



# Sustainability

Key issue for marine market in 2022

- Sanctions landscape changing under Biden
- Casualty investigations in digital age
- Dubai bids for arbitration excellence

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**Customer Success:** Please contact Customer Success on UK office: +44 (0)20 3377 3996; US office: +1 212 600 3460; APAC office: +65 6508 2430  
email [customersuccess@lloydslistingintelligence.com](mailto:customersuccess@lloydslistingintelligence.com)

**Editorial queries:** Please contact Yvonne Knock, email [yvonne.knock@informa.com](mailto:yvonne.knock@informa.com)

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## IN BRIEF

### Cargo theft warning

The TT Club has created seven animations that simply and clearly illustrate a variety of cargo theft techniques, including driver attacks, personnel with false authority and theft from moving vehicles. TT Club's MD of loss prevention Mike Yarwood said: "Cargo loss through theft or criminal damage has always been a concern but the current stresses and strains on supply chains across the world make security an even higher priority for operators and cargo owners alike. Conditions such as cargo congestion, delays, longer dwell times and shortage of secure storage facilities all mean the opportunities for criminals increase. Alterations to well-established transport procedures or 'work arounds' also bring heightened risk."

### Disease award

Thome Offshore and Tasik Toba Subsea AS have jointly won *Offshore Support Journal's* Safety award for their work in achieving the world's first Infectious Disease Mitigation-Arrangements (IDM-A) notation by classification society ABS. It was the result of months of collaborative efforts between the ship manager and shipowner, together with charterer Shelf Subsea, to ensure the subject vessel complied with detailed engineering and procedural requirements for the management of infectious diseases, including Covid-19. These arrangements are designed to prevent infectious diseases entering the vessel, to contain any disease in the event of an outbreak and to have contingency plans in place to evacuate any serious cases for treatment.

### Rope-handling course

Ocean Technologies Group (OTG) and Samson Rope, a leading developer and manufacturer of high-performance synthetic rope solutions, have agreed to collaborate to provide seafarers with on-demand access to Samson's comprehensive set of online courses in rope handling, inspection, fabrication and installation. The courses will be available on OTG's Ocean Learning Platform, which was created to deliver blended learning, assessment, and competency management solutions.

## Shipping must move on decarbonisation

Inclusion of shipping in the EU Emissions Trading System (ETS) will encourage shipping's journey towards decarbonisation, but EU action threatens to undermine broader international progress if the ETS extends outside of the EU, says the World Shipping Council (WSC).

"The EU can lead global climate action, but it can't succeed alone. Advancing fuel-technology pathways in global shipping requires the shared commitment and cooperation of industry, governments and international regulators. Through the ETS, the EU has a unique opportunity to strengthen, motivate and complement global policy for reducing greenhouse gas emission in international shipping," said John Butler, president and CEO.

The WSC supports inclusion of the maritime sector in the EU's proposed regional market-based approach, including both vessel owners and operators as responsible entities. This can reduce regional shipping greenhouse gas emissions by about 42 per cent and also accelerate emission reductions among non-maritime sectors. However, an intra-EU scope rather than the extra-regional one proposed would increase the EU's influence on the global stage. It would provide a decisive EU example about the need to introduce a carbon price for shipping without complicating that pathway for others by overlapping with their trade. An intra-EU scope would:

- Strengthen economic incentives for climate action and minimize the potential for carbon leakages that would undermine EU Green Deal goals.
- Position the EU as frontrunners with the ability to drive global policy through the IMO to reduce shipping's greenhouse gas emissions internationally.
- Enhance member state competitiveness internationally.
- Maintain coherence with the necessary supply side requirements for production and distribution of low-carbon marine fuels proposed in the Renewable Energy Directive (RED) and Alternative Fuels Infrastructure Directive (AFIR).

"If the EU goes ahead with an ETS that reaches outside its borders, it runs a serious risk of alienating non-EU countries, making it more difficult to establish global market-based measures at the IMO. Why not instead take this opportunity to both achieve the Green Deal goals and drive faster international progress through strong European leadership?" asks Butler. WSC member companies represent more than 90 per cent of global liner shipping industry container and roll-on roll-off carriers. Liner shipping is committed to working with the EU institutions to achieve the Green Deal's goals through good policy that will help achieve industry greenhouse gas reduction targets and move as fast as possible to zero emissions from international shipping.

- *For more on decarbonisation, see pages 10 to 11. MRI*

## Warning not to get complacent

The ITIC (International Transport Intermediaries Club) has warned brokers and agents that allowing complacency to creep into their daily activities has the potential to cost them dearly.

A recent example concerned a shipbroker negotiating a short-term charter on behalf of their owner principal for whom the broker had worked for several years. As was usual, the broker used the rider terms of the owner's head charter agreement to fix the sub-charter. This meant that the rider terms of the head charter would be identical to those in the sub-charter. Under the rider terms of the head charter, the charterer was responsible for paying for the vessel's hull to be cleaned if required and also for paying hire on any days the vessel was idle. Unfortunately, the broker had sent the charterers a copy of the rider terms from a different head charter agreement and not the terms applicable to this particular owner. Therefore, the terms in the sub-charter and those in the original owner's head charter were different.

Towards the end of the charter, the vessel was left idle for several days but the charterer refused to pay hire on those idle days claiming it was not required under the terms of the charter. Although the hull did not require cleaning, the vessel had lost 10 days ballasting to a port where cleaning could be carried out.

The charterer agreed to pay for a hull inspection but would not cover the US\$75,000 the owner was demanding for lost hire, citing it had not been agreed under the terms of the charter. Once it was discovered that the broker had given the charterer the wrong rider terms, the owner turned to the broker for recovery. *MRI*

## Global premiums up 6.1 per cent

The International Union of Marine Insurance (IUMI) has released its 2021 analysis of the global marine insurance market – known as IUMI Stats Report – showing that global marine insurance premiums for 2020 increased by 6.1 per cent from 2019 to reach US\$30 billion. This demonstrated real market development in all marine insurance lines (except P&I) for 2020; however early indications in 2021 are showing that continued development is uncertain.

The hull underwriting sector grew by 6 per cent in 2020 and global premiums reached \$7.1 billion. Importantly, the gap between global premiums and global tonnage had begun to reduce. For the first time in many years loss ratios had improved to return the sector to a technical break-even position. However, any recovery had begun from a very low base and a return to more normal levels of shipping activity is likely to increase current low levels of claims frequency.

As with the hull sector, cargo underwriting also returned to a technical break-even position in 2020 having achieved a 5.9 per cent increase in global premiums to reach \$17.2 billion. However, a likely increase in nat cat events going forward coupled with increased risk accumulations has the potential to impact cargo underwriting performance in 2021.

An oil price rally reversed the fortunes of the offshore energy insurance sector in 2020 to halt the many years of a declining premium base – the 2020 premium base was recorded as \$3.6 billion. New underwriting potential is likely to result from increased offshore reactivation but this will bring additional risk and the possibility of an increase in the current extremely low levels of claims.

IUMI's secretary general, Lars Lange said: "The health of marine insurance as detailed in this year's IUMI Stats Report is mixed. The 2020 global premium results and loss ratios from the hull and cargo underwriting sectors showed that both these insurance lines returned to a technical break-even in that year. This was achieved after many years of unprofitability."

• See pages 8 to 9 for more from IUMI. **MRI**

## Court rules against US government over vessel withholding

On 16 November 2021 the Third Circuit Court of Appeals issued a precedential landmark ruling in *Nederland Shipping Corporation v United States of America*, No 20-2269 reversing the district court's dismissal of damage claims against the government for lack of subject matter jurisdiction and remanding the matter to the US District Court for the District of Delaware for further proceedings.

*Nederland Reefer* had arrived at the port of Wilmington, Delaware on 20 February 2019 to discharge a cargo of refrigerated bananas from Chile. Following a shipboard inspection on 21 to 22 February, a US Coast Guard Captain of the Port Notice Letter dated 22 February was issued, advising that the vessel's departure clearance was being withheld and the vessel was being detained pursuant to 33 USC § 1908(e) of the Act to Prevent Pollution from Ships (APPS – 33 USC § 1901, et seq). The owner and operator of the vessel acceded to the government's demands for an "agreement on security" to get the vessel back in service. In exchange, the US agreed to allow the vessel to depart and agreed to not arrest, seize, or attach the vessel or any other property of the ship owner or operator.

However the government unreasonably delayed the release of the vessel for 36 days. *Nederland Shipping Corporation* commenced an action in the District of Delaware seeking to hold the government liable for breach of the Agreement on Security and seeking an award for damages. The government moved to dismiss the lawsuit for lack of subject matter jurisdiction. District Judge Andrews agreed, ruling that there was no subject matter jurisdiction over the dispute.

*Nederland* appealed the decision to the Third Circuit Court of Appeals. In reversing the District Court, the Third Circuit ruled that agreement on security is a maritime contract with the primary objective being to return the vessel to her maritime trade. **MRI**

### IN BRIEF

#### Challenging year

Describing 2021 as "one of the most challenging years on record", North P&I Club's latest Pre-Renewal Report calls for "robust action" in the form of increasing mutual P&I rates at the forthcoming renewal to confront the challenge of mounting claims liabilities. Rising International Group (IG) pool claim costs and a surge in Covid-19-related claims have resulted in the Club seeking a 15 per cent increase on P&I premium rates for the 2022/2023 policy year. "In the last year, the prevailing marine insurance environment has faced many challenges, with rapidly rising IG pool claim costs posing the most significant risk," said James Tyrrell, North chairman.

#### DNV accreditation

OneLearn Global has cemented its position as one of the maritime industry's leading eLearning training companies by gaining DNV accreditation. The Cyprus-headquartered company recently secured "ISO 9001:2015 – Maritime Training Providers" for developing, delivering and evaluating learning programmes that are properly designed and have clear objectives. To gain the certification, OneLearn Global has also worked with qualified subject matter experts and instructors on developing its training programmes and improving courses in line with market demand and experience.

#### Information security

Classification Society ClassNK has obtained the certification of ISO 27001, an international standard on information security management, from the Japan Quality Assurance Organization. The certification by the third party demonstrates that ClassNK secures and manages information of clients in accordance with ISO 27001. In recent years, cyber threats, such as information leakage and unauthorised access, have been increasing as a result of the expansion of internet environments. Digitalisation of various information such as electronic certificates and survey records, has progressed and the importance of actions to enhance information security is increasing.



