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Discovery and disclosure – English and American perspectives

The process of disclosing and exchanging relevant information before a trial or arbitral hearing is now common in many parts of the world. However, there remain some key differences in how the process takes place depending on the jurisdiction.

'...In plain language, litigation in this country is conducted "cards face up on the table". Some people from other lands regard this as incomprehensible. "Why," they ask, "should I be expected to provide my opponent with the means of defeating me?"' The answer, of course, is that litigation is not a war or even a game. It is designed to do real justice between opposing parties and, if the court does not have all the relevant information, it cannot achieve this object...'[1]

In many parts of the world today, especially in international arbitration and in the common law jurisdictions, as a general rule, a litigant is obliged to disclose to and exchange with his opponent all relevant documents and information that he will rely upon during litigation.

The following two articles examine the processes in two major shipping jurisdictions, namely 'discovery' in the United States and 'disclosure'[2] in England.

The objective of this procedural stage is to give parties the opportunity to review the evidence (both their own and the opponent's) and to assess the strengths and weaknesses of their own and the other party's case before a trial or arbitral hearing. With all relevant information 'on the table', the parties are much better placed to concentrate their minds on the issues at hand – a process that promotes settlement.

Given its significance in helping resolve claims, we believe that our members may find useful a review of the English disclosure and US discovery processes. While similar in many respects, there remain key differences. Richard Singleton II, of law firm Blank Rome, provides an outline of the discovery process in the context of New York court litigation and Nevil Phillips, of Quadrant Chambers, provides an outline of the disclosure process in the context of English arbitration proceedings.

In this edition

From the club's experience, discovery and disclosure promote negotiation, and many cases do in fact settle as a result.

1 Per Sir John Donaldson M.R. in *Davies v Eli Lilly & Co* [1987] 1 W.L.R. 428.

2 The reality is that the process is now generically referred to as 'disclosure' in England, but was (until the advent of the reform to the English Civil Procedure Rules (CPR) in High Court litigation in the mid-to-late 1990s) previously also known as 'discovery'. In institutional international arbitration (eg commodities, construction, energy disputes, but less so in conventional maritime arbitration), the process is often more broadly referred to as 'document production'.

Pre-trial discovery: the United States litigation perspective

This article explains the procedure for obtaining information and evidence in the possession of an opponent in United States litigation, and the benefits of this procedure.

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Introduction

In United States litigation, the procedure for obtaining information and evidence in the possession of an opponent is known as 'discovery'. The main methods for obtaining discovery include:

- initial disclosures
- requests for production of documents
- requests for admissions
- interrogatories
- depositions

This article explains these methods.

Initial disclosures

Shortly after commencement of litigation, each party is required to make initial disclosures, which obligates each party to voluntarily disclose all documents relevant to its claims or defences, and identify all witnesses with knowledge of relevant facts.

Requests for production of documents

Each party thereafter has a right to serve requests for production of documents, seeking documents not included in the initial disclosures. These requests can be for specific identifiable documents or broad categories of documents.

Requests for admissions

Requests for admissions are statements that the opponent must either admit or deny, with cost-shifting provisions in the event a denial is proven wrongful at trial.

Interrogatories

Interrogatories are open-ended written questions that must be answered by a party with knowledge, under oath.

Depositions

The final discovery method, the deposition, is one of the hallmarks of the United States legal system and in many respects one of its greatest strengths.

Purposes of depositions

Depositions allow a party to achieve a variety of objectives. They enable parties to:

- examine witnesses prior to trial to determine what the witnesses will contribute to the issues presented for trial
- probe weaknesses in the witness testimonies
- evaluate the credibility of those witnesses.

It is a powerful method for exposing the truth, and if used properly together with the other forms of discovery outlined above, can be extremely effective in revealing the intimate details of the other party's case. This minimises the chance of any unpleasant surprises at trial.

Formalities
Depositions are obtained by simply serving a notice on the parties to the litigation. The depositions of non-parties can be obtained by serving a subpoena. Depositions of a corporation can also be obtained, requiring a person with knowledge to appear and testify on behalf of the corporation.

The deponent (party, non-party or corporate representative) must appear at the place and time designated in the notice, unless otherwise agreed, and answer questions posed by the opponent's lawyer.

