Maritime Risk International
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P&I, claims management and loss prevention
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Sustainability

Shipping sector has to step up

- *Ever Given* analysis
- Collecting evidence essential
- *Eternal Bliss* explored

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IN BRIEF

Research launched

Classification society ClassNK has begun joint investigative research with Sompo Japan Insurance on risk assessment of autonomous ships. Using ClassNK's knowledge of ships and Sompo Japan's knowledge of risks associated with ship operation and management, as well as knowledge on risk assessment for the practical application of autonomous vehicles cultivated by Sompo Risk Management Inc, they will carry out optimal risk assessment for autonomous ships by researching and sharing their knowledge. They began their research in February 2021 and aim to announce the results within 2022.

Commitment to compliance

Vessels flying the St Kitts & Nevis (SKAN) flag that engage in illegal activities face immediate deregistration. That's the tough message being circulated by the International Registrar of Shipping and Seamen after a SKAN-registered vessel was intercepted off the West African coast carrying six tonnes of cocaine. The 4,400 dwt *Najlan* was immediately deregistered as a result of the interception that exposed the illegal drugs haul. Liam Ryan, International Registrar of Shipping and Seamen, and CEO at the SKAN registry, said: "Wherever we find evidence of illegal activities we will take the strongest possible measures to demonstrate our commitment to compliance with the law and to deter others thinking of using vessels for nefarious purposes."

Swedish results

Resilience in the face of volatility during an extraordinary year. That was the message from The Swedish Club, as it finished 2020 with an operating profit of US$3 million; record free reserves at $231 million; and confirmation of the Club's A- ratings as stable by S&P Global Ratings and AM Best. A strong investment return offset the P&I result, which reflected a combination of unprecedented Pool claims and the premium inadequacy that the whole sector is working to address. The Club recorded a total combined ratio of 123 per cent, an anomaly compared with the performance of previous years.

Asbestos still a threat to shipping sector

Despite the introduction 10 years ago of regulations prohibiting the use of asbestos materials onboard ships, a significant number of existing and newbuild vessels continue to operate systems and machinery containing the hazardous substance. According to maritime testing facility Maritec, which carried out asbestos surveys for IMO compliance between 2011 and 2020, more than 55 per cent of in-service vessels and 50 per cent of all newbuilds were found to contain asbestos materials.

John Rendi, general manager, environmental services, Maritec, said: "Although newbuild ships are delivered with an asbestos-free declaration, in many cases asbestos has been found onboard during subsequent surveys, or port state inspections. This is placing shipowners in a very difficult position. It can lead to fines and detentions along with the high cost associated with removal. More importantly, if seafarers and shipyard workers are unknowingly handling asbestos then they are at risk of developing a respiratory illness."

Under SOLAS regulation II-1/3-5, asbestos is banned in all ships built after 2011. Ships built between 2002 and 2011 may have asbestos fitted but only in certain specified areas (rotary vane compressors and thermal insulation >1,000°C, for example). If during an inventory of hazardous materials (IHM) survey asbestos is found onboard a ship built after 2002 (except when permitted in certain machinery on ships built before 2011), then it needs to be removed within a period of three years and replaced with a non-asbestos equivalent. This replacement must not be attempted by anyone other than trained and certified professionals.

Pipe flange gaskets, valve packing and components in auxiliary machinery equipment, such as pumps, compressors, condensers, and oil purifiers, accounted for more than 63 per cent of all the asbestos found on the vessels surveyed. Other equipment where asbestos is commonly found includes heat exchangers, economisers, boilers, and inert gas systems. Differing asbestos restrictions from country to country further compounds the problem. For example, the permissible threshold value for asbestos in the US is 1 per cent while in France it is zero. In Singapore it is 0.1 per cent. ***MRI***

Fires and a place of refuge reviewed

A detailed review of some of the more serious containership fires of recent years highlights concerning features of the aftermath in terms of safety to crew, the stricken ship and its cargo, and the maritime and coastal environment. Speaking recently, TT Club's Abdul Fahl pointed to the substantial delays in finding damaged ships a place of refuge (usually an existing port), illustrated by the examples of *MSC Flaminia*, *Maersk Honam* and *Yantian Express*. These heavily damaged, fire-stricken ships took at worst almost three months to be granted refuge and a further period approaching six months elapsed before their cargo could be safely and securely discharged.

Fahl explained: "A place of refuge – typically a port – is where a ship in need of assistance can take shelter to enable it to stabilise its condition and reduce the hazards to navigation and protect human life and the environment." He goes on: "There are no international conventions or mandatory regulations directly compelling a state to provide refuge. IMO resolutions promote preparedness and the need for coastal states to take responsibility to avoid compounding issues faced by ships in distress. Equally, EU member states are required to draw up and implement plans to take ships in distress requesting refuge under their authority. However, the relevant Directive stops short of imposing a legal obligation on the coastal states to provide such refuge."

The IMO guidelines state: "When a request for an access to a place of refuge is made, there is no obligation for the coastal state to grant it, but the coastal state should weigh all the factors and risks in a balanced manner and give shelter whenever reasonably possible." Despite such "requirements" and "guidelines", the fire-crippled *MSC Flaminia*, on which three crew members died, was denied access to a number of ports in Europe for 11 weeks before berthing in Wilhelmshaven, Germany. Even then, more than 20 weeks elapsed before her remaining containers were discharged in Romania. *Maersk Honam* was even more seriously damaged in the Arabian Sea, with five crew losing their lives. The severely destabilised ship was eventually allowed into Jebel Ali, Dubai some 11 weeks later. ***MRI***

Warning on choosing shorter routes in polar areas highlights the fire risk

Following the news of the fire on *MPV Everest*, Voirrey Blount, admiralty manager at global law firm Reed Smith, said: "Any fire on board a vessel is a major incident, regardless of the location of the vessel. However, most vessels are not navigating in the Antarctic regions of our oceans and are not many days from rescue, unlike the *MPV Everest* who found herself requiring assistance in one of the most isolated areas of navigable water on Earth.

"The Maritime Union of Australia has quite rightly raised concerns about the lack of a contingency plan for incidents such as these. Although it would not be reasonable to have a chartered vessel on permanent standby 'just in case' it could, fairly, be deemed reasonable to have a support vessel on standby when the icebreaker is in transit to/from Antarctica.

"This is certainly something the Australian Antarctic Division will need to closely review ahead of their next operation. With the changing climate, commercial shipping is able to reach ever more extreme areas, with the Arctic region in particular being looked at as a way of reducing transit times for vessels. A key issue with trading in these areas is the question of what happens when something goes wrong?

"Getting out to distressed vessels can be difficult even in benign conditions; getting out to a distressed vessel in the extreme environments of the poles adds a whole new issue to the problem. There is a very limited availability of search and rescue capabilities in the polar regions and this must be taken into account by both owners and insurers when considering operations in these geographic areas. This is another example of supply and demand being the key. Without commercial shipping there is no need to have rescue services available but without the rescue services it may not be safe to send commercial vessels to navigate those areas without extra precautions being taken." ***MRI***

Lessons from failure to conduct adequate cargo checks

The UK P&I Club has launched the latest in a series of award-winning reflective learning training videos, based on a real-life case of a vessel which incurred significant damage to its maize cargo due to a failure to conduct basic checks on completion of loading. The animated video depicts an incident where a bulk carrier is fixed to load a full cargo of yellow maize in bulk, where the previous cargo to be carried had been bulk fertiliser. On completion of loading, all five holds were fumigated and the holds were then closed, secured and sealed. During the initial stages of the voyage, the vessel encountered heavy weather, with all hatches covered over a period of eight days.

On arrival at the discharge port, the hold and manhole seals were inspected and found to be intact. Three holds were approved for discharge, but two were rejected. A bad odour was reported at the forward end of both hatchways and the surfaces of the cargo stows in both of the rejected cargo holds were found to be locally mouldy, discoloured and caked, with temperatures in the affected areas measured at up to 63°C. The quantity of damaged cargo was estimated to be about 10 mt to 12 mt in each hold.

Stuart Edmonston, loss prevention director at UK P&I Club, said: "The pre-discharge inspection revealed a substantial amount of wetted maize kernels and residue in the drain channels above and between the cross joint sealing. It was apparent the panel cross joints had not been cleaned in preparation of the hatch covers being closed at the load port. Improving checks and procedures in our industry will prevent wasteful and costly incidents like this occurring and this is our key focus. We hope these interactive training videos can help improve standards and safety at sea, prompting crew and ship operators to question if this could happen on their ship, and how they can mitigate the risk." ***MRI***

IN BRIEF

Atlantic challenge

In December 2021 Team *Elijah's Star* will take on the Talisker Whisky Atlantic Challenge – a 3,000-mile rowing race across the Atlantic Ocean – in support of Action Medical Research's work to support babies born too soon. Inspired by the story of a prematurely born but much-loved baby boy named Elijah Halse, the team will attempt to complete the row between the Canary Islands and English Harbour, Antigua & Barbuda in 37 days – the same number of days Elijah survived before passing away. The four-man *Elijah's Star* crew – comprising Dean Frost, Philip Bigland, Mac McCarthy and Kevin Watkins – are seeking to raise £200,000, with Campbell Johnston Clark contributing as a corporate sponsor.

Training partners

Stream Marine Training (SMT) and the University of Gibraltar have formed a collaborative partnership to provide MCA-approved STCW courses and technical training for seafarers and maritime students completing the new BSc (Hons) Maritime Science with Cadetship Programmes. The University has established the Gibraltar Maritime Academy and has the local resources required to teach trainees key skills such as fire-fighting techniques, which form part of the MCA-approved fire-fighting courses. SMT will offer its expertise in the form of its MCA-approved online safety critical courses and advice from its trainers, many of whom are ex-mariners, who can relate the theory to real-life situations at sea.

Sea trials

The Indian Register of Shipping (IRClass) has undertaken successful sea trials for two vessels towards the use of biofuels in concurrence with the Indian flag administration. The two vessels – *Ambuja Mukund* and *Ambuja Vaibhav*, are owned by Ambuja Cements. In a bid to move towards reducing greenhouse gases, the trials were carried out and the emission levels for CO_2 and NOx at both ballast and loaded voyages were monitored during the trial period. IRClass found the biodiesel's NOx emissions were lower than those of low sulphur, high-speed diesel.

IN BRIEF

Carbon advisor

Shipbroker IFCHOR and carbon market specialist ClearBlue Markets have partnered to offer carbon emissions advisory services to the shipping industry. IFCHOR ClearBlue Oceans will help clients navigate changing legislation, source high-quality emissions offsets as well as structure and execute carbon offset projects or transactions. The new service is a response to the growing number of requests for shipowners and operators to offset their direct greenhouse gas (GHG) emissions through voluntary carbon standards. The movement of global trade by sea accounts for around 3 per cent of global anthropogenic GHG emissions.

GTMaritime employee owned

GTMaritime has transitioned its business to an employee-owned trust (EOT), in a move set to incentivise employees under the guidance of the management team responsible for establishing GTMaritime. The structure of the trust enables existing and future employees to become direct beneficiaries of the company's continuing success. Robert Kenworthy and Chris Morgan sold their majority stake in the company to an EOT that will hold the shares for the benefit of GTMaritime employees. Both remain on the board of directors as CEO and chairman and will continue to be actively involved in the company, with no changes to the existing management structure.