## IN BRIEF

### Tonnage tax

Following the UK's Budget and Spending Review, Jonathan Moss, partner and head of Marine and Trade at DWF, said: "By modernising the UK's Tonnage Tax regime and announcing that the first Freeport tax sites in Humber, Teesside and Thames will be able to begin initial operations from November, the Chancellor seems to be showing a commitment to not only expanding the UK's shipping industry but also encouraging jobs and investment in areas where economic opportunities have previously been lacking". The UK's long-term vision, Maritime 2050, was launched in January 2019, referring to the digitisation of the maritime sector, using blockchain-based ledgers, digital documentation for seafarers, autonomous vessels and investment into navigation and communications technology.

### Testing warning

UK P&I Club has released its latest video, based on a real-life incident where two men narrowly escaped serious injury while testing an emergency fire pump. The animation depicts the situation where as part of a third-party survey, the surveyor, with the assistance of the chief engineer, were carrying out a test on the pump. Shortly after descending into the fire pump well, the chief engineer urgently ordered the surveyor to get out. By the time they both reached the steering compartment deck, they were experiencing symptoms of dizziness, due to exposure to diffused Freon refrigerant gas, with the chief engineer in a state of near collapse.

### MoU on cybersecurity

Classification society ClassNK has signed a memorandum of understanding (MOU) on cyber security with the Panama Maritime Authority (PMA). Panama, the world's largest flag state, is making various efforts to improve the safety of its own vessels. The PMA is establishing a "Cyber Incident Voluntary Reporting Scheme" to better understand the cyber threats that vessels are actually exposed to and to seek more pragmatic and effective measures to control the cyber risks. The scheme encourages all Panama-flagged vessels to report detected cyber incidents to the PMA.

## Supply chain crisis shows no sign of stopping as we move into 2022

Shippers across the globe might have to battle the effects of supply chain congestion and record high ocean freight rates for some time to come. The question remains – when will they get relief? "This is proving to be the 'peak season like no other', just as we predicted" said the Global Shippers Forum (GSF), the voice of cargo owners in international trade. James Hookham, GSF's director, has highlighted the challenges that importers and exporters face in getting their goods on shelves and in warehouses for the winter holiday season. They are struggling with historically poor levels of service from shipping lines, ports and terminals, and inland logistics providers, yet paying the highest shipping rates and surcharges seen for decades.

"Global shippers are riding a tidal wave of congestion this peak season that started in exporting countries and is now arriving on the shores of importers and sweeping inland. First, we had lockdowns in Chinese ports, then an inexplicable shortage of empty containers, then the ships suddenly all maxed out and slots were like gold dust (and costing as much). Now our goods are queuing to get into ports, waiting for a crane to unload the box and then for a driver to move it inland to where we need it. It's been a tough ride and it is not yet over, but most of us are still standing, although, sadly, there will be 'wipe-outs'," he said.

"To continue the surfing analogy, was 2021 a freak wave or a permanent rise in sea level? Just about every shipping line is predicting the latter," continued James Hookham. "And why wouldn't they when they are collectively expecting to turn profits exceeding US\$150 billion this year? But there is good reason to query the hype of continued congestion.

"The expectations for consumer inflation levels in most developed countries are hardening and most central banks are expected to increase interest rates next year. That won't affect retail prices immediately, but it could trigger a rapid change in consumer sentiment that means the 'click-fest' of online shopping that has reportedly fuelled the surge in shipping demand for the past 18 months could be extinguished as quickly as it ignited".

Meanwhile, in the UK the International Trade Committee was investigating rises in the cost of international shipping after recent months had seen concerns over steep spikes in container prices, with reports of prices for some containers more than quadrupling during the pandemic.

MPs are likely to use the session with experts and leaders in shipping and retail to explore the impact of coronavirus on supply chains, the issues facing UK ports, and the impact on importers, exporters and consumers. The Committee is also likely to examine the obstruction of the Suez Canal in March by the *Ever Given* container ship, and the event's implications for supply chains and the wider industry. **MRI**

## Call for international shipping voice

Shipping needs a "King Arthur-style" round table of many relevant bodies to fully represent its views at international level and "do it justice", InterManager's president Mark O'Neil said during the association's annual general meeting. Highlighting the shipping industry's distant position in relation to important global events such as the recent COP26 environmental discussions, O'Neil said shipping's arena seat is "in the gods" and we need to be ringside. "We need to control the narrative and be involved."

One year into his term of office, O'Neil reported an increase in membership but stressed InterManager plans to grow even more. This year InterManager – which is celebrating its 30th anniversary – has "shouted more loudly as an association and gained much more recognition," he said.

He stated that third-party ship and crew managers, who today employ 90 per cent of the world's seafarers, are well-placed to "drive the debate". "I'm fed up with others taking the lead. We need to have opinions on important issues to serve our members and our respective crews," he said. O'Neil also highlighted the association's crucial membership of the industry Covid-19 vaccination taskforce, it's pivotal role in ensuring that seafarers around the world are recognised as key workers and it's life-saving campaign to improve the onboard provision of medical oxygen on ships. **MRI**

## West of England

### NEW CHARTERS AND TRADERS TEAM

The West of England P&I Club has announced the creation of a dedicated charterers and traders product team to manage its charterers comprehensive cover, which provides bespoke cover. Suumit Madhu will lead the new team, with support from Nicola Goff, Christina Anderson, Chris Ward and Paul Kaye covering both underwriting and claims support for members.

## MS Amlin

### NEW HULL UNDERWRITER

MS Amlin Underwriting Ltd has appointed Stuart Forsyth as lead class underwriter for hull. Stuart will report directly to Laurence Humberstone, head of marine. He brings more than 30 years of experience across underwriting and broking within the marine (re)insurance market and joins from RSA where he served as London market hull and liability leader.

Stuart began his career at Willis Faber & Dumas, becoming divisional director in 1996. In 1998 he moved to Sedgwick, working within their hull department specialising in Greek and North American business. During his 12 years as a broker, he gained significant experience in both direct insurance and reinsurance, before serving as CEO of the Scottish Boatowners Mutual for 16 years.

## Chaucer

### NEW MARINE SPECIALTY DIVISION

Chaucer has appointed Mike Smith, formerly director at Willis Towers Watson, to head up its new marine specialty division. Mike has more than 35 years' experience working within the marine insurance industry, focusing on all aspects of marine cargo and freight liability insurance from both a broking and claims management perspective, most recently with responsibility for servicing a portfolio of global cargo accounts at Willis.

The appointment comes as the marine insurance lines at Chaucer are set to be repositioned to support product development and technology-driven sector innovation, enhanced service, and future growth in targeted segments. To achieve this aim, the following changes will come into effect in January 2022.

Marine Global will be led by Phil Graham, the incumbent head of marine at Chaucer, and will incorporate the London

and international market lines of cargo, specie, hull, war and liability, and the ports and terminals portfolio.

Marine Specialty will be led by Mike Smith and will include marine PI and transport logistics, the freight forwarder business in London and Lonham, Chaucer's specialty cargo, freight and logistics liability insurer based in Ipswich where he will be working closely with Mike Ayres and the underwriting team.

## TT Club

### NEW TECHNOLOGY OFFICER



The TT Club has named its first chief technology officer, Kevin Blunsum, as a major step in ensuring its ability to service its members' developing digital needs.

Kevin is a well-respected member of the London-market insurance community. In his 30-year career he has held a variety of positions engaged in insurance technology development and change management with Deloitte, EY, Accenture, and more recently with Aspen Insurance as director of business transformation.

Kevin will be working closely with Lisa Gibbard, the recently appointed CIO of TT Club's management company.

## Wallen Group

### NEW CEO

John-Kaare Aune has been appointed CEO at Wallem Group after a successful term as interim CEO. Having joined Wallem in 2019 as managing director, ship management, John took over as group CEO on an interim basis in January 2021 following the resignation of Frank Coles.

Before joining Wallem, he worked as regional director – Asia Pacific at the Cayman Registry, playing a key role in the growth of its global commercial activities. He had previously worked at the Norwegian Maritime Directorate.

## Hill Dickinson

### PROMOTIONS ANNOUNCED

Maritime law firm Hill Dickinson has promoted a number of associate lawyers to senior associate positions in its latest promotions round, which this year saw a record number of people advance across the whole group. The promotions are spread across shipping and maritime

teams in the firm's UK and international offices and took effect from 1 November.

Promoted to senior associate are Piraeus-based Harris Kouppas and Iris Vamvaka, Hong Kong-based Clement Lai, Kun Ho Park in Singapore, and yachts team member Amy Cardale, based in London.

## Coastguard

### SERVICE CONTRIBUTION



A prestigious Master Rearcrew Certificate has been presented to Kevin Weller, chief technical crew at HM Coastguard Search and Rescue (SAR) base, Caernarfon, to recognise his contribution to rotary aviation. The award recognises long service and consistently high standards in one or more branches of professional flying whether civil or military, including air transport, airborne instruction, test, or operational flying.

Kevin played a key role in the transition of the HM Coastguard SAR helicopter service to Bristow in 2015, helping to ensure the safe introduction of Sikorsky S-92 helicopters to North Wales, and managing the transition of a large number of aircrew from the military.

He served with the Royal Navy from May 1973 where he qualified as an aircrewman on Wasp helicopters before receiving his instructor qualification. In the years following the Royal Navy, he began teaching future generations of UK and overseas aircrew at the SAR Training Unit at RAF Valley.

## Stream Marine Training

### NEW OPERATIONS DIRECTOR

Stream Marine Training Group has named Katy Womersley as group operations director. Katy will take over from Colin McMurray, who is joining Forth Valley College as a director in January 2022. Katy was a deck officer before coming ashore in 2005 to join Clyde Marine Training (CMT) as an STCW instructor. Having secured a role in cadet training based on her industry experience and talent, Katy later became general manager at CMT, working with Colin to grow the business. She then moved to Stream Marine Careers in 2020.

# A look back at 2021 as we step into 2022

Lars Lange, of IUMI, looks back at 2021 and considers what the marine sector will face in 2022

**2** 021 has been another year of challenge and change. The ongoing Covid-19 pandemic continued to cause disruption to various sectors across the world and has taken, sadly, many lives and livelihoods. As we approach the end of the year and with the vaccination programme underway in many countries, we hope that 2022 will be a far more positive year for all.