Scope of questioning
The scope of permissible questioning is very broad and, with the exception of questions that infringe on attorney-client or work-product privilege, a witness must answer all questions asked. Parties can make objections, but by rule in federal court, all objections (except as to the form of the question) are reserved for the time of trial. Objections are therefore not necessary, except for objections to questions that could be corrected by rephrasing the question. Even when an objection is made, the witness must still answer the question, subject only to the limitation regarding privileges mentioned above.

The questioning proceeds much as it would in court. However, remarkably, whilst the deposition is taken, no judge is present – only the parties' lawyers are in attendance. The goal of the examining lawyer is to find out as much as possible about the opponent's case and the evidence the deponent will contribute to it, and to lock the deponent into one version of events. The party tendering the deponent generally does not ask questions unless the witness is likely to be unavailable for trial or follow-up questions are necessary to clarify or correct any testimony that was inaccurate or misleading. All questions and answers, including everything said by the lawyers during the deposition, are recorded by a certified court reporter – unless expressly agreed to be off the record. The court reporter then prepares a transcript of the deposition, which is provided to the parties.

Preparation for a deposition
Attorneys are permitted to prepare deponents prior to their deposition by reviewing the facts and documents with them and suggesting subjects and specific questions the examining lawyer will likely ask. Such preparation is almost always done. But once the deposition commences and a question is pending, the deponent is prohibited from discussing his testimony with his lawyer, unless the discussion relates to the assertion of privilege.

Maximum length of a deposition
In federal court, the deposition is limited to seven hours unless agreed otherwise or extended by the court. It is not unusual in important or complex cases, or in cases with multiple parties, for a deposition to continue for several days.

Relevance of depositions to trial
Deposition transcripts have two main uses at trial. First, if the witness is unavailable, his sworn deposition testimony may be submitted in evidence in place of his live testimony. Second, the transcript can be used to impeach a witness who testifies at trial inconsistently with the testimony he or she gave at the deposition. This is a compelling means to demonstrate to the court that a witness's trial testimony is not credible or worthy of belief.

Although valuable at trial, the deposition perhaps has even more value in advance of trial. Many cases are settled after depositions are taken because the facts are known, the credibility of key witnesses (or lack thereof) has been established and the witnesses are usually locked into positions on the issues, making it difficult for them to change their position a trial. Stated another way, after the depositions are taken, all of the cards to be played at trial are on the table for all to see.

Conclusion
While depositions admittedly can increase the cost of litigating in the United States, they can also result in considerable savings by allowing the parties to more accurately and transparently assess the issues and evaluate their chances of prevailing at trial, which promotes settlements. And even if settlement is not possible, the availability of depositions greatly enhances the likelihood that the trial will be decided on the merits and the truth, rather than on tactics and surprise.

Disclosure: the pre-hearing London arbitration perspective

There are no rigid rules or parameters for disclosure in London arbitration (at least which arise as a matter of law). However, in practice, certain approaches have become well established.

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Procedural discretion

Arbitration in London may take many forms. However, the default position in all those forms, as regards procedural and evidential matters (which will include the scope of any document production or 'disclosure') is contained in s 34 of the Arbitration Act 1996.

In this regard, s 34(1) of the Act provides that: '*It shall be for the tribunal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter.*' In turn, s 34(2)(d) provides that: '*Procedural and evidential matters include … whether any and if so which documents or classes of documents should be disclosed between and produced by the parties and at what stage.*'

Thus, the scope of disclosure in London arbitration will, in practice, be determined by the arbitral tribunal in each case (assuming that the parties do not themselves agree upon such matters in advance – which the 1996 Act permits them to do).

It follows that, strictly speaking, there are no rigid rules or parameters for disclosure in London arbitration (at least which arise as a matter of law) – each case will turn upon its own demands and requirements. This is reflected in the fact that, even under well-known institutional arbitrational rules, there are no rigid limits for disclosure or document production.

Thus, for example, the London Court of International Arbitration (LCIA) Rules 2014 provide in Article 22.1(v) that the tribunal may '*order any party to produce to the Arbitral Tribunal and to other parties documents or copies of documents in their possession, custody or power which the Arbitral Tribunal decides to be relevant*'. The International Chamber of Commerce (ICC) Rules 2017 provide for a similar breadth of procedural discretion.

However, in practice, certain approaches in relation to disclosure have become well established.

