



IUMI
International Union of
Marine Insurance



Message from the President

The IUMI 2014 conference in Hong Kong saw the appointment of new members to the Executive Committee, the Technical Committees and Presidency. I am deeply honoured to have been elected to head this important industry body. I would like to thank my predecessor, Ole Wikborg. He and the outgoing IUMI officers have left the organisation in excellent shape, and I will carry on in the same spirit.

The Hong Kong conference was a huge success. The organising committee, speakers and panellists deserve our appreciation, as do the conference sponsors and IUMI Professional Partners (IPPs), for making this global gathering so professional and rewarding. True to its motto, "Building Expertise for a Changing World", the conference highlighted the rapid evolution of the marine insurance world. I was personally impressed by the dynamics and vitality of the Asian markets and the opportunities for marine insurers to participate in and support healthy growth.



With new team compositions in the Executive Committee and Technical Committees, this is a good occasion to prioritise projects and start new initiatives. We will continue to further raise this organisation's visibility and political profile, encourage deeper membership involvement and make the IUMI more transparent, compliant and modern than ever.

At the top of my personal agenda is enabling IUMI to voice the views and concerns of our industry more strongly than in the past. As experts with specialised know-how, we can provide key support in political decision-making processes. This will mean placing greater emphasis on improving and strengthening media relations to raise public awareness of the excellent work being done in our Technical Committees and positioning IUMI as a valuable partner for NGOs and regulatory authorities as well as the global transport and marine community.

But these outwardly directed efforts are only one side: equally important is cultivating the value and importance of the marine insurance sector within our own companies. Marine may be a rather small line of business, but it is certainly the most international class – and of strategic importance for global trade. IUMI and its annual conference represent an ideal platform to strengthen the global network of marine insurance professionals, which in turn helps us perform better than ever and create value for our companies.

This last point brings us back to the motto of the Hong Kong conference, "Building Expertise for a Changing World". By continuously enhancing expertise, marine insurers can secure a strong position as specialised solution providers for their clients. With new capital providers entering the insurance markets and further fuelling the competition, it is more important than ever to establish our unique skill sets and risk knowledge as our most important value proposition for clients.

I look forward to tackling these projects, and having the privilege of helping to bring IUMI to the next level.

Dieter Berg, IUMI President

IMO to develop cyber security guidelines

By Helle Hammer, Managing Director Cefor and Chair of the IUMI Political Forum

The IMO Maritime Safety Committee (MSC) has supported a Canadian / U.S. recommendation to develop voluntary guidelines on maritime security practices. The purpose being to protect and enhance the resiliency of cyber systems supporting the operations of ports, vessels, marine facilities and other elements of the marine transportation system.

The growing reliance of information technology and data in the daily work within the marine and energy sectors increases their exposure to cyber related risks. A successful cyber-attack can have several implications relevant to insurance: Loss of life, personal injury, pollution, loss of property, business interruption, loss of production, loss of data, and loss of reputation.

It is a challenge also to underwriters to understand properly these risks. Hence, the development of these new guidelines has been added to the IUMI Political Forum's current items list for further monitoring and participation with input from an insurance perspective.

Member States and industry are now invited to put forward papers and examples of existing guidelines to MSC 95 next year, in which a full debate will take place.

IMO MARINE ENVIRONMENT PROTECTION COMMITTEE (MEPC) 67, 13th to 17th October 2014

By Nick Gooding FCII, IUMI Alternate Officer at IMO

The above Committee held its 67th meeting from the 13th to 17th October.

IUMI were co-sponsors of a paper MEPC 67/2/6 submitted by the International Chamber of Shipping under Agenda item 2 Harmful Aquatic Organisms in Ballast Water. The paper described the concerns with implementation of the Ballast Water Management Convention. Of particular concern was the lack of robustness of the current Guidelines for approval of ballast water management systems (the G8 Guidelines) which govern the criteria to be used for sampling and analysis of ballast water during Port State control inspections. Another concern was potential ramifications for prudent owners who had installed ballast water management systems on board vessels that had been type approved under the current G8 Guidelines which risk being made obsolete by Port State Control regulations. It was the paper author's proposal that "first generation" type approved systems, installed in good faith prior to the Convention's entry into force and before the G8 Guidelines have been reviewed and the revised guidelines applied shall be considered acceptable and therefore "grandfathered" for the life of the ship. The paper was the subject of a lengthy debate that was generally sympathetic to the issues raised. The eventual outcome was the Plenary endorsing a plan of action for reviewing the G8 Guidelines.