Ammonia leak

An ammonia leak was reported to have killed one seafarer and critically injured three others on LPG carrier *Hamburg DW* (IMO 9014420) while it was off Malaysia and had 25 crew on board. The Malaysian Maritime Enforcement Agency (MMEA) said the incident occurred in international waters off Port Klang. Selangor MMEA director, Captain Mohammad Rosli Kassim, told local media that a preliminary investigation "found that the ship's piping system was leaking, which in turn caused ammonia gas to be exposed .The two injured seafarers were affected by the fumes and reportedly suffered burns".

Vaccination lottery for the dry bulk sector as crew struggle to get shots

The vaccination lottery that is faced by the maritime industry is beginning to hit the dry bulk sector hardest, says Intercargo, the organisation representing the world's quality dry bulk shipowners.

"We are seeing a number of port states suggesting that all crew on board a vessel must be vaccinated as a pre-condition of entering their ports, and indeed insisting on a particular brand of vaccine. This is of course a very serious problem for the industry as a whole, when we consider the high proportion of seafarers that come from developing countries with no access to any vaccine at all," says Dimitris Fafalios, chairman of Intercargo. "The dry bulk sector is, however, bearing the brunt of this uncertainty due to the nature of its business. Bulk carriers on tramp trading call at many more ports than other shipping sectors and are at the mercy of the nationalised vaccination policy, applying at the port of call."

He added: "While the world's eyes were on the situation in the Suez Canal, a very real crisis has been unfolding behind the scenes, unnoticed and ignored by the world's media. The UN IMO and global maritime organisations' efforts must permeate not only every area of the shipping industry, but in addition urgent action outside the maritime sphere is needed by all government leaders at the highest level. Coordinating a worldwide vaccination programme for seafarers under the WHO and making WHO-approved vaccinations available to seafarers in their home country is an urgent priority. In addition, universal commitments for collective action are imperative to resolve the humanitarian crisis at sea with crew change, and to keep global trade moving."

Intercargo echoes the recent statements made by IMO secretary-general Kitack Lim that the issues around vaccination need to be resolved and warning that the crew change crisis is far from over; also, the heads of five UN organisations calling for maritime and air transport workers to be prioritised for Covid-19 vaccination, given their key role in supporting global trade and mobility, which is essential for a sustainable socio-economic recovery. While the numbers of seafarers requiring repatriation after finishing their contracts has declined in recent months, there are still around 200,000 seafarers waiting to return to their homes and families. An equal number are waiting on shore to resume their livelihood and keep the world trade going. ***MRI***

Important to check crew Covid-19 tests

The International Transport Intermediaries Club (ITIC) has highlighted the importance of thoroughly checking the results of crew Covid-19 tests in a recent case handled by the insurer. The case involved a ship manager arranging a crew change in Manila. The change was undertaken by the manager's appointed port agent and all relevant Covid-19 protocols were followed. With the new crew on board, the vessel resumed its voyage and sent its port entry and free pratique documentation to the discharge port. However, both the agent and the local authorities at the discharge port discovered in the documentation that one of the crew who signed on at Manila had tested positive for Covid-19. Unfortunately, the positive test result had been missed by the ship manager, the port agent at Manila, the health immigration authorities and the vessel's master.

As a result, the vessel was ordered to return to Manila to test the entire crew and make replacements as necessary. Additionally, the ship had to be disinfected. The delays totalled six days in Manila plus five additional steaming days. The vessel owners put in a claim to the ship managers for around US$350,000. However, through negotiation, the claim was eventually settled at $175,000 as a number of parties had failed to spot the positive test, including the owners themselves, not just the ship manager.

ITIC reimbursed the ship manager but encourages all parties to remain vigilant and to check documentation thoroughly. Covid-19 testing is likely to be a feature of seafaring life for some time to come, and a simple oversight such this can result in costly delays to the vessel and its cargo as well as causing unwelcome disruption for the crew. ***MRI***

HDI Global UK

NEW DIRECTOR

HDI Global UK has appointed Steve Foreman as its director of marine cargo underwriting. Steve joins HDI having spent almost 30 years specialising in marine cargo insurance products at RSA. During his time at RSA, Steve worked in offices across Europe, including the UK, Italy and Belgium. Most recently, Steve managed RSA's European cargo portfolio.

Standard Club

NEW YORK COUNSEL NAMED

The Standard Club has appointed Gina Venezia as new general counsel in its New York office. Gina joins Standard Club after more than 20 years at Freehill Hogan & Mahar in New York. She will enhance the club's in-house capabilities and service to members, particularly with complex US claims and dispute resolution.

Thomas Miller Specialty

NEW SENIOR CONSULTANT

Thomas Miller Specialty has hired consultant Sven-Erik Braun to bolster the strategic business development of its European offering. With more than 30 years' experience, Sven-Erik has a deep knowledge of marine insurance markets. He has held senior roles with leading German insurance companies, including 14 years as managing director at marine broker Döhle Assekuranzkontor GmbH & Co KG.

IMO

TO ADD MEMBERS

The IMO Council is to expand the size of the Council, extend the term of its members and recognise three additional language texts as authentic versions of the IMO Convention. The approvals were made at the 33rd extraordinary session of the Council, which was held virtually on 8 April 2021.

On entry into force of these proposed Council reforms by the Assembly, the IMO Council will increase by 12 member states, from its current 40 members to 52.

Hill Dickinson

HONG KONG APPOINTMENT

Hill Dickinson's Edward Liu has been reappointed to Hong Kong's Advisory Committee on Promotion of Arbitration. His new three-year term of office extends to 2024. The Committee advises and assists Hong Kong's Department of Justice in the promotion of arbitration in Hong Kong.

Edward is also a member of Hong Kong's Steering Committee on Mediation, one of only two members serving in both legal advisory bodies to the Hong Kong government.

ICHCA

NEW HEAD

The International Cargo Handling Coordination Association (ICHCA) has appointed Richard Steele as the new head of ICHCA International. He will take over the role on 1 July on the retirement of the current postholder Richard Brough OBE.

Richard is a safety and skills professional who has been involved in the ports industry for more than 21 years. He is currently the chief executive at Port Skills and Safety (PSS) an organisation that he has led for 11 years. Before PSS, Richard was the senior learning and development manager for Associated British Ports for 10 years.

London Club

NEW UNDERWRITERS

The London P&I Club has expanded its team with the appointment of two experienced underwriters. Mark Esdale, who has worked in the P&I industry for 20 years, joins the London P&I Club as associate director. Mark began his career with a leading P&I insurance provider, underwriting small craft business. He later moved to another P&I Club to set up and develop the company's fixed premium facility.

George Dickson has been appointed as underwriter. Before joining the London P&I Club George spent five years with a fixed premium insurance provider specialising in the European commercial market.

Indian Register of Shipping

AWARD

The Indian Register of Shipping (IRClass) has announced that its executive chairman, Arun Sharma, has received India's most prestigious maritime award, Varuna award, at the 58th edition of National Maritime Day. The nomination for the award was done unanimously by various maritime industry bodies. The award recognises and honours individuals for their sustained and outstanding contribution to the Indian maritime sector, as well as exhibiting strong leadership skills and decision making.

A marine engineer with a strong technical and commercial background, Arun is currently leading IRClass. He has held several top management positions with key shipping companies in his career spanning several decades. He was also IACS's head of small group on quality policy and strategy committee chairman.

Stephenson Harwood

NEW PARTNERS

Stephenson Harwood LLP has promoted five marine lawyers to its partnership.

Justin Gan is now a partner in the firm's marine and international trade practice. Based in Singapore, he acts in charterparty, offshore, trade, and ship financing-related disputes, as well as non-contentious matters in the marine sector.

Richard Hugg is now a partner in the firm's marine and international trade practice. Based in London, he has more than 10 years' experience in the marine insurance market, acting for insurers on a wide range of classes of business.

Mark Lakin has been named a partner in the firm's Dubai partnership. He is a member of the marine and international trade practice, and has a broad range of litigation experience, with expertise in shipping, commodities and trade finance disputes.

Simone Liu is now a partner in the firm's finance practice. Based in Shanghai, she focuses on shipbuilding, sale and purchase and ship finance transactions, including complex structured finance projects and financial leasing matters.

Anna Kwong has been named a partner in the firm's finance practice. Based in Hong Kong, she specialises in international trade finance and commercial banking.

WFW

STEPPING DOWN

In April 2021 Frank Dunne stepped down from his role as senior partner with WFW to become a "senior advisor". Frank joined WFW at its inception in 1982, making partner only two years later in 1984. He established the firm's presence in Greece and spent some time in New York as well as in London. He also served as chairman from 2004 to 2017, a major period of global expansion for the firm.

Ever Given: a logistics industry in suspense and **a challenge for lawyers**

Enrico Vergani and **Marco Mastropasqua**, at BonelliErede, examine the grounding of *Ever Given* in the Suez Canal and the ripple effect for the whole maritime sector

In the early hours of 23 March, the 20,000 TEU container ship *Ever Given* grounded while transiting northbound through the Suez Canal.

The grounding occurred in the single waterway area, leading to the Canal's closure and a backlog of vessels waiting to transit. On 29 March *Lloyd's List* reported that 429 vessels were stuck in the queue. Other ships diverted around the Cape of Good Hope, adding more than 10 days to their voyage.

Smit Salvage and Nippon Salvage were jointly engaged by *Ever Given*'s owners on LOF terms to assist the Suez Canal Authority (SCA) with refloating efforts. After six days of salvage operations, the vessel was refloated, thanks to extensive dredging, more favourable spring tides and the pulling power of numerous tugs.

The Canal reopened and vessels resumed their transit. At the time of writing, however, *Ever Given* is still at anchor in the Great Bitter Lake area for further assessment, and discussions are ongoing about security now sought by the SCA.

Groundings in the Suez Canal are not infrequent and closures happen from time to time. In fact, just a few days after the *Ever Given* incident, another two vessels grounded not too far from the same point. However, the blockage in those cases was sorted out rapidly.

A flag state investigation and an SCA investigation are underway. In addition to the salvage claims brought by the SCA (and salvors), the SCA will be bringing claims for damage to the Canal, for loss of revenue and potentially impose a fine. The vessel may well remain in Suez for an extended period until these claims are resolved and some delicate negotiations are under way between the SCA and the owners, hull underwriters and P&I Club.

On 13 April it was confirmed that *Ever Given* had been arrested by the SCA because of the US$916 million compensation claim brought against the owners. Apparently, the SCA claim includes approximately $300 million for salvage and approximately $300 million for loss of reputation. According to media reports, it seems that the SCA's claim does not concern the salvors' (Smit and Nippon Salvage) claim for salvage services, which the owners and hull underwriters of *Ever Given* expect to receive separately. In any case, the arrest might have a remarkable impact on cargo still on board in terms of potential deterioration and further delay.

Salvage operations and rewards

It is likely that very significant salvage rewards will be involved. General average (GA) has been declared and average adjusters involved for the collection of the usual form of guarantee from cargo owners and underwriters.

The value of the vessel is reported to be in the region of $114 million. This case may well involve the largest salved fund of any container ship casualty to date.