Marine insurance has certainly not been shielded from the impact of Covid-19. With at least one billion tonnes of trade wiped from the books during the first half of last year, some impact on marine cargo insurance was inevitable. In the early days, supply chains were severely disrupted and the average weekly mileage for the global fleet took a sharp downwards dip – particularly for container and passenger vessels. But the recovery has been consumer led and, fortunately, vessel mileage has returned to more normal levels, with the exception of passenger shipping.

Importantly, given that marine insurance covers physical damage to vessels and their cargoes, despite significant market disruption across the marine industry, Covid-19 has not really impacted yet on the overall claims profile. Quite the reverse: lower levels of shipping activity reduced the overall frequency of claims but with a return to near-normal, claims are expected to rise again.

**“The pandemic brought to light significant supply chain vulnerabilities, particularly when national authorities closed ports or limited their activities causing port congestion and container shortages”**

## Sustainability is the key issue for 2022

While the pandemic will continue to impact every industry throughout 2022, one positive effect is that it has moved sustainability and environmental, social and governance (ESG) issues into the spotlight. Important events continue to push this agenda with COP 26 and MEPC 77 taking place in November. Simultaneously the latest IPCC (Intergovernmental Panel on Climate Change) assessment report has been published stating that it is “Code Red” for human-driven global warming, and the Global Maritime Summit is determinedly driving the Getting to Zero Coalition and working with maritime industry leaders to make progress on decarbonisation and ESG issues. It is clear that we must all act now.



Asia File/Alamy Stock Photo



From a marine insurance perspective ESG issues are having a major impact.

- First, climate change and the related rise in sea levels and natural catastrophes (nat cats) will impact the frequency and severity of claims. We have witnessed an alarming rise in nat cats across the world and predictions suggest that this trend is likely to worsen in time.

The World Meteorological Organization states that the number of natural disasters has increased by a factor of five in the past 50 years and this will undoubtedly impact the claims landscape in the future. For example, this year alone has seen an increasing number of containers lost at sea due to bad weather.

- Secondly, the evolution of the transport assets insured and changes to the cargoes protected will also be significant and underwriters are already working to adapt as the industry adopts alternative fuels. During the recent IUMI Annual Conference in September the shipping industry's move to decarbonisation was discussed at length, which of course IUMI fully supports, but at the same time we recognise that adequate risk management provision must be in place to underpin the transition.

Simply put, the role of a marine insurer is to protect their clients and here we must support shipowners transition to low or zero-carbon fuels such as ammonia and hydrogen in a safe manner, with all associated risks fully understood and managed. As with anything new there is no history or loss data to help assess the potential risks that could be involved. As we learn more about specific risks, we need to educate our clients accordingly and urge the parties involved to begin working on new mandatory regulations to help facilitate this transition as smoothly as possible.

- Third is the sustainability of the assureds themselves and the industries in which they operate. It is becoming increasingly clear that some industries will have the opportunity to grow and develop while others will shrink as the world moves to a more sustainable footing. Underwriters will need to embrace the oncoming wave of digitalisation which has the potential to transform how the insurance sector operates as a whole. Advances in data management and analysis will enable more informed decision making and risk profiling, while technology will also drive efficiencies throughout the market. As the maritime industry becomes increasingly digitised and digitalised, the risk of cyber threat, cyber security and cyber insurance must not be forgotten.

### Keeping marine safety top of the agenda

IUMI, at its core, is about facilitating safer shipping and managing risk, and this past year has seen an array of new concerns plague the industry. The pandemic brought to light significant supply chain vulnerabilities, particularly when national authorities closed ports or limited their activities causing port congestion and container shortages. This continues today and major ports across the world (particularly west coast US) are contending with a staggering pileup of cargo and, consequently, an ever-increasing accumulation of risk. This is a long-standing concern for marine underwriters. Significant events in ports, such as the explosions suffered in Beirut and Tianjin, are clear examples of the dangers of risk accumulation.

The global supply chain was also hit by the Suez Canal incident this year when the 20,000 TEU container ship *Ever Given* blocked the waterway for a few days. This highlighted the inherent frailties within transport chains and encouraged some to revisit the concept of more local manufacturing and distribution bases to facilitate sustainability.

This year, IUMI has been vocal on the increasing number of fires breaking out on large containerships. By their nature, these fires are very difficult to extinguish often putting the crew at extreme risk. In many cases, the cause of these fires was found to be misdeclared or undeclared dangerous cargoes which is now becoming a significant industry challenge.

Positively, IUMI has co-sponsored (with the flag states of Germany and Bahamas, the shipowner association BIMCO and the shipbuilder's association CESA) a submission to the IMO Maritime Safety Committee's (MSC) 102nd session with a view to amending SOLAS on the issue of containership fires. Suitably MSC 103 has agreed to include this in the biennial agenda of the Ship Systems and Equipment (SSE) Sub-Committee for 2022-2023. The provisional agenda for SSE 8 includes an output on "Development of amendments to SOLAS chapter II-2 and the FSS Code concerning detection and control of fires in cargo holds and on the cargo deck of containerships", with a target completion year of 2025.

**"If 2021 has taught us anything, it is that the marine industry is a resilient and united sector braced for and willing to change and adapt"**

The amendments will apply to new vessels to enhance provisions for early fire detection and effective control of fires in containerised cargoes stowed on and under the deck of containerships. They are scheduled to enter into force on 1 January 2028, provided that they are adopted before 1 July 2026.

### Tackling challenge and change head-on

In the year ahead IUMI and marine underwriters will continue to adapt to a range of significant challenges including technologies, vessels, propulsion methods, cargo types and trading patterns. These will bring with them a much-changed risk profile.

If 2021 has taught us anything, it is that the marine industry is a resilient and united sector braced for and willing to change and adapt. IUMI looks forward to working with industry partners and peers to ensure that our collective efforts result in a more positive, sustainable and secure future. [MRI](#)



Lars Lange

Lars Lange, Secretary General, IUMI

# Route to decarbonisation in shipping

Akshat Arora, of The Standard Club, considers how the shipping sector is adapting to decarbonisation

**A**ccording to a recent scientific report, human activity is changing the climate in unprecedented and sometimes irreversible ways – weather patterns are changing, sea levels are rising and extreme weather events are becoming more frequent and ferocious. The United Nations (UN) has described the findings of this report as “code red” for humanity.

As a specialised agency of the UN, the IMO has committed to contribute its efforts to combat climate change impacts and has adopted a strategy that envisages:

- i. a reduction of the average carbon intensity (carbon dioxide (CO<sub>2</sub>) emissions per transport work) of international shipping by at least 40 per cent by 2030, pursuing efforts towards 70 per cent by 2050, as compared to 2008 levels; and,
- ii. a reduction of total annual greenhouse gas (GHG) emissions from shipping by at least 50 per cent by 2050 compared to 2008, while pursuing efforts towards phasing them out entirely within this century.

During the 76th session of the IMO’s Marine Environment Protection Committee (MEPC 76), held in June 2021, a great proportion of time was devoted to delivering this strategy. Essentially, MEPC 76 adopted amendments to the MARPOL Annex VI, concerning mandatory goal-based technical and operational measures for the reduction of GHGs. These amendments will enter into force on 1 November 2022 and applied from 1 January 2023.

This goal-based approach allows shipowners and operators to achieve the annual carbon intensity reduction factor through a combination of technical and operational measures:

- i. calculation and verification of energy efficiency existing ship index (EEXI);
- ii. introduction of a rating mechanism (A to E) linked to the operational carbon intensity indicator (CII); and
- iii. enhanced use and auditing of a ship energy efficiency management plan (SEEMP).

## Technical measures: energy efficiency existing ship index (EEXI)

The aim of the EEXI is to measure ship’s energy efficiency based on its design and arrangements. This regulation is applicable to all existing ships of 400 gt and above falling under MARPOL Annex VI.

In principle, the EEXI describes the carbon emissions per cargo ton and mile. It determines the standardised CO<sub>2</sub> emissions related to installed engine power, fuel oil consumption, transport capacity and speed. There are different correction factors that apply, depending on the ship type and capacity.

To ascertain how much a ship must reduce its emissions to meet the goal-based targets, ships will need to calculate the attained EEXI and determine if it is equal to or lower than the required EEXI. The data used for calculation will need to be filed in the EEXI technical file.

The EEXI technical file will need to be approved by the ship’s flag state or class and the compliance with the EEXI regime will be reflected in the International Energy Efficiency Certificate (IEEC) at the first annual, intermediate or renewal survey of the International Air Pollution Prevention (IAPP) certificate on or after 1 January 2023 for ships delivered before 1 January 2023, or at the initial survey of IEEC for ships delivered on or after 1 January 2023.

In cases where the attained EEXI is greater than required, there will be a need to implement countermeasures to improve the ship’s efficiency index. Being a technical or “design” efficiency index, this may include alterations to the ship’s design or machinery. Some of the available options are:

- introduction of an engine power or shaft power limitation;
- increasing ship capacity (by increasing the deadweight (dwt) or gross tonnage (gt), if structurally possible);
- propulsion optimisation devices, eg, high-efficiency propellers, propeller boss cap fins, Mewis duct, low friction paints, air lubrication systems, etc;
- energy efficiency technologies (EETs), such as waste heat recovery, wind assisted propulsion, solar cells, etc; and
- switching to carbon-neutral fuel, but this might not be viable for most existing ships due to very high capital expenditure.

The regulations are not prescriptive on which improvement method should be deployed and the right solution may vary based on ship type and size. It is vital to consider the ship’s age against the cost and payback time of improvement option.

## Operational measures: carbon intensity indicator (CII) and enhanced ship energy efficiency management plan (SEEMP)

The CII is an operational measure applicable to ships of 5,000 gt and above, which aligns with the requirements on recording ship’s fuel consumption in accordance with the IMO Data Collection System (IMO-DCS).

As per the revised MARPOL Annex VI regulation 28, from 2023 applicable vessels will need to:

- i. calculate attained annual operational CII in a 12-month period from 1 January to 31 December in that calendar year, and
- ii. demonstrate reductions of carbon intensity from 2023 to 2030. The reduction rates are intended to achieve the levels of ambitions set out in the IMO’s strategy.