International Bar Association (IBA) rules – limited default disclosure

In this regard, the position in relation to large-scale international commercial arbitration in London sometimes evidences a preference for disclosure founded upon the IBA Rules on the Taking of Evidence in International Arbitration (2010). Those Rules (by Article 3.1) provide for very limited default disclosure by a party: '*Documents available to it on which it relies, including public Documents and those in the public domain, except for any Documents that have already been submitted by another Party.*' That is supplemented by a facility (under Article 3.2 ff) for each party to serve a '*Request to Produce*', which may seek to widen the scope of the disclosure provided.

LMAA terms – indication of the scope of disclosure required

However, maritime arbitration in London is more commonly conducted under the LMAA Terms (presently in their 2017 version). Helpfully, those provide some indication of the scope of disclosure that will be required. In this respect, paragraph 9 of the Second Schedule of the Terms provides expressly:

'Subject to any specific agreement between the parties or ruling from the tribunal, the parties are entitled at any stage to ask each other for any documentation that they consider to be relevant which has not previously been disclosed. Parties will not generally be required to provide broader disclosure than is required by the courts. Generally, a party will only be required to disclose the documents on which it relies or which adversely affect its own case, as well as documents which either support or affect the other party's case.'

As can be seen, the scope of disclosure there anticipated is broader than that required by default under the IBA Rules – while the IBA Rules require a party to disclose only '*Documents available to it on which it relies*', the LMAA Terms require (unless otherwise ordered) disclosure by a party of '*the documents on which it relies or which adversely affect its own case, as well as documents which either support or affect the other party's case*'.

As paragraph 9 of the Second Schedule of the LMAA Terms intimates, the general ethos is that this scope of disclosure will marry with that which would ordinarily be required in litigation before the English courts. In the latter regard, Rule 31.6 of the Civil Procedure Rules (CPR) provides for a default position of '*Standard Disclosure*' to be provided by a party. That comprises '*the documents on which he relies; and ... the documents which – (i) adversely affect his own case; (ii) adversely affect another party's case; or (iii) support another party's case ...*'.

Thus, as can be seen, disclosure in LMAA arbitration tracks disclosure before the courts, although the Commercial Court in London is shortly, from March or April 2018, to embrace a two-year pilot scheme of revised and more tailored disclosure in which the default position will comprise only '*Basic Disclosure*', requiring a party to disclose '*(1) the key documents on which it has relied (expressly or otherwise) in support of the claims or defences advanced in its statement of case; and (2) the key documents that are necessary to enable the other parties to understand the case they have to meet*'[1].

Expanding on the scope of disclosure

In practice, it is possible (usually by way of a request or application for Specific Disclosure) to further expand the scope of disclosure where sufficient justification can be made out. Ordinarily, arbitral tribunals in maritime matters will (in appropriate circumstances) be amenable to an application for what is traditionally referred to as '*Peruvian Guano*' disclosure. That derives from a test as to documentary relevance articulated by Brett LJ in the old case of *Compagnie Financiere du Pacifique v Peruvian Guano Co* (1882) 11 QBD 55 at page 63:

'It seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may – not which must – either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary. I have put the words 'either directly or indirectly' because, as it seems to me, a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary, if it is a document which may fairly lead him to a train of inquiry which may have either of these two consequences...'

The idea behind disclosure meeting the *Peruvian Guano* test is that a party should disclose documents that may lead to a train of inquiry that might produce documents that meet the test for Standard Disclosure, ie which advance his own case or which damage the case of his adversary.

However, as indicated above, this is not the default position and will require the tribunal to be persuaded that there is a genuine basis for the application (and a demonstrable reason for believing that certain documents, if disclosed, will lead to further relevant disclosure). Tribunals will be alert to head off what is often termed 'a fishing expedition' (where one party simply 'fishes' indiscriminately for disclosure in the hope simply that something of relevance might turn up).

Finding a balance

Against this backdrop, it can be seen that the English approach to document production in maritime arbitration is one that seeks to adopt a balance between benefit and burden. The system is intended to ensure a relatively level playing field in terms of pre-hearing disclosure (of greater practical value, perhaps, than a very narrow IBA-style default position), while avoiding the potentially negative consequences (in terms of delay and expense) that can otherwise come from a more expansive disclosure system.