Getty Images

Based on the assessment of the criteria under article 13 of the 1989 Salvage Convention, the salvage reward could be enormous. The high value of salved properties, the efforts and skills arranged by the salvors, the full success obtained, the time used and expenses incurred, the promptness of the services, the availability and use of tugs and other equipment and the state of readiness and efficiency of salvors' equipment play a key role in fixing the reward.

So as not leave any stone unturned, a further aspect to consider is the controversial approach of liability salvage, based on the concept that salvage rewards should reflect the value of the owners' assets preserved from liability claims, as well as the value of recovered property. In practice, liability salvage presents immense problems of proof. Estimating the damages that owners would have to pay absent a successful salvage could be highly speculative.

General average and contributory goods

A GA declaration has been tendered by the owners and Richard Hogg Lindley has been appointed as the GA adjuster. We

assume the usual letter of instructions has been circulated to all the interests involved in the marine venture, together with the wording for a GA average bond and average guarantee to be issued concerning the various contributory goods.

GA will be adjusted most likely according to the 1994 York-Antwerp Rules or any subsequent amendment thereto. This could mean seeing the latest edition of the Rules (2016) in the firing line. Of course, much will depend on the related provision in the bills of lading representing the cargo on board the vessel and the provision in the charterparty entered into between the owners and the charterer.

With the aim of facilitating obtainment of payment, the adjuster requires each party interested in the voyage to provide a GA bond as security. A GA bond is effectively a promise to pay whatever contribution is assessed, backed up by a GA guarantee from a bank or insurance company. The adjuster uses the carrier's ocean bills or cargo manifest to identify from whom they should be demanding GA bonds. Non-vessel operators issuing their own bills of lading usually appear as the shipper on the carriers' ocean bills/cargo manifest; therefore, the adjuster will send a letter demanding a bond in respect of the cargo. The letter will normally give brief details of the incident, ask for a declaration of the cargo's value and request that the GA bond forms be duly executed and returned. Most shippers are not the cargo owners and thus are not called on to sign any forms; rather, they keep the cargo owners duly posted and pass all GA forms along to them. If the cargo interests are selling on ex-works, FOB or CAF terms, they should forward GA forms to the buyers/consignees. Operators are unable to obtain cargo released at destination until the guarantee has been returned.

In addition, given the great deal of uncertainty following the preliminary assessment of the vessel, the prospect and time frame for any repairs and the arrangements for the cargo, as well as the recent news on the arrest of the vessel, either a GA bond or a guarantee will most likely contemplate a non-separation agreement to secure the necessary flexibility in dealing with further steps.

The vessel's interests might be reluctant to accept any entity other than the London market granting security. The general principle, however, is that the guarantee stands in lieu of money to be deposited against the value of the cargo. Provided it comes from a financially sound issuer, we believe there should be no argument or room to prevent the acceptance of a guarantee issued in a standard form. That said, we cannot rule out a challenging approach from cargo insurers and a dispute concerning the average guarantee.

As the vessel is chartered, also the charterer might be called to contribute to the values of the bunker on board.

A further issue may concern any law and jurisdiction clauses to be inserted in any GA bond and guarantee and related attempts of cargo interests to challenge them and avoid any favourable enforcement.

Ever Given's size and the number of cargo owners involved means the GA will likely be lengthy and complicated. Indeed, it could be the largest GA case ever in terms of the number of different property interests. This leaves shippers with uninsured cargo highly vulnerable to being lost, as the owner can hold the goods under lien until the GA deposit established by the adjuster is paid.

Liability limitation proceedings

Under the London Convention on Limitation of Liability for Maritime Claims (LLMC 1976, as amended in 1996), shipowners are entitled to limit their liability to the vessel's value plus any earned freight. *Ever Given*'s owners thus commenced liability limitation proceedings before the Admiralty Court in London on 1 April. The limitation fund is expected to be approximately $114 million and legal representation will be required if an interested party wishes to be involved in the proceedings. Successful claims against the owners will be paid out of the fund on a pro rata basis.

However, it is worth stressing that the salvage award will not fall within the limitation's scope and that, under article 4 of the Suez Canal Rules of Navigation, owners/operators of any vessel transiting the Canal are liable without the option of availing themselves of limited liability regimes. It thus appears, at least prima facie, that *Ever Given*'s owners cannot rely on any limitations against the SCA, which in principle may fully recover any loss of income and expenses resulting from damage and/or business interruption.

A further interesting issue to consider is whether the sums paid to settle the claims will be considered salvage (in which case recovery pro rata to values will be sought from cargo in GA and hull underwriters will obviously pay the proportion due from the owners or classified as payments for damage to the canal/loss of revenue and/or fines, in which case they will fall to the P&I Club and will not be part of the GA. Since the SCA is likely to be the recipient of all those sums, it might be less interested than cargo interests in the technical assessment of any sums paid.

A look ahead

The recent grounding of one of the world's largest vessels in the Suez Canal – one of the most impressive feats of logistics infrastructure in the world – and its immediate impact on maritime trade between Asia, the Middle East, Europe and the east coast of the US, is a clear example of the devastating impact an incident involving a single vessel can have on the global supply chain.

Some critics have pointed to how fragile the logistics and supply chain appears when tested by a single event. One thing is for sure: the *Ever Given* incident has made it clear just how important logistics have become and the key role logistics – especially marine transport – play in serving industry and ensuring that everyday life runs smoothly.

From a legal point of view, the matter gives rise to a number of questions concerning the assessment of damage, release of security and recoverability of losses incurred not only by those involved in the incident but also potentially by countless other entities extending well beyond the maritime sector.

The challenge has just begun. ***MRI***

Enrico Vergani

Marco Mastropasqua

Enrico Vergani, partner, and Marco Mastropasqua, senior counsel, at BonelliErede

Sustainability: our journey

James Bean, of The Standard Club UK, reflects on the journey that the shipping industry is making in terms of its sustainability

While the subject of sustainability has been openly discussed within the shipping industry and finance sectors for more than a decade now, it has only been in more recent years that insurers have started to consider the impacts that sustainability issues could have on their business in a coordinated way.

This article looks at sustainability from the viewpoint of the mutual marine liability insurer, the P&I Clubs, the reasons why this is a topic now being proactively discussed and what steps, in particular from the Standard Club's perspective, have been taken on the journey towards adopting a strategic approach to sustainable insurance.

The concept of sustainability is composed of three pillars: economic, environmental and social – also known informally as profits, planet and people. There is no denying it: these issues are having an impact on more and more aspects of human life and the physical world. Referred to collectively in this article as "sustainability issues", there is growing pressure and urgency from all sectors of society for industries and governments worldwide to respond.

The maritime industry, which includes P&I clubs, is no exception. Sustainability issues pose a wide range of complex and inter-connected risks to the mutual marine liability insurers which, if not managed appropriately, could challenge their ability to provide their members with the high levels of cover they need to trade and adapt to the ever-changing environment.

"Clubs should adapt and evolve so that they can continue to meet their obligations under the broad range of covers they provide, ensuring their members' continued ability to trade"

While on behalf of their members, the clubs and the International Group (IG), are already helping to underpin economic development and address sustainability issues through providing high levels of cover in a cost-effective way and by actively preventing and managing the consequences of maritime losses, this in itself is not going to be enough.

In the same way that shipowners are being set tough legislative targets to reduce emissions or have to demonstrate their sustainability credentials to access better funding, satisfy shareholders, recruit the best crew or win business from charterers, the clubs and their approach to sustainability is starting to become a focus for their key stakeholders. For the clubs, this includes their members, regulators, government bodies, reinsurers, service providers and employees alike.

Fortunately, like other insurers, the clubs' core business is to understand, manage and carry risk. Clubs should adapt and evolve so that they can continue to meet their obligations under the broad range of covers they provide, ensuring their members' continued ability to trade. This has always been the case and, more recently, has been demonstrated through the clubs' ability to respond to and meet members' needs in the face of changing regulation, whether that is certificating for MLC, wreck and bunker conventions or supporting members as they contended with the challenges of IMO 2020.

While shipping faces many sustainability issues and has been proactive to-date in addressing key areas closely linked to the environment and society generally, probably the most complex and significant challenge facing club members in the coming years is decarbonisation. As highlighted by Watson Farley & Williams in their recent sustainability report (see page 14 of this issue of *Maritime Risk International*), the challenge of reducing CO_2 emissions is too large for any one company, even any one set of stakeholders, to address. It should therefore be no surprise that sustainability is now on the agenda for the IG clubs as they look to support and assist their members in addressing, among other things, the challenges of transition.

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While there is no question that some clubs are further ahead than others in their sustainability journey, what is important for all club members, and society at large, is that sustainability issues are being actively discussed at board level. The Standard Club is no exception. While the club already had a forward-looking approach to identifying, assessing, managing and monitoring risks, as well as a focus on developing innovative insurance solutions for members and improving business performance for the long term, up until recently the club had not formally made the commitment to having a coordinated and strategic approach to managing sustainability issues. That has now changed.

Through dialogue with the club board both this year and last, The Standard Club has now put plans in place to look at the sustainability issues facing the club and to develop its strategic thinking in this area. This work is being coordinated via the club's in-house sustainability team. Reporting into the chief executive and in turn the board, the sustainability team comprises representatives from aspects of the business: claims, underwriting, loss prevention, risk, compliance, marketing and finance.

"Sustainable insurance aims to reduce risk, develop innovative solutions, improve business performance, and contribute to environmental, social and economic sustainability"

But what is a strategic approach to managing sustainability issues and where have we chosen to start on our journey? Helpfully, the United Nations Environment Programme Finance Initiative defines a strategic approach to sustainable insurance as one "Where all activities in the insurance value chain, including interactions with stakeholders, are done in a responsible and forward-looking way by identifying, assessing, managing and monitoring risks and opportunities associated with environmental, social and governance issues. Sustainable insurance aims to reduce risk, develop innovative solutions, improve business performance, and contribute to environmental, social and economic sustainability".

The first step The Standard Club has chosen to take in adopting a strategic approach to sustainability is undertaking a materiality assessment. In the sustainability world, such assessments form the backbone of reporting and follow a tried and tested process whereby the environmental, social and governance issues that could affect a company can be identified, refined and assessed.

In the club's case, having defined the scope and purpose of the assessment, it is now engaging with key stakeholders to identify and prioritise by importance a range of potentially material sustainability issues which are relevant to the long-term success of the club. Through this work, it will be able to narrow down its focus to a short-list of topics which can be used to inform the club's strategy and business plan. The output of this assessment will also ensure that the club can meet the needs of both current and future reporting requirements, whether requested by members, regulators or other key stakeholders.

However, undertaking this assessment is more than just about meeting the club's reporting requirements. Undertaken correctly, it should deliver several valuable long-term benefits, such as:

- Identifying trends on the horizon that could impact upon the club's ability to provide P&I covers which represent excellent and sustainable value.
- Enhancing business strategy by using materiality inputs to reflect new business risks and opportunities.
- Enabling the club to be ready to take advantage of opportunities to develop new products or services to support its members and stay ahead of competitors.
- Prioritising the club's resources to address sustainability issues which matter most to members and other stakeholders.
- Identifying areas of interest to the club's key stakeholders, enabling it to report concise information which will satisfy evolving stakeholder and regulatory demands on these issues.

