



Crew well-being

Adapting to the “new normal”

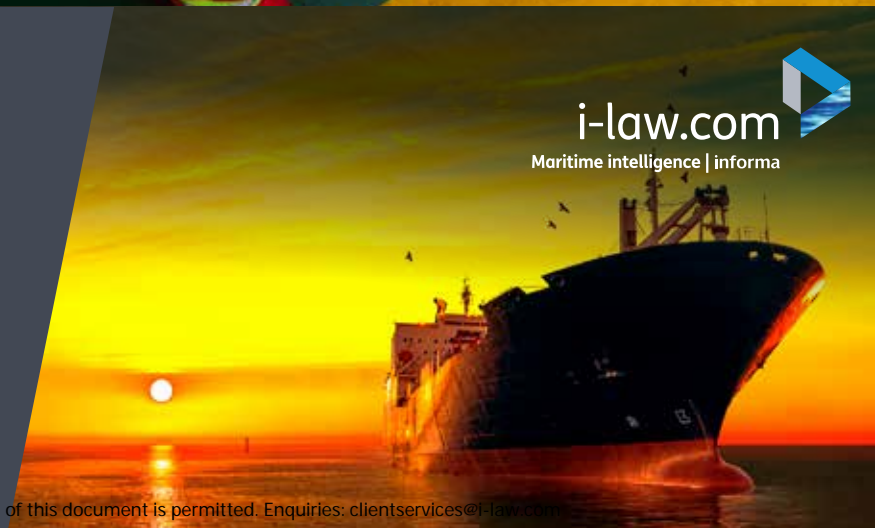
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In this issue

REGULARS

- 4 News
- 7 Our Mutual Friends
- 26 Classified directory of services

FEATURES

- 8 **The human risk of Covid-19**
Neale Rodrigues, of Britannia P&I, provides a loss prevention perspective on seafarers' work and welfare during Covid-19
- 10 **Managing Covid-19 challenges**
Richard Cain, of Thome Offshore Management and Thome Oil & Gas, discusses crew welfare issues through the Covid-19 pandemic
- 12 **Remote surveys – the future?**
Voirrey Blount, at Reed Smith, reports on the impact of Covid-19 on remote surveys and at how the workforce has had to adapt
- 14 **Getting the facts straight**
Ian MacLean, of Hill Dickinson, provides a checklist for the master's statement of facts
- 16 **Renewables driving offshore market**
Sian Dinnadge, of the Standard Club, reviews offshore wind energy and P&I cover for offshore contractors
- 18 **Lloyd's reparations and insuring the "Middle Passage"**
Helene Peter-Davies, a lawyer in the London marine market, takes a look at the marine insurance involvement in the slave trade
- 21 **Safeguarding vehicle and machinery operations in ports**
James Mountain, of Fire Shield Systems, considers fires at ports
- 22 **Mississippi Rising: considerations from a claims perspective**
Taylor Coley, of Thomas Miller Americas, looks at the risk of major river flooding
- 22 **Lessons learned from a mooring operation gone wrong**
Stuart Edmonston, loss prevention director, UK P&I Club, considers a recent mooring issue
- 24 **Shipping law on rescuing migrants**
The legal position on saving life at sea is not straightforward, writes David Osler of *Lloyd's List*

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IN BRIEF

Seafarers essential

The government of Jamaica has listed seafarers among the class of “essential workers” under its Disaster Risk Management Act and has put in place measures to speed up the transit of registered seafarers through its borders. An estimated 600,000 seafarers are waiting for crew changes – 300,000 on vessels and 300,000 waiting to embark – according to the International Transport Workers’ Federation. Many of those on board have been working for up to four months past their contracted dates while those waiting to embark are typically not receiving wages, leaving them facing financial ruin.

Import/export

Six of the world’s largest ports, with a combined US\$1.14 trillion of import/export trade for the H2 period, are said to be exposed to increasing geopolitical and windstorm risk in 2020. The trade volumes of each port easily exceed \$100 billion, according to analysis by the Russell Group. Hong Kong, currently in the eye of a geopolitical storm cloud, heads the list of ports with \$288 billion of trade passing through, with Singapore coming in not far behind with \$255 billion. Houston, meanwhile, which lies at the heart of US global shipping, is potentially exposed to nearly \$188 billion of Gulf of Mexico windstorm risk at the midpoint of the hurricane season.

Hurricane warning

With the US National Oceanic and Atmospheric Administration warning 2020 will see “above-normal” hurricane activity, Skytek, in collaboration with Aon plc, has responded to the needs of marine (re)insurance companies with a new hurricane tracking system, enabling them to evaluate and aggregate at-risk cargo, hull and offshore assets in relation to the “cone” of a storm. The tool provides near real-time access to insured assets such as the global vessel fleet, exploration and production units, storage facilities, and transmission systems operating in hurricane-affected waters. The tool has flexibility to evaluate assets within any cone of uncertainty, howsoever drawn.

Oil spill highlights legal shortfall

Following the recent oil spill incident south of Mauritius, a number of issues are raised with regard to compensation limits, according to Martin Hall, partner and head of marine casualty at Clyde & Co. The oil spill occurred after the bulk ship carrier MV *Wakashio* ran aground on a coral reef in July. The ship began to leak fuel oil and broke apart in mid-August. Mauritius declared a state of environmental emergency after some 1,000 tonnes of fuel had leaked into the surrounding waters.

Hall said: “As the ship is not a laden tanker, any compensation claims seem likely to be dealt with under the 2001 Bunker Convention. This provides for mandatory third-party insurance cover and allows claims of third parties for clean-up expenses and other losses caused by pollution from bunkers to be made directly against the insurers. However, owners may be entitled to limit liability in accordance with the Convention for Limitation of Liability for Maritime Claims 1976, or as amended. Compensation is based on the gross tonnage of the vessel, which in this case appears to be 101,932 tonnes, and which would entail a cap of around US\$18 million if Mauritius has only enacted the 1976 Limitation Convention.”

Hall explains that any prospects of breaking this limit seems unlikely: “The only means of breaking the limit in the likely event that claims exceed the limitation fund under the 1976 Limitation Convention would be to prove that the owner is personally responsible for the loss and that they either acted with the intention to cause the loss or that they acted recklessly and with knowledge that the loss would probably result. Although the Bunker Convention 2001 only came into force in 2008, this terrible incident shows that it is already time for governments of coastal states to urgently consider the applicable limits and enact the updated limits under the 1996 Protocol to the Limitation Convention to ensure compensation claims are properly covered.” **MRI**

Impact of Covid-19 on crew welfare

The latest Seafarers Happiness Index, published by The Mission to Seafarers, has revealed the ongoing impact of Covid-19 on the welfare of international seafarers and their families. The report shows the continuing decline of happiness at sea, largely due to the inability of seafarers to sign off and return home. Heavy workloads, virus fears and a perceived lack of Covid-19 precautions on board vessels are exacerbating the decline in satisfaction.

The latest survey, undertaken with the Shipowners’ Club and Wallem Group, analyses the experiences of seafarers across the global maritime industry between April and June 2020, at the height of the Covid-19 pandemic. Overall, seafarer happiness has dropped from 6.30 in Q1 2020 to 6.18 in Q2 2020. The latest report shows vessels are sailing with fewer crew, increased sickness on board and a pressure to keep hygiene standards at almost hospital-like levels. The demands of meeting these standards while also maintaining social distancing are relentless and seafarers are struggling to adhere to new guidance.

This level of workload has been relentless since the outbreak of Covid-19 and is clearly taking its toll. Seafarers have reported feeling unsupported, stressed and without respite, which is impacting work standards as well as the welfare of seafarers. Combined with the challenge of accessing medical services, the risk of an increase in incidents of self-harm and in the number of accidents is very real as stress impacts work, compromising safety at all levels.

Andrew Wright, secretary general of The Mission to Seafarers, said: “We are in the middle of a welfare crisis. While Q1 showed us how seafarers suffered as Covid-19 struck home and provided insight into the support that was needed, the Q2 report highlights the cost of inaction and the need for immediate solutions. It is paramount that we see progress with crew changeovers, onboard PPE and improved communication between shore and sea, to defuse this ticking timebomb. Protecting seafarers is a priority and governments must now come together and work with industry before it is too late.” **MRI**

IN BRIEF

Innovation certification

Classification society ClassNK is launching a service titled “Innovation Endorsement”, for certifying innovative technology. In February 2020 the Society announced the “ClassNK Digital Grand Design 2030” which shows its future vision for the digital society of 2030, aiming to support the evolution of ocean-related business by meeting the new needs of clients brought about by digital technology and data distribution, and contribute to the further improvement of safety. The Digital Grand Design cites three fundamental policies, with one of them being to “diversify certification services and expand their scope”.

Ammonia power

NYK Line, Japan Marine United Corporation and Nippon Kaiji Kyokai (ClassNK) have signed a joint research and development agreement for the commercialisation of a gas carrier that would use ammonia as the main fuel, in addition to an ammonia floating storage and regasification barge. Since carbon dioxide (CO₂) is not emitted when ammonia is burned, it is regarded as a promising next-generation fuel that could mitigate shipping’s impact on global warming. In addition, it is said that zero emissions can be realised by using CO₂-free hydrogen as a raw material for ammonia.

Liquid cargo simulator

Bernhard Schulte Shipmanagement (BSM), has launched a liquid cargo training facility at its maritime training centre in Cyprus. This, combined with a structured career progression model, will ensure BSM’s LNG crews are highly trained and competent to support its growing global LNG shipping operations. The new immersive environment is part of a wider boost to LNG training across the whole company, reflecting increasing industry demand and more LNG vessels entering the market. It offers realistic training on a wide range of vessel types: LNG-fuelled ships and LNG gas carriers with a combination of cargo containment systems and different propulsion systems with various options for LNG-fuelled ship and LNG fuel supplier configurations.

Warning on crew changes and disruption to cargo

Intercargo has warned of far-reaching repercussions if terminal and cargo operations are halted and cargo vessels stop operations and trading as a result of crew remaining on board vessels for 12 to 17 months. If worldwide progress is not made on crew change, the safety of crew, ships and cargoes could be compromised, it said. About 300,000 seafarers remain trapped on board their ships and a similar number are awaiting re-employment while suffering financial hardship.

Despite a universal campaign from all sectors of the shipping industry, Intercargo says that hundreds of thousands of seafarers still continue serving after completing their Seafarer Employment Agreement (SEA) and that many of them have now spent more than 12 months on board. This situation is exacerbated by the fact that bulk carriers on tramp trading call at many more ports than other shipping sectors do, piling added strain on an already fatigued workforce with no hope of crew change.

Dimitris Fafalios, chairman of Intercargo, warned: “We have seen crew changes refused because a Covid-19 test could not be carried out within the prescribed 48-hour window before the crew’s arrival, despite the journey to the port taking three days. In some other countries which claim to allow crew change, in fact this happens only if crew can be replaced with the country’s nationals.” Intercargo supports the cross-industry recommended framework of protocols for ensuring safe ship crew changes and travel during the Covid-19 pandemic and places great emphasis on accurate testing procedures, especially for on-signing crew. It says that seafarers should be tested prior to departure from their home country and tested again at arrival to port prior to going on board ship. Similarly, seafarers disembarking from ships should be tested prior to coming ashore or flying out. If tests are negative, they should be exonerated from quarantine. Additionally, it says that all seafarers should be allowed to travel with visa exemptions for joining ships, and that port states should allow seafarers to sign off without confirmed flight tickets and wait in isolation hotels while awaiting flights, which, subject to availability of flights, could be for a long time.

- See pages 8 and 10 for more on crew changes and welfare. **MRI**

Beirut port re-opened, with marine losses low

The economic damage to Beirut following the warehouse explosion in the port has been estimated at around US\$15 billion, while the insured loss in the marine sector, for damage to ships, goods and the port itself, was likely to come to less than \$250 million, reinsurance broker Guy Carpenter said. Overall insured losses – including property damage – from the explosion on 4 August could reach around \$3 billion, claimed Reuters.

Guy Carpenter said that information showed 10 vessels were within 1.6 km of the blast and 40 vessels within 10 km. It said: “We expect those vessels would have incurred damage. Many other vessels were within a radius where sporadic damage may have occurred,” adding there was still “substantial uncertainty” around insured losses, but early analysis suggested that hull, cargo and port facility losses would come to less than \$250 million.

US insurer Liberty Mutual said it expected claims of between \$25 million and \$50 million from the explosion. AXA XL said that it had exposure in Lebanon but it was too soon to give a loss estimate. Meanwhile container lines have resumed calling at Beirut Port as the terminal was sufficiently far away from the explosion to avoid serious damage. Hamburg, Germany-based container line Hapag Lloyd said that its first ship to call at Beirut since the disaster was due to dock on 14 August. CMA CGM added: “Damage to Beirut terminal being less serious than what could be expected after the tragic events, the first CMA CGM vessel, *Nicolas Delmas*, operated there with success on Monday.” Beirut’s container port has an annual average capacity of just higher than 1 million TEUs, compared with Tripoli’s 400,000 TEUs, although the latter’s capacity could be expanded if needed. **MRI**

IN BRIEF

Well-being award

Inmarsat has joined forces with Shell Shipping and Maritime and maritime digital consultancy Thetius to launch a new “Open Innovation Challenge” for start-ups and SMEs to identify technology that can benefit crew safety, health and well-being at sea at a moment when Covid-19 has exposed the welfare of seafarers to global scrutiny. The Open Innovation Challenge is looking for novel solutions that have the potential to improve crew safety and welfare across four challenge areas spanning deck safety, fatigue, administration reduction and overall well-being.

Recycling approach

Evergreen Marine Corporation (Taiwan) has become the 11th shipowner to publicly disclose its approach to ship recycling through the Ship Recycling Transparency Initiative (SRTI) online platform. It said: “We are committed to the planning of a completely sustainable life cycle for our vessels from design, construction, operation and ultimately to decommissioning. As such, we are delighted to join SRTI, through which signatories can share their ship recycling information via an online platform, helping the industry to improve its eco-friendly recycling policies and practices, and to work together in sustaining an ‘evergreen’ global environment.” The shipowner, headquartered in Taiwan, is the fifth signatory to join the SRTI in 2020, bringing the total number of signatories to 26.

Vessel launch

MV *Roknoor-32*, a general cargo vessel, built under the classification of the Indian Register of Shipping (IRClass), was successfully launched from the Delta Shipyard in Chattogram, Bangladesh. Ordered by Unichart Navigation, it is the first in the series of five vessels and is also the first Bangladesh flag vessel being constructed under IRClass. The launch follows several other vessels which were built under IRClass’s classification and successfully delivered during the coronavirus pandemic.

Drone usage at sea accelerates

The development of drones, autonomous road vehicles and unmanned ships has been rapid in recent years. The benefits of such automation to freight transport infrastructure are often enumerated – sustainability, cost reduction, environmental protection and resistance to disruption. However, the adoption of such technologies has seen a degree of resistance due to concerns over safety, security, levels of investment and variable regulatory regimes. The TT Club has recently launched a webinar exploring these issues.

TT Club’s managing director for loss prevention, Mike Yarwood, said: “Some of the concerns about widespread use of autonomous transport methods, safety and security for instance, can be in fact improved in certain circumstances through the technology.”

In the webinar, Svilen Rangelov, co-founder and CEO at Dronamics, outlined the flexibility of drones in delivering cargo to smaller and possibly more remote centres of population as economically and as swiftly as larger cities. Speed to market for urgently required supplies, such as has been seen during the Covid-19 crisis, was also emphasised.

At sea, the near-term benefits of autonomy including increased safety and voyage optimisation have already been realised. The medium-term benefits of reduced crew are expected to impact coastal cargo vessels the most, where crew expense forms a higher percentage of operating costs and where enhanced situational awareness and precise manoeuvrability is at a premium. Hussain Quraishi, strategic innovation manager at Wärstillä, said autonomous technology in the marine sector is well advanced across smart sensors, smart routing and smart vessel control. The technology is demonstrable and has been proven to enhance safety and provide operational savings.

Yarwood added: “The Covid-19 crisis has certainly acted as an accelerator for change in potential adoption of autonomous technology, as it has in other aspects of supply chain management. But significant barriers need to be overcome. Our panel identified a number of these and responded to concerns from the webinar’s participants around the world.”

A lack of uniform regulation across national governments and even within countries is a major block to autonomous vehicle and drone deployment. Environmental hazards such as bad weather, winds and high seas affecting drone operation and autonomous ships, and icy and rain-affected roads are seen as challenges that technology can cope with and the avoidance of human error is generally seen as an asset in improving safety. However, a vulnerability to cyber attack that is perceived to increase with the use of computer-controlled vehicles is a strong disincentive to adoption, the forum concluded. **MRI**

London still dominates arbitration

Research by HFW has found that London continues to dominate the market for international maritime arbitration, accounting for more than 80 per cent of all cases globally. London handled 1,737 maritime arbitrations in 2019 – up 14 per cent on the previous year – which equates to around 83 per cent of all international maritime arbitrations that year, according to HFW’s analysis of data from major arbitral institutions around the world. Singapore and Hong Kong – London’s two strongest competitors – trailed with 229 and 124 international maritime arbitrations in 2019, respectively.

Craig Neame, partner at HFW, said: “This data clearly shows the extent of London’s continued dominance in the international maritime arbitration industry, and we see nothing to suggest that will change anytime soon. Credibility and trust in London’s arbitration centres remain high among international parties – the London Maritime Arbitrators Association accounted for 96 per cent of all international maritime arbitrations globally in 2019. Singapore and Hong Kong remain attractive to companies in Asia, and in recent years the UAE has launched the Middle East’s first dedicated maritime arbitration centre – the Emirates Maritime Arbitration Centre – and the Nordic Offshore and Maritime Arbitration Association was established as an alternative to post-Brexit London for both maritime and non-maritime international disputes. They may emerge as future forces in international maritime arbitration, but, for now, London – and English law – continue to rule the waves.

“As the UK continues through its post-EU transition period, and the world grapples with the Covid-19 pandemic and its economic aftershocks, it is difficult to predict with absolute certainty the future maritime arbitral landscape. However, as companies within the industry start to face economic challenges and ensuing disputes as a result of the post-pandemic global financial downturn, we expect the use of arbitration to increase.” **MRI**

Charles Taylor TECHNICAL EXPANSION

Charles Taylor has expanded its marine technical services team with the addition of four senior marine surveyors: John Poulson, Sean Murphy, Captain Glenn Walker and Peter Poulson; as well as operations manager, Lillian Aquilia, effective immediately. They will operate from Charles Taylor US locations in New York, Boston, Savannah and San Francisco. A senior technical director will be joining the team in the UK.

John brings more than 40 years' experience in marine engineering, surveying, consulting, claims and loss prevention. As a senior manager, he has held various leadership roles for the coordination and oversight of global marine surveying and consulting operations, quality control and dispute resolution. He is also a chartered engineer.

Sean is a chartered engineer and naval architect with seven years of consulting across a range of maritime and engineering matters focused on mitigating incident risk. Glenn is a master mariner and marine surveyor with 25 years dedicated to the US Merchant Marine and yachting industry for commercial, government and private vessels.

Peter is a USCG-certified marine engineer and surveyor overseeing surveying and consulting services for a cross-section of instructing principals. He has extensive passenger vessel experience in the Antarctic with CMI Inc and on ultra-deep water drilling ships.

Lillian, a seasoned global operations manager, has been responsible for the centralised coordination and instruction of surveyor attendances on behalf of underwriters including H&M, P&I, vessel owners, cargo and other marine concerns.

Skuld GREEK APPOINTMENT



Skuld has appointed Helen Yiacoumis as head of freight, demurrage and defence (FD&D) in Skuld Piraeus. She will join Skuld on completion of her contractual obligations and will be based in Piraeus.

Prior to joining Skuld, Helen spent almost 18 years at The North of England P&I Association, where she joined as a

solicitor and progressed to director in the Greek office. Helen is a qualified solicitor and worked at Holman Fenwick Willan International between 1999 and 2001.

Ocean Technologies Group NEW CHIEF PRODUCT OFFICER

Learning and operational technology innovator, Ocean Technologies Group, has further bolstered its leadership team with the addition of Caspar Atkinson as chief product officer.

Caspar has more than 20 years' experience in creating digital products and delivering technology solutions, successfully launching B2B and B2C products in a diverse range of companies from start-up through to multinational corporate. He has also held product leadership roles at Sky, Brandwatch and Realtime 3D gaming pioneers Polystream as well as working as a technology consultant for IBM and Accenture.

Hill Dickinson HEAD OF MARINE

Tony Goldsmith, partner, master mariner and marine casualty specialist, has been appointed as head of marine and trade at Hill Dickinson, succeeding the firm's current head of marine, David Wareing, who is due to retire in the autumn having held the position since 2017.

Tony, a former seagoing master mariner (class 1), joined Hill Dickinson in 1993 and became founder and managing partner of the firm's Singapore office when it opened in 2009. He will return to the UK later this year to take up his new post. Before joining the then-named Hill Taylor Dickinson in 1993, he was a deck officer with Ocean Fleets, sailing on tankers, bulk carriers and general cargo vessels.

He is on the Singapore Chamber of Maritime Arbitration panel of arbitrators, and is a mediator with the Singapore Mediation Centre. His professional affiliations include being a Liveryman of the Worshipful Company of Shipwrights.

He will be succeeded in the firm's Singapore office by marine trade and energy partner, Andrew Lee.

Watson Farley & Williams DISPUTE RESOLUTION PARTNER

Watson Farley & Williams has announced that dispute resolution expert Marcus Dodds has joined the firm as a partner in London. He was previously a partner at

Reed Smith, where he was co-head of the LNG and offshore groups.

A highly experienced litigator and former ship's captain with more than 30 years' experience in the maritime sector, Marcus has a broad practice spanning both dry shipping, offshore and Admiralty matters, both contentious and non-contentious. A recognised expert in offshore and LNG shipping, he has acted as external legal advisor to the international industry body SIGTTO (Society of International Gas Tanker and Terminal Operators) for many years and sits on Lloyd's Register's Classification Committee.

FIATA WINNERS NAMED

FIATA (International Federation of Freight Forwarders Associations) and international freight transport insurer TT Club have announced this year's regional winners for the Young International Freight Forwarder of the Year Award.

Representing their respective companies and national associations, candidates submitted their dissertations earlier in the year, focused on demonstrating their expertise in freight forwarding. The dissertations sought to illustrate complex multimodal shipments of cargoes such as large crane assemblies, locomotives, halal meat and rainbow trout eggs. Many of the candidates this year were able to further demonstrate their expertise through inclusion of Covid-19 challenges, explaining how these were overcome.

This year's regional winners are:

- Europe: Femke Marie Fürst (DSLVL – Germany).
- Africa and Middle East: Vimbai Loreen Manyumbu (SFAAZ – Zimbabwe).
- Americas: Anastasia Gureeva (CIIFFA – Canada).
- Asia Pacific: Umair Aamir Sheikh (PIFFA – Pakistan).

Shipowners' Club NEW BOARD MEMBERS

The Shipowners' Club has appointed Peter Sydenham and Jan Vermeij to its board of directors, with effect from November 2020.

Peter brings with him more than 40 years of insurance and reinsurance experience, having recently held posts of managing director and leader of special lines at Swiss Re. Jan is chief operating officer at Ultrana and is also the executive director of Ultratug, Chile.

Managing the human risk of Covid-19

Neale Rodrigues, of Britannia P&I, provides a loss prevention perspective on seafarers' work and welfare during Covid-19

Seafarers are facing increased demands on their workloads due to the impact of the coronavirus pandemic. Covid-19 has had a serious impact on the way we all work and live, with lockdowns and working remotely the new norm. It has also adversely disrupted the lives and working environment of the approximately two million seafarers around the world, who as a result need help and support to overcome the challenges.

Dealing with the pandemic on board vessels has not been easy. Seafarers are already in often stressful roles and the extra work involved, including acquiring and wearing appropriate personal protection equipment, keeping the ship appropriately sanitised and trying to maintain social distancing, have added to their existing responsibilities.

Crew are being expected to perform these extra duties due to the fact that some of the tasks which are normally performed by specialists, eg stevedores and port officials, are no longer

possible due to quarantine-related restrictions. This additional work often requires extra risk assessments, with appropriate management oversight, with new procedures and safe working practice guidelines.

Maritime Labour Convention (MLC) 2006

The Maritime Labour Convention (MLC) 2006 was put in place to set out seafarers' rights to decent conditions of work regarding safety, their health and well-being and other forms of social protection. MLC 2006 also sets out the maximum duration of service periods on board for crew, currently no longer than 12 months, after which a seafarer is entitled to repatriation. It also stipulates the statutory minimum paid annual leave, which equates to 30 days per year. Therefore, according to MLC 2006, the maximum time a seafarer should serve on board is 11 months before being entitled to take one month of paid annual leave. Under the MLC, flag states also have a responsibility towards the right of seafarers to be repatriated and port states have an obligation to facilitate such repatriation as well as the replacement of seafarers.

“Having to stay on board beyond the end of a contracted period is difficult to deal with, mentally and physically”

At the time of writing, there are around 200,000 seafarers working beyond their contract durations and waiting for repatriation. From the author's experience, when you join a ship, whether on a two-month or an 11-month contract, the mindset



is geared toward that contracted period and, as you come towards the end of the contract, you prepare yourself for signing off and going home. Having to stay on board beyond that period is difficult to deal with, mentally and physically.

The May 2020 edition of “Crew Watch”, produced by Britannia P&I, has provided guidance and advice to seafarers on how to protect themselves and others, and maintain their mental health during this pandemic. This practical advice, on a number of technical issues arising from the pandemic, is set out below.

Surveys

Remote classification and statutory surveys are now being undertaken by classification society and flag state surveyors who are unable to attend a ship due to travel restrictions. To conduct these surveys, ship staff, primarily senior officers, are required to provide pictures, videos and reports on the areas being assessed.

There are, however, concerns regarding the quality of information that will be provided, particularly whether issues or items may be missed or misrepresented. Guidance about remote survey requirements and associated responsibilities has been recommended and discussed.

Social distancing

Advice has been issued to seafarers concerned about lack of personal protection equipment and social distancing protocols from some pilots and port officials. In some countries, stevedores stay on board a ship for the entire cargo operation, often with their families, and this can amount to up to 50 additional persons on board. Ship staff have therefore been advised on the need to establish new safe working protocols appropriate for working in close proximity with third parties joining the ship for a limited time, as well as defining safe working and “no access” areas.

Fumigation

In one example, due to Covid-19, an approved fumigator was not able to go on board to conduct their operations. Ship staff were therefore asked to undertake the involved tasks instead. A prerequisite for permitting such an operation is obtaining permission from local biosecurity and port state authorities, as well as the flag state, and local/crew labour authorities.

Masters and responsible crew must also be provided with all the necessary training and equipment and must be made aware of all associated hazards. It must also be ensured that if responsible crew are not satisfied with the training or equipment, then they are not compelled to carry out tasks such as in-transit fumigation.

Tanker operations

Tanker operations have been modified to reduce face-to-face interactions to minimise infection. Safety and pre-cargo checks and pre-operation documentation is now exchanged via email, with ship-to-shore checklists and agreements also completed remotely. Shore-based staff are often restricted from boarding the ship to connect cargo hoses, so crew now have to connect hoses, conduct pressure tests and verify line integrity. Cargo samples are also taken by the crew and left for shore surveyors to collect. This may have an impact if there are any disputes

about cargo quality, as the independent surveyors and experts (who would normally be appointed by the Club) are unable to go on board to assist members.

Responsibility

In all the above cases, it is also important to remember that the master is ultimately responsible for the integrity and safety of all persons and operations on board and must be provided with the required guidance and support. Prior to commencement of any task or cargo operation, a full risk assessment should be conducted and the work should only commence, or continue, when the responsible officer and the master is satisfied with all operational arrangements and checks. Risk monitoring should be carried out at regular intervals while the operation is underway and a final risk assessment and review of the operation conducted on completion. This should be documented and filed ashore and on board.

“Shipping company offices need to keep their colleagues at sea updated in what is an ever-changing environment. Giving crew as much information as possible, even if the full picture is not available, is better than silence”

Communication

Regular communication with ship staff is key. Shipping company offices need to keep their colleagues at sea updated in what is an ever-changing environment. Giving crew as much information as possible, even if the full picture is not available, is better than silence. Knowing that they have the support of their office colleagues is vital, as life at sea can be isolating and is intensified in the current pandemic. Contact with family and friends is also very important. News from home is a good morale booster for seafarers. Knowing their families are safe is a huge relief and many networks are offering discounted voice calls for seafarers for the duration of the pandemic.

Covid-19 has had a dramatic effect on the industry, with seafarers having to adapt to unusual circumstances and take on extra tasks and duties. P&I Clubs need to play their part in helping members with practical advice and measures to clarify many of the issues faced by seafarers. *MRI*



Neale Rodrigues

Neale Rodrigues, divisional director,
loss prevention for Britannia P&I

Managing the challenges of Covid-19

Richard Cain, of Thome Offshore Management and Thome Oil & Gas, discusses how his company's management of crew welfare issues through the Covid-19 pandemic is an example that others can use to form their own best practice procedures



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We have all been experiencing unprecedented changes to the way we live and work due to the global upheaval brought about by Covid-19. Nobody could have foreseen the need for whole countries to impose lockdowns on their populations to slow the spread of a virus which has led to large numbers of people losing their lives.

Against this backdrop, the maritime industry has continued to ship goods around the world to ensure people did not run out of essential food supplies, medication and fuel. It has achieved this despite the varying and constantly changing restrictions from port to port during the height of the pandemic.

Even as some countries cautiously relax some of their restrictions, there is always the chance of a spike in cases which could mean the return of regional lockdowns at very short notice. This makes it very tricky to plan anything with any certainty.

Firms across the world activated business continuity plans as the pandemic began to spread. Thome, for example, quickly set up an emergency response management team, meeting every day to advise seafarers, the fleet and shipowners by constantly reviewing government and World Health Organization information to address any concerns. It also monitored the restrictions at ports, advising vessels before they docked to help limit any unexpected issues.

Crew repatriations have been particularly challenging during this time with an estimated 300,000 crew having to work beyond their specified contract periods on board during the peak of Covid-19, restrictions and a similar number were awaiting re-employment and suffering real financial hardship.

A big challenge has been the suspension of international flights, border closures and ports and airports imposing travel restrictions on foreign nationals to limit the virus spread. The

situation became so severe for the maritime industry that a ministerial summit hosted by the UK government on 9 July was called. 12 countries agreed to facilitate crew changes and recognise seafarers as key workers, something which major maritime trade bodies and unions had been calling for.

However, even with agreements like this in place it is still a major operation to effectively organise crew repatriations. An example of this is a Thome Offshore crew repatriation organised from the dive support vessel *Southern Star*, which had to conduct a crew change over four port calls in three ports inside a week, as part of the mobilisation for the offshore maintenance of a Korea National Oil Corporation/MODEC FPSO in Vietnam.

For this, Thome had to coordinate with Tasik Subsea (the owners) and Shelf Subsea (the charterers), as well as the agents, port facilities and marine authorities of three different countries, then finally the end users of the vessel. This took a lot of effort and willingness on behalf of all parties involved. This was complicated further as the nearly 30 signing-off and more than 40 signing-on crew came from multiple employers and were different nationalities, so it was a real team effort to make it a success. The process took more than three weeks to plan and involved stringent measures to ensure the health and safety of all those involved.

These measures have proved their worth as the crew are so far Covid-19 free. This has been achieved with strict protocols on social distancing and, where possible, the use of personal protection equipment (PPE) and twice-daily checking of crew temperatures. Frequent hand washing has also been implemented and crew have been advised to look out for and report if they feel any of the symptoms associated with the virus, like high temperature, a frequent and new dry cough or loss of taste or smell.

A quarantine area was installed on the vessel so that in the event of anyone becoming infected, they could be securely isolated away from their colleagues to prevent the virus spread.

The key to keeping crew morale high is regular communication. Crewing managers send regular updates to all crew regarding the global situation and changing circumstances/restrictions. The onshore teams are also in regular contact with the vessels to check on the well-being of the crews, particularly where the crew have been working beyond their contracts.

Some of the other initiatives in place are as follows.