Other matters that were of interest to IUMI members was the debate on Fuel Oil quality where during MSC 93 Member States were encouraged to strengthen their oversight of bunker fuel suppliers. In a long and sometimes fractious debate that followed the Industry together with some Member States argued for mandatory guidance. However the majority of Member States supported non-mandatory guidance this being, on the basis, that they saw that the supply of bunkers was a private contractual arrangement between the ship owners and the bunker fuel suppliers in which they did not want to intervene. Your IUMI representative made a verbal intervention supporting statements made by the Cook Islands and IPTA, for mandatory guidelines, as we are the industry that bears the ultimate cost of ship damage caused by off specification bunker fuel. The Committee instructed the Working Group to prepare draft terms of reference for a correspondence group to develop draft guidance for assuring the quality of fuel oil supplied for use on board ships and to consider the regulatory framework on fuel quality.

Another area which engendered some passionate debate was the discussion for the development of a data collection system for fuel consumption on ships. Industry argued that the proposals put forward would amount to a mandate for slow steaming and pointed out the economic cost and the low carbon emissions, from ships, whilst carrying 98% of world trade in comparison to other forms of transport. This rather compelling argument led to a decision to develop a data collection system focusing on fuel consumption only. It was agreed to re-establish the inter-sessional correspondence group with a view to submit a report to MEPC 68.

German Ministry of Economics: London Sanctions Clause LMA 3100 inconsistent with German Law

By Prof. Dr. Dieter Schwampe, Dabelstein & Passehl, Hamburg, www.da-pa.com, d.schwampe@da-pa.com

Dabelstein & Passehl is IUMI Professional Partner since 2010

Sanctions are continuing to make life difficult for insurers. The latest development in Germany is the view of the German Federal Ministry of Economics, expressed in a letter to the German Insurers Association (GDV) that the Sanction Clause LMA 3100, widely in use in the London market and elsewhere, is inconsistent with German foreign trade law. Section 7 Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung/AWV,) prohibits the issuing of a declaration in foreign trade and payments transactions whereby a resident participates in a boycott against another country, so-called boycott declaration. It is the Ministry's view that the Sanctions Clause LMA 3100 is in conflict with the sec. 7 AWV because it refers to economic sanctions imposed by the United States of America without a limitation to such sanctions which are identically in force in the European Union, and also because it refers to economic sanctions imposed by the United Kingdom, without clarifying that the economic sanctions thereby referred to are only those which are in force in the United Kingdom as a member state of the European Union and which, therefore, are in the same way also in force in Germany.

Consequences are not addressed in the Ministry's letter. They can be criminal and civil law offences. Criminal law offences can make a person breaching sec. 7 AWV subject to a fine. Civil law consequences require careful considerations, because the general rule under German law is that a legal transaction that violates a statutory prohibition is void, unless the statute leads to a different conclusion (sec. 134 German Civil Code). The question arising is whether a breach of sec. 7 AWV has as a result that an inconsistent clause in an insurance contract is void, so that the insurance contract extends cover to areas, which the sanctions clause aimed to leave outside cover.

For the purposes of sec. 7 AWV Residents do not only include natural persons resident or habitually resident in Germany and legal persons and partnerships based or headquartered in Germany, but also branches of foreign legal persons or partnerships, if the headquarters of the branch are in Germany and separate accounts are kept for them, and permanent establishments of foreign legal persons or partnerships in Germany, if the permanent establishments are administered in Germany (cf. sec.2 (15) German Foreign Trade and Payments Act (Außenwirtschaftsgesetz/AWG). It must further be considered whether consequences are limited to insurers, or whether they can extend to brokers and insureds, if resident in Germany in the mentioned sense. Insurers and brokers should make sure that they are under no duty to advise residents in the mentioned sense of risks following from the use of the Sanctions Clause LMA 3100, or otherwise consider approaching the insured in an appropriate way.

The above is meant to provide initial information only. It must neither be deemed not treated nor used as and does not substitute legal advice, which should be taken if the application of sec 7 AWV appears possible.

For details feel free to contact the author d.schwampe@da-pa.com.



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IMO Sub-Committee on Carriage of Cargoes and Containers Meeting 8th to 12th Sept 2014

By Nick Gooding FCII, IUMI Alternate Officer at IMO

The above mentioned IMO Sub-Committee met in London from the 8th to the 12th September 2014. Various sessions were attended, on behalf of IUMI, by Lars Lange and Nick Gooding. This Sub-Committee meeting week turned out to be dominated by technical discussions on a range of topics which were only of periphery interest to marine insurers.

Three Working parties and one drafting group were set up on the following topics;

1. Development of an International Code of Safety for ships using gases or other low-flashpoint fuels (IGF Code)
2. Substances harmful to the marine environment (HