 - late: Drinks Reception – Venue TBC



Star Antares decision brings renewed uncertainty in general average



Chirag Karia KC, Quadrant Chambers, analyses the Star Antares decision made this November and asks which version of the York Antwerp Rules Applies under the Congenbill 1994 Form?



The Congenbill 1994 standard form is one of the most extensively used standard form bills of lading in international trade.

Clause (3) of that form provides for general average ("GA") to be "*adjusted, stated and settled according to York-Antwerp Rules ["YAR"] 1994, or any*

subsequent modification thereof". Since the YAR 1994 have been followed by the YAR 2004 and YAR 2016, which version applies under this standard form bill of lading? Are the YAR 2004 and YAR 2016 "*subsequent modification[s]*" of YAR 1994, with the result that the YAR 2016 (being the latest "modification") apply? Or are those rules completely new rules, with the result that the YAR 1994 apply?

Until the decision in *Star Axe I LLC v. Royal and Sun Alliance Luxembourg S.A. and others (The Star Antares)* [2023] EWHC 2784 (Comm), the received wisdom was that the YAR 1994 governed GA adjustments under the Congenbill 1994 form. A vast number of adjustments have been carried out on that basis.

However, in *The Star Antares*, Butcher J held that received wisdom to be wrong and that clause (3) of the Congenbill form in fact incorporates the YAR 2016.

LONG HISTORY

In his *Commentary on the York-Antwerp Rules 2004* published by the Association of Average Adjusters in July 2004, Richard Cornah, an average adjuster who played a prominent role in the deliberations at the Vancouver Conference leading to the issuance of the YAR 2004, reported that the CMI's International sub-committee and Plenary sessions had both agreed that the new rules should be given the title of "*York-Antwerp Rules 2004*" to make it clear that these were new rules and not simply an amendment to or modification of the 1994 Rules.

He also opined in that Commentary that, where contracts such as the Congenbill 1994 refer to "*York-Antwerp Rules 1994* or any subsequent modification thereof..." the 1994 Rules will remain applicable.

In 2007, BIMCO similarly stated that it considered the YAR 2004 "*to be a new set of rules and not in any way a modification or amendment of the 1994 Rules*".

Thus, by 2018, the editors of the 15th edition of *Lowndes & Rudolf: The Law of General Average and The York-Antwerp Rules*, the standard work on the law and practice of general average, were able to declare that, although the language "*might be thought ambiguous*", "*So widespread is the view amongst practitioners that incorporating language such as that contained in the Congenbill '94 form . . . does not incorporate the York-Antwerp Rules 2004 or later versions, that it is possible to contend that there is a binding practice in London to this effect.*"

The bills of lading in The Star Antares had been issued in 2021. The owners of the vessel argued that the words of clause (3) should be construed against the background of the publications summarised above and that, when that is done, it is clear that those words were intended to incorporate the YAR 1994 and not any later versions or iterations of the rules.

JUDGMENT IMPLICATIONS

Butcher J rejected that argument. He first construed the operative words, "*any subsequent modification*" without reference to the publications relied on by the owners and held that those words were "*reasonably to be understood as capable of applying to a new version of the rules.*"

He then considered the publications relied on by the


owners and held that some of them – including Richard Cornah's *Commentary on the York-Antwerp Rules 2004* – were not reasonably available to the parties and therefore could not be taken into account when construing clause (3).

Finally, he held that, if and to the extent the publications relied on could be taken into account, a reasonable person "*would consider such a statement of opinion as being neither necessarily correct nor a sure guide to how a court would construe the relevant words*". He concluded that the YAR 2016 were "*at least a 'modification' of the YAR 1994*" and therefore the Congenbills in dispute incorporated those 2016 Rules.

The consequences of this ruling are potentially far reaching and extremely disruptive. GA assessments completed under the YAR 1994, in accordance with the received wisdom that the Congenbill 1994 incorporated those rules, are at risk of being challenged on the basis that the wrong rules have been applied, leading to uncertainty and potential litigation.