Once the materiality assessment has been undertaken and the sustainability topics which are most material to the club have been ranked by order of importance, the club will then, as is usually the case, be aligning them with the UN's 17 sustainable development goals (SDGs). Published in 2015 the SDGs cover a wide range of targets interconnected with environmental, social and governance issues. This is the approach that has been adopted by the Skuld, Gard and Swedish Club in their sustainability reports, as have other insurers and insurance bodies, including Lloyd's of London.

Underpinning each SDG is a range of inter-connected targets which will allow the club to further hone in on the activities that it already undertakes in support of these goals, and identify areas where it can make improvements to meet these targets.

However, not all of these targets are equally relevant to all businesses and sectors. The extent to which the club as a mutual marine liability insurer can contribute to each, and the risks and opportunities they individually represent to the club and its members, will depend on many factors.

By assessing the current, potential, positive and negative impacts that the club and its members activities might have on the SDGs through the materiality process, it should be possible for the club to develop and refine its goals and metrics specific to its operating context, as well as identify any financial impact. This is turn should create the roadmap for taking the club forward on its sustainability journey.

To conclude, as risk managers, risk carriers and investors of member's premium, all the clubs have an important role to play in fostering sustainable economic and social development. Having started this journey, we have the opportunity while meeting the needs of the present, to futureproof our business and create long term value for all club members and stakeholders. ***MRI***

James Bean

James Bean, managing director, The Standard Club UK Ltd

Sustainability integral to marine insurance

Helle Hammer, of the Nordic Association of Marine Insurers (Cefor) and of the IUMI policy forum, looks at how sustainability is driving the insurance agenda in the shipping world

One of the strongest drivers for change in today's society is sustainability. This will continue for years to come, influencing consumer behaviour, governments and businesses alike. Marine insurance is no exception to this for a number of reasons.

First, it directly affects the risks insured. Climate change leads to more severe windstorms and flooding, which in turn increase the frequency and severity of claims. But sustainability is also about our responsibility to deliver services to meet the planet's greatest challenge and contribute to a sustainable ocean industry. Further, environmental, social and governance (ESG) issues are becoming increasingly important to shareholders and employees, and a prerequisite to recruit future talents. Additionally, energy transition and the shift towards greener shipping represents new opportunities to expand product lines for renewables and clients' changing needs.

The insurers' role

The core business of marine insurers is and will always be to understand and manage risks and offer assistance and financial protection when disaster strikes through sufficient funds. For clients, it is a risk management tool. Financial authorities have a role in securing solvent companies with an aim to ensure the adequate protection of policyholders and beneficiaries, and regulators set the safety standards. The separation of roles and expectations means that focus from a marine insurer's perspective will be on loss prevention activities, supportive claims handling, risk selection and know your client (KYC) programmes. Through this, marine insurers already engage on a daily basis in environmental, social and governance issues based on their extensive knowledge from a large number of claims and expertise in assessing risks.

Prevention will always be better than cure and much effort is put into learning from past behaviour. Through experience, marine insurers are well placed to offer advice on how to prevent incidents and thereby reduce the risk of injury to crew and pollution. In the event there is an incident, marine insurers offer extensive support and a network of experts that assist in preventing further escalation, protecting those that have been affected. Going forward, sustainable claims handling and repairs are some of the topics for discussion on how to further improve.

Transparency is key

For the risk selection, transparency will become increasingly important as a growing number of marine insurers focus on their portfolio also from a sustainability perspective. Where banks have their Poseidon Principles to assess and disclose the climate alignment of their ship finance portfolios, similar initiatives may evolve for marine insurers also.

Several have already acceded to the UN Environment Programme (UNEP) Financial Initiative's four Principles for Sustainable Insurance (PSI), with a commitment to:

1. Embed ESG issues relevant to their insurance business in decision making.
2. Work together with clients and business partners to raise awareness of ESG issues, manage risk and develop solutions.
3. Work together with governments, regulators and other key stakeholders to promote widespread action across society on ESG issues.
4. Demonstrate accountability and transparency in regularly disclosing publicly their progress in implementing the Principles.

A new ESG guide for non-life insurance was published by the organisation in June 2020.

In practice, this increased focus means that dialogue between owners and their insurers will expand beyond what has traditionally been the case, including both the climate footprint of the business and crew welfare for example. From individual companies, risk appetite will vary. We have already seen examples of insurers that will not cover the transport of coal or take a firmer stance on the recycling of vessels. The worst performers within a segment might also find themselves in the spotlight as more awareness is raised on sustainability.

The IMO strategy

Working together with regulators and other stakeholders is one of the obligations under the PSI, to which Cefor and also its umbrella organisation, the International Union of Marine Insurance (IUMI), have joined as supporting institutions.

As organisations, we already work on behalf of our members on a number of sustainability-related issues. Arctic sailings, autonomous vessels, fuels, and various safety-related issues concerning fires are examples of this.

In 2018 the IMO adopted a strategy with a target of reducing annual greenhouse gas emissions (GHG) from vessels by 50 per cent by 2050 compared to 2008. A measure demanding energy efficiency requirements on existing vessels will take effect from 2023, while carbon intensity targets will be mandatory from 2026.

To reach the IMO target, zero-emission vessels are being developed. As an example, the "Getting to Zero Coalition", a partnership between the Global Maritime Forum, the Friends of Ocean Action and the World Economic Forum, aims to accelerate the decarbonisation of maritime shipping by developing and deploying commercially viable zero-emission deep sea vessels by 2030. More than 140 companies within the maritime, energy, infrastructure and finance sectors, supported by key governments and IGOs, are currently part of this alliance. Cefor is one of those supporting organisations.

Safe transition

As vessels become greener, new risks are introduced. Insurance companies have a choice to be left behind or continue supporting their clients in the push for more sustainable solutions. Cefor has made a clear commitment to the latter.

The challenge will be to insure something that does not fit into any modelling nor offers any answers in the loss records. The solution lies in a better understanding of the risk. Through knowledge sharing and transparency we can to some degree offset a new risk.

To ensure the safe transition to more environmentally friendly solutions, marine insurers can and will play a role in identifying the safety gaps in dialogue with class, owners, manufacturers and regulators. And once a better understanding is reached, insurers can make any necessary adjustments or additions to conditions to ensure that crew and owners are sufficiently protected.

Together with other stakeholders we can also engage in discussions with class and regulators – the IMO in particular – on new or amended regulation and guidelines that might prove necessary.

Let's consider an engine room as an example. Will the traditional terminology of machinery and parts for combustion engines with associated fire and explosion risks be adequate to address modern design and new technologies? Are the crew properly trained and prepared to deal with this? And how will they be protected from some of the new, more toxic fuels?

Another example is related to the increasing market share of alternative fuel vehicles (AFVs). What happens when a larger number of these vehicles are transported onboard a car carrier? Or people take their electric car on a ferry and want to use the idle time on board to charge the battery? Today's fire regulations were clearly not made with AFVs in mind and measures to prevent and mitigate a fire involving these vehicles may not be as effective. While fires from AFVs may be less frequent, consequences may be more severe and new measures could be necessary to prevent and mitigate this risk.

A proactive approach

New opportunities may arise from the transfer of cargo from land to the more environmentally friendly transport of cargo at sea. And with energy companies moving from hydrocarbons to renewable energy sources such as floating offshore wind, discussions have already begun on standardising insurance solutions and thus facilitate the further expansion of these.

To sum up, marine insurers are taking a more proactive interest in sustainability and incorporating this across all business areas from investment strategies to underwriting, loss prevention, claims handling and business development. As an example, Cefor is committed to supporting these efforts for a more sustainable ocean industry through the three core roles we can take on:

- **Influencing** – among members and in discussions with owners, manufacturers, surveyors, salvors, brokers, classification societies and not least regulators.
- **Facilitation** – by creating meeting places and by enabling new and greener technologies, solutions and choices through the drafting of clauses and guidelines.
- **Knowledge sharing** – through the use of statistics, training courses and seminars, sharing best practice/information and dialogue with external partners to better understand and manage the new risks. ***MRI***

Helle Hammer

Helle Hammer, managing director of the Nordic Association of Marine Insurers (Cefor) and chair of the IUMI policy forum

Sustainability concerns rising up the shipping agenda

Lindsey Keeble, **George Paleokrassas** and **Simon Petch**, of Watson Farley Williams, take a look at the law firm's recent report on sustainability and shipping finance


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Sustainability concerns have rocketed up the shipping agenda over the past decade, with environmental, social and governance (ESG) issues already influencing financing decisions, fleet renewal and regulatory change across the industry.

In 2018 the IMO set a high bar for the industry: to lower shipping's CO_2 intensity by 40 per cent by 2030 and its greenhouse gas emissions by 50 per cent by 2050, as compared with a 2008 baseline. Many banks, predominantly western, have also signed up to the Poseidon Principles, which commit them to reporting on the carbon intensity of their loan portfolios as against the IMO's decarbonisation trajectories. The focus of major charterers on sustainability is demonstrated by the launch of the Sea Cargo Charter in October 2020.

The Watson Farley Williams report "The Sustainability Imperative: ESG – Reshaping the funding and governance of shipping" examines the industry's views on sustainability and governance and how these issues will impact on how it finances, and even structures, itself. Its key findings are:

- Reducing carbon emissions is the main and most immediate challenge, though trade tensions, Covid-19 and access to finance are also important.
- Financiers attach more importance to sustainability issues than do operators.
- Despite commitment to sustainability, traditional ship finance banks have a limited appetite for funding new clean-technology upgrades themselves – or accommodating their financing by others.
- Decarbonisation looks set to drive greater cooperation among industry participants.
- Industry looks to governments to lead the funding of clean technology and fuel research.
- Shipowners are wary of committing to new green technologies.

It is built around a survey of 545 industry decision makers, two-thirds of executive level and the rest from senior management and 10 in-depth interviews with senior figures from the sector. Banks, lessors and other sources of finance comprise 44 per cent of respondents, charterers 12 per cent and shipowners and operators the remaining 44 per cent. Almost half the respondents are from Europe, Middle East and Africa (EMEA), just over a third are from Asia Pacific and the rest from the Americas.

"There is not yet consensus on how to meet environmental targets and the technological challenge is immense. Zero-carbon fuels already exist but the networks to deploy them at scale and the right cost have yet to be developed"

Key findings

Decarbonisation is viewed as the main challenge for shipping, well ahead of non-ESG factors, though this varies somewhat regionally. Within the ESG matrix, there is broad agreement among financiers and ship operators worldwide that emissions are the main priority. Beyond that, concerns differ, though regulatory issues around health and safety and governance rank equally in the survey.

There is not yet consensus on how to meet environmental targets and the technological challenge is immense. Zero-carbon fuels already exist but the networks to deploy them at scale and

the right cost have yet to be developed. Some cleaner fuels, LNG for example, emit less carbon dioxide but more of other undesirable gases, while others are clean themselves but their production is not, shifting the carbon burden down the value chain.

Uncertainty about the ultimate future energy source means operators shy away from buying ships that use clean fuel – for fear they might be the wrong choice for a 20- to 30-year investment – meaning it will likely be 2030 before we see a significant shift to clean fuels. In the interim, shipping must mitigate its carbon emissions with other technologies, such as better hull and power plant designs, hardware retrofits and voyage optimisation software. Some of these upgrades are already popular, especially in the digital realm, and there is scope for significant emissions reduction through improved processes and greater efficiency. The survey shows clearly that cost is the key driver behind a shipowner's decision to invest in a new technology, followed by proven results.