This attraction is enhanced by a measure of flexibility which comes from leaving the arbitral tribunal as the master of its own procedure (further to s 34 of the 1996 Act), with the ability to entertain (where appropriate) discrete applications for (potentially wider) specific disclosure.

However, disclosure in this sense is a strictly documentary process. There is (ordinarily) no facility under English procedure for anything approaching the deposition process in the United States (whereby individual witnesses may be interrogated on the documents or on their evidence in advance of the final hearing). Thus, while where there is a question mark as to the adequacy or integrity of one party's disclosure, it may be possible for the tribunal to require that a 'responsible officer' of a corporate party provide a witness statement explaining the inability to provide certain disclosure, but there will ordinarily be no procedural opportunity to question that individual on that issue before the final hearing.

Nevertheless, the sufficiency of the disclosure process in London arbitration, coupled with the adversarial nature of any final hearing (whether oral or on documents alone), almost invariably permits a thorough and just examination of any claim, but with a weather eye on costs and efficiency (as matters of ever-increasing sensitivity).

1 See https://www.judiciary.gov.uk/wp-contentuploads/2017/11/draft-practicedirection-2-nov-2017.pdf

Blockchain: some potential implications for marine insurance

With the world gripped by cryptocurrencies and governments struggling to monitor and regulate the trade, the underlying technology – blockchain – presents tremendous potential for the shipping industry as a whole. This article looks to shed some light on this technology, as well as other technologies, such as smart contracts, and illustrate some potential implications on the marine insurance industry.

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What is blockchain technology?

Blockchain is a ledger of transactions and data that is stored on multiple machines. While most traditional databases are housed on one centralised server, which is vulnerable to hacking, the storage of data on multiple computers (nodes) removes any single point of failure and control, and makes records almost incorruptible, while entries and changes are explicable and traceable.

Transactions or changes are only processed after several confirmations of the network, ensuring that every addition follows the parameters of the network. After the information is stored in the block, alteration or deletion is impossible unless the subsequent blocks of information are also changed and the majority of the network accepts the change/deletion. As such, this minimises the risk of fraudulent activities.

Blockchain forms a platform on which smart contracts can operate. Smart contracts are self-executing contracts in which the terms of the agreement between the parties are completely digitised and written into lines of code. A simple example would be a cargo insurance contract which would trigger once the temperature of a reefer container exceeds a specific threshold, and the loss is declared and verified by a surveyor. The insurance would automatically pay out for the loss through the smart contract. Such contracts can also automate the underwriting of policies and claims-handling between the two companies. This can streamline processes and make claims-handling more efficient, to the benefit of insurers and assureds.

Blockchain and the marine insurance industry

The potential benefits of the technology for the insurance industry are wide ranging and extend to both claims handling and underwriting/risk assessment.

Claims handling

Blockchain enables all parties, including insurers, to have access to the blockchain of data, eg bills of lading, charterparties and reports. This can reduce the time spent in collecting relevant documents from interested parties. Furthermore, blockchain technology can also reduce human errors in reviewing claim documentation and creates efficiency in the assessment of claims.

Underwriting/risk assessment

Blockchain technology has the potential to streamline processes by connecting brokers, insurers and third parties to distributed common ledgers that capture data about identities, risk and exposures, and integrates this information with insurance contracts.

In turn, the blockchain platform can link the data collected to policy contracts so as to perform the following:

- receive and act upon information that results in a pricing or a business process change
- connect client assets, transactions and payments
- capture and validate up-to-date first notification or loss data.

Ultimately, the technology has the potential to reduce the cost of insurance by simplifying transactions and minimising the administrative burden in an industry that has traditionally been relatively paper driven.

Blockchain and P&I cover

As blockchain technology is relatively new and not as yet comprehensively regulated, it is difficult to assess how and to what extent the shipping and insurance industries will adopt and regulate this technology. It may be some time before the technology and its impact are discussed fully by the International Group of P&I Clubs. One potential area where blockchain technology might impact shipping is in the use of electronic documentation (specifically bills of lading) in the transport of cargo.

Currently, a member's P&I cover is able to respond to typical P&I liabilities arising under any approved system of electronic bills of lading to the extent that these liabilities would also have arisen under paper bills of lading.[1] However, to the extent that liabilities arise because an electronic bill of lading has been used instead of a paper bill of lading, owners/members should be aware that in so far as such risks are not of a traditional P&I nature, other insurance arrangements may be required.