Ships will be given an annual CII rating indicating their performance over the previous year. There are five CII rating categories given on a scale from A to E, where A is the best, based on a calculation of annual efficiency ratio (AER) or capacity gross ton distance (cgDist).

AER (emission per dwt-mile) is used for the ship segments where the cargo is weight critical, while cgDist (emissions per gross ton-miles) is used for volume-critical cargo, like cruise ships, vehicle carriers, roll-on/roll-off (ro-ro) and roll-on/roll-off passenger (ropax) vessels.



Zoonar GmbH/Alamy Stock Photo

## CII ratings

The attained annual operational CII will be based on IMO-DCS. Emissions data must be submitted through the IMO-DCS in addition to the existing fuel consumption requirement. Emissions reporting must, as a minimum, include the AER (for bulk carriers, tankers, container ships, general cargo, LNG carriers, gas carriers, combination carriers and reefers) or the cgDIST (for cruise ships, vehicle carriers, ro-ro and ropax).

As required by the MARPOL Annex VI regulation 26, an enhanced version of the SEEMP will need to be developed. This would include:

- i. the ship's CII rating together with the description of the methodology used to calculate the ship's attained annual operational CII;
- ii. the required annual operational CII for the next three years;
- iii. an implementation plan documenting how the required annual operational CII will be achieved during the next three years; and
- iv. a process for reporting to flag state for verification.

From 1 January 2024 ships will be issued with a statement of compliance (SoC), covering verified fuel consumption, attained carbon intensity reduction and an annual rating (A to E) based on carbon intensity reduction performance against the required carbon intensity reduction. Ships rated "D" for three consecutive years or at rating "E" for one year, will have to submit and implement a corrective action plan showing how they can improve the vessel's efficiency to "C" or above. The corrective action plan is to be included in the SEEMP.

Periodic SEEMP verification audits will be introduced to ensure plans are in place to achieve the targets and ensure correction plans are being followed where a ship is rated E in any given year, or D in three consecutive years. The guidance on the frequency and specific requirements of these audits is expected to be developed in 2022.

If regular improvements are not made, a ship's CII rating could drop as the targets will become increasingly strict every year. A consequence of this could be loss of earnings and inability to trade, so there is a strong incentive to improve energy efficiency.

## Other industry-wide developments

In addition to IMO regulations, the European Commission has set out a package of proposals on 14 July 2021 for approval

by European Parliament and the EU Council. Some of these proposals are aimed at accelerating efforts to decarbonise shipping. However, these proposals have drawn concerns and criticism as they could potentially undermine the IMO's efforts on decarbonisation and increase a vessel's administrative burden.

Similarly, industry stakeholders have rolled out their initiatives to tackle emissions, eg a proposal by industry organisations calling for an internationally accepted market-based measure, financial institutions like banks have the Poseidon Principles and charterers have the Sea Cargo Charter.

Discussions involving shipping industry's route to decarbonisation were held during the 26th UN Climate Change Conference of the Parties (COP26) at Glasgow in November 2021, where areas such as policy and framework, innovation infrastructure, and financing energy transformation were covered.

## Conclusion

The route to decarbonisation leaves shipowners and operators with the immense task of achieving compliance by reviewing operational efficiency of their fleet of vessels. As 2023 approaches, shipping companies are recommended to benchmark their fleet's performance and fuel consumption. This will allow them to understand the technical and operational measures that are required to upgrade their existing ships to a suitable efficiency level.

The Standard Club has formed a working group and advisory panel that looks at many aspects around decarbonisation in shipping. Guidance is provided to members through a combination of member workshops, webinars, articles, podcasts, and physical interactions. [MRI](#)



Akshat Arora

Akshat Arora, senior surveyor,  
The Standard Club



# The new era of **casualty claims investigation**

**Donal Keaney**, of Ince, discusses the way that casualty investigations have changed and what might lie ahead

**T**he shipping industry has experienced a significant modernisation of the casualty claims investigation process in the last few years. The way in which these investigations are undertaken has become faster, more streamlined and more time and resource effective, largely due to the improved reliability of electronic navigational evidence and systems. These systems have enabled investigators to access and gather information remotely when it is appropriate to do so, as well as process relevant electronic navigational evidence without physically being at the scene of the incident.

Covid-19 undoubtedly accelerated the adoption of remote casualty investigations and with the use of file-sharing sites and mainstream video conferencing facilities such as Zoom, the preservation of evidence and statement taking continued almost seamlessly, when just a few years ago, everything would likely have come to a standstill.

As the world continues to readjust, there is a place for in-person and remote investigations to harmoniously co-exist, with data solutions providing complementary benefits to both physical and virtual investigations. For example, using emerging software solutions can allow legal teams and other relevant parties in casualty investigations to gain a more efficient preliminary understanding of the scope and scale of the claim, and form an early assessment of the potential financial exposure of clients and legal implications.

While the maritime industry explores the implications of fully autonomous vessels, casualty claims are unlikely to ever be fully “hands free”. However, it is empowering that digitalisation is expediting processes, changing our legal frameworks and underpinning advice to advance how investigations are undertaken.

## **Institutions and regulation – riding the wave of modernisation**

The modernisation of casualty investigations and the shift to more streamlined processes is being reflected institutionally. Courts worldwide are keeping pace with the wealth of technological developments in this space, adjusting existing regulations – and drafting new ones – to match the progress being made.

Critically, this is the case with the new rules affecting witness evidence that came into effect this year. From 1 October 2021 witness statements used in claims commenced in the UK Admiralty Court must comply with the new rules, prescribed in Practice Direction 57AC. These new rules are designed to remove complex legal witness statements and also statements which are designed to provide an overarching narrative of the party’s case, including reference to documentary evidence.

The court considers that cases will be determined by documentary evidence in most instances, and therefore witness testimony must now be confined to that narrow section of the evidence which is subject solely to the witness’ own knowledge or experience of an incident. As a result, the collation of witness evidence is now more complicated and each matter needs to be assessed on a case-by-case basis at the outset.

Another example is the introduction by the Admiralty Court of a “fast track” collision liability procedure to make early exchange of electronic track data mandatory in all collision liability actions. This allows for more efficient and cost-effective court proceedings and grants parties the ability to accurately assess liability at an early stage. Moreover, preliminary hearings at the English Admiralty Court – and even trials themselves – are currently being carried out remotely, with all filing done electronically. With these efforts, the English Commercial Court has reaffirmed its position as the leading forum for dispute resolution in admiralty matters.



## The technology underpinning a revolution in casualty investigation

To analyse and fully understand this level of widespread adoption, it is crucial to look at what has laid the foundation for streamlining the casualty claims processes. Here is where several technological developments are playing a key role, namely voyage data recorders (VDRs) and the automatic identification system (AIS).

The use of VDRs has grown since 2012 when the IMO adopted Resolution MSC.333(90) to revise the performance standards for VDRs to assist in investigations into casualties. Since then, VDR data has become far more comprehensive and reliable. All ships with VDRs fitted after 1 July 2014 now have a long-term recording medium, capable of storing a minimum of 30 days of continuous electronic data. As a result, the preservation of VDR data is no longer a matter of urgency, particularly in a large-scale casualty where VDR data can evidence the actions of crew to mitigate loss following an incident, as well as prior.

AIS has also become an important tool in improving casualty claims processes. Investigators have access to a comprehensive data bank of global information in use worldwide that allows specialised legal and casualty teams to create accurate “animations” of incidents. This relevant data is then combined with evidence provided by owners, reports produced by local correspondents, and further input from the crew – gathered via email or remote interviewing – to allow legal teams to advise clients effectively and concisely on liability and propose appropriate legal action, at a very early stage.

Additionally, wider improvements in telecommunications allow investigators to remotely interview witnesses involved in a casualty. The ability to interview witnesses remotely – which developed across the industry significantly as a result of the Covid-19 pandemic and the implementation of travel restrictions worldwide – minimises travel and cost-related concerns and is especially significant given the recent introduction of amended rules for the preparation of witness statements.

## Early assessment of evidence – a powerful first step in casualty investigation

Early assessment of AIS and VDR evidence enables legal teams involved in the casualty claim process to assess the impact of this evidence on the relevant legal tests and provide early advice on liability, which may affect decisions on security and forum shopping. Reviewing and analysing available data from an early stage can also result in significant time and costs savings by shortening the lead time for advice.

The ability to conduct efficient preliminary analysis of electronic navigational records is therefore key to providing shipping companies affected by casualty claims with the most accurate advice and guidance. This advice is of relevance to groundings, “wash damage” cases, unsafe port cases, collisions and allisions, irrespective of the value of the claim. The use of AIS, VDR and other resources to analyse electronic evidence should be considered best practice in the early stages of a casualty claim, enabling vessel owners, their insurers and other stakeholders to make early decisions on the immediate response to a casualty.

Despite the key role that electronic evidence plays in early assessment and throughout the casualty investigation procedure,

legal teams and shipowners must remain aware that electronic evidence alone is unlikely to provide the complete picture and witness evidence still plays an integral part in claims and legal proceedings that invariably follow a casualty. It is important to remember that witnesses’ recollection of events will deteriorate over time and can be influenced by external factors. It is crucial, therefore, that witnesses are interviewed by an appropriate qualified person as soon as possible after an incident.

## Casualty expertise with tech-enabled insights

It is undeniable that technology has become a powerful ally to all parties involved in casualty claim procedures, from investigators to shipowners and their legal advisors. Moreover, it has significantly helped to streamline and increase the effectiveness of investigations, by allowing the relevant institutions to deploy resources more efficiently and by having a positive pull-effect on the regulatory progress in this space.

Data and analysis systems are part of the legal teams’ toolkit to evaluate casualty claims remotely from an early stage, allowing them to make early assessments of the situation and its legal implications and kick start the delivery of their advising capabilities. Data-driven assessments are just the first step of the process. Casualty expertise and insights must follow and work in combination for the successful resolution of a claim.

It is for this reason that ship operators and insurers need legal advisors with the relevant experience and knowledge to access, analyse and apply – in a legal context – all the data and insights extracted from the incident. Local correspondents and surveyors can contribute to the process by responding and gathering evidence on scene, but they are unlikely to have the ability to test, access and evaluate the electronic evidence. Understandably, they will also lack specialised legal knowledge to interpret how the evidence applies to cases and can work in favour – or against – stakeholders.