At the heart of shipping's decarbonisation challenge is the question of who assumes the first-mover financial risk of researching, developing and installing new technology. With some shipowners unwilling to do so, and traditional maritime finance not the most obvious source of investment, many think governments should take the lead in funding said research. Yet taxpayer funding for cleaner shipping may be hard to justify given the supranational nature of the industry and its reputation for a lack of transparency, meaning any such support could result in more obligations, extending beyond environmental standards and into governance, being imposed on shipowners.

One way to bridge the first-mover problem is through more collaboration and risk sharing. Yet shipping remains a largely conservative industry, with the survey results suggesting that shipowners prefer to cooperate with their peers rather than energy or technology companies, despite the latter's expertise in relevant areas of technical innovation. Another hurdle is the shipowner-charterer relationship, and the extent to which the costs of clean technology retrofits are reflected in charter rates.

Although shipowners do not place access to finance among their leading challenges, there is a gap between how they view ESG and how banks and other sources of capital are adjusting their portfolios according to sustainability and governance criteria. The survey shows that most financiers would reconsider backing shipping companies that did not comply with environmental regulations, though they disagree on their role in improving shipping's credentials in this area. Other sources of finance are stepping up their ESG monitoring too, from institutional investors such as pension funds to capital markets.

Also impacting the appetite for lending are the increasingly stringent capital adequacy requirements as set out in the Basel Accords, potentially making some Western banks more reluctant to lend to shipping. Capital requirements may put further pressure on traditional debt financing and make other options such as leasing, joint ventures and the capital markets more attractive.

Compliance with governance and social standards is also becoming important as pressure from regulators and law makers increases. Another motivator for better governance is attracting fresh capital to the sector. A majority of shipowners, charterers and financiers agree on the need to improve transparency to attract new investors, which is seen as key to tapping additional funding and the capital markets.

Legislation is the best prompt for better transparency and ESG reporting, though end users such as charterers and energy companies will also play a role as they have their own ESG criteria. Still, shipowners view the social element of ESG as more important than governance criteria, being significantly more concerned about crew welfare than financial reporting, understandably so given the Covid-19 pandemic.

"To effect the environmental improvements from which other ESG gains may flow, all stakeholders in shipping will need to contribute. Exactly how is up for debate"

And while shipowners value their independence, the financial demands of clean technology could see them consolidate, give up equity or go public, all associated with better governance and financial reporting and more transparency. Vertical integration will also be required, as well as more cooperation between shipowners, charterers and end users, as well as governments.

To effect the environmental improvements from which other ESG gains may flow, all stakeholders in shipping will need to contribute. Exactly how is up for debate, but common ideas include matching innovation funds from governments and banks; credits from shipyards for greener options such as dual-fuel ships; and longer charter terms (or higher rates) to support shipowners' clean investments.

It is interesting that many in the industry believe the drive to sustainability will bring about changes in the shape, capital structure and financing of the sector, meaning shipping will not be able to bring about significant environmental change without also addressing social and governance issues. The separate elements of ESG look set to reinforce each other in shipping in the coming years.

In spite of its reputation as being old-fashioned and resistant to change, shipping has shown itself to be a highly resilient and adaptable industry through the years. There is a clear recognition within the industry that we are on the cusp of a new era and are likely to see significant changes in the coming years which will re-shape the industry. ***MRI***


Lindsey Keeble


George Paleokrassas


Simon Petch

Lindsey Keeble, global maritime sector co-head and partner, London, George Paleokrassas, global maritime sector co-head and partner, Athens, and Simon Petch, partner, Singapore, Watson Farley Williams

False economy and evidence gathering

There is often a false economy in the decision to arrange a low-cost survey where a matter appears to be simple or of low value. **Paul Apostolis** and the Campbell, Johnston Clark Singapore office explain what is required to transpose what appears on the ground at the time into a convincing presentation to a judge or arbitrator sitting in a room often years after the event

The capture of evidence on the core issues surrounding any incident, contemporaneously with its occurrence, is key to the successful pursuit or defence of any claim in respect of that incident. That evidence will inform the level of any settlement or of any award or judgment if the matter has to be arbitrated or litigated. Without it, cases cannot be effectively settled or fought and substantial investments in costs may be thrown away for failure to take the correct steps at the outset for relatively minimal cost.

Investigators, such as surveyors, will lack the legal training to appreciate the issues to which any given incident is likely to give rise and in relation to which a burden of proof will lie and what is required to transpose what appears on the ground at the time into a convincing presentation to a judge or arbitrator sitting in a room often years after the event.

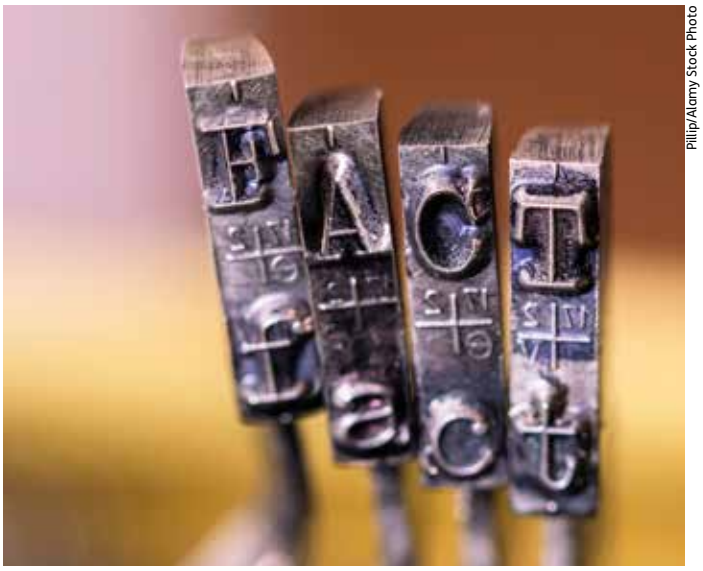
This is not a special plea for use of lawyers in all aspects of an investigation. But delegating the task exclusively to surveyors, even if perceived as a lower-cost option in the short term, is misguided and is demonstrably the reason why a number of cases fail. The reasons for that are easy to understand. Lawyers and surveyors perform distinct functions: the surveyor may be able to determine cause, but he will not have the practical experience of presenting cases to judges and arbitrators in the court or arbitration room in a way which will meet their exacting standards of proof.

Burden and standard of proof

At the heart of any litigation are the facts. What set of circumstances caused two parties, whether known to each other in a contractual relationship or strangers with a duty of care owed to each other due to their proximity, to come into dispute. Resolution of that dispute relies not on the applicable law or on what actually happened, but rather on how those underlying facts can be proved. The law has catered for this by creating the burden and standard of proof.

In civil litigation, whether in contract or in tort, the burden of proof of asserting a set of facts or circumstances of a dispute lies on those who make an allegation. The law then requires that litigant to prove those facts sufficiently so that if the circumstances or the facts are disputed, the tribunal has sufficient cogent evidence to tilt the finding of fact sufficiently in favour of that party on the balance of probabilities. A party does not have to prove the facts on which they rely absolutely and nor are they required to satisfy the facts on the criminal standard of beyond reasonable doubt. All that is required is that, if weighed in the balance, the facts as alleged tend to favour the alleging party's version of events.

What the party who bears the burden of proof must do is adduce sufficient evidence of the facts and surrounding circumstances necessary to tip the balance of justice in their favour.



Pillip/Alamy Stock Photo

A failure to satisfy the standard of proof by the party who bears the burden of doing so will cause a claim or defence to fail, irrespective of the actual circumstances or the merits of the law. This was succinctly summarised in *Re B (Children) (Care Proceedings: Standard of Proof)* [2009] 1 AC 11, where the court held as follows:

"If a legal rule requires a fact to be proved (a 'fact in issue'), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."

The issue

The purpose of writing this article is to highlight a fairly common practice, mostly in the small to medium range of marine casualties such as collisions at anchor, low-impact groundings, cargo damage claims and incidents giving rise to general average (GA) which are disputed on the grounds of alleged unseaworthiness of the vessel, involving potential damages in the US$100,000s rather than in the millions range. These claims tend to be categorised as not warranting the expenditure of a meticulous collection and documentation of the facts by witness interview, VDR preservation and document collection, ostensibly on the grounds that the claims do not justify the costs and the matter will likely settle as between the parties. Rather a surveying company was asked to "find out what happened" when sent to survey the damage.

But there is a pitfall. After the effluxion of a year or two with time bars approaching and no prospects of collating the evidence in retrospect in a form necessary to satisfy either the burden or standard of proof, we are asked to assist in recovering unpaid GA, resolve a collision liability or seek to defeat an allegation of unseaworthiness or cargo damage.

It is worth bearing in mind that the party on whom no burden of proof rests has an easy task. For a cargo owner, all they require is a clean bill of lading evidencing delivery of their cargo into the hands of a shipowner/carrier in sound condition and a broad and unsubstantiated denial of liability often on spurious grounds. Since the decision in *Alize 1954 v Allianz Elementar Versicherungs AG (The CMA CGM Libra)* and pending a different conclusion by the Supreme Court to the findings of the court of first instance ([2019] 1 Lloyd's Rep 595) and the Court of Appeal ([2020] 2 Lloyd's Rep 565), what can only be described as strict liability has been placed on the shipowner/carrier if the passage plan is found to be incorrect at the commencement of the voyage, thereby reducing the extent to which the negligent navigation defence can be used.

It seems that a cargo owner in all future groundings/heavy weather damage will simply allege that the passage plan was defective in an unspecified manner, rendering the vessel unseaworthy, potentially to the exclusion of the contractual defences incorporated in the bills of lading. What may simply be an error of navigation now becomes an unseaworthiness incident by mere allegation and, if not bottomed out through investigation at the onset, a perfectly good contractual defence may fail.

Owners now have a difficult assignment, not because the facts and the law do not favour their case, but because they cannot adduce sufficient evidence in retrospect to prove their case to the satisfaction of a court or tribunal or the opposing party in settlement negotiations.

This lack of evidence collated at source can become a debilitating liability in the future conduct of litigation or efforts to find a commercial solution even to the minute detail of the number of layers of lining paper used in a container to protect a coffee cargo. In *Volcafe Ltd v Compania Sud Americana de Vapores SA* [2019] 1 Lloyd's Rep 21, the court found (at para 43):

"I would hold that the carrier had the legal burden of proving that he took due care to protect the goods from damage, including due care to protect the cargo from damage arising from inherent characteristics such as its hygroscopic character. I would reinstate the deputy judge's conclusions about the practice of the trade in the lining of unventilated containers for the carriage of bagged coffee and the absence of evidence that the containers were dressed with more than one layer of lining paper. In the absence of evidence about the weight of the paper employed, it must follow that the carrier has failed to prove that the containers were properly dressed."

The point here is not how much or what weight of lining paper was deployed. It may have been the correct amount. The issue is that this evidence was not collected at the time of survey and, after the event, could not be proven. The actual amount became irrelevant through lack of evidence. How easy and inexpensive would it have been to collect the evidence from the onset on the number of sheets of paper used to line the container? It would have certainly cost less than taking the matter to the Supreme Court.