Crewing/mental well-being

- **Hotline** – Thome extended its hotline services to its vessels via its corporation with the International Seafarers Welfare and Assistance Network (ISWAN) which provides psychologists experienced in handling stressful situations on board vessels.
- **Constant updates on the Covid-19 situation** – Through regular circulars and emails to seafarers.
- **Update on crew changes** – The chief human resources officer provides regular updates and possibilities for crew changes.
- **Complete PPE for all seafarers.**
- **Health checks** – Regular monitoring of crew health, including twice daily temperature checks for all onboard crew and any third-party visitors. Practice distancing and PPE wearing.
- **Crew follow up** – Follow up with crew when repatriated home.
- **Family relations** – Actively and continuously maintaining contact with the families of seafarers. Regular communications with families to reassure that their loved ones on board are safe.
- **Extension of advance payments** – Providing financial assistance to seafarers waiting to join vessels.
- **Loans** – Provision of financial help to seafarers who are unable to go on board due to the suspended crew changes.
- **Social activities** – Implemented, for example, competitions on board to increase engagement and help relieve the stress and anxiety of seafarers during the pandemic.

Learning and training

- **Online training** – To maintain training compliance of officers and ratings in the fleet, online training has been initiated, including environmental compliance training.

Ship management

- **Remote briefings** – Updates to masters and chief engineers, etc.
- **Preventive measures practices** – Procedures in place for onboard crew and meeting external parties, including the development of an outbreak management plan.
- **Daily contact with the vessel** – Management companies should be in regular contact with vessels to identify possible issues, including addressing crew concerns.
- **Remote audits, surveys and inspections** – These should be carried out where possible.
- **Emergency preparedness** – Including various drill scenarios (including “suspected cases”) on board.
- **Recovery management strategies** – For the purpose of post-pandemic planning.

Office and home

- **Provision of equipment and tools** – Laptops, monitors and headsets provided to be able to function effectively remotely.

- **Remote but present** – As work-from-home arrangements are in place for safety, staff are still able to provide the appropriate level of service to customers during this difficult period
- **Daily meetings** – These should reinforce collaboration and engagement between management and staff.
- **Maximising the use of technology** – IT planning, as result of business continuity needs, and a robust and secure IT infrastructure, has resulted in minimal disruption to business process and allowed a seamless transition to working from home. Regular online live events (eg virtual town hall sessions, conference calls, department meetings, etc) can be conducted to keep staff informed.

Managing the coronavirus pandemic for businesses has not been easy, but with careful planning and good communication it is possible to operate efficiently by taking a practical approach to working around any barriers or restrictions.

“The future for ship management post-Covid-19 is good, as it has been demonstrated that, even during a worldwide pandemic, ship managers effectively managed their vessels to ensure delivery of essential supplies”

The use of digital technology with various video conferencing platforms has certainly helped for regular meetings and updates as well as being able to remotely carry out vessel surveys, inspections and audits by sharing documents and for discussions to take place with onboard personnel to check that all audit requirements have been met.

In fact, a lot of the digital options are proving to be more efficient ways of working, cutting down on travel time, hotel bills and so moving forward we can see many ship managers increasingly adopting new technology to improve their services to clients and principals.

The future for ship management post-Covid-19 is good, as it has been demonstrated that even during a worldwide pandemic, which at one stage had around one fifth of the world’s population in lockdown, ship managers still effectively managed their vessels to ensure that countries got their essential supplies.

Ship managers ensured vessels still made their port calls and delivered medicines, fuel and food supplies so countries did not run out of essentials. All this against a backdrop of uncertainty with crews working well beyond their stipulated contracts, in some instances, and for this we remain extremely grateful. **MRI**



Richard Cain

Richard Cain, Thome’s crewing manager for Thome Offshore Management and Thome Oil & Gas

Remote surveys – the future?

Voirrey Blount, at Reed Smith, reports on the impact of Covid-19 on remote surveys and at how the workforce has had to adapt

In these unprecedented times of global shutdown, the shipping industry has been forced to move rapidly into the digital age. Vessels still require their statutory surveys and the clock does not stop just because the surveyors are unable to fly out to a vessel. This has forced flag states and recognised organisations (ROs) to develop their own procedures for remote surveys and inspections at a rapid pace.

Remote surveys and inspections were already in use before Covid-19 – Lloyd’s Register performed one in five of its surveys without attending the ship – but their use has increased considerably. In March 2020 the number of complex remote surveys performed by Lloyd’s Register increased by 25 per cent. As resources continue to remain limited, remote surveys and inspections will be an increasingly used tool from the suite of options available to flag states and ROs. The question, however, is whether the industry should continue to use remote surveys and inspections as the global community begins to move out of the worst of the pandemic and countries begin to allow freer movement once again.

The benefits of remote surveys and inspections are many. One such benefit is an overall reduction in workload for the crew. Using an electronic database to which all the ship’s certificates have been uploaded means ROs and flag states can access this without the ship’s crew having to find all the certificates for each different survey or inspection: a repetitive job that can take considerable time. Although someone from the crew would be required to go around and take videos and photos, or indeed live-stream to the surveyor, it is likely this job would be performed by the chief officer and/or chief engineer depending on the survey.

“With remote surveys you lose that sixth sense of something being wrong from the demeanour of the crew or feel of the vessel”

In contrast, when a surveyor joins the ship to perform a physical survey/inspection it can often result in participation from multiple crew members, as usually someone is required to be with them throughout the whole visit. Furthermore, it reduces time spent in port when inspections and surveys are being performed, reduces the need for ships to deviate to attend surveys and also encourages transparency and clear communications between the vessel and shore-side management. It should also reduce the costs incurred by shipping companies, to reflect the saving in surveyors’ travel costs and expenses.



Maintaining confidence in the credibility of remote surveys is where the challenge really lies. For many surveyors, the survey or inspection starts before they have even set foot on the vessel. Walking along the dock and looking at the hull, the state of the gangway, the demeanour of the crew and countless other factors can give the surveyor a “feel” for the ship before the true survey begins. Even crew on the best-run ships can feel nervous before and during a survey/inspection; it is not uncommon to hear comments such as “Don’t tell him about the VHF that isn’t working” or “Make sure she doesn’t see that rust patch” in the lead-up to a survey or inspection. With remote surveys you lose that sixth sense of something being wrong from the demeanour of the crew or feel of the vessel and the crew are in complete control of what the surveyor can see – so anything that they want to be hidden will be. This possibility of problems being missed is sure to be the key argument from those who are against the shift to remote surveys.

A further difficulty arises regarding ownership of the photos and videos taken by the crew in the process of performing the survey. If these are taken on personal devices, can the crew member be compelled to share these with the external organisation performing the survey? Using an app installed on a company-provided mobile phone or tablet, or just the device’s camera and email, and not personal devices, could be the best way to avoid this conundrum. Many companies already provide these to their vessels, often for the bridge and the master. To ensure the correct procedure is followed, this would require updates to companies’ safety management systems, which would need to be developed in accordance with any guidelines provided by the flag state.

Having a surveyor physically attend on the ship when conducting an out-of-water survey just once every five years could be seen as the ultimate goal. This, of course, would require considerable risk assessments being undertaken to determine for which vessels this would work and which would require a more “boots on the ground” approach to surveys. The Paris MoU system for inspections involves the creation of a “White, Grey and Black list”, which indicates how often ships are inspected when in port. A system similar to this is likely to be one of the best ways of determining the safety of only physically surveying the vessel on a minimal basis. The system has proven itself to be an effective and efficient way of managing port state control inspections. Indeed, the information from the data provided by the Paris MoU can assist with targeted inspections. With records of deficiencies for individual ships being recorded, ROs and flag states could decide to target a specific ship, or indeed just a specific survey/inspection for that ship, with an in-person survey.

The long-term wider use of remote surveys requires a more standardised approach across the industry. Currently different ROs offer remote surveys for different surveys/inspections. To avoid doubt and confusion some continuity is required between flag states and ROs to enable shipowners to make the correct decision for their vessel(s). All stakeholders in the industry need to be confident that remote surveys are not simply a “soft” approach and that their credibility is guaranteed. This standardised approach will ultimately need to come from the IMO to ensure the same standard is met across the board, built around a strong legal framework. IMO legislation currently contains very strict guidelines on how surveys should be

performed; any update regarding remote surveys will need collaboration between flag states and ROs along with other industry stakeholders.

Strong communication between all the involved parties is going to be a key component to the success of this endeavour. Clear and precise instructions will need to be developed that enable the remote leadership of the surveyor to be supported by the crew on board, many of whom will be new to the concept of remote surveys. In the long term this will also give the crew the chance to upskill by assisting the surveyor in a direct manner, rather than simply standing by as passive observers while the surveyor does all the work. Many crew are likely to be sceptical at first, as indeed are many shipowners, about the effectiveness of the remote surveys, but owners may be brought round by the reduction in interference with daily operations and the potential for lower-cost surveys.

Shipping is a 24/7, 365 days a year industry and the services that support it should be as well. The ability of crew to undertake surveys or inspections of their own ship at a time that works for them is a significant benefit for the owners and crew. The remote survey systems that already exist, such as the LR Remote app or DNV GL’s DATE platform, provide 24/7 assistance from a team of technical specialists. This always-available support is vital to the efficiency of the remote survey system: if support is only available when a surveyor would be working on the ship then the benefit of flexibility is lost to a certain extent.

“Many crew are likely to be sceptical at first, as indeed are many ship owners, about the effectiveness of the remote surveys, but owners may be brought round by the reduction in interference with daily operations and the potential for lower-cost surveys”

Using a combination of remote and physical surveys is likely to be the way forward in the future. Certain aspects of inspections, such as observing crew drills, require the physical presence of a surveyor on board the vessel. Inspections of small dents or minor issues are often already done remotely and there is certainly scope to expand the use of remote surveys: whilst we must be mindful of their limitations when developing the guidance to be used in the future, Covid-19 has shown what can be done with the technology we already have available to us and it is key that the momentum is not lost. *MRI*



Voirrey Blount

Voirrey Blount, admiralty manager at Reed Smith

Getting the facts straight

Ian MacLean, of Hill Dickinson, Singapore, provides a checklist for the master's statement of facts

In the event of a casualty, the master's statement of facts (SOF) is one of the most commonly requested documents in the early stages of the proceedings. The master is also responsible for completing the accident report forms demanded by flag and port states, including some potentially tricky questions.

This article examines these issues in the context of English law and serves to provide context. In the event of a casualty, the primary source of guidance for a master should always come from the owner and/or manager of the vessel as well as the written procedures in place that govern the individual vessel's technical and commercial operation.

The master's statement of facts (SOF)

The drafting of the master's SOF is an important stage in the processing of a casualty, not least where there is likely to be high-value litigation.

Various entities may demand the master produce one as soon as possible, including local authorities, charterers, cargo interests, property insurers, loss of hire insurers etc. Not all of these parties are necessarily entitled to an SOF immediately following a casualty, or indeed at all, although a failure to cooperate with local authorities specifically may result in a delay to the vessel and possibly, in due course, action being taken by them.

In the case of a significant casualty, where possible, the master should always take advice from the owner/manager who in turn should liaise with the P&I Club, other insurer or legal adviser as to the contents of the SOF.