It remains to be seen how an increased use of blockchain in cargo-related transactions might alter P&I and other related marine cover in the future.

Legal issues arising out of blockchain technology

Notwithstanding the advantages and improvements that blockchain technology can offer, there remain several areas of uncertainty in its use.

Legislation to deal with blockchain transactions

The legal framework of a number of jurisdictions may not yet be fully equipped to deal with blockchain transactions (eg anti-money laundering requirements and anti-corruption laws will have to be updated to accommodate anonymity in blockchain transactions). Nevertheless, there are already examples of some jurisdictions taking a proactive approach with the new technology. For example, Singapore is working on a blockchain-based digital trade platform for small and medium enterprises, Fast Track Trade (FTT). Every transaction on FTT is recorded and traceable, thus making it safer and cheaper for businesses to conduct trade transactions and access financing. Prudential Singapore offers insurance to mitigate the business risks arising from the use of FTT.

Apportioning liability and disputed claims

There may be difficulties in apportioning liability in smart contracts. As mentioned, these consist of a set of instructions that self-execute as opposed to a natural written contract with prescribed legal consequences.

Difficulties in programming a smart contract to take into consideration the nuances of liabilities and attribute an exact apportionment of contributory negligence to each party is one example. By way of our earlier example, the reason for the reefer container's internal temperature having exceeded the specified threshold may be due to the crew's negligence in monitoring the temperature during the voyage or the shipper's failure to properly pack and stow the cargo within the container. Therefore, the apportionment of liability in this scenario may not be an exact science and, as such, not readily quantifiable based on the rigid parameters of a smart contract.

Law and jurisdiction

Due to blockchain ledgers' non-specific location, transactions may potentially be subject to the jurisdiction of any given node in the network. It may be difficult to pinpoint which country has legal jurisdiction in the event of a dispute. Hence, if there is an ancillary contract, its terms should include the parties' agreement on governing law, albeit that exclusive law and jurisdiction clauses can often be challenged. The lack of physical connection to any one jurisdiction may result in certain countries' courts being willing to seize jurisdiction even in the face of an exclusive jurisdiction clause.

Conclusion

In an ideal situation, blockchain technology enables the use of smart insurance contracts, which are non-paper based, self-executing, unambiguous, involving all relevant parties concurrently with zero-fraud and error. Will it survive and thrive so as to one day replace traditional models and make contracting more accessible and cost-effective for the assured? It would seem that until the technology gains wide acceptance and addresses the outstanding concerns, insurers are likely to continue concluding separate contracts with their assureds in order to accurately capture the parties' rights and obligations.

It is also to be expected that there will be further issues that will only surface after the technology becomes widely adopted. In the meantime, legal practitioners and insurers will have to work together to identify and address as many of these issues so as to maximise the benefits of the technology.

The authors acknowledge Samantha Kong, Associate, Incisive Law LLP, for her contribution to this article.

Companies such as Maersk have led the push for innovation by collaborating with IBM and Microsoft to implement blockchain technology into logistics and insurance platforms.

1 23 October 2015, Standard Club circular – Electronic (paperless) trading systems – essDOCS, Bolero, E-title Authority Pte Ltd. http://www.standard-club.com media/1927767/23-october-2015-standard-asia-circular-electronic-paperless-trading-systems-essdocs-bolero-e-title-authority-pte-ltd.pdf

Lien on sub-freights and sub-hire: practical considerations for shipowners

A clause[1] in a charterparty that entitles a vessel owner to secure payment of hire and other sums due under the charter by way of a right to lien sub-hire and sub-freight is an established feature in maritime business. Recently, the nature of the right to lien sub-hire and sub-freight, and the further steps required to be taken to enforce this right against a charterer, was considered by the High Court of Singapore.[2]

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Lien on sub-hire or sub-freight

Whilst the concept of a lien[3] at law is widely understood, the precise legal nature of an owner's lien on sub-freight or sub-hire seems less obvious. Does such a lien amount to a charge over the assets of the charterer? If so, does a charge created by an owner by simple issuance of a notice of lien on sub-hire become readily enforceable? Or are further steps required to perfect the lien? Specifically, is the failure of an owner to register the charge fatal to his claim pursuant to the lien in the event a charterer goes into liquidation?

These and other questions were considered by the court.