This is not an isolated incident. We have seen small collisions where the VDR was not downloaded and where follow-up questions were not asked to iron out inconsistencies or offer an explanation when a point was in doubt. A court will not speculate to assess a fact. In *Starbuck v Patsystems (UK) Ltd* [2017] EWHC 397 (IPEC), the court held:

"In the end it seems to me that I am being asked to speculate about things which Patsystems could quite easily have proved by proper evidence, such as an expert report based on actual source code comparisons, and I see no reason why I should speculate. Hence I conclude that Patsystems has not proved that the ACE software reproduces the expression of the intellectual creation of NSA version 3.1, and the counterclaim accordingly fails."

There is often a false economy in the decision to arrange a low-cost survey where the matter appears to be simple or too low in value. This is best demonstrated in the case of *Dawkins v Carnival plc* [2011] EWCA Civ 1237, where a passenger allegedly slipped on water spilled in the conservatory. The issue was how long it was allowed to remain there as an obvious risk before the passenger slipped. No crew were interviewed on this point and when the matter arrived in the Court of Appeal at what must have been considerable costs when compared to that of a thorough investigation, the court found:

"The absence of evidence from one or more of the many members of staff claimed to be present in the Conservatory at the material time is remarkable. The explanation for the lack of evidence from a member or members of staff was, the Recorder found, that the defendants 'could not establish who it was'. In my judgment, in the absence of evidence from members of staff claimed to be implementing the system, the judge was not entitled to infer from the existence of a system that the spillage which led to the fall occurred only a few seconds, or a very short time, before the accident."

It may well be that the water had been there for a matter of seconds. It may well be that the crew immediately implemented the safety management system to deal with the spillage. But in not accurately recording what they did at the time through proper crew interview and witness statements, Carnival and their liability insurers not only incurred the damages claimed but also their own and the passenger's costs to the Court of Appeal. Lawyers should be and often are prepared to cut their fees to cater for clients' expectations on costs for collecting the evidence. If you do not understand the burden of proof and how courts or tribunals assess evidence, you may well struggle to appreciate what evidence needs to be gathered.

We would urge you to consider the consequences of not collecting the evidence to a legal standard when next a matter appears of low-order value and not worth the expenditure of a proper investigation. The eventual outlay could be significantly more than the costs of that investigation. ***MRI***

Paul Apostolis

Paul Apostolis, director, Campbell Johnston Clark, Singapore

Incidents and evidence: what you need to know

Now **George Radu**, of the UK P&I Club, provides a P&I club perspective on the importance of gathering evidence

When members face a serious incident which could lead to litigation, they should immediately contact their local P&I club representative and begin collecting evidence. It is important to note that collecting evidence is not a one-person job but requires assistance throughout the organisation. By notifying other departments and in particular IT, one can ensure the relevant emails, videotape and incident-related documents are not lost or deleted.

Preservation of evidence

Immediately after an incident which may lead to litigation, members should begin collecting evidence. Prompt collection of evidence is important because in the days and weeks following the incident, conditions change, memories fade and records could become lost or misplaced. Failure to preserve records – paper or electronic – will result in the spoliation of evidence. Spoliation of evidence is the intentional, reckless, hiding, altering, fabricating or destroying of evidence relevant to a legal proceeding. Penalties for spoliation of evidence range from sanctions, fines, penalties, adverse jury verdicts, to negative publicity and damaged reputation.

The duty to preserve evidence rises when litigation is reasonably anticipated. Members should treat every incident as if litigation will follow and preserve evidence accordingly. Anticipation of litigation will likely follow a personal injury, a collision or a property damage incident. If a member believes a lawsuit is possible, they should notify their club and a lawyer will be appointed.

What data should be collected?

The information and evidence that should immediately be collected is the time, date and location of the incident and the parties involved. The lawyer will coordinate the interviewing of witnesses, securing crew statements, and the collection of documents needed for defence. Members should also identify any other sources of information such as the vessel's electronic navigation data (GPS, radar, AIS, ECDIS), its voyage data recorder, the electronic logs, CCTV cameras and the crew's mobile devices.

Electronic data preservation and recovery is essential following a casualty. Some data is automatically saved, while other data can only be preserved if the crew takes the necessary steps to save the information before it is overwritten with new data. Technicians may be required to assist the vessel with the preservation and downloading of certain electronic data. If the incident involves a specific piece of vessel equipment, the equipment involved should immediately be placed on hold and not used until an inspection has taken place and authorities have completed their review and inspection. It is important during the collection of evidence to interact with authorities, first responders, and other witnesses.

Once the immediate response is completed, evidence preservation throughout the organisation is necessary. The way to demonstrate good faith is through a litigation hold.

Litigation hold

Members should implement a litigation hold on their own or, in the case of a serious injury or loss of life, members may receive from the claimant's lawyer a litigation hold letter. If a litigation hold letter is received, members should take the following steps to comply. Failure to comply with a litigation hold could result in sanctions, fines or penalties or an adverse jury verdict.

> **"It is important during the collection of evidence to interact with authorities, first responders, and other witnesses"**

A litigation hold is the process of avoiding the inadvertent destruction of relevant evidence. Notice that a litigation hold was received should be sent in writing to managers of each division or group within the company and anyone involved with the events at issue. The issuing manager should document all persons within the organisation who received the litigation hold and oversee the compliance with the litigation hold and monitor efforts to retain relevant evidence. The memo should inform all employees of the need to comply and should involve both legal and information systems personnel.

Some of the items which should be identified and preserved include applicable ship-related documents including electronic data, emails, surveillance footage, photographs, contracts and commercial documents. It is also important to notify any outside parties who are in possession of your information and request they document the steps taken to preserve evidence. Once the litigation hold memo is sent, it should be followed up on a regular basis and remain in effect until the statute of limitations has expired as to all anticipated claims. If litigation has commenced, the litigation hold should last until final conclusion of the suit. ***MRI***

George Radu

George Radu, claims executive, UK P&I Club

Brexit – what you need to know

Oliver Goossens, of the UK P&I Club, discusses the impact of Brexit on the shipping sector

The labyrinthine process of the UK's withdrawal from the EU approached some degree of finality as the transition period ended on 31 December 2020, the date that marked Britain's formal withdrawal from the EU after 47 years.

But what has not changed as a result of Brexit? UK law is totally unaffected by Brexit. Statute and common law are unchanged, and any EU directives and regulations which were brought in prior to withdrawal are now incorporated into UK legislation.

For example, the EU regulations on contractual and non-contractual matters (Rome I and Rome II) are part of domestic law by way of statutory instruments. The English courts will continue to apply the Rome I and Rome II regime when deciding questions of governing law. In the absence of an express agreement, the governing law is that of the country most closely connected to the dispute.

Other notable examples include the Environmental Damage Regulations and the International Convention on Civil Liability for Bunker Oil Pollution, which are also implemented into UK law.

London arbitration, as shipping's most popular forum, should be unaffected. UK statute law which governs London arbitration (under the Arbitration Act 1996) remains the same as does the common law, and enforcement of London arbitration awards under the New York convention is also unaffected. London, as the top international dispute resolution centre, with 1,500 more arbitrations last year than its closest rival Singapore, is expected to continue to dominate.

Additionally, the UK is still party to IMO conventions, so no change there either, although the UK is no longer required to toe the EU line in any decisions going forward.

What has changed?

There have been some changes to financial passporting, which is the process by which one company in the European Economic Area (EEA) can automatically do business with another EEA company. For that reason, Lloyd's of London has its Brussels subsidiary and the UK Club will do certain business from its Rotterdam office.

Brexit also means the UK is no longer part of the EU sanctions regime, in which it previously took a leading approach. The UK will prepare its own sanctions list and, while we can expect some overlap between the two lists and hopefully a degree of cooperation, it will be necessary to check both lists separately to be fully confident of your position in relation to potential trading sanctions in Europe.

The UK has left the European Maritime Safety Agency and an independent set of rules and safety, security and sustainability will follow, presumably from the UK Maritime and Coastguard Agency.

A symbolic point, frequently referred to during the Brexit campaign, was the role of the European Court of Justice as having the final say in UK law. However, the UK Supreme Court is again the highest court in the country and cases no longer can be appealed or handed over to the European Court of Justice for a final decision.

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Lastly, one of the most significant changes which will impact English law relates to High Court judgments and their enforcement. The Recast Regulation, under which the rules of jurisdiction and enforcement of court proceedings were harmonised, falls away. So it will not now be as straightforward to enforce English High Court decisions across Europe and that may well impact the value and desirability of English High Court awards, but will not affect London arbitration awards.

As the Recast Regulation no longer applies, the UK is seeking to rejoin the 2007 Lugano Convention which is the Recast Regulation's previous iteration and would broadly have the same effect. To rejoin Lugano, permission is needed from all current members, and the UK's request to join is still pending. The European Commission has advised there are clear reasons not to agree and the trade deal negotiated with Europe did not deal with this issue.

If accession to Lugano is not granted, the UK will have to fall back on the Hague Convention for enforcement, and where things fall out of the scope of that, the UK's own domestic laws and conflict of law rules to determine questions of jurisdiction and enforceability of judgments.

Things may lack a degree of efficiency in the first instance, but one interesting upshot might be the return of the anti-suit injunction in court proceedings. That injunction, used to prevent parties commencing in jurisdiction X when there is an agreement to proceed in jurisdiction Y, was unavailable under the Recast Regulation and the Lugano Convention, but may now again become a feature of English law litigation. The lawyers at least therefore have something to be happy about. ***MRI***

Oliver Goossens

Oliver Goossens, senior claims executive, UK P&I Club

An exclusive **remedy?**

Nick Austin and **Mike Adamson**, of Reed Smith, who acted for the successful owners in *The Eternal Bliss*, consider industry reaction to the case and ask where it leaves us pending an appeal later this year

At the start of his judgment in *K Line Pte Ltd v Priminds Shipping (HK) Co Ltd (The Eternal Bliss)* [2020] EWHC 2373 (Comm); [2020] 2 Lloyd's Rep 419, Andrew Baker J said: "From time to time, a case provides the opportunity to resolve a long-standing uncertainty on a point of law of significance in a particular field of commerce. This is such a case".

The uncertainty the judge was seeking to resolve was whether a shipowner can recover damages from its charterer for losses (in this case a cargo claim liability) caused by a failure to discharge within the agreed laytime, in addition to the demurrage the shipowner receives for the period of the delay itself. Or is demurrage all the shipowner can get?

This question had divided the opinion of practitioners and academics for decades and was one which the parties in *The Eternal Bliss* agreed to refer to the court as a question of law under the Arbitration Act 1996.

The issue had arisen when, following the carriage of soybeans from Brazil to China, the vessel was delayed for around 31 days at the discharge port due to congestion and a lack of storage space. The vessel went on demurrage and the owners faced a claim from cargo interests after damage to the soybeans was discovered.

The owners settled that claim and turned to the charterers in London arbitration to claim an indemnity for the sum paid to the cargo interests. This claim was put on the basis that the owners had incurred the cargo claim liability as a direct result of the charterers' failure to discharge within the laytime. The owners did not allege any other breach.