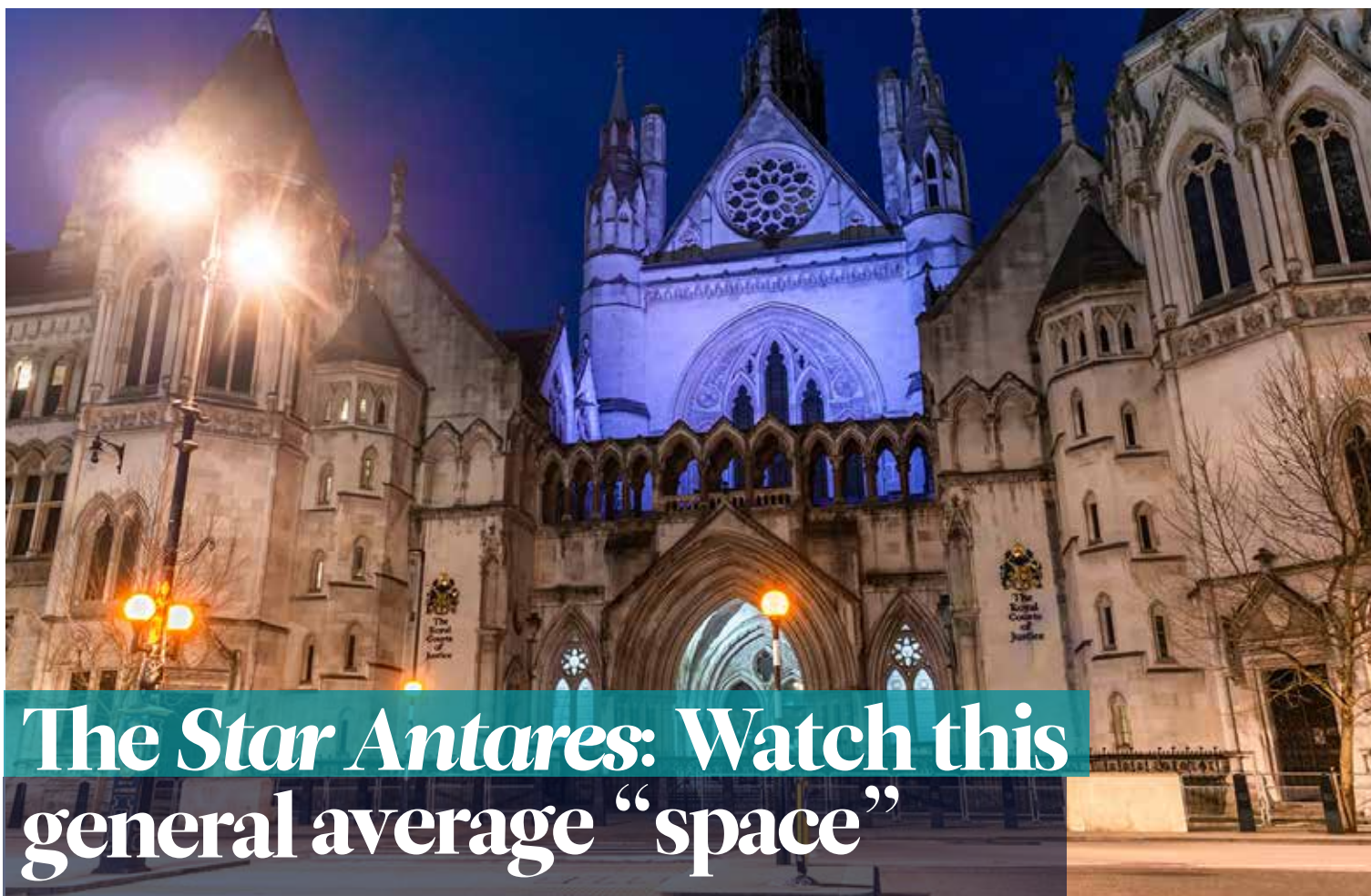
More importantly, the one-year time bar in Rule XXIII of the YAR 2016 – which does not appear in the YAR 1994 – poses a very serious risk of shipowners, other GA contributors and average adjusters being time barred from recovering GA contributions which they had been relying on receiving to make the payments required by the adjustment.