As per Practice Direction 57AD, solicitors must oversee the entire process of preparing witness evidence, so their early involvement is crucial. That is why legal teams are particularly effective when they include former mariners in their team to work with clients’ either on on-site investigations or interpreting data. Their experience of both sides of the fence enables them to provide insightful reports, incident analysis as well as a clear legal strategy for the resolution of the incident.

To conclude, shipping companies that are looking to take a more progressive approach to casualty investigations should ask their legal advisors not just about how they gather their information and the tools at their disposal, but more importantly how this translates into better outcomes. *MRI*



Donal Keaney

Donal Keaney, senior  
marine manager, Ince

# Human performance limitations – stress as a distractor

Stuart Edmonston, of the UK P&I Club, considers the human factor in marine incidents and draws on the aviation sector for examples

**T**he maritime and aviation environments, while operating in vastly different environments, share some key similarities. Most importantly, through studying incidents in both sectors we can analyse common themes that led to each incident to share knowledge and improve overall operational safety.

Knowledge sharing between industries is a key element of improving safety globally. At the UK P&I Club, we firmly believe that the flight deck can teach the bridge important safety lessons. We also believe that many of these lessons apply to the maritime industry as a whole, including engineers and shore management, as well as deck officers.

Distractions such as phone or radio communication, alarms, paperwork, or people can have a negative effect on performance. Measures can be put in place to mitigate some of these. However, our internal distractions, such as stress, can have powerful and long lasting effects.

Stressors in seafarers can be personal or directly connected to work conditions. Common occupational stressors for seafarers include overly strenuous or repetitive labour, the physical risks associated with a post, career prospects, employment and compensation and the separation from loved ones.

## Aviation case study: summary

An Embraer 145 landing at London Southend Airport ran over a private aircraft tow bar that had been dropped on the runway. No damage was caused to the aircraft. The investigation found that the tow bar had fallen from a Cessna 210 that had departed Southend Airport 30 minutes before. The Cessna pilot had likely been distracted during his pre-flight checks by an earlier road traffic incident he was involved in and had inadvertently left the tow bar attached.

## Detail

The Embraer 145 regional jet arriving at Southend from Aberdeen made a normal approach to Runway 23 at Southend Airport. As the Commander applied the brakes on landing, he saw an object on the runway to the right of the centreline, approximately 8 to 10 m in front of the aircraft. He estimated that the aircraft was travelling at between 105 and 110 knots at this stage. He applied slight left rudder as the object disappeared out of view and felt a small bump through the rudder pedals, but was not sure if this was caused by the aircraft clipping the object or running over the centreline.

A runway inspection found a private aircraft tow bar on the runway. There were no indications of any damage to the aircraft, so the Commander continued to taxi the aircraft to stand.

Shortly after the Embraer landed, the Southend Tower received a call from Farnborough Radar. They had been contacted by the

pilot of a Cessna 210 light aircraft that had departed Southend Airport before the arrival of the Embraer, as he thought he may have departed with the tow bar still attached and that it could have fallen off.

The Cessna pilot flew to Southend Airport regularly. On the day of the incident, while riding to the airport on his motorbike, a cyclist pulled out in front of him. He was able to miss the cyclist and no one was injured, but the pilot described it as “a fright and a close shave”. He continued to the airport, pulled the aircraft out of the hangar using the tow bar and completed the pre-flight checks. The start-up was uneventful but, as he taxied to the runway, he noticed a slight tendency for the aircraft to track to the left. He considered it minor and made a mental note to check the tyre pressures on landing.

Approximately 30 minutes into the flight he was thinking about the tracking issue and it occurred to him that he could not positively remember removing and stowing the tow bar. He knew the tow bar was no longer attached to the aircraft because the landing gear had successfully retracted. He immediately reported his concern to Farnborough Radar and asked for a message to be passed to Southend.

The pilot discovered that he had also left his bags behind in the hangar at Southend. He reflected that he was distracted by the earlier motorcycle incident and that this was “on his mind” while completing the pre-flight checks.

A review of the tower log for Southend indicated that after the Cessna had taken off, the Embraer was the third aircraft to use the runway; the other two aircraft did not make any report so presumably had not seen the tow bar. Additionally, a wildlife inspection of the runway had taken place in the intervening period and the tow bar was not spotted by that vehicle either.

During the airport’s investigation into this incident, it was noted that the pre-flight checklist used by the pilot did not include any reference to ensuring the tow bar or other ground equipment was removed before flight. Following the incident, the pilot amended his checklist to add a reminder to remove and stow the tow bar. He also added a visual reminder in the cockpit of the aircraft.

## Analysis

This incident highlights how stress from events, in this case unrelated to flying, can cause a significant distraction and underlines the importance of pilots honestly assessing their fitness for flight before every flight. A stressful or traumatic event can be distracting and difficult to put out of mind. It may be tempting to continue with a planned operation and not realise the effect of such an event on subsequent performance.

The Civil Aviation Authority Skyway Code highlights the importance of pilots assessing their fitness to fly before any





flight. The Code suggests using the “IM SAFE” mnemonic for self-assessing fitness for flight:

#### IM SAFE

- Illness – are you suffering from any?
- Medication – are you taking any?
- Stress – are you suffering from any?
- Alcohol – when did you last drink?
- Fatigue – are you well rested?
- Eating – have you eaten recently?

(Source: Air Accident Investigation Branch – United Kingdom.)

#### How might this apply in maritime operations?

Stress is ever-present in daily life and particularly in maritime operations where pressure comes from all directions. In all aspects of ship operations stress exists, particularly when things do not go exactly as planned, such as a near-miss incident. The latency effect of these momentarily stressful incidents on post-incident performance is important and could cause temporary degradation in ability to carry out duties.

Examples of momentary stresses are:

- A slip or trip
- A mooring or towline parting
- A close-quarters situation with other traffic
- Sudden machinery failure, such as lifting gear.

It is important to be aware that:

- Short-term acute stress events can have, depending on the individual, a latency effect where human performance is degraded for some time after the incident.
- After an acute stress event, it is necessary to be more vigilant of degraded individual and team performance.
- We can remain preoccupied with an incident, long after the incident has passed, even if the consequences were benign.
- There is a need for vigilance regarding fitness to carry out roles and responsibilities.
- It is important to maintain the workplace in a tidy state upon completion of the activity or work.
- Verifications are made properly, eg check the stabilisers are stowed, thrusters retracted, crane secured, etc.

#### Maritime comparisons: *Aris T* and *Lorretta G Cenac*

The bulk carrier *Aris T* was proceeding along the Mississippi river in Louisiana. The ship subsequently collided with a tank barge, its towing vessel (*Lorretta G Cenac*) and several shoreside structures at a cost exceeding US\$60 million. The collision resulted in two crew members receiving injuries.

The investigation determined that the cause of the collision was likely the failure of parties to take early and effective preventative action, in part due to their distraction from safety-critical navigational functions. The distracting nature of mobile telephone calls and messaging was held to be crucial, as it diverted visual attention away from navigation. Furthermore, there is the potential for use of such devices to become stress inducing due to the content of calls/messages. This can affect the crew’s ability to think clearly.

#### *Daroja* and *Erin Wood*

The general cargo ship *Daroja* was underway off Peterhead, Scotland when it collided with the oil bunker barge *Erin Wood*. It was determined that at the time of the incident both ships were manned by watchkeepers not keeping a proper lookout. Furthermore, on *Daroja*, the chief officer on watch missed several opportunities to detect the bunker barge. This occurred because he had become complacent and inattentive. The chief officer was distracted by the pressing need to complete cargo paperwork, a phone call and possibly the use of his tablet computer. (Sources: Marine Accident Investigation Branch (UK) and National Transportation Safety Board (US).)

*This article features excerpts from the book Maritime Team Dynamics – Lessons from the flight deck, recently launched by the UK P&I Club and CAE, the aviation training company. [MRI](#)*



Stuart Edmonston

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

# A new dawn for the e-bill

As their use is becoming more widespread, electronic bills of lading are here to stay. **Cecilie Rezutka**, at CJC, provides a practical overview and considers common legal issues arising from them

**E**lectronic bills of lading have existed for several decades but their take up has been slow. That is until the arrival of the Covid-19 pandemic which has considerably accelerated digitalisation globally, shipping being no exception.

Measures introduced by governments to slow the spread of Covid-19 brought numerous unintended consequences for the delivery of cargo. Restrictions on movement significantly delayed the delivery of the bills of lading and led to an increased incidence of vessels arriving at the discharge port before the bills of lading, adding to the global port congestion problem.

We are frequently asked to advise on misdelivery claims which usually arise in circumstances where the original paper bills of lading are not available at the discharge port and cargo is released against a letter of indemnity provided by a cargo receiver or charterer. In circumstances where it transpires later that the cargo was delivered not to the lawful holder of the bill of lading but some other party, misdelivery claims may arise with cargo interests suing the carrier for the total loss of the cargo. This can result in large claims, which are often uninsured by P&I given that delivery was not made against the original bill of lading as required by the terms of the policy.

More specifically, for example, a complex dispute arose out of Peru's removal of the obligation to sight an original paper bill of lading prior to the release of cargo following the adoption of Legislative Decree 1492. Without sight of the original bill, the carrier would be less certain who the correct consignee is to release the cargo to. This increased the risk that the carrier might release the cargo unknowingly to the wrong party and exposed carriers to legal action prompting shipowners to refuse to call at Peru and divert vessels to other countries, giving rise to claims under their charter agreements. While discharge without the presentation of original negotiable bills of lading is established practice in some countries (an example being Russia), the abrupt introduction of this system in Peru caused uncertainty. The situation would have been different had a recognised electronic trading system been in widespread use at the time.

## Back to basics – the core functions of bills of lading

Bills of lading generally fulfil three key functions – they:

1. act as a receipt for the shipment of the goods;
2. provide evidence of the terms of the contract between the carrier and the cargo owner; and
3. serve as a document of title.

These functions are conveyed

- (i) by operation of law, an example being the English Carriage of Goods by Sea Act 1992 (COGSA); or
- (ii) by established custom and practice and enable the bill of lading to be transferrable between parties to a commercial transaction.