The charterers denied liability on the basis that demurrage was the owners' exclusive remedy for the charterers' breach in failing to discharge within the laytime. But the owners said that demurrage only covered damages for loss of use of the vessel as a freight-earning asset and that they were entitled to recover, as damages, their liability to the cargo claimants because it was a different type of loss.

The position before *The Eternal Bliss* – one or two breaches?

On the face of it, the 1991 High Court decision in *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde)* [1991] 1 Lloyd's Rep 136 appeared to answer the critical question (whether a second breach was required in order for owners to recover damages) in the charterers' favour.

In *The Bonde*, it was held that to recover damages on top of demurrage a shipowner needed to show that the damages were a different type of loss from the mere use of the vessel and that they resulted from a breach by the charterers of an obligation other than the failure to load within the laytime, ie there needed to be a second, separate breach.

The Bonde followed a long line of cases dealing with the question of damages in addition to demurrage, starting with the Court of Appeal decision in *Aktieselskabet Reidar v Arcos Ltd* (1926) 25 Ll L Rep 513. In that case, the court had held that an owner was entitled to damages for deadfreight as a result of laytime being exceeded. However, there has been a long and healthy debate as to whether the majority, in reaching that conclusion, found there to have been one breach (a failure to load within the laytime) or two breaches (a failure to load within the laytime *and* a failure to load a full cargo).

Reidar v Arcos was then considered all the way up to the House of Lords in *Suisse Atlantique Société d'Armement Maritime SA v Rotterdamsche Kolen Centrale* [1966] 1 Lloyd's Rep 52, following which a view emerged that there needed to be a second breach (beyond exceeding laytime) for an owner to recover damages in addition to demurrage.

Notably, the judgment in *The Bonde* was based on the view that *Reidar v Arcos* was authority for the requirement for there to be two breaches.

But this view was not universal. The most recent edition of *Scrutton on Charterparties and Bills of Lading* states: "Where there is no further breach of charter beyond the failure to load or discharge within the laydays, but the charterer's breach

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causes the shipowner damage in addition to the detention of the ship, the position is not clear but it is submitted that the better interpretation ... is that these losses can be recovered in addition to demurrage". Some commentators agreed, notably the practitioner Robert Gay in an article published in 2004.

The position following *The Eternal Bliss* – what does demurrage liquidate?

Andrew Baker J considered in detail the judgment in *Reidar v Arcos*. He held that the majority of judges in the Court of Appeal had concluded there were two breaches by the charterer but that, on a proper reading of the judgment, the majority did not say that there *must* be two breaches for an owner to recover damages in addition to demurrage.

He went on to consider *The Bonde* and said the judgment was based on "faulty reasoning" of the majority view in *Reidar v Arcos* and was wrongly decided. He was therefore free to consider the underlying question of what demurrage liquidates in order to answer the question before the court.

He concluded that demurrage "serves to liquidate loss of earnings resulting from delay to the ship through failure to complete loading or discharging within the laytime" but that "it does not seek to measure or therefore touch any claim for different kinds of loss, whatever the basis for any such claim".

This meant there was no requirement for the owners to prove a separate breach (in addition to the failure to load or discharge within laytime) to recover damages in respect of a liability to cargo interests, because this was a different type of loss not related to the use of the vessel.

Reaction to *The Eternal Bliss*

A new case that takes exception to a 30-year-old decision thought by many to represent the law has understandably provoked much comment in the legal world. It has also prompted commercial parties to shipping and trade contracts to look again at their potential exposure, as well as at new opportunities to pass on liability to counterparties.

Shipowners have naturally welcomed the judgment, confirming as it does that, if they face exposure to cargo claims following delays in discharge, they have a route to recover those losses from their charterers. This is particularly helpful to carriers of perishable goods who may have no real-world prospect of defending a cargo claim in the jurisdiction it is brought, whatever the bill of lading says on paper.

"Some charterers are including protective clauses in their charterparties, for example by defining precisely what demurrage covers and seeking to make it an exclusive remedy for losses caused by a failure to complete operations within laytime"

Unsurprisingly, voyage charterers have been less enthusiastic. They are now staring at an increased exposure to claims where a shipowner has suffered a cargo liability caused by operational delays for which they are responsible.

Of course, the judgment may have wider ramifications beyond passing on cargo liabilities. Shipowners may look more closely at what other losses they can claim from their charterers in circumstances where it seems they only need to show a type of loss unrelated to the loss of use of the vessel, but no separate breach of charter. But with any such claim, a shipowner will still need to show that his loss was caused by the overrunning of laytime and is not too remote.

It should come as no surprise that some charterers are including protective clauses in their charterparties, for example by defining precisely what demurrage covers and seeking to make it an exclusive remedy for losses caused by a failure to complete operations within laytime. This may be difficult to achieve commercially in all cases.

Will there be a twist in the story? The case will be heard before the Court of Appeal later in 2021 and it remains to be seen what approach they will take. Plenty will be watching. ***MRI***

Nick Austin

Mike Adamson

Nick Austin, partner, and Mike Adamson, counsel, Reed Smith

One Sea route to autonomous ship safety

Autonomous ship technology can improve maritime safety according to One Sea, the industry group aiming towards 2025 as its target for the first autonomous maritime ecosystem. Some of One Sea's leading technology company members explain why, and how

Safety is of paramount importance to the maritime industry, yet 75 per cent of marine insurance claims point to human error as a main cause. Autonomous vessels are regarded by some as integral to the future of shipping but tension persists when it comes to the degree to which operations should be automated; and the pros and cons of different human–machine interfaces.

The One Sea Ecosystem aims to lead the way towards an operating autonomous maritime ecosystem by 2025 and improving maritime safety is a key objective. For this reason alone, autonomous ship technology should not be seen as simply a precursor to unmanned vessels, as One Sea senior ecosystem lead, Paivi Haikkola, explains.

"It's important that as an industry, we understand how autonomous technology can be applied to improve operations and enhance safety – a key objective for One Sea and its members," says Haikkola. "While the end goal is to develop fully automated vessels, there are many stages to this process and we can start exploiting the benefits of autonomous technology to improve maritime safety today."

Eero Lehtovaara, One Sea chairman, master mariner and head of regulatory and public affairs at ABB Marine and Ports, suggests that autonomous technology can support crews by providing greater awareness of the vessel's overall situation and condition.

Autonomous technologies improve situational awareness, both in terms of visible obstacles as well as hidden risks such as potential technical failures and so provide critical data for ship operations, Lehtovaara explains.

"People are good at perception, risk assessment and decision making, but what we are not good at is focusing on several things at the same time. For example, when a person at the bridge focuses on a single obstacle that is perceived as a risk, this can easily overshadow everything else that is going on at that time.

"The perception of objects and fusion of navigational data can be improved significantly by technology so that a machine performs wide-angle continuous monitoring and sensor fusion. This would provide the human operator with a good overview of the actual situation and enable them to focus on the important items, instead of trying to focus on everything at the same time," says Lehtovaara.

The benefits of using technology to improve situational awareness becomes clear when discussing collision avoidance.

"Driven by improvements in sensor technologies, AI and computer power, the algorithms to identify possible upcoming collision scenarios improves both in accuracy and reliability as well as distance," says Lehtovaara.

"Collision avoidance during manoeuvring in close range will significantly improve as the perception in close range is heavily dependent on deck crew's manual observations and communication over radio. That is prone to human errors and miscommunication. Autonomous technologies will enable continuous data-driven situational awareness of close and long range for all of the bridge crew members and therefore facilitates communication, common situational awareness and decision making."

While discussions have been initiated at the IMO, no regulatory framework exists covering the use of autonomous technologies at sea. If technological advances can enhance maritime safety, lack of regulatory rigour will – at best – mean such advances are patchy.

"We have the technology however we don't yet have the regulations. We urgently need a regulatory framework at both an international and national level, and it is our hope that One Sea will be there to represent autonomous technologies as the regulations are developed," adds Lehtovaara.

> **"Collision avoidance functionality can be used as an advisory system together with current on board systems as soon as regulations allow for it"**

The important role autonomous technology can play in navigation and the need for new regulations also draws comment from Anton Westerlund, Vice President of Remote Operation Solutions, Site Manager at Kongsberg.

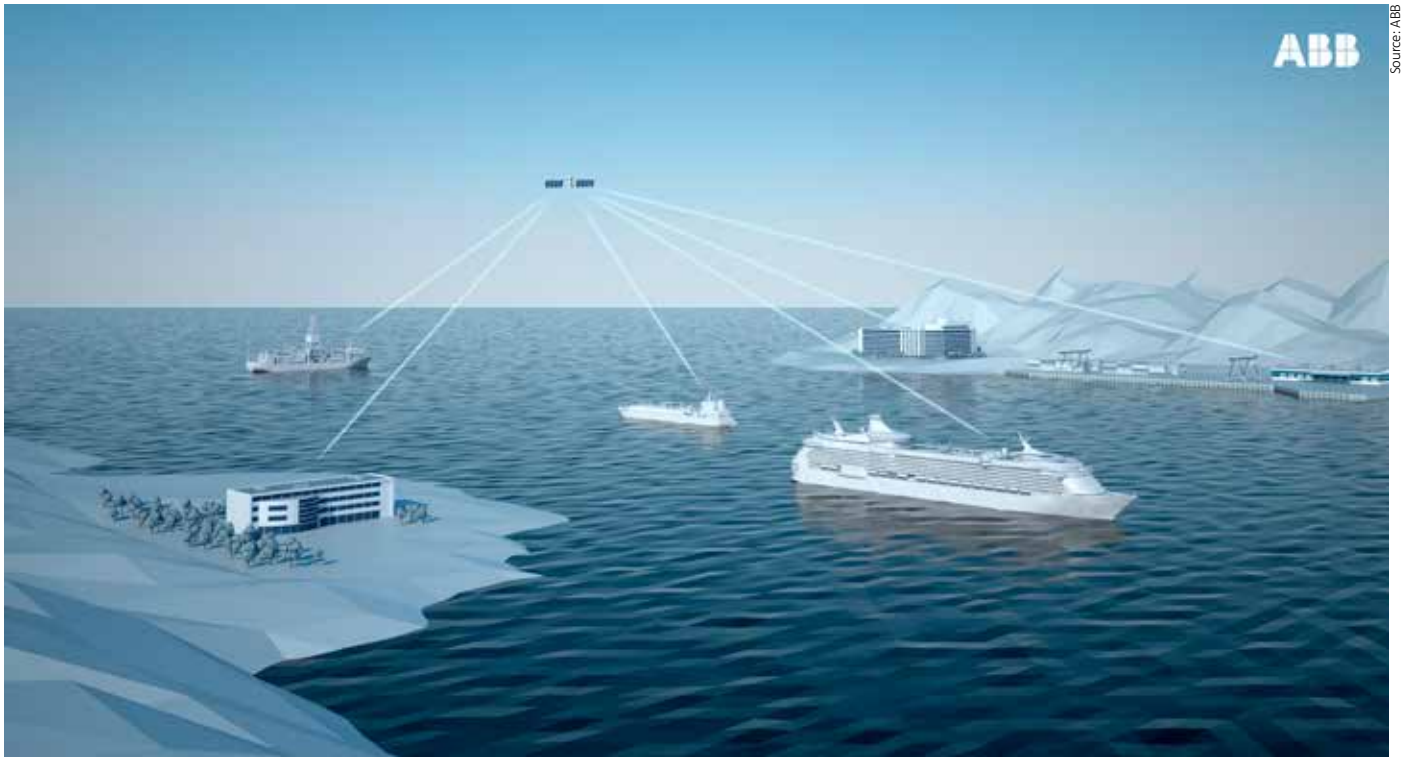
"The safety aspect is one of the most important drivers for different levels of autonomous shipping. Removing humans from hazardous working environments on board vessels, reducing the likelihood of human error by introducing smarter systems that are highly automated and autonomous to various degrees, improves both internal and external situational awareness," he said.