Such a result would undermine the fundamental principle underlying the concept of GA, being, "*that which has been given for all should be replaced by the contribution of all.*"

● Chirag Karia KC acted for the claimant shipowner in *The Star Antares*. 

“The consequences of this ruling are potentially far reaching and extremely disruptive. GA assessments completed under the YAR 1994, in accordance with the received wisdom that the Congenbill 1994 incorporated those rules, are at risk of being challenged on the basis that the wrong rules have been applied,”

**Chirag Karia KC,
Quadrant Chambers**



Andrew Chamberlain, Partner, and Kirsten Wright, Associate at law firm HFW, discuss recent important developments in the world of general average



In the *Star Antares* (2023), the English High Court has boldly gone where no [English High Court] has gone before and clarified which version of the York-Antwerp Rules is applicable pursuant to clause (3) of the

Congenbill 1994.

The court's finding that the York-Antwerp Rules 2016 apply renders these, the most recent version of the York-Antwerp Rules, more relevant than ever. But, what is the significance of the *Star Antares* judgment to the ship and cargo community in the context of general average?

WHICH YAR APPLIES?

On 3 November 2021, while on route to China, the

Star Antares sustained damage after allegedly striking an unknown submerged object. General average was declared on 19 November 2021. Shortly thereafter, the cargo's insurers (the defendants) issued average guarantees to the carrier (the claimant) undertaking to pay the claimant or the claimant's average adjusters any contribution to general average and/or salvage and/or special charges which might be legally and properly due and payable in respect of the goods covered by the bills of lading.

The bills of lading in question were on the standard Congenbill 1994 form, which provides that "General average shall be adjusted, stated and settled according to York-Antwerp Rules 1994, *or any subsequent modification thereof*, in London unless another place is agreed in the charter party" (emphasis added).

A dispute arose between the claimant and the defendants as to whether their respective rights and obligations in relation to general average, and the recovery of general average contributions, are governed by the York-Antwerp Rules 1994 or the York-Antwerp Rules 2016.

In a concise judgment which draws on a wealth of industry and legal commentary, Mr Justice Butcher held that the York-Antwerp Rules 2016 can properly be described as a “modification” of the York-Antwerp Rules 1994 and accordingly, the York-Antwerp Rules 2016 are incorporated into the Congenbill 1994 through the wording of clause (3).

General average cases rarely come before the English High Court. This in itself renders the judgment in the *Star Antares* an important one. The judgment is expected to cause disquiet among some general average practitioners especially as the unsuccessful claimant has now indicated that it does not intend to appeal (initial indications were that it would do so).

CONTRARY APPROACH

Possible controversy exists because the judgment runs contrary to the approach taken by many adjusters and practitioners to date, which has been to interpret the York-Antwerp Rules 2016 as a new set of rules and not a “modification” to the York-Antwerp Rules 1994.

It is not the first time that the court’s decision on a general average-related issue has run contrary to the practices and understandings adopted by adjusters when interpreting the York-Antwerp Rules (see, for example, the Supreme Court’s interpretation of the meaning of Rule F of the York-Antwerp Rules 1974 as held in the *The Longchamp* (2017)).

The York-Antwerp Rules 2016 were the result of an extended drafting process which garnered healthy engagement from stakeholders before they were published.

They strike a reasonable compromise between the interests of shipowners and cargo interests and were designed with modern trade and the adjustment of large, complex casualties in mind.