## E-bills of lading and their status

An electronic trading system is a system which is intended to replace paper documents used for the sale of goods and/or their carriage by sea or by combined or other means of transport. Transfer of rights is not by physical endorsement but via contract, such as through novation or assignment. In practical terms, the sender who holds the e-bill transmits an electronic message using a private digital key to the recipient who deciphers it with a public digital key which makes the sender lose its ability to transfer or take delivery.

A key difference is that under English law (and indeed under the laws of most countries) e-bills are treated differently from paper bills. Importantly, the function that the bill is a document of title does not operate by law.

Mandatory provisions such as the Hague (-Visby) Rules which offer well-known rights and protection to both carriers (eg defences and the right to limit liability) and cargo interests (eg restrictions on the carrier's ability to exclude or limit its liability) do not apply to e-bills by law.

Another difficulty in international transactions is that many countries also do not consider documents which are signed electronically as valid.

The law in England and Wales could soon change. On 30 April 2021 the Law Commission published a Consultation Paper seeking submissions on the question whether electronic trade documents should have the same effect in law as paper bills.

The law does however respect the parties' freedom of contract. For the time being electronic trading systems therefore circumvent the unclear status of e-bills by way of complex multi-party contracts where all parties to the transaction agree beforehand to treat the e-bill:

1. as having additional functions and operating in a particular way; or
2. in the same way as a paper bill.

This framework allows the parties to sue one another under the multi-party contract. Exposure is therefore different from that under paper bills – the complex contracts will often involve bespoke clauses whose effect may be untested before the English courts. Before transitioning to e-bills, stakeholders should therefore assess their exposure and if necessary seek legal advice.

## How do Clubs approach e-bills?

### P&I liabilities

Before February 2010 the rules of all Clubs of the International Group of P&I Clubs expressly excluded liabilities for cargo carried under electronic documentation to the extent that such liabilities would not have arisen using paper bills. While this continues to be the default position, the rules have since been gradually relaxed.

Electronic trading systems which have been formally approved by the IG Group are recognised and liabilities covered are subject to usual exclusions. The following systems have been approved



by the International Group of P&I Clubs for use by its members: essDOCS, Bolero International, E-Title, edoxOnline, CargoX, WAVE and Tradelens. Separate insurance may be required for non-P&I liabilities which may arise from the multi-party agreements for use of e-bills such as cyber risks, confidentiality obligations or obligations to maintain computer links etc.

For unapproved trading systems, the default position applies and liabilities are only covered to the extent they would also arise under paper bills. P&I Clubs may cover a liability in their discretion notwithstanding although this is far from guaranteed.

#### **Freight, demurrage and defence (FD&D)**

Depending on the terms and the extent of cover, it is possible that FD&D insurance may assist a carrier under an e-bill in covering its litigation or arbitration fees but not for the liability claim itself. This cover is discretionary and will be subject to the legal merits and the member's exercise of due diligence. Complex proceedings (as may be the case with e-bills given the lack of legal precedent) are perhaps unlikely to be covered.

#### **To e-bill or not to e-bill**

The economic reasons for the transition to e-bills speak for themselves. One container shipment alone can generate 200 communications and the administrative cost of processing the documentation is estimated to account for between 15 per cent and 20 per cent of the overall cost of transporting the goods. The prospect of reduced administration and costs, a secured fast end-to-end documentation process, reduced credit time in financial transactions resulting from instant transmission of information and a reduced risk of fraud and human error make the case for a transition.

From a legal point of view, e-bills help avoid the following common situations:

##### 1. Physical bills of lading are not available

This situation is commonly resolved by the issue of a letter of indemnity (especially if prescribed by the terms of the charter) whereby the charterer agrees to indemnify the shipowner for any losses caused as a result of delivery of the cargo without the production of a bill of lading. However a letter of indemnity:

- (i) is only as valuable as the issuer who grants it and may not be worth the paper it is written on; and
- (ii) invalidates P&I cover for claims arising in consequence, even if the letter of indemnity was issued on an IG Group standard letter of indemnity.

Alternatively, shipowners have discharged cargo directly into warehouses – which exposes them to claims for damage or theft – or waited for the arrival of the bills which resulted in undue delay.

##### 2. More than one person demands delivery

This is a red flag and indicates a defect or dispute as to title. E-bills help ensure that only the final holder of the e-bill has proof of ownership and is able to demand delivery, although the obligation on the shipowner to verify the person's identity remains.

##### 3. A bill of lading needs to be amended/the destination changed after it has been signed

The carrier is dependent on information from shippers which may change during the booking process and sometimes after the bills

have been issued, primarily in cases where there is a change to the named disport. Later amendment requests commonly have to be submitted to the shipping agent, the three originals traced, invalidated and cancelled and replaced by a new set of originals. Changes might impact the credit arrangement. E-bills help simplify the process enabling agreed changes to be approved and implemented swiftly.

##### 4. Agents provide unauthorised information on the bill of lading

With paper bills, often local agents at the port are authorised to complete the paper bills and sign them on the master's behalf. In doing this, it is not uncommon for the agents to issue bills which contain inaccurate remarks. E-bills provide the shipowner with more ability to verify the information on an e-bill instantaneously.

A transition to a paperless trading system is not without challenges. Operability is limited as the value of the electronic trading system only increases with the number of its users. The increased exposure to cyber attacks is a problem and is illustrated by the Court of Appeal case *MSC Mediterranean Shipping Co SA v Glencore International AG* [2017] 2 Lloyd's Rep 186, although the risk may be offset by increasing industry risk awareness and insurance.

As with any technological development more certainty will be introduced by the passage of time as disputes make their way through the courts.

#### **The second time is the charm – full steam ahead for e-bills**

E-bills have been a work in progress for many years. Despite the drawbacks of the current paper system, carriers and cargo interests alike are familiar with it, aware of its benefits and its pitfalls and have been reluctant to make the change. However, as it is becoming increasingly desirable for the shipping industry to reap the benefits that e-bills provide, recent market developments indicate that it may now have found the determination to take the plunge.

On this occasion, the transition is being spearheaded by numerous large shipping companies as part of their global agenda to improve operational efficiency. We therefore expect the adoption of e-bills to be dominated by commercial dynamics and their use to gradually filter down from the top of the market.

As ever, the law will develop in the area as e-bills become more prevalent. Until the law catches up, stakeholders need to be clear on their legal exposure under e-bills which will differ from that under paper bills and seek wherever possible to reduce it while maintaining adequate insurance. *MRI*



Cecilie Rezutka

Cecilie Rezutka, associate at CJC



# Reducing shipping delays as emissions and sustainability requirements tighten up

**Simon Ring**, of Pole Star, warns despite the remarkable resilience of the global economy delays continue to affect the maritime industry

**I**n November, the World Trade Organization revised its forecast for global trade growth in 2021 upwards to 10.8 per cent. Good news, certainly. Yet all around the world, crews and containers are either unavailable or in the wrong places, while the surge in global demand has created bottlenecks. Even if global manufacturing supply chains recover, the shipping industry is unlikely to be fully back to “normal” within 12 months, especially as some ports in Asia and Australia have only just reopened.

Delays cost money and in the aftermath of the pandemic they rightly prompt calls for increased trade digitisation and smarter working methods. And there are promising signs. Software innovators are already integrating inland rail and road logistics through the intelligent exchange of information between public and private operators, including freight forwarders, shippers and customs. This is already happening at ports such as Genoa in Italy.

Yet even though it is clear the streamlining of documentary processes in trade transactions would transform efficiency, lack of agreement on standards means many age-old paper-based administrative processes continue to slow down cross-border trade. Now, however another set of delays is set to affect the industry – compliance with decarbonisation targets in the wake of the COP26 climate conference.

**“The drive to reduce carbon emissions is commendable, but it makes regulation almost inevitable, leading to complex requirements affecting almost everyone engaged in cross-border trade”**

Pressure on the shipping industry and its approximately three per cent contribution to global carbon emissions was on the increase before the conference began. UN Secretary General Antonio Guterres publicly criticised the IMO for foot-dragging on emissions reductions. The US and Denmark have also called for faster progress, pushing for net-zero for the industry by 2050. A group of 19 countries at COP26, including Britain and the US, has now agreed to create zero-emissions routes and more initiatives will follow, with potentially far-reaching consequences. The ESG (environmental, social and governance) agenda of international organisations will focus on the origins of the cargo and its greenhouse gas emissions, the environmental and social costs of its production and transport prior to export.

The international drive to reduce carbon emissions is commendable, but it makes regulation almost inevitable, leading to complex requirements affecting almost everyone engaged in cross-border trade.

Smart solutions are going to be necessary to eliminate these choke-points. In the not-so-distant future the answer is likely



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to lie in distributed ledger technology. A platform based on this technology, with data-matching capabilities could screen every one of 24,000 containers on a large vessel in seconds, checking certificates of origin, bills of lading, weights and other metrics, along with port of origin and any transshipment points. This kind of advanced application is however, still a way off.

What is feasible now, however, is the use of digital platforms with open and distributed networks to accelerate bunkering operations, canal transits and the full gamut of agency services. Coupled with persistent, real-time vessel tracking data this allows financial institutions and partners to release payment or activate services at the right time, removing many administrative delays as ships move around the world.

When it comes to meeting emissions and ESG regulations, similar single-platform capabilities can screen vessels, carriers, transactions, cargoes and commodities for compliance. Charterers, operators and banks can build such a platform into their current infrastructure, drawing instantly on the expertise of companies that employ recognised techniques to make accurate

assessments of carbon emissions. Their outputs provide high-quality data that monitoring solutions integrate into workflows within existing systems. This enables any customs or port authority, bank, exporter or importer, to rate a vessel, its peer group and its carbon tonne per mile within a matter of seconds, while also producing an essential audit trail. Legal, risk and compliance departments use the audit to review a transaction, saving time and providing access to expertise in carbon screening.

It is now possible to integrate data from companies specialising in environmental and social audit, to provide up-to-the-minute evidence of sustainability from one end of a transaction to the other, covering human exploitation, soil erosion, deforestation and water productivity, as well as carbon emissions.

All this information is available through a single pane of glass along with information about sanctions compliance from the tracking of vessels at sea and their histories, as well as those of their owners and operators. Anti-money laundering measures include rapid bill of lading verification.