Simplicity and brevity

Once issued, an SOF stands as a record of the casualty. As a matter of general practice, with very few exceptions, any party the owner is in litigation with as a consequence of the casualty will have the right to see the original version of the SOF as issued, as well as any subsequent versions. Should a dispute arising from the casualty go all the way to court, a master may be questioned in the witness box on the contents of the SOF.

Errors and misstatements in the original SOF can later be corrected by way of a master's witness statement prepared with the assistance of a lawyer where the master identifies and explains incorrect facts. However at trial, the cross-examining counsel is likely to take time to ask the master

why the original SOF was incorrect or ambiguous and seek to undermine the credibility of the master as a witness in the eyes of the court for that initial inaccurate content. The shorter the SOF is, the less opportunity there is for error or ambiguity that later requires clarification. Simplicity and brevity are key.

“Once issued, an SOF stands as a record of the casualty. Should a dispute arising from the casualty go all the way to court, a master may be questioned in the witness box on the contents of the SOF”

Avoid addressing causation and providing explanations

In addition, it is preferable to avoid any potentially prejudicial content that could be used against the owner, or to open up lines of inquiry to an opponent.

For this reason, at this very early stage, until a full investigation has been undertaken, the safest approach is for the SOF to confine itself to being a record of “what” happened and “where” it happened. The SOF should not address the cause of the accident.

Consequently, comments relating to the “cause” of the accident such as “why” it occurred, “how” it occurred, “what” went wrong, “what” equipment failed and “who” made decisions or gave commands prior to the accident that played a role in its occurrence should be avoided if possible. The initial SOF is not the occasion to be providing explanations or offering defences.



The content checklist

Ideally, in a significant casualty, the Club or legal advisor should review the content of the SOF before it is finalised. Each case will, of course, turn on its own facts as to what is appropriate and there can be no absolute rules for all eventualities. However, in the absence of compelling reasons to do otherwise, the following guidance should assist in drafting an SOF for a major casualty:

- It should be a chronological list of facts. Numbered paragraphs assist in proving structure.
- Keep it short and brief. It is better to be asked to provide further information than to provide too much information at the first draft.
- Do not address causation (the reason the accident occurred).
- Except for identifying an injured crewman where it is relevant to do so (landed ashore for treatment for example), do not identify crew members who witnessed the incident or were involved in the incident.
- Do not identify the individuals on duty at the time of the incident or where they were.
- Do not provide details about orders or instructions that have been given or who gave them or suggest that they were not properly executed.
- Ideally, include only times that can be independently verified from automatic time stamps such as the telegraph logger, engine room alarm log, fire alarm etc. If necessary, use times that have already been recorded in the log book or movement/bell book.
- Do not “guess” at the time an event occurred if such a time can be determined from the voyage data recorder (VDR) and the VDR has not yet been reviewed. It is acceptable to describe events chronologically without giving times for every event.
- Do not speculate, offer opinions, perform a what-if analysis, explain what equipment issues occurred (if they did) or why.
- Do not insert any narrative about risk assessments, permits to work, completion of checklists, procedures that were or were not followed etc.
- Do not address resource deficiencies, crew competence, defend/justify your own, or other crew members’ actions/decisions. Resist the temptation to “explain”. There will be plenty of opportunity later to do this in a structured and measured way, with reference to the appropriate supporting evidence, when preparing formal witness statements.
- If in doubt, leave it out. Experience shows that, even in a major casualty, an initial half-page chronology has been sufficient to meet the needs of those seeking an SOF.

Naturally, the above is also good advice for any crew member asked to draft their own statement relating to the incident, though the advice is that where possible following a major casualty, such statements should only be drafted once the owner/manager and/or the Club have sent someone to the vessel to assist.

Port and flag state accident report forms

Following a major casualty, the master is likely to be required to complete an accident report form for both the flag of the vessel and possibly for the jurisdiction where the accident occurred. Frequently, there will a statutory requirement to complete this exercise within a specific time. Once workload permits, work on

these documents should be commenced so there is sufficient time to send the drafts of these forms to the owner/manager who can then take further advice as necessary. Many owner/managers will require that such completed forms are routed through the office in any event.

The forms typically follow a box format with specific targeted questions. However, there will usually be a statement box for the master to provide his own narrative, in which case the above guidance for the SOF can be followed in the preparation of that free-form narrative.

A common difficulty arises with the questions “What was the cause of the accident?” or “What in your view should be done to prevent the accident recurring?”

It maybe some time before these questions can be addressed with confidence and it is unlikely that they can be answered in the first few days. An initial answer that can be used for both of these questions is “Under investigation”. Should the authorities require further details they will follow-up with their own queries.

Protests

A sea protest is a statement prepared by a master and then sworn before a notary public to make a record of, say, heavy weather damage encountered on the voyage, or presented to the master of another vessel following a collision, holding the other vessel responsible.

“Sea protests are not recommended. They do little to strengthen a case and the risk arises of including prejudicial or inaccurate content which later needs to be corrected”

As a matter of English law such protests are not required. It is not the same in all jurisdictions and local advice should always be taken. For example, in some jurisdictions, it is a prerequisite to note protest before general average can be “declared”.

In general, in the absence of advice from a local lawyer or from the owner’s Club to prepare a protest, sea protests are not recommended. They do little to strengthen a case as it stands and the risk arises of including prejudicial or inaccurate content which later needs to be corrected. That said, if a protest is prepared, then the same guidance as governs the SOF above applies to the protest, save for the fact that if, for example, there has been heavy weather that has caused damage, then this needs to be mentioned, but only in general terms. *MRI*



Ian MacLean

Ian MacLean, partner and master mariner, Hill Dickinson, Singapore

Renewables driving offshore market

Sian Dinnadge, of the Standard Club, reviews offshore wind energy and P&I cover for offshore contractors

The offshore wind energy market is growing against a backdrop of an increasing demand for alternative energy sources and political pressure for nations to transition to cleaner energies. However, currently offshore wind energy contributes just 0.5 per cent to overall global energy production as against 17 per cent from offshore oil and gas. Just 7 per cent of overall wind energy was produced offshore last year. The overriding reason is the relative infancy of offshore wind as an energy source, but it is anticipated that it will grow substantially between now and 2035 and Asia will be key to the industry's progression.

Operators engaged in the installation of offshore wind farms will require the support of P&I Clubs to respond to their third-party liabilities assumed at law or under specific contracts. This article addresses how P&I cover can respond when a vessel is engaged in offshore wind farm construction, but first looks at the current offshore wind market and the potential areas for growth which may present good business opportunities for the Club's offshore contractor membership.

Growth of offshore wind energy – a focus on Taiwan and Japan

Europe has long been at the forefront of offshore wind energy and the UK continues to be one of the most significant players. By the end of 2019 there were 110 offshore wind farms in 12 European countries. The UK has the largest amount of offshore wind capacity, with 45 per cent of all installations. Germany is second with 34 per cent, followed by Denmark (8 per cent), Belgium (7 per cent) and the Netherlands (5 per cent).

Although the UK has 21 wind energy projects currently under construction (16 GW), growth of offshore wind is expected to be driven by Asia and predominantly China which has 68 projects under construction (21 GW). The US also has a role to play with 12 projects under construction amounting to 5 GW of capacity. So, while 73 per cent of active capacity is in north-west Europe, under half of capacity under development is located there. Asia is expected to be by far the world's largest offshore wind market by 2050 boasting as much as 60 per cent of global capacity. China's contribution to this is well known but other markets in Asia such as Taiwan and Japan are also quietly advancing into this space.

Taiwan

Offshore wind energy growth is supported and incentivised by the Taiwanese government by way of a generous feed-in-tariff scheme. Taiwan is aiming for a significant energy mix as currently approximately 50 per cent of its electricity is sourced from coal with just 6 per cent sourced from renewables. However, by 2025 the Taiwanese government intends to reduce the reliance on



coal to 30 per cent and increase the use of renewables to 20 per cent. With respect to wind energy specifically, the aim is for capacity to grow from 0.845 GW in 2020 to 7.7 GW in 2025.

As a way of assisting offshore wind development, Taiwan's Ministry of Economic Affairs has hosted competitive auctions which explicitly target foreign partners. Such auctions resulted in the Formosa 1 wind project off Miaoli County in West Taiwan, which is a large-scale 128 MW wind farm representing Taiwan's first commercial-scale offshore wind project. The installation was completed in October 2019 and commissioned the following month. The power generated by this wind farm alone is sufficient to power 128,000 homes. There are a further 10 wind projects to come online between now and 2025, including Orsted's Greater Changhua South East and South West Projects (605.2 and 294.8 MWs respectively).

Potential for offshore wind development in Taiwan is clearly huge, but it would be misleading to suggest that its path is not without uncertainty. The market suffered a set-back in 2018 when there was a government proposed cut in feed-in tariffs which led to some developers suspending project development. There has been a further 7.6 per cent reduction proposed for projects in 2020, so at this stage it remains unclear the extent to which tightening subsidy regimes may impact on the development and growth of the offshore wind energy market.

Japan

Japan is another key area for offshore wind development and, as an island nation with the seventh longest coastline in the world, that may come as no surprise. It is also a country in the throes of redefining its energy mix following the Fukushima disaster and offshore wind farms, particularly floating wind farms, are going to be key to this energy shake up. Although Japan's advancement into offshore wind may be slower than Taiwan's, it is thought that the long-term potential for offshore wind development in Japan is much greater. Japan, being the world's third largest economy, has the benefit of numerous strong domestic sponsors who are already active investors in offshore wind development in Europe and therefore already have that project expertise.

Japan piloted offshore wind for the first time back in 2003, however by the end of 2019 it still had just 66 MW of capacity. This is all looking to change with new legislation enacted in April 2019 to encourage the development of new offshore wind projects by



creating a framework to coordinate efforts to establish an offshore wind industry in Japan. The country's first large-scale project is set to commence in 2021 with Akita Offshore Wind set to begin the installation of a 139 MW plant in waters off the Akita Prefecture on Japan's north-east coast. This plant alone will generate enough power for 47,000 homes and represents the government's first step in their aim to achieve 10 GW of wind capacity by 2030. Japan is also currently hosting its first offshore wind auction since the new legislation was passed, and is inviting developers to build and operate a floating offshore wind farm off Goto City, Nagasaki Prefecture with a minimum capacity of 16.8 MW.

Floating wind technology is going to be key to Japan's success in this industry as the water around the island becomes very deep very quickly and there are few shallow water sites suitable for offshore wind development.

The International Group and P&I cover for offshore contractors

P&I Clubs provide marine liability cover to shipowners and charterers, insuring around 90 per cent of the world's ocean-going tonnage. P&I responds to a wide range of liabilities, including loss of life and personal injury to crew, passengers and others on board, cargo loss and damage, pollution, wreck removal, collision liabilities and other damage to property. 13 P&I Clubs together comprise the International Group of P&I Clubs (IG). The IG has a mechanism for sharing larger losses among the members of the Group under what is termed "poolable" cover.