The York-Antwerp Rules withdraw the 2% commission on disbursements and the 7% fixed interest rate considered onerous by cargo interests, but reinstate some of the allowances which had been restricted in the York-Antwerp Rules 2004 (salvage under Rule VI; crew wages and maintenance during a general average detention at a port of refuge under Rule XI; and temporary repairs to accidental damage under Rule XIV).

In principle, the stakeholders consulted on the York-Antwerp Rules 2016 were content with this compromise at the time of publication, and the York-Antwerp Rules 2016 have been endorsed by BIMCO and incorporated into many of its standard forms. However, the York-Antwerp Rules 2016 have seen comparatively little use when compared with the York-Antwerp Rules 1994, being perceived by many shipowners as less “friendly”.



“General average cases rarely come before the English High Court. This in itself renders the judgment in the *Star Antares* an important one. The judgment is expected to cause disquiet among some general average practitioners.”

WIDENING APPLICABILITY

Other standard forms - most notably the Gencon 1994 charterparty - contain similar wording to that found in clause (3). Consequently, it is expected that the English High Court’s judgment in the *Star Antares* and its effect of widening the applicability of the York-Antwerp Rules 2016 will be felt across the shipping and cargo community, particularly in the dry bulk shipping trade where the Congenbill 1994 is a widely used bill of lading.

Carriers take note in respect of general average recovery actions: the York-Antwerp Rules 2016 extinguish rights to general average contribution unless an action is brought within one year after the date on which the general average adjustment is issued.

There is also a “long stop date” for commencement of proceedings within six years from the date of termination of the common maritime adventure. The “long stop date” fore-shortens the limitation period of six years from the date of the adjustment, which would otherwise be applicable to claims under average bonds and guarantees.

Carriers considering a recovery action under general average adjustments published within the past year should carefully check whether the York-Antwerp Rules 2016 are applicable to the adjustment and take steps to “protect time” with respect to any contributions they wish to seek from other parties to the common maritime adventure. We can expect an uptick in protective proceedings issued in the English High Court as carriers seek to do so.

In the longer term, an update to the Congenbill which puts the applicable York-Antwerp Rules beyond doubt would provide greater clarity to the ship and cargo community, general average practitioners, and the legal community alike. ⚓



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18th April 2024



Thursday 18th April 2024, Singapore

All Times in Singapore Time (SGT)

08:00 - 9:00 : Registration and Coffee in the Pre-Function Area

09.00-09:30: KEYNOTE ADDRESS TBC

**09.30-10.15: PANEL DISCUSSION:
State of the market: Mind the (reinsurance) gap**

This session analyses the state of the local and global insurance markets, including a look at the way reinsurers are influencing changes in insurance policies. We look at the gaps in cover for certain risks and ask whether insurers are running the risk of becoming irrelevant by writing out too many risks from policies.

**10.15-11.00: PANEL DISCUSSION:
War, war or jaw, jaw?**

With wars in Europe and the Middle East and threats in Asia too, this session will look at the way marine insurance war cover is evolving and how the cover has reacted in the past two years. It will include a look at the Singapore War Mutual and how that operates.

11.00-11.30: COFFEE AND NETWORKING BREAK

**11.30-11.50: KEYNOTE:
Decarbonisation: Who is going to pay?**

The need for a transition to greener processes has been highlighted by the 1-in-100 year events happening almost annually, but what has actually been done to offset the new threats in the marine space? How is the shipping sector responding to the need for greener fuels and processes? This presentation includes a look at what has changed and how those new risks are viewed by insurers. It will also include a look at the changing regulatory framework, particularly in Singapore, and the potential impact of that on shipping and its insurers.

**11.50-12.30: PANEL DISCUSSION:
Getting to the shops on time?**

Supply chains were disrupted by the Covid-19 pandemic, but now it is the turn of the changing climate to have an impact, most notably at the Panama Canal. The subsequent delays have enormous repercussions in terms of costs and claims, but have also sparked debate about developing trading routes, from China to the Arctic, as we explore.