**“As the global supply chain recovers from the depredations of the pandemic it would be counter-productive if the environmental and sustainability improvements desired by most of the world’s population end up constricting the vital arteries of trade”**

Streamlining compliance in this way is to everyone’s advantage. For ports it will ease bottlenecks and improve their compliance with governmental carbon emissions targets. For vessel operators, exporters and importers it means faster turnarounds, quicker payment and better use of working capital. Banks and financial institutions with access to accurate and verified data will reduce the risk of financing businesses and transactions that turn out to be environmentally deleterious. They will also find it easier to meet governmental demands for green financing, offering significantly preferential terms to charterers using a vessel that has a transparently superior emissions and sustainability rating. Carriers with a track record of sustainability will also be viewed more favourably when seeking finance to expand their businesses.

As the global supply chain recovers from the depredations of the pandemic it would be counter-productive if the environmental and sustainability improvements desired by most of the world’s population end up constricting the vital arteries of trade. *MRI*



Simon Ring

Simon Ring, global head of maritime trade technologies & ESG, Pole Star



# Sanctions under the Biden administration

US President Joe Biden has started to issue executive orders impacting the marine environment, as **Marjorie Holmes, Oliver Beiersdorf and Louisa Martac**, of Reed Smith, report

**T**he “Executive Order on Promoting Competition in the American Economy” puts forward 72 initiatives for multiple federal agencies. While it does not establish new requirements, it is a call to action for federal agencies to establish policies in order to address the harmful trends associated with corporate consolidation, decreased competition and the ultimate harm they cause to America’s consumers, workers, farmers and small businesses.

Joe Biden is attempting to enforce competition compliance more vigorously than his predecessor. As illustrated by the Order, shipowners, carriers and airlines need to ensure that their competition compliance programmes are up to date. Some shipping companies do not have compliance programmes in place as they are advisory, rather than compulsory. As can be seen in the Order, rather than make it compulsory, Biden’s administration directs the Department of Transportation to consider issuing clear rules and encourages both the Surface Transportation Board and the Federal Maritime Commission to establish certain rules in relation to the shipping industry, air travel and rail travel.

**“During the Covid-19 pandemic, heavy port congestion has resulted in less capacity on the market. This not only stopped the usual flow of imports and exports that the shipping world was used to, but also saw empty containers lying uncollected on docks”**

At EU level, there is no discount on fines for a shipping company having a compliance programme in place; however the US and UK do give a discount. If a shipping company does have a competition programme in place, it significantly reduces the chances of being held criminally liable for the wrongdoing of an employee. Therefore, if an employee does not receive the necessary training, it could cause the shipping company to have criminal liability in some jurisdictions, such as the UK.

In the current climate, more countries worldwide are implementing competition regimes. In 1990 there were 30 jurisdictions with competition laws in place. However, there are now currently 200 jurisdictions with competition laws in place. It is apparent that the world is getting more interested in competition compliance.

The Order shows that the US is encouraging competition compliance. Shipping companies are continuing to face difficulties, such as lack of containers and lack of facilities to discharge cargo. During the Covid-19 pandemic, heavy port congestion has resulted in less capacity on the market. This not only stopped the usual flow of imports and exports that the shipping world was used to, but also saw empty containers lying uncollected on docks.

Another reason that shipping companies are facing difficulties is the lack of workforce due to Covid-19. Lack of workforce put together with lack of containers and lack of facilities to discharge cargo has caused port congestions worldwide.

The capacity on the market being reduced is not within the control of shipping lines. Given the Order, carriers would do well to ensure that they have compliance in place. **MRI**





# Sanctions as a weapon in the US arsenal

Alexander Brandt, of Reed Smith, discusses the new approach from Joe Biden to the use of sanctions

**T**he Trump administration marked a tumultuous four years of American foreign policy, during which the international maritime community found itself under sustained scrutiny and pressure. The restrictive programmes imposed against Venezuela and Iran in particular, led to some high-profile shipping company casualties.

Placing bad actors on the US Department of the Treasury's Office of Foreign Assets Control's (OFAC) Specially Designated Nationals (SDN List) was a key weapon in the Trump administration's sanctions arsenal; the number of SDNs increasing by approximately one-third during his tenure, according to The Treasury 2021 Sanctions Review, but we also saw US regulators apply pressure through "guidance" (in particular, the 14 May 2020 Guidance to Address Illicit Shipping and Sanctions Evasion Practices) to ancillary services providers (such as insurers, bunker providers and flag states) that forced a dramatic change in industry self-regulation. A final trend of note was the physical seizures of high-value cargoes in the last few years, by the US Department of Justice.

Against that context, many in the industry were hoping for a change in approach to US sanctions under the Biden administration. In some ways, this optimism has borne out. We have seen a multilateral approach to sanctions on Myanmar in February 2021 and subsequently with regard to Belarus in August. The US stance on the controversial Nord Stream 2 pipeline softened in May, with the lifting of certain restrictions.

More generally, there has been a more measured approach towards designations during the course of the year and the recently released Treasury 2021 Sanctions Review stands as a frank assessment of the difficulties associated with aggressive, unilateral, imposition of sanctions.

Overall, however, the shipping community still faces daunting challenges posed by US sanctions programmes. Both Iran and Venezuela remain subject to stringent restrictions that continue to have significant implications for the maritime community.

Although we may have seen fewer designations to date, there has been an uptick in targeted federal agency investigations, using jurisdictional "hooks" such as US dollar transactions to exercise their authority. We have also seen greater collaboration between the US government and foreign sanctions authorities to pursue those investigations. These investigations are extremely disconcerting for those involved, require considerable time and resources to address, raise difficult local law issues (such as GDPR and anti-boycott restrictions) and can result in profound civil and criminal consequences.

Another strategy the Biden administration has continued to deploy is seizing vessels and cargoes involved in sanctionable activity beyond US shores. This was a highly effective tactic for the US in 2020 and one we have seen replicated in July 2021, with a New York federal judge issuing a forfeiture order for *M/T Courageous*, for alleged violations of DPRK sanctions.

These points taken together mean that the maritime community is highly unlikely (and ill-advised) to change its approach to due diligence and sanctions compliance. This includes counterparty due diligence, AIS monitoring, document checks and implementation of robust compliance policies and procedures. *MRI*



Alexander Brandt

Alexander Brandt, Reed Smith transportation industry group lawyer and lead member of its sanctions practice

# A new landscape for **commercial and maritime arbitration** in Dubai

**Enrico Vergani** and **Lorenzo Melchionda**, of Barabino & Partners, report on changes to the arbitration rules in Dubai, aiming to create an international standard competitor for the world's arbitration centres

**I**n an unexpected move that has changed the arbitration landscape in the Middle East, Dubai Ruler's Decree No 34 of 14 September 2021 merged the DIFC Arbitration Institute (DAI), the centre that administered DIFC-LCIA arbitrations, and the Emirates Maritime Arbitration Centre (EMAC) into the Dubai International Arbitration Centre (DIAC).

The consolidation of the three centres into the DIAC creates a one-stop shop for arbitration by combining two leading arbitration institutions in the region with a maritime arbitration chamber to create a chamber capable of administering both commercial and shipping arbitrations. The intention is to enhance Dubai's status as an international arbitration hub for the Middle East and Africa and to solidify Dubai as an attractive place for global investments.

## General implications of the merger

The merger of the three centres raises two sets of issues: the new DIAC's status and structure, along with the fate of the existing arbitration agreements and ongoing disputes under the two now-defunct institutions in the interim period.

The implementation of this consolidation will obviously require transferring DIFC-LCIA and EMAC assets, equipment and financial appropriations to the new DIAC. The personnel working for the two institutions and their know-how will also be transferred to DIAC.

The consolidated DIAC will have the status of a non-profit, non-governmental institution with separate legal personality and administrative autonomy. It will be headquartered in mainland Dubai and have a branch office in the DIFC.

DIAC's internal organisation has been reshaped to be fit for its new role. The DIAC will be operated by a board of directors, which will oversee the DIAC's activities. The board's responsibilities include general policy and strategic decisions, the approval of the internal organisational structure and governance rules and the approval of arbitration and conciliation rules and the list of fees for arbitrators and conciliators.

A court will assist the board by preparing rules and policies for the board's approval and will act as the appointing and administering body in arbitration and conciliation proceedings. The creation of a separate body to supervise DIAC arbitrations akin to the ICC International Court of Arbitration is an important development, since it allows the board and court to focus on their respective roles of overseeing DIAC's activities and supervising arbitration proceedings.

The recently appointed members of the board are Dr Tarik Humaid Al Tayer (chairman), Dr Ahmed Al Suwaidi (vice-chairman), Ms Jihad Kazim, and Messrs Ahmed Belyouha, Ahmed Al

Rasheed, Abdulaziz Al Marri and Graham Lovett. The board will appoint court members from among experienced and highly qualified local and international arbitration and ADR experts. An administrative body supervised by an executive director will provide case management services and administrative support.

The impact of Decree No 34 on pending DIFC-LCIA and EMAC arbitrations and existing DIFC-LCIA and EMAC arbitration agreements is a very sensitive issue. The transition to the new system will need to be managed to avoid delays and disruptions.

Decree No 34 provides that ongoing arbitrations will continue under the supervision of the new DIAC, which will apply the DIFC-LCIA or EMAC rules: thus, the applicable rules will remain the same, but the administering authority will change. It was proposed that ongoing DIFC-LCIA arbitrations be administered by the DIFC-LCIA Registrar and Secretariat "for and on behalf of the LCIA on a secondment basis from DIAC", but no agreement seems to have been reached.



Arbitration agreements providing for arbitration under the auspices of DIFC-LCIA or EMAC and that were entered into before Decree No 34 came into force will remain effective, but the new DIAC will replace the DIFC-LCIA or EMAC in administering future cases. However, parties should avoid inserting in their contracts DIFC-LCIA or EMAC arbitration clauses to avoid complications.

Further administrative and operational changes have been introduced. For instance, Decree No 34 provides that the deliberations of the DIAC Board and Court are confidential and must be free from conflicts of interest. The decree also clarifies that arbitration hearings can be held anywhere, including remotely thanks to modern technology. The new DIAC Rules will include “emergency arbitration” (a fast-track procedure to obtain urgent interim relief before an arbitral tribunal is constituted) and award scrutiny (though limited to form), both under the DIAC court’s supervision. If the parties do not agree on the seat of the arbitration, the DIFC will be the default and the English-language, specialised business courts in the free zone will oversee and support DIAC arbitrations.