Poolable cover is traditionally designed for trading vessels which share common risks, therefore when a member is engaged in specialised activities such as wind farm installation work, they are encouraged to liaise with their broker and Club to ensure cover is tailored to their particular operational needs. Typically, a wind farm installation vessel will be provided with P&I cover on poolable terms plus specialist operations and contractual extensions to agreed limits (in addition, the underwater vehicles and divers' extension if specifically required). There are certain liabilities which remain poolable throughout the performance of specialist operations including liabilities in respect of crew and other people on board, oil pollution from the ship and wreck removal of the ship. This is because these risks are considered common to all shipowners regardless of the activity being performed. However, the type of work being undertaken means that there are

a number of exposures arising from the nature of the operation or contractual arrangements that are not typical of mainstream shipping and therefore require this tailored approach.

P&I cover does not respond to loss or damage to "contract works" such as the monopile or the wind turbine itself; however it is common practice for a wind farm project to be insured under a construction all risks (CAR) policy (eg WINDCAR) whereby contract works will be listed as project property. This is a good example of where P&I insurance dovetails neatly with members' other market insurances.

A contract review service enables in-house lawyers to review operating contracts from a P&I perspective and to highlight where liabilities may be poolable and where extensions to cover might be required. For example, it is common to see the installation contractor assume liability for loss/damage to company property while in their care or custody up to the deductible under the company's CAR policy. When wind turbines or generators are being carried on board the vessel (prior to commencement of installation works) any "at law" liability for loss or damage to the property can be covered on a poolable basis up to the limits under Hague or Hague-Visby terms. Any non-fault based liability or liability in excess of Hague or Hague-Visby terms may only be covered under the Club's contractual extension.

Conclusion

Shipowners and operators in the offshore industry will be keeping a close eye on the opportunities that present themselves in the offshore wind market in the coming years and P&I Clubs will be on hand to support its members to take advantage of the commercial opportunities available. *MRI*



Sian Dinnadge

Sian Dinnadge, underwriting director,
offshore division, Standard Club

Lloyd's reparations and insuring the "Middle Passage"

Helene Peter-Davies, a lawyer in the London marine market, takes a look at the marine insurance involvement in the slave trade

Following the death of George Floyd at the hands of a police officer in Minneapolis on 25 May 2020, the world's understanding of the Black Lives Matter movement and aims has increased exponentially, with waves of protests being seen in major cities throughout the globe. Whichever way you view the movement, the origins of the discrimination still faced by the black community is inextricably linked to the slave trade, which involved more than 400 years of oppressive behaviour towards an entire ethnic community.

There are the signs of change arising from the protests. In the City of London, one response to the protests has been a statement by Lloyd's of London that they will be making reparations for their founders' roles in the trans-Atlantic slave trade. They have committed to providing financial support to BAME charities and organisations promoting opportunity and inclusion. This is an important step for Lloyd's to have taken and it will be interesting to see if other institutions with similar slave trade links within the City of London, and beyond, follow this example.

However, while welcomed, this acknowledgment of wrongdoing is thought by many to be long overdue: the Slavery Abolition Act received Royal Assent as long ago as August 1833, with the government of the day providing reparations to slave owners, not to the newly freed slaves. This followed the earlier outlawing of transportation of slaves through the Slave Trade Act 1807.

From a shipping perspective, Lloyd's is marine insurance. The reparations statement raises the question of what exactly their involvement in the slave trade was and how entwined the slave economy was to the British commercial and shipping markets of the day.

The triangular trade

The forced movement of people from Africa to the Americas saw approximately 12.5 million people displaced between the 16th and 19th centuries in European-owned and operated vessels. At the peak of the slave trade in the late 18th century, Britain was the leading slaver nation, accounting for around 40 per cent of all Africans displaced between 1761 and 1807.

Slave ships undertook a triangular voyage commencing in major European ports. In the UK these were London, Liverpool, Bristol and Glasgow. Cargoes of textiles, rum, guns and other manufactured goods were taken to west Africa, to be traded for captive slaves.

The voyage leg from west Africa became known as the "Middle Passage". The captive slaves were transported in tight, overcrowded, confined spaces. There were issues of malnutrition, disease and uprising. The voyages were dependant on the

vagaries of the trade winds and could take from one month to several months to complete. Stores on board for crew and captive slaves were at a premium. In the case of the slave ship *Zong* (*Gregson v Gilbert* (1783) 3 Doug 232), on a voyage in 1781 with limited water and stores, the crew killed around 130 captive slaves by jettisoning them (that is, throwing them overboard) with a view to claiming the "losses" against the vessel's marine insurance policy, reasoning that the act was committed for the overall safety of

the vessel. This case became one of the leading ones cited in support of the abolition of the slave trade.

On the sale of the captive slaves in the slave markets of the New World, the profits were used to purchase plantation-produced goods, such as sugar, cotton, rum and tobacco that were carried on board for the final passage to Europe.

"At the time, shipping involved significant risks: a vessel departed a British port and, save for very limited news back from Africa or the New World, the success of the voyage was only known once the vessel returned. Insurance was important to protect the investment in the adventure"

Insurance for ship and "cargo"

Lloyd's of London has humble origins, from a coffee house on Tower Street in the 1680s. It became a hub for information about shipping and a place where individuals could arrange to meet with private underwriters for insurance to be arranged for vessels and their cargoes. Following a spate of insurance policies being issued for "speculative" lines which brought the insurance markets into disrepute, Lloyd's was re-established in 1769 by a number of underwriters, including Joseph Marryat and John Julius Angerstein, the latter being described as the "Father of Lloyd's".

Marine insurance policies are taken out for the ship and cargo to address risks during a maritime adventure. At the time, shipping involved significant risks: a vessel departed a British port and, save for very limited news back from Africa or the New World, the success of the voyage was only known once the vessel returned. Insurance was important to protect the investment in the adventure.

This included insurance of the "Middle Passage" and the captive slaves: insuring a human life as a commodity. This gave rise to a defining feature of those insurance policies. It is difficult to comprehend how the human lives of the captive slaves could be insured under the marine policy for the "Middle Passage": it would have included an assessment of the risks that were deemed to be acceptable under such policies, treating human lives as no more than a valued "cargo".

Policies for the "Middle Passage" were underwritten on a "per head" basis; with women and children being valued at a fraction

of a “head”. The captive slaves were, for insurance purposes, considered to be perishable cargo, similar to livestock cargoes, with both being termed as subject to “Class II common hazards”.

Insurance cover was provided for, among other risks, “perils of the sea” which included loss or damage deliberately caused by the master or crew. Perils of the sea excluded loss for death by natural causes or sickness, which was termed as “wastage”, “corruption” or “spoilage”, and also extended to where captive slaves committed suicide (which was a frequent occurrence). In addition, the majority of policies included clauses providing that insurrection of captive slaves was an accepted risk for the purposes of general average. Those clauses had limitations based on the quantities of losses that occurred to the captive slave population on board the vessel. Underwriters were often not liable to make payments under the policy for losses of less than 10 per cent of the value of the “cargo”.

There was a clear lack of recognition of the human condition or humanity within the insurance market during this period with regards to the slave trade; lives of captive slaves were reduced to accounting terms and items for actuarial risks to be considered against.

Slavers and the City

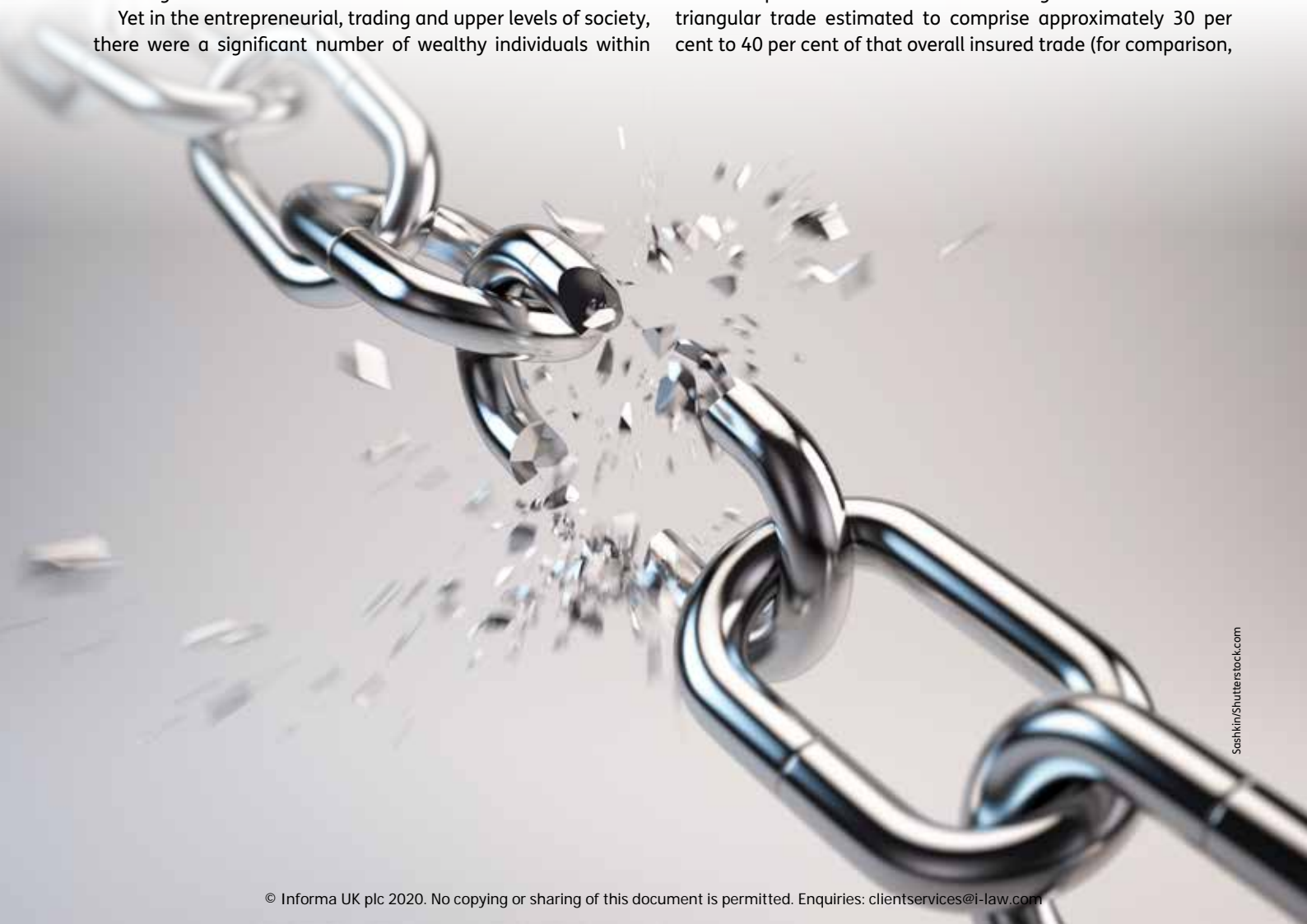
In the UK at the time, the slave trade was fuelling the economy and industrial revolution but was conveniently far enough away from home. It is easily conceivable that the ordinary British person would have been oblivious to the slave trade and the economy that was derived from the mass displacement and suffering of millions of Africans.