**12.30-13.00: FIRESIDE CHAT:
Working in the shadows: the dark fleet grows**

The past year has seen an increase in the numbers of the so-called dark fleets, while other vessels are having to turn off any tracking systems to navigate certain waters. We ask: what is the scale of the problem and also what are the implications of that for insurers? What are the emerging threats and how should insurers respond?

13.00-14.00: LUNCH BREAK AND NETWORKING

**14.00-14.40: PANEL DISCUSSION:
Sanctions: are the wordings fit for purpose?**

No matter where business is done in the world, sanctions are having an impact. This session considers the changing nature of sanction rules but also at the insurance wordings and asks whether they remain fit for purpose. We also look at the dilemma when leaders and followers are subject to differing rules. This session will include a look at the recent sanctions case in.

14.40-15.00: PRESENTATION: The test of insurance: claims from oil bunkering

With an increased numbers of claims from oil bunker incidents, particularly from vessels using off-spec fuel, this session hears about the claims and any emerging trends. We consider why these claims are happening and any risk management solutions to mitigate the losses, as well as take a look at the changing regulations insurers?

**15.00-15.20:
NETWORKING BREAK**

PANEL DISCUSSION: Changing the shape of P&I

With the merger of NorthStandard last year, the market was abuzz with chatter about the implications for the whole P&I market. This session dives into the detail on the state of the market since then, both in terms of rates and performance.

PANEL DISCUSSION: Wind farms: blowing hot and cold

Asian waters have seen wind farms springing up in the past year with plans for more to come, as the push for green energy continues. This session examines the current state of play and at both the risks and opportunities that poses for marine insurers.

PRESENTATION: How to insure against the hackers?

The gremlins in the machine have quickly morphed into aggressive gang of cyber criminals who rove the world looking for the unwary. Businesses are acutely aware that risk management can take them so far, but they need insurance to support them in the endless war against the criminals. However, as this session explores, insurance cover is not easily available and where available, the limits are far too low. How can the insurance industry match the needs of the shipping community?

14.00-15.00: DEEP DIVE: Cargo: the challenges end-to-end

Not declaring dangerous cargoes remains a huge issue for the insurance market, with vessels and crew exposed to immense danger. However, that is not the only challenge facing cargo insurers. Gen Zs are among the greatest online shoppers and, with fast growing young populations Asia and Africa alike, are placing extra demand on shippers. But do insurers understand those changing patterns and are they responding? This deep dive into the cargo market also tackles the thorny question of online retailers. Without bricks and mortar but with hundreds of shipments which all need insurance, the insurance market needs a better solution.

**15.00-15.20:
NETWORKING BREAK**

DEEP DIVE: Salvage: Why do we never learn?

Sadly, casualties happen time and again but rarely does the industry learn from the mistakes of others. Dealing with casualties in Asia does have some unique features so this session explores those differences and how the market needs to respond. In this deep dive we also explore whether, with all the green initiatives underway, ports are ready for salvage?

FOCUS SESSION 1: Lithium batteries and fire: the solutions

This session will dive into the reasons that lithium batteries, in what gadget or vehicle, will start a fire. We consider the ways these growing risks can be risk managed and how such fires can be extinguished or minimised, hearing from the experts involved in dealing with such fires and their consequences.

FOCUS SESSION 2: Throwing the BMW out with the bath water

Asian insurers have shown an almost total lack of appetite to insure car carriers with electric vehicles on board. But, as more consumers choose to buy EVs, more carriers will have them on board. Why are insurers taking this stance and what will free up the market into the future? This deep dive considers why insurers are so risk-adverse and whether insurers can ever make a profit out of this business?