The transition to the new system is expected to take six months and the intention of the Dubai Ruler is that it be smooth and without incident.

### The impact of the reform on maritime arbitration

The changes introduced by Decree No 34 will cause complex maritime disputes previously administered by EMAC to be handled by a larger arbitration body. Although parties to shipping disputes have always been free to use the DIAC or the DIFC-LCIA, EMAC was the region’s only arbitration centre specialised in maritime disputes, and its rules were drafted accordingly. Decree No 34 stipulates that the new centre is to retain EMAC’s expertise and personnel, so the focus on shipping arbitration will be maintained.

**“Arbitration chambers can provide top-quality services in maritime arbitration only when they have a consolidated practice built on everyday experience – an element of immeasurable value in the shipping industry”**

Maritime arbitration requires high specialisation. Maritime law has its own law sources, mostly international conventions, and freedom of contract has a massive impact, with standard forms/clauses (edited by international organisations like BIMCO or by market stakeholders) that comprehensively set all the contractual rules. One paramount factor to consider is that application of the law to maritime cases is far from straightforward; indeed, the specific facts of a maritime case often require the examination of intricate technical issues that result in the law necessarily being applied on the basis of “each case turns on its own fact”. Maritime disputes thus have distinctive features that set them apart from the other types of disputes typically resolved through arbitration. Likewise, maritime arbitration has developed its own traditions, practices and rules.

For these reasons, if arbitration centres want to demonstrate excellence in serving the specialised maritime industry, they need in-depth expertise in the field. This expertise is developed, first and foremost, by handling a sufficient number of cases every year and strengthened only through day-to-day work.

Lloyd’s Salvage Arbitration Branch (LSAB), which risked closure in July due to lack of sufficient cases, is a cautionary tale: LSAB has since agreed to continue service only thanks to the strong support from the UK and international maritime communities.

The message, however, is clear: arbitration chambers can provide top-quality services in maritime arbitration only when they have a consolidated practice built on everyday experience – an element of immeasurable value in the shipping industry.

As mentioned, maritime law has something special that sets it apart from other types of legal principles and other areas of law. Shylock’s speech in Shakespeare’s *The Merchant of Venice* (Act I, Scene III) is worthy of note in this regard: “[S]hips are not boards, saylers are not men, there be land rats and water rats, water thieves and land thieves, I mean pyratts and then there is the peril of waters, winds and rocks”; thus maritime arbitration calls for its own seats and “liturgy”.

Having arbitrators experienced in the intricacies of the matters of law, fact and technology commonly involved in shipping arbitration is far more important (and much safer) than having arbitrators on one’s doorstep. Reaching a quick and sound decision might well avoid disrupting big projects, eg concerning offshore and renewable energy plants, which inevitably overlap with the shipping industry: it might even make the difference between a successful project and the end of a business.

The industry is indeed moving towards specialisation in maritime arbitration. According to Queen Mary University of London’s 2021 International Arbitration Survey, the top five seats of arbitration are London, Singapore, Hong Kong (closely tailing the first two), Paris and Geneva. In addition, 90 per cent of the respondents added that their preferred forum for resolving cross-border disputes is international arbitration.

The choice of a specialised seat of arbitration will become even more relevant when arbitration chambers are called on to address potential disputes or differences arising out of the Belt and Road initiative, especially its maritime segment (Maritime Silk Road).

Technology, including remote hearings, will certainly help whenever in-person hearings are unnecessary, eg cross-examination of key witnesses. And if complex shipping disputes and related matters, eg offshore wind farm projects, are handled by specialised chambers, the required excellence and case flow will be guaranteed, which is likely key to ensuring a high level of expertise and, therefore, an enhanced service quality in maritime arbitration proceedings. *MRI*



Enrico Vergani



Lorenzo Melchionda

Enrico Vergani,  
partner and  
Lorenzo  
Melchionda,  
Dubai-based local  
partner, Barabino  
& Partners



# New variant sparks flashback to **global crew-change chaos**

Fears are stalking the industry that seafarers will once again fall victim to the travel restrictions that have now been reinstated by more than 50 countries since the Omicron strain was identified, writes **Cichen Shen** of *Lloyd's List*

**S**tricter border controls led by a new and potentially more transmissible coronavirus variant have raised concerns about further headwinds facing crew changeover. There are fears in the industry that seafarers will once again fall victim to the travel restrictions that have now been reinstated by more than 50 countries since the Omicron variant was identified in South Africa.

Governments appeared to be going for the original playbook from when the pandemic first broke out in March 2020, said a spokesperson of the International Chamber of Shipping (ICS). A total of 56 countries have so far instigated new travel restrictions as a result of the new variant, although not all are immediately limiting crew changeover protocols.

The ICS and the International Transport Workers' Federation are monitoring the impact on flights and remain concerned that the restrictions on transport workers will follow imminently. "There is concern about the potential impact, especially as this is such a busy time for crew change ahead of Christmas," the spokesperson added.

The remarks echoed a Twitter post by ICS secretary general Guy Platten earlier this week. "Countries shutting borders with little or no notice and no thought for seafarers or other transport workers caught up. Is this March 2020 or November 2021? Deja vu strikes again. Let's not repeat the mistakes," he said.

With a growing number of countries imposing flight bans on southern African nations due to concerns over the new variant, the World Health Organization has urged governments to follow science and the International Health Regulations and keep their borders open. "Travel restrictions may play a role in slightly reducing the spread of Covid-19 but place a heavy burden on lives and livelihoods," it said.

Countries such as Singapore — a key shipping and crew change hub — did, however, move to curb the entry of vessels from Africa. The Singapore Economic Development Board, a government agency that oversees business strategies, listed seven countries from which vessels are subject to restrictive measures. They are Botswana, Eswatini, Lesotho, Mozambique, Namibia, South Africa and Zimbabwe.

As of 27 November shipyards, process terminals (petrochemical chemical and petroleum terminals) and waterfront facilities under the board's purview had to seek its approval before accepting any vessel arriving from or transiting through the seven countries in the past 14 days.

Vessels that had newly signed-on crew with travel history to the listed nations within the same timeframe are banned from calling at those facilities, as is tonnage that has conducted contact operations in Mozambique, Namibia and South Africa.



# Pandemic brings crew welfare issues to the fore

Life for seafarers is tough but the global pandemic has highlighted cracks in working practices to keep crew safe and well, writes **Nidaa Bakhsh** of *Lloyd's List*

**S**eafarer well-being has been brought into the spotlight amid the global pandemic. “Seafarers have a tough life but when coronavirus came along, cracks in the system” became apparent, said Yale University director of maritime research **Martin Slade**.

Speaking on a Seafarers Hospital Society webinar, he said well-being was affected by physical factors such as obesity or fatigue, and psychological things such as anxiety, burnout, depression or suicidal feelings. Personal lifestyle choices also played a part.

In a study based on 2,200 research papers, he identified five main stressors for seafarers, namely, work environment, organisational, cultural, physical and psycho-social factors.

Recommendations for companies included a good exercise regime, promoting activities, and better education that addresses stigmas related to mental health. While communication was also key, allowing seafarers to stay in touch with family, it could also be a source of stress and anxiety.

“We need to think of them [seafarers] as people, not just resources,” he said, adding that healthy, happy employees will lead to greater profitability, reducing the risk of accidents.

They require good nutrition and a decent amount of sleep to recharge, but noise and vibrations on board were an obstacle, as was the six hours on, followed by six hours off shift system.

While many seafarers required single cabins for personal space, they were missing out on interpersonal communications, preventing the detection of a change in behaviour, for example.

Small changes could make a big difference, but Slade found that despite the fact that there are many published recommendations, only a few were incorporated into practice.

Simple things such as better nutrition on board were helpful, as were having printed materials about mental health. Training was also a necessity, not just for managers.

Speaking on the same webinar, Lloyd's Register Foundation's senior programme manager Olivia Swift said that change was unlikely to happen without a concerted effort by the industry. “Everyone has a role to play – this is a team effort.”

Cognitive overload was an area for concern that could affect safety, as shipping gets more complex with digital systems, she said. “We have to get the basics right. The culture of care needs to come from the top.”

The Maritime and Port Authority of Singapore has yet to release information about related policy changes. It did not immediately respond to a request for comment.

The precautionary measures implemented by the city state are expected to be followed by other maritime nations. One shipping executive in China said he “won't be surprised” if port authorities in China, the world's largest trading nation, tighten the rules for vessels coming from Omicron-affected regions.

“We haven't seen any official circular, but local governments in China don't do circulars anyway. Some of them might have already started to [implement] new requirements as they've been highly vigilant to risks of importing infections.”

Bjørn Højgaard, chief executive of Anglo-Eastern Univan Group, said the Hong Kong-based ship-management firm was not aware of any new restrictions from China yet, and that this might be because existing controls were considered sufficient.

It's difficult for foreign crew to sign off and “rare” for them to sign on in China, while many of the country's ports do not allow any crew change, even for Chinese nationals, he said.

“If a Chinese national signs off abroad, he needs 21 days quarantine prior to boarding a flight [home]. Such quarantine is not allowed by the emigration [authorities] of many countries, hence they can't sign off.”

Crew also have to undergo stringent protocols of virus testing, including antibody testing, during quarantine in order to be able to book a repatriation flight.

“Approval for boarding flights comes from Chinese authorities, who may not allow more than three seafarers per flight, thus delaying people for months after they sign off,” said Captain Højgaard. He said he was concerned that the new variant might worsen the situation, but added, “it's too soon to say what the impact will be on crew change.”

Concerns regarding a return to more restrictive conditions come just as the crew change situation had started to ease. According to the latest report from the Neptune Declaration on seafarer well-being and crew change, November had seen the lowest number of seafarers onboard beyond the expiry of their contracts since May.

The report showed that the number of seafarers onboard vessels beyond the expiry of their contract has decreased to 4.7 per cent from 7.1 per cent in the last month, and the number of seafarers onboard vessels for over 11 months had also decreased to 0.7 per cent from 1 per cent. The Neptune Indicator also reported an 8.5 percentage point increase in seafarer vaccines, from 41 per cent in November to 49.5 per cent in December as seafarers are increasingly gaining access to vaccines.



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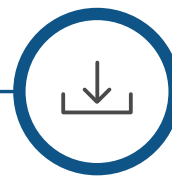
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