Yet in the entrepreneurial, trading and upper levels of society, there were a significant number of wealthy individuals within

Britain who were less oblivious and chose to profit from the brutal trading and forced labour of the slave trade. One focal point for this was the City of London and, as discussed above, the marine insurance market.

Insurance underwriting is a mechanism for spreading risks among a number of entities; there is usually a lead underwriter, with followers who each assume a percentage of the risk. Marine insurance underwriters of the 17th and 18th centuries, including those of policies written for the vessels engaged in the slave trade, were predominantly individuals, with a more corporate approach to insurance being introduced with the chartered companies of the Royal Exchange and London Assurance following the “Bubble Act 1720” (also Royal Exchange and London Assurance Corporation Act 1719), which continued in force until 1824. The individual insurance policy was placed by brokers introducing potential insureds to those within the City who were willing to underwrite maritime adventures. Lloyd’s was one of those places where such introductions were made. The act of underwriting was instituted by the merchant adventurer presenting the documents for the voyage and these being signed at the bottom, at which point the underwriter agreed to take on the risk in return for the premium; hence the insurance policy was “underwritten”.

The people willing to underwrite the slave trade were those that knew most about it and most frequently were those who also conducted the same trade. Marine insurance premiums have been estimated to have been worth £7.8 million to £13.2 million per annum in the latter decades of the slave trade, with insurance premiums for the “Middle Passage” and wider Atlantic triangular trade estimated to comprise approximately 30 per cent to 40 per cent of that overall insured trade (for comparison,



the reparations made to slave owners arising from the Slavery Abolition Act 1833 were £20 million and is estimated to have been 5 per cent of the country's GDP at the time).

Within the City, including Lloyd's, there are numerous historical links to the slave trade, such as:

- Joseph Marryat (1757-1824). Marryat was the first chairman of the newly established Lloyd's of London and became a Member of Parliament for Horsham in 1808. He was an absentee slave owner, and owned enslaved people in Trinidad, Grenada, Jamaica and St Lucia. He remained firmly against the abolition of slavery.
- John Julius Angerstein (1732-1823). Angerstein was from St Petersburg and made his fortune as an underwriter with Lloyd's, with the majority of his business being concentrated on the Atlantic trade, including the slave trade. Accounts indicate that he was a trustee of a number of estates in Grenada, rather than a slave owner.
- William Beckford (1709-1770). Referred to as Alderman Beckford, he was twice Lord Mayor of London. He was the largest slave owner of his time and his vast wealth was derived from his ownership of plantations in Jamaica. It is reported that he owned more than 22,000 acres of land in Jamaica and controlled up to 3,000 slaves. He was an MP and formed a powerful pro-slavery lobby.

“Legislative reformation began with the Slave Trade Act 1788, which placed a limitation on the number of persons who could be carried on board a slave ship. This Act was ahead of its time in terms of the regulation of the structure of a vessel”

Abolition and legislative change

It is important to remember that those complicit in the slave trade did not represent the entire viewpoint of the British public. From the mid-1700s onwards, a movement with the aim of abolition of slavery and the slave trade was formed. In legislative terms, reformation began with the Slave Trade Act 1788, also known as “Dolben's Act”. This placed a limitation on the number of persons who could be carried on board a slave ship and the space and provisions requirements per person. Prior to this, there was no legislation to dictate the conditions under which captive slaves were held during the “Middle Passage”. This legislation was enacted at a time prior to the Plimsoll Line, so vessels were often overburdened on their passage, to make the greatest profit. This Act was ahead of its time in terms of the regulation of the structure of a vessel.

The Society for the Abolition of the Slave Trade was established in 1787, with the sole purpose of educating the public about the atrocities of the slave trade. The leading figures in the Society were William Wilberforce, Thomas Clarkson and Granville Sharp. Their petitions, protests and lobbying culminated in the enactment of the Slave Trade Act 1807 and the abolition of the slave trade. This legislation made the physical trade of captive slaves from Africa to the New World, in British-flagged ships, and

the insurance of that trade in British flagged ships, illegal. This did not mean that the business of underwriting of captive slave “Middle Passage” ceased on the London market, however: a proportion of the trade continued to be placed for vessels of non-British flags sailing from non-British ports in countries where the trade continued to be legal.

It was another 26 years until the forced labour of slavery was declared illegal in Great Britain and the colonies, with the enactment of the Slavery Abolition Act 1833, with the legislation becoming effective some 12 months later.

Under the terms of the Slavery Abolition Act 1833, reparations were given to some 46,000 slave owners who were the masters of some 800,000 slaves. The sum of £20 million that was paid out at the time is calculated to be the equivalent of some £16 billion today. In stark contrast, the 800,000 persons who were granted freedom from physical slavery were set free, with nothing with which to build their new life.

From the UCL database “Legacies of British Slave-ownership”, it can be seen that, at the time of abolition, Alderman Beckford's son, who inherited his entire estate on his passing in 1770, received reparations in the sum of £12,800. That is equivalent to around £10 million today.

Conclusion

It has been more than 200 years since the abolition of the slave trade in Britain and 187 years since the abolition of slavery. As we know, and as exemplified by recent events, the black community within society continues to feel the repercussions of the slave trade and injustices that have been meted out following abolition. As such, discrimination continues to pervade for many within today's societies.

This dark element of the City of London's past should not be forgotten. The history of the slave trade is one of brutality and inhumanity that is incomprehensible in today's terms. Not only were persons displaced for the sole purpose of financial gain from their forced labour in the plantations of the New World, but when there was a chance to right those wrongs and compensate the victims of this trade at the time of abolition that opportunity was not taken.

Lloyd's is to be commended for its recognition of this chapter of its history. It will be interesting to see whether others whose history is linked to the slave trade will follow Lloyd's lead in making reparations. Such reparations will hopefully lead the present generation of the black community, whose ancestors suffered so much as a result of such an abhorrent “trade”, to obtain the equality they deserve. *MRI*



Helene Peter-Davies

**Helene Peter-Davies, a lawyer
in the London marine market**

Safeguarding vehicle and machinery operations in port

James Mountain, of Fire Shield Systems, considers the risk of fires at ports and some mitigation measures

“Almost one million containers pass through our port each year,” says Neil Bellinger, workshop and mobile equipment manager, DP World London Gateway. “As a result, our schedules are tightly packed each day – there’s little room for any period of downtime.”

DP World London Gateway is the third largest UK container port and one of the 120 UK commercial container ports. Meeting such a large demand for operations – including storage, transportation and handling of raw and bulk materials – can leave ports and docks vulnerable to a number of different types of fire risks.

The common fire risks at ports and docks

Storage. Millions of tonnes of materials pass through ports each day, with around 113 million tonnes of freight tonnage passing through the UK’s major ports in the first quarter of 2020. Materials are often stored on site while awaiting onward travel, some for extended periods of time. If storage is not managed carefully, it can present a significant fire risk. Similarly, loose materials, such as biomass or wood chippings, also pose a significant risk. During transportation, hotspots can form within bulk, loose materials. These hotspots will often remain dormant throughout transportation. However, as materials are separated into smaller piles, these hotspots can become activated, leading to self-combustion. This makes it critically important to monitor temperatures of materials in storage.

Sealed shipping containers can also present potential hidden fire risks to ports. This makes it critically important to monitor the materials passing through a port, to ensure sufficient fire protection measures can be implemented to alleviate potential risk.

On-site vehicles and machinery. Vehicles and mobile machinery are in constant use at ports – delivering and collecting cargo and moving it around the site. These vehicles can create several fire risks, from exhaust emissions to potential clogging from dust build-up, resulting in overheating. Additionally, the shift towards increased sustainability is driving higher demand for electric and hybrid electric vehicles (EVs and HEVs) at ports, bringing new fire risks. Common fire hazards include drive systems, power electronics, heaters and battery packs. For HEVs, the risks associated with combustion engines remain pertinent.

More specifically, EVs and HEVs rely on lithium-ion batteries to power the engines. The malfunction or failure of lithium-ion batteries can result in toxic gas emissions or large explosions, making it increasingly important to ensure the appropriate fire safety measures are implemented.

The constant use of static and mobile machinery is also commonplace at ports, to ensure demanding programmes are fulfilled. Machinery – with any kind of power supply – carries significant risk of overheating, which creates an additional fire risk to be monitored and controlled.

Protecting vehicles and machinery

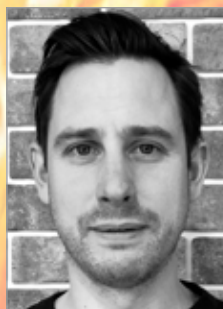
The coastal location of ports means machinery is required to continue to work in harsh, exposed environments for long periods of time, all the while collecting dirt. These conditions create a high risk of fire. Suppression systems installed at facilities such as DP London Gateway have been designed to efficiently prevent and suppress fires, with minimal clean-up should a fire break out.

The system at DP London Gateway operates via three, integrated elements: detection, alarm and suppression. The detection element comprises linear heat-detection cables, which are carefully positioned through high-risk areas for fire, inside the engine compartment of mobile machinery, to allow for early detection of heat, which has the potential to cause a fire.

An alarm panel, positioned inside of the operator cabin of mobile equipment, notifies the operator of the outbreak of fire. It can also be released manually by the operator if needed. The external alarm will then sound to alert the operator and other team members surrounding the mobile machine. The team also opted to install an external control for the suppression system on each machine, operated by Wi-Fi and/GPS signal.

Once the alarm has sounded, the suppression element of the system begins. The distribution network is made up of flexible, fire-resistant hydraulic hoses and stainless-steel pipe with DW1 nozzles. The nozzles are positioned to cover all areas at high risk of fire.

The system releases Forrex – a hybrid liquid agent, specifically design to combat fires in engine compartments. The semi-coarse spray benefits from the fire elimination properties of dry powder, and the heat reduction capability of water mist, to suppress fire and reduce the risk of reignition. The adhesion properties of Forrex allow it to easily coat all surfaces of engine components, to continue cooling and cut off oxygen supply, until the risk of reignition has been removed. *MRI*



James Mountain

James Mountain, sales and marketing director at Fire Shield Systems

Mississippi Rising: considerations from a claims perspective

Taylor Coley, of Thomas Miller Americas, looks at the risk of major river flooding

The Mississippi River, the fourth longest river in the world, with a drainage basin stretching over 32 US states, has long been considered an enigma. As likely to move a poet's heart as a shipowner's ledger, all whose lives must touch the Mississippi have conceded her many titles fairly won: "mighty", "the big muddy", and the evocative, if unflattering, "old man".