17.05 - 18:00: Drinks Reception



Creating a more assured approach to risk



Captain Stephen Norman, Master Mariner, FMSOMWS, Global Business Development

Director, DNV, explains project assurance and the real value of project challenges and opportunities



Rising costs, project over runs, unsuitable/unavailable installation vessels or inefficient methodologies, equipment breakdown, supply chain bottlenecks and shareholder value destruction all feature as prominent headlines in the current execution of offshore energy projects.

The inherent under-reporting of near misses and the high potential for incidents increasingly challenge the surety of the pipeline for delivery of energy security. This makes the energy transition start to look less likely and higher risk.

The UK government recently took positive moves to accelerate renewables deployment with the substantial



“The inherent under-reporting of near misses and the high potential for incidents increasingly challenge the surety of the pipeline for delivery of energy security. This makes the energy transition start to look less likely and higher risk.”

increase in administrative strike price combined with the development of a specific fund for offshore wind.

STAYING ON TRACK

This will accelerate many more projects, bringing those previously deferred back to the table, each aggressively competing for a share of the limited supply chain.

How then, do the government, regulators, investors, insurers and project teams ensure confidence that they can stay on track for safety, quality, cost and schedule?

The energy transition is leading to greater complexity, risk and uncertainty. The success of new energy projects relies on the understanding of this risk and the implementation of effective de-risking strategies. Similarly, all project stakeholders will need confidence that projects are safe, reliable, on schedule and to budget.

These complex projects must contend with multiple challenges related to project management, legislative compliance and adoption of common standards, in addition to providing independent assurance to stakeholders on safety and environmental issues.

This invariably increases complexity, with multiple design standards and differing regulatory requirements, which

demand design and installation technologies and system capacities which are at the limit of current industry experience. These uncertainties are magnified when multiple stakeholders and complex supply chains are involved.

The concept of a third party assurance programme is well understood across industry and has been in operation for hundreds of years allowing for a well-defined process of assessment to confirm the effectiveness of an installation's critical barriers. The term can be applied to many facets of review and may be termed as:

> Classification, certification, verification, warranty and inspection among other descriptors

In all cases, the basic concept is the same, Is it safe? Is it reliable? Does it comply?

CONFIDENCE TO ALL

Assurance provides a positive declaration intended to give confidence to all relevant stakeholders.

Assurance should always cover the entire life cycle of an offshore project, including design, onshore and offshore survey during fabrication, installation, hook-up and commissioning, operation and decommissioning, these activities underpin safe and reliable projects and assets during

operations.

Through time, numerous regulated approaches have developed to cover high-risk operations or high hazard industries where there is potential to impact on the safety of life, property or the environment.

Within the offshore hydrocarbon industry the Lord Cullen report and the subsequent safety case regime provides a solid backbone to regulating assurance requirements.

There are also clear expectations from the Health and Safety Executive (HSE) under COMAH and the Construction Design and Management Regulations 2015, for developers and contractors to ensure appropriate considerations during the development of (mainly onshore) construction projects. The overall goal is the same to reduce the risk of harm to those who build, use and maintain structures.

All regulations are supplemented by international codes and standards that have been developed by industry to define technical requirements and safety margins such as ISO technical standards, ATEX and the like.

SIGNIFICANT AMBIGUITY

With complex offshore projects in both hydrocarbon and renewables industries the process of assurance may be undertaken by several providers and developed using a modular approach where the interfaces can lead to uncertainties and gaps inducing significant ambiguity into the project and increasing the likelihood of safety critical elements being poorly managed.

Increasingly, the process of assurance is mistakenly perceived as a costly and unnecessary requirement, overlooking the clarity and understanding of the inherent value that it brings to the safety, value, quality and ultimately the success of the project.

Taking the nuclear industry as an example, the concept of Intelligent Customer in relation to high-hazard safety was developed by the UK Office for Nuclear Regulation and has gained international acceptance.

It defines the capability of the organisation to have clear understanding and knowledge of the product or service being supplied by a service provider. One could argue, in offshore projects, that as the complexity and modularity increases the understanding over the requirements and the effectiveness of application decreases - unless there is very intensive oversight and engagement from the developer.