"Collision avoidance is a vital part of the autonomous navigation system. Collision avoidance functionality can be used as an advisory system together with current on board systems as soon as regulations allow for it. When it comes to collision avoidance and the related COLREGS there is room for a lot of improvement on how the rules are interpreted and followed. Standardised collision avoidance advisory systems can benefit the current seagoing vessels."

Awake.ai CEO and co-founder, Karno Tenovuo agrees that new rules need to be implemented for autonomous vessels regarding COLREGS; he believes many collisions could be avoided using autonomous technology because intended manoeuvres can be calculated in advance.

In a more pointed observation, Tenovuo adds: "Autonomous technology will make ships safer and has the potential to have the biggest impact on crew safety by removing or reducing the number of crew onboard, because in most cases, when accidents happen it is the crew that gets hurt."

Less contentious is the fact that autonomous technology is not susceptible to fatigue or lapses in concentration as it operates



Source: ABB

around the clock at 100 per cent capacity. Maritime cargo and load handling specialist MacGregor has been taking a systematic approach to developing autonomous technologies that will further contribute to raising safety and efficiency standards.

Janne Suominen, manager, offering development at MacGregor, explains that no isolated development will secure a safer, more efficient environment; the key lies in many smaller advances that will be integrated together. The process will depend on stakeholder collaborations.

"The success of partial or fully autonomous operations will rely on greater connectivity between systems. The important part will be to standardise connection protocols so that a system, comprising a number of components, can work effectively together.

"Ship safety connects closely to port operations, as there are multiple physical and digital touch points when a vessel arrives at/departs from the port and while loading/discharging operations are being carried out. Autonomous technologies can be used during port calls to increase safety by having systems that allow working in safe conditions like in the control room of the terminal."

However, Suominen stresses that crews still have a vital role to play in an automated environment.

"Automation will deliver increases in safety by removing human errors, but it will not automatically be like that. Without a crew on board or at the port to solve a problem, an autonomous vessel would need either to be extremely robust or to offer greater levels of redundancy than traditional vessels. Today, the crew plays a vital role in effective redundancy capabilities, a factor that should not be underestimated when considering a more automated future.

"Responsive, expert service teams will need to be available to provide support, together with advanced remote monitoring systems, so that the integrity of the autonomous vessel is continuously supervised."

The call for the industry to start using autonomous technologies to improve safety and efficiency has been explored in detail by Wärtsilä in a recent white paper. Here too, the company suggests that the journey towards fully autonomous vessels could prove to be of more importance to the industry, as autonomous technologies can provide solutions to current challenges.

"The pursuit of autonomous operations is already leading to smarter systems that can enhance the safety, cost-efficiency and environmental performance of today's vessels; in practice this means reducing collisions or incidents – especially in busy ports – assisting with docking, saving fuels through optimised speed profiles, reducing associated emissions and optimising crew numbers," the paper says.

Accelerated digitalisation has been one of many unexpected outcomes from the Covid-19 pandemic and, in the maritime context, the trend has additional implications for autonomous ships, according to Juhani Hupli, One Sea vice-chairman and vice-president, transformation programs and strategy at Wärtsilä.

"Covid-19 created new demands for a more coordinated response to ensuring safe crew changes and the mental and physical wellbeing of sailors aboard," he explains.

"The pandemic increased the need for solutions that minimise the number of people who need to be aboard – for example, remote guidance systems for vessels as well as remote support and monitoring systems that allow for troubleshooting and issue resolution without the need to send maintenance personnel aboard."

In this reading, external pressures as well as the industry's own operational challenges are driving the adoption of autonomous technologies as a route towards safer ship operations, through the continuous monitoring and decision-making support it enables and through the ship efficiency that enhances crew competence.

- *One Sea is a 20-member consortium which includes international technology heavyweights ABB, Cargotec, Inmarsat, Kongsberg, Monohakobi Technology Institute (MTI) and Wärtsilä.* ***MRI***

Supply chains at risk of phytosanitary inspections

Cargo group calls for CTU Code compliance to avoid the disruptions that would occur from intrusive inspections, writes *Lloyd's List*'s **James Baker**

The Cargo Integrity Group (CIG) has made an "urgent plea" to shippers to adhere to the CTU Code (Code of Practice for Packing of Cargo Transport Units) or face inspections that could significantly affect container shipping globally. The concern is over the risk of invasive species "hitching rides" on cargo or in containers, TT Club risk management director Peregrine Storrs-Fox told a webinar hosted by the International Union of Marine Insurers.

"Some will be aware of a call by some countries for intrusive inspections for imports and export freight," Storrs-Fox said. "If you think Covid-19 and the Suez Canal blockage has disrupted trade, their impact, frankly, would be trivial compared to such inspections."

A number of governments, along with signatories to the International Plant Protection Convention, were considering "intrusive inspections" for both imports and exports to check phytosanitary conditions, in order to protect native flora and fauna. "This would totally bring gridlock to advanced supply chains because every single container would need certification," Storrs-Fox said.

"Obviously there would be a cost but it would also take time. It is almost unimaginable these days, with 200 million containers being moved every year, for them to be inspected effectively at every single port to comply with that type of regime."

The CIG, which consists of a number of industry bodies including the World Shipping Council, Global Shippers' Forum, Container Owners' Association, TT Club and the International Cargo Handling Coordination Association, is promoting the greater adoption of the CTU Code, to prevent regulation being imposed.

"It is important to work out how to do something effective that is proportionate to the risk involved," Storrs-Fox said. The non-mandatory CTU Code was the best available option for preventing cargo losses caused by poor container packing practices, he added.

"Two thirds of incidents related to cargo damage are caused or exacerbated by poor packing practices," he said. "By extrapolating known figures, it is estimated that the total economic cost to the transport and logistics industry exceeds $6 billion. The most galling aspect of this is that the vast majority is avoidable by adopting established good practice."

But while the CTU code had been in existence since 2014, there remained a "woeful ignorance" of its requirements, which had led to the introduction last year of a "quick guide" that sought to widen its adoption. But these efforts will take work, if the introduction of the rules on the verification of gross mass is anything to go by.

Although it was introduced five years ago, and unlike the CTU Code is enforceable law, overweight containers were still being cited as the cause of casualties.

"I am not aware of any enforcement action taken in any country in the past five years," Storrs-Fox said. That doesn't mean it hasn't happened, but in terms of government agencies enforcing what is international law, it would appear not to happen on a regular basis."

> **"Two thirds of incidents related to cargo damage are caused or exacerbated by poor packing practices"**

One possible option to ensure the correct application of the CTU Code was the licensing of staff working in container stuffing centres.

"If you want to drive a car or a lorry you need a licence," said IUMI loss prevention committee vice chairman Uwe-Peter Schieder. "I think it is a good idea to discuss a packing licence based on the CTU Code so everyone who wants to start stuffing a container needs to know the CTU Code."

Licencing had been debated but resisted when the CTU Code was introduced, but was still a "debate worth having".

"It is important to have the knowledge," Captain Schieder said. "The guys at the stuffing centres will get a variety of cargoes and they need to have the largest knowledge."

Combatting Covid-19 with containers

Box shipping can provide a vital supply chain for vaccines but will need to work closely with manufacturers to meet regulatory compliance requirements, writes *Lloyd's List*'s **James Baker**

With 150,000 vials of coronavirus vaccine fitting into a single container, it would be possible to ship enough doses to protect the entire world on just a handful of ultra-large containerships. The challenge, however, is far more difficult than that and to date, the vaccines that have been exported from their countries of manufacture have moved by either road or air.

But there are hopes that container shipping can have a role in the distribution of the world's coronavirus vaccines.

"Given the sheer scale of the exercise of getting the majority of the world vaccinated, and the demands these vaccines will place on finite, temperature controlled airfreight capacity, our view is that ocean shipping is likely to play a prominent role in the distribution of the less temperature sensitive coronavirus shots," said PSA International vice-president for cargo solutions Siddharth Adya.

Speaking at a Cool Logistics webinar, Adya noted that ocean freight would help reduce the costs of transport, particularly for the developing world, and that the associated inventory of consumables such as syringes and personal protection equipment were already shipped by sea. "To that extent, we believe containers can and will play a critical role in the medium term," he said.

Michael Culme-Seymour, a consultant with the World Economic Forum and vice-president of shipment tracking service Roambee, said that with a target price of US$3 to $5 per dose, transport could add 30 per cent to 40 per cent to the costs of vaccines.

"We have to find ways to ship them more cost effectively," he said. "If we can start on some small trade lanes, such as India to Southeast Asia, and get the systems and equipment in place, people can start to gain confidence that ocean works."

But while the box shipping sector is already experienced in shipping vaccines, there was work to do before pharmaceutical companies would entrust such shipments to ocean freight.

"Speed is the key at the moment, so road and air are dominating," said DHL Global Reefer Competency Centre director Sebastian Steinmüller. "There are opportunities, but there are a lot of challenges. The industry has already proved it can move pharmaceuticals but not every trucking company might have the experience of delivering reefer containers in a compliant way."

Nevertheless, huge volumes of supporting products are going on the ocean already and some niche trades, like intra-Europe and intra-Asia, would definitely see vaccines going by ocean, he added. "But the vaccination ratios will have to reach a certain level before this will be common."

A key element of any ocean transport of vaccines will be data transparency and regulatory compliance. "Sharing of critical logistics and product information as quickly as possible will be important so that events can be flagged," Adya said.

"This will also be important to avoid time lags when shipments arrive at port and need to be quickly entered into the vaccine supply chain. By providing timely and steady fulfilment of vaccines and PPE we can minimise the need for handling at destinations that maybe do not have the equipment or infrastructure."

Visibility will also be important from a carrier perspective, according to Maersk head of pharmaceuticals and healthcare Hristo Petkov, particularly given the requirement for refrigerated containers, which are also in short supply.

"We can get the containers to the customer but the demand needs to be forecast," he said. "If a pharma company asked for 50 containers tomorrow, it would be very hard to find them and it might have to come at the expense of someone else."

Matching supply with demand is perhaps one of the biggest problems container shipping will face with distributing vaccines. "The delays from Suez and on the US west coast mean there is an absolute lack of confidence," Culme-Seymour said.

Prioritising the global distribution of vaccines would require relationships with producers, rather than just transactional interactions, Petkov added.

"Convincing pharma to move to ocean will be a long process that requires quality commitments to be in place," Steinmüller said.

"The switch from air to ocean will be a process. Equipment availability is simply not going to be able to keep up as we move into less developed countries. Mindsets will have to change. But we will also have to look at how data is shared and how we prioritise vaccine deliveries by sharing information across the supply chain."

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