Facts

Diablo Fortune, owner of *V 8 Stealth II*, bare-boat chartered the vessel to Siva Ships International Pte Ltd, a company incorporated in Singapore. The charterer in turn entered into a pooling arrangement with V8 Pool Inc through which the charterer earned hire.

The charterer subsequently went into liquidation and the owner sought to enforce a lien over sub-hire pursuant to Clause 18 of the charterparty by serving a notice of the lien on the pool. The pool consequently withheld hire payments to the charterer who was by then in liquidation.

Issue

The liquidators of the charterer applied to the Singapore High Court seeking an order directing payment of the hire to the charterer on the basis that the lien on sub-hire was void for want of registration with the Accounting and Corporate Regulatory Authority of Singapore (ACRA).

Decision

The court decided in favour of the liquidators of the charterer and held that the lien over sub-hire created by the charterparty was registrable pursuant to the Singapore Companies Act (CA)[4]. Accordingly, as the owner failed to register the lien as prescribed by the CA, it was held to be void as against the charterer.

In reaching the decision, Her Honour Judicial Commissioner Audrey Lim characterised the lien over sub-hire as a book debt or a floating charge pursuant to sections 131(3)(f) and 131(3)(g) of the CA, respectively.

1 For example, Clause 18 of the New York Produce Exchange (NYPE) 1993 materially provides 'That the Owners shall have a lien upon... all sub-freights and/or sub-hire for any amounts due under this Charter...'
2 Duncan, Cameron Lindsay and another v Diablo Fortune Inc and another matter [2017] SGHC 172.
3 Latin, ligare = to bind. A right to hold and retain another's property until a claim is satisfied, A Dictionary of Law, 2nd edition, LB Curzon.
4 (Cap 50, 2006 Rev Ed).

Observations

The decision raises a number of interesting points. We highlight three.

First, the choice of law. The owner contended that the head charter which created the lien was subject to English law, pursuant to which the requirement to register a lien on sub-hire or sub-freight would not apply since, pursuant to English law, the charterer was a foreign company. The court rejected this argument and held that, where insolvency proceedings are commenced, the court of that jurisdiction would apply the insolvency scheme and the laws of that jurisdiction to matters arising from the insolvency. Accordingly, whether or not the lien on sub-hire was registrable is an issue for Singapore law by virtue of the insolvency proceedings taking place in Singapore.

Second, the owner's application to stay the Singapore court proceedings in favour of arbitration in London pursuant to the arbitration clause in the charterparty was dismissed. The court held that, as the dispute under the CA involved the operation of the insolvency regime, public policy considerations applied for the protection of the creditors of the company as a whole. Accordingly it was held that a dispute arising under section 131 of the CA was non-arbitrable, even if the parties expressly included them within the scope of the arbitration.

Third, the court considered the regime in respect of lien on sub-freight or sub-hire in other jurisdictions, notably Hong Kong and England.

The court noted that the Singapore position is similar to the English position, ie if the charterer was a company incorporated in England, and subsequently liquidated in England, the owner's lien on sub-freights will be void against any liquidator of the charterer unless the particulars of the lien were registered as a charge within the statutory time prescribed for registration[5].

In contrast, in Hong Kong, express provision exists in the Hong Kong Companies Ordinance to exclude a shipowner's lien on sub-freights for amounts due under the charter from being regarded as a charge on the book debts of the company or a floating charge, and accordingly there is no requirement to register the same. As such, in Hong Kong, an owner would not be subject to any requirement to register the lien. In contrast, the Singapore High Court, whilst acknowledging the commercial inconveniences of the requirement for registration of lien over sub-hire or sub-freight, was not prepared to dispense with the requirement for registration of the lien, in the absence of express legislative provision.

Lessons learned

A lien on sub-hire or sub-freight remains a useful tool in a vessel owner's armoury to secure payment of sums due under the charterparty (especially in the current shipping climate). However, to ensure that this right remains enforceable, the member should conduct due diligence both in respect of the financial standing of its counterparties and of any particular legal requirements and formalities applicable in the relevant jurisdiction of the counterparty, for example, the need for timely registration with the appropriate bodies in respect of the lien in order to protect the member's interests in the event that a counterparty goes into liquidation. Needless to say, a relatively small amount of extra effort extends a long way in securing our members' interests. The club, with its extensive network of service providers globally, is able to assist our members to obtain the appropriate legal advice in this regard.