As Mark Twain once aptly stated: "The Mississippi River will always have its own way; no engineering skill can persuade it to do otherwise". Unfortunately for members and P&I Clubs alike, this still holds true. The Mississippi remains difficult to navigate, prone to high water and thus perpetually awash with high-value claims. Below are a few claims issues that have been seen repeatedly and, with the benefit of hindsight, have provided some to be lessons learned along the way.

High water

The Mississippi River's most notorious issue is high water. The river is considered high when it rises to 8 ft above sea level, which it usually does annually, peaking around April. Nearly all claims originating on the Mississippi can arguably be attributed, at least in part, to high water. The 2018-2019 season proved particularly devastating, with a recorded 211 days of high water from 6 January 2019 to 4 August 2019 before the river's height finally abated. The river had not been so high for so long since

1927, which culminated in historic floods wherein levees from Illinois to Louisiana failed. Though 2019 saw no levee failures, it certainly resulted in more than its fair share of claims.

When the water runs high, it also runs quickly. Consequently, all manoeuvres take on high importance and require expertise, precision and accuracy. Though the Pilots' Associations (of which there are three in the Lower Mississippi) may seem to advocate for stringent and sometimes costly measures during high-water events, their requirements are typically borne out of experience.

"When the water runs high, it also runs quickly. Consequently, all manoeuvres take on high importance and require expertise, precision and accuracy"

In 1875, in *Atlee v Packet Co* 88 US 389 (1875) the US Supreme Court differentiated between the expertise and knowledge required of a pilot in charge of a vessel on the rivers of the country versus that which enables a navigator to carry his vessel safely on the ocean. The court stated that: "in the long course of a thousand miles in one of these rivers, he [the Mississippi River pilot] must be familiar with the appearance of the shore on

Lessons learned from a mooring operation gone wrong

Now **Stuart Edmonston**, loss prevention director, UK P&I Club, considers a recent mooring issue

The incident

A bulk carrier was discharging cargo alongside a mineral terminal. At the required time, the crew were ordered to their mooring stations and the main engine was placed on standby, ready for use. The plan was to move the vessel astern using only the mooring lines, which were to be transferred from bollard to bollard by the shore linesmen, with an ebb tide running from ahead.

While repositioning the vessel astern the terminal, using only mooring lines and with the engine on standby, the master became

concerned the vessel was developing excessive sternway. On the poop deck, an able seaman tightened the back spring winch brake and as the strain came on the rope, it parted with one end of the rope, snapping back and violently striking the second officer. The injured seaman suffered broken ribs and serious internal injuries.

Analysis

This accident was the result of a loss of control during the shifting manoeuvre. Proper consideration was not given to the effect of a strong ebb tide on the vessel. Additionally, the main engine should have been used before control of the vessel was lost.

A synthetic fibre rope will stretch under tension and, if it parts when under load, the sudden release of stored energy will cause it to snap back with great velocity, risking death or injury to anyone who gets in its way. It was determined that the rope parted due to local abrasion damage at the point of failure, combined with the able seaman over-tightening the winch brake, preventing the brake from rendering below the breaking load of the rope.

Lessons learned

- All mooring operations should be subject to a proper risk assessment and planned to ensure that all involved crew are



Semmiel Photo/Shutterstock.com

each side of the river as he goes along. The compass is of little use to him. He must know where the navigable channel is, in its relation to all these external objects, especially in the night. He must also be familiar with all dangers that are permanently located in the course of the river, as sandbars, snags, sunken rocks or trees, or abandoned vessels or barges. All this he must know and remember and avoid”.

The obstacles and navigation means have changed since 1875 but the principle remains the same: the Mississippi is known to be treacherous, especially to strangers.

Collisions and allisions

For every three to four feet the river rises, its current gains approximately one knot of speed, so it is not surprising that high water results in a high percentage of collisions and allisions. The US Coast Guard (USCG) has issued various Marine Safety Information Bulletins (MSIBs) to try and improve some of these issues (eg requiring multiple means to hold vessel position), but even these measures can fall short.

For example, we have seen various allisions, particularly where terminals are close to bridges. In one instance, a vessel departed her berth at the terminal with the assistance of two tugs alongside. The position of the terminal required the vessel to head up river (with the current) before turning the vessel back to her original course downriver, just before a

bridge. Unfortunately, one of the tugs failed and the vessel, pulled along by the current in high river conditions, was unable to avoid alliding with the bridge. In that instance, even the best preparation and best planning was unable to prevent an incident – an all-too familiar scenario on the Mississippi.

Anchor loss

Another surprisingly common occurrence on the river are incidents involving broken anchor chains. When the river is high and the current is increased, the soft, muddy bottom of the Mississippi is being constantly replenished with silt and sediment descending from upriver. If a vessel’s anchor chains become entangled the choices are limited: expert finagling requires a great deal of luck, hiring a crane barge to free the anchor is extremely expensive and abandoning the anchor to the river bed is laden with a great deal of risk.

The frequency of the occurrence does not diminish the sting. There’s no easy answer for anchors attempting to become one with the river. Not only are crane barges very expensive to hire, they are often in low supply during high season. If the anchor is abandoned and causes a navigation obstruction in the future, the damage and legal costs could be astronomical. The best recommendation is for a shipowner to report any such anchor incident to their P&I Club as soon as possible for the best degree of assistance.

Covid-19

The advent of Covid-19 has introduced further uncertainty to operating on the Mississippi River. So far, we have seen issues with pilot-mandated disinfections, crew changes and have even heard of terminals refusing to discharge vessel cargo for fear of infection. This year has brought the same seasonal demands as ever coupled with the challenges of operating during a pandemic, resulting in an even more tense shipping environment on the Mississippi. However, ship operators and owners, as well as P&I Clubs and all the supporting bodies and infrastructure within the Mississippi River region, will navigate a way forward – come hell or high water. *MRI*

aware of how the operation is to be conducted, the potential hazards, and all required safety precautions.

- Mooring machinery and ropes should be maintained and frequently checked in accordance with the manufacturer’s instructions.
- Over-tightening winch brakes may lead to the mooring rope breaking load being exceeded.
- Be aware that the whole mooring deck is a potential snap-back zone during operations, and so always keep clear of mooring ropes when they are under tension.



Stuart Edmonston

Stuart Edmonston, loss prevention director, UK P&I Club



Taylor Coley

Taylor Coley, claims executive at Thomas Miller Americas

Shipping and the law on rescuing migrants

The moral obligation to save life at sea is simple and straightforward; inevitably, the legal position is not, writes **David Osler** of *Lloyd's List*

The obligation to save life wherever possible has been set down in the moral codes of the world's major religions for millennia. In maritime practice it has been around for centuries and in the law of the sea for decades.

The issue is back in the spotlight as a result of the political impasse on the vessel *Maersk Etienne*. On 4 August it responded to a request from Malta's search and rescue coordination centre to assist a migrant boat carrying 27 people. Since then, the vessel has been at anchor off Marsaxlokk, with Malta refusing to take them on shore. Prime minister Robert Abela has said responsibility for them rests with Denmark as flag state.

Maersk is declining to discuss the cost, but has confirmed that the ship has been off hire for more than four weeks. The expense of additional provisions is also likely to be substantial.

This is the latest episode in a problem that has grown with the increase in migration across the Mediterranean, sparked by conflicts in North Africa and the Middle East.

What is the legal position? Is a vessel obliged to assist a migrant boat in difficulties in the first place? According to legal experts, the short answer is yes. Under article 98 of the United Nations Convention on the Law of the Sea (UNCLOS), a master has a duty to "render assistance to any person found at sea in danger of being lost in so far as he can do so without serious danger to the ship, the crew or the passengers".

The master must respond to "information from any source that persons are in distress at sea" and is "bound to proceed with all speed to their assistance" (The International Convention for the Safety of Life at Sea (SOLAS), chapter V, regulation 33). He may only refuse to do so in "special circumstances", which would probably have to go beyond purely commercial reasons.

Neither UNCLOS nor SOLAS specify any sanction for failure to act, according to Marcus Dodds, a master mariner and partner in Watson Farley & Williams. "The text of these (and other relevant) conventions do not prescribe penalties, they only propose the duties," he said. "It is up to each state party that has transposed such duties into their national law to address what penalties should be imposed and upon whom if those duties are breached."

That leaves the decision about prosecution down to flag states and/or coastal states, according to Clyde & Co partner Stephen Mackin. "A failure to provide assistance, without reasonable justification — for example, in the event it would put the vessel providing assistance in peril or there were better suited vessels to provide assistance at the site — is punishable by criminal



sanction," he said. "Sanction is enforced either by the vessel's flag state, where the incident is in international waters, or it may be subject to local law were the vessel is in territorial waters."

While all flag states may be equal from a legal standpoint, some are clearly more equal than others, as George Orwell might have put it. In the real world, the prospect of meaningful enforcement by jurisdictions in which the state effectively does not function on land is probably slim.

No binding obligation

Once the migrants are on board, there seems to be no binding obligation on any country to accept them on shore. So while Abela appears to be wrong to suggest that the *Maersk Etienne* crisis is Denmark's problem, from a strict legal standpoint, he is probably correct to insist it is not Malta's.

UNCLOS article 98 simply provides: "Every coastal state shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring states for this purpose."

The Search and Rescue Convention chapter 3.1.9 imposes an obligation on the party responsible for the search and rescue



THOMAS LOHINES/Contributor/Getty Images

region where the incident occurs to have the primary obligation for assisting in the prompt disembarkation of any persons rescued, said Mr Mackin. “So, where the rescue takes place in coastal waters, the obligation to arrange disembarkation would be clear and would fall on the coastal state,” he said. “However, a rescue outside coastal waters can result in a stalemate, the vessel having effected a rescue continuing on her voyage to her intended destination and the authorities in that location refusing to accept the rescued persons.”

“Once the migrants are on board, there seems to be no binding obligation on any country to accept them on shore. So while it appears to be wrong to suggest that the *Maersk Etienne* crisis is Denmark’s problem, it is probably correct to say it is not Malta’s”

A lawyer at a third law firm said: “The closest coastal state should permit the ship to dock and deliver the refugees, but the reality is that many have not done so.”

Citing the legal term used to describe the documentary evidence of the negotiation, discussions, and drafting of a final treaty text, he added: “In the travaux préparatoires to one of the conventions, language making it an express obligation was rejected by the states.”

In 1981 a resolution of the executive committee of the United Nations High Commissioner for Refugees argued that the duty to accept asylum seekers should fall on the country of the next port of call. But this does not have binding force.

“This is not to my knowledge anywhere in statute or convention,” the lawyer added. “There is no definitive answer, unfortunately.”

The European Commission does not have the legal jurisdiction to enter the conflict about which country should accept the 27 migrants that are stuck on board *Maersk Etienne*.

Denmark may have to accept the migrants, Danish political parties say, although the minister responsible rejects the notion.

The IMO said in an email that it was monitoring the situation.



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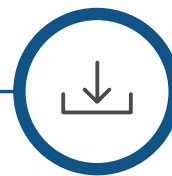
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