In an era of high staff turnover and limited succession planning where lessons learned are oft forgotten, that 'corporate memory' or indeed 'individual memory' for what is being designed and assured and by who can easily be overlooked and increasingly misunderstood, unless supported by a comprehensive assurance programme.

“The total assurance approach provides an integrated set of tools that improve the prospects of “getting it right” from the start while demonstrating a transparent assurance process to compliance that delivers safety and value creation throughout the entire project lifecycle.”

*Captain Stephen Norman,
DNV*

MORE CONNECTED

As our energy systems transform and become ever more connected, the complexity of the project increases, equally the requirement to be able to assure the entirety of the project becomes more critical. For example, understanding and ensuring that the impact of change in one area does not substantially increase the risk on another part or system of the project.

Progressively, we observe an expansion of Safety Case Regulations into the offshore wind industry and are likely to become a requirement in the upcoming hydrogen economy or where different asset types are linked, such as in INTOG.

DNV have been developing improvements in the delivery of the assurance process so that clients can easily understand the breadth, depth and integrity of the process and have confidence in its value.

This we see as key to supporting the concept of an Intelligent Customer. This improved knowledge and confidence underpins all aspects of assurance and supports the delivery of an integrated approach to assurance, one where the 'total assurance' of the project is the aim.

Integrating third-party review processes and ensuring a comprehensive gap analysis is conducted prior to project execution delivers a much-enhanced project oversight and benefits including:

- Improved safety
- Time savings
- Costs reductions
- Improved transparency
- Management of interfaces
- Improved stakeholder confidence

TOTAL PROJECT ASSURANCE APPROACH



Stakeholders come in many forms and includes the relationship that a project has with authorities, insurers, investors, the public and all project partners.

At early project phases a total assurance approach can deliver significant support for managing risk outside of the traditional technical understanding, for example project commercial risk versus bankability driving investor appetite, regulatory and public confidence and project insurability.

CLEAR COMMUNICATION

With clear communication and delivery of a transparent assurance process, projects can be de-risked at much earlier stages creating value that cannot be measured as part of a fractured procurement activity.

That value can materialise in easier approval during the consents process, reduced insurance premiums, higher degrees of investor appetite or enhanced efficiency during construction. It underpins the decision-making process of investment, allowing senior management the ability to cross check the integrity of the concept and design and confidently commit to the release of next stage funding.

In summary, successful projects demand that designers and operators manage their risks through implementing some form of project wide risk management approach, which includes a total technical assurance scheme.

The total assurance approach provides an integrated set of tools that improve the prospects of “getting it right” from the start and assuring compliance as the project proceeds.

Total assurance involves setting and monitoring objectives pertaining to completion and delivery schedule, technical performance (functionality, reliability, safety and

environmental, etc.), budget targets and providing independent verification to assure the achievement of those objectives.

Total technical assurance must be viewed as a critical element, providing the project with a level of confidence that can be demonstrated to the project stakeholders regarding the effectiveness, efficiency and compliance of various project activities against project objectives, industry standards and statutory obligations.

That total assurance approach engenders confidence that the technical aspects are at the appropriate level and is built around the correct processes through the phases of the project:

- > Assessment of the technical design – as evidenced by a third-party design verification report;
- > Confidence in the supply chain based on the third-party verification of materials & components (including pipe mills, cable manufacturers and major equipment fabricators);
- > Assessment of the construction and fabrication by independent surveyors;
- > Risk management of cost and schedule along with expediting of project progress to ensure the project effectiveness and efficiency as well as security of supply issues;
- > Confidence in the insurability of the project during construction and operation as addressed by warranty during the temporary phase transportation and installation of the project; and,
- > HSSE risk management for the project, which addresses topics such as the occupational, safety and health of the project personnel during project realisation, external safety/environmental risks.





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