The club will monitor and inform members of developments, as appropriate.

5 Section 860 UK Companies Act 2006, see Ugland Trailer [1985] 2 Lloyd's Rep.372 and The Annangel Glory [1988] 1 Lloyd's Rep.45. However, as Bowtle pointed out at [2013] LMCLQ 44, this requirement does not apply to overseas companies.

DNA tracer technology

A powerful new risk management tool to assist both ship and cargo owners in their costly fight against claims and disputes arising from pollution, oil spills and discharges.

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Forecast Technology has pioneered the development of synthetic DNA tracer technology as a simple and inexpensive method of marking vessel cargoes and other hydrocarbons, including residues found in slops and bilges. The tracer provides indisputable proof of source in order to avoid and/or minimise extremely costly and time-consuming disputes on culpability and regulatory compliance issues.

For further information or discussion on any aspect of the science, design and qualities of this pioneering technology, please visit Forecast Technology's website at www.forecasttechnology.com or contact Dudley Chapman, Stuart Hall or Robert Armstrong, directly on +44 1869 337558.

The issue

Claims and disputes arising from pollution, oil spills and discharges result in ever-escalating legal, investigation and insurance-loss adjustment costs, as well as major disruption to operations, irrespective of fault.

The product

Researched, developed and tested at the laboratories of Minton Treharne and Davies in Cardiff, Forecast Technology's synthetic DNA tracer can be coded with the signature number issued to every vessel by the IMO, thereby adding a permanent and unique 'fingerprint' to all onboard fluids irrespective of whether they are oil or water based.

Forecast Technology's range of patented synthetic DNA-based tracers are easy to transport and straightforward to administer with minimal interference to operations. The use of synthetic DNA makes the tracer robust, water resistant and incorruptible, and as a naturally occurring material, these tracers are environmentally friendly and generate no side effects harmful to marine or human life.

Proof of culpability

The tracer technology was designed to address an increasingly unsatisfactory situation for shipowners and cargo owners alike (as well as underwriters and insurers), where even the most spurious of claims raised by regulators or third parties in the aftermath of an oil spill/discharge or a pollution incident is likely to result in huge legal defence and root cause investigation costs, often amounting to hundreds of thousands of dollars, in addition to a major disruption of operations. Adoption of the DNA tracer system offers a speedy and indisputable method of proving or disproving culpability that will bring transparency to any situation and help simplify this area of compliance with legislation and regulation.

The potential benefit

The potential cost saving to shipowners from the introduction of this technology is obvious and substantial. Forecast Technology's synthetic DNA tracer system provides clear and indisputable proof of source and can affirm both guilt or innocence. International law requires that vessels use pollution prevention equipment to preclude the discharge of waste oil and oil-contaminated waste water. Should any overboard discharges occur, they must be documented in an oil record book. Falsification of the oil record book is by far the most common offence cited during prosecution of environmental crimes. Forecast Technology's synthetic tracer system is designed to help eradicate such practices and assist crew in maintaining an accurate oil record book.

Interview with the editor

For the second year running, Standard Asia took on an intern as part of the Maritime and Port Authority of Singapore (MPA) Global Internship Award (GIA). Ziyi (Zac) Lim discusses his experience of working in an international maritime company.

The Standard P&I Club is committed to promoting the professional development both of its staff and the wider shipping industry. For the second year running, Standard Asia participated in the MPA GIA. This fully sponsored internship provides high-achieving students who aspire to a maritime career with the experience of working with international maritime companies in Singapore and beyond.

Andrew Tan, Chief Executive of the MPA, said of the 2017 MPA GIA awards: *'The strong interest in this year's GIA shows that, notwithstanding the current challenges facing the industry, the maritime sector continues to invest in future talent. The number of GIAs has seen a steady increase from 23 in 2014 to 39 in 2017.'*[1]

Ziyi, who joined Standard Asia for a 10-week internship, discusses his experience below.

Tell us about yourself

I am currently in my penultimate year at the Singapore Management University (SMU) reading Economics as a first degree with a focus on maritime studies.

I come from an average Singapore family. No one in my family works in the shipping industry. Nonetheless, they know that shipping is my interest and are behind me all the way.

Why maritime studies?

Believe it or not, I was inspired by the anime *One Piece*, and *Pirates of the Caribbean*. I was curious to find out more about the shipping industry. I subsequently enrolled and completed a Diploma in Maritime Business at the Singapore Polytechnic.

Over the course of my studies, I realised that the maritime industry extends wider and deeper than the media could portray. I appreciated the industry's importance to Singapore and indeed to the global economy.

How did you know about the programme and how were you selected?

The MPA reached out and conducted a roadshow at the SMU to generate interest in the programme. At the first round of interviews, candidates were required to collaborate, brainstorm and present solutions to resolve current maritime challenges facing Singapore. The second round of interviews was conducted by various participating companies. Standard Asia was the first company to interview me. The chance to work with a leading International Group P&I club in a position which is not desk-bound and with plenty of opportunities to interact with people from across the spectrum of the maritime industry was simply too good to pass up. Needless to say, I accepted Standard Asia's offer right away!

The MPA Global Internship Award Ceremony 2017 on 11 May 2017. 2017 MPA GIA intern to Standard Asia, Ziyi Lim flanked by Andrew Tan (R) and David Roberts (L), Managing Director of Charles Taylor Mutual Management (Asia) Pte. Limited, managers of Standard Asia.

1 http://www.mpa.gov.sg/web/portal/home/media-centre/news-releases/detail/c6e0c98b-8dfd-437f-80d2-b56c48217452

What did you do as an intern?
The ten-week programme was well-structured and aimed at providing the intern with the widest possible exposure to the workings of the P&I club and its related businesses.

The first four weeks were spent with Standard Asia in Singapore. I was introduced to the different aspects of marine insurance with a focus on war insurance. I worked closely with the underwriters of the Singapore War Risks Mutual (SWRM).

I then spent four weeks in London working with the club's reinsurance team. I was given a thorough grounding in the process of underwriting in respect of onshore and onboard risks.

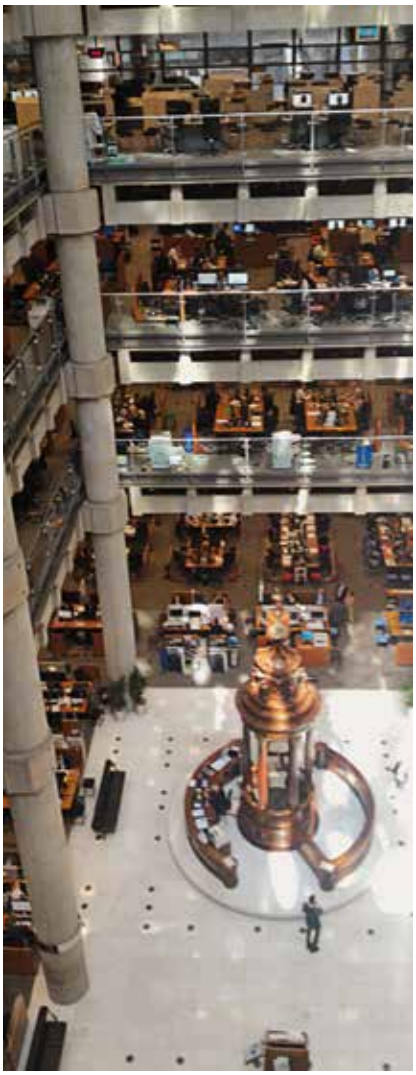
My final two weeks were spent in Singapore where I worked on a project culminating in a 45-minute presentation on piracy to the Standard Asia team.

Top three takeaways
Soft skills are as important as technical skills, even more so in shipping. I shadowed various underwriters and brokers, which was invaluable training at communicating in a business setting. I learned to converse and craft emails from different perspectives and for different purposes.

In London, I had the opportunity to experience and immerse myself in a different cultural environment from Singapore. I realised the importance of adapting to different cultures in order to conduct business worldwide.

Lastly, visiting Lloyd's of London was a great learning experience. The architecture and lively atmosphere are unique, as are the formalities. I was reliably informed that removing my jacket or tie whilst in the building may attract the attention of security! I was particularly impressed that face-to-face brokering has been retained over the centuries to good effect.

Final words?
I am grateful to the MPA for the opportunity to have a headstart in pursuing a shipping career by experiencing life at work in a top-tier international maritime company and living in the UK. Thank you too to the people at The Standard Club both in Singapore and London who made me feel welcome and who generously shared their expertise.



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The Standard P&I Club

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Charles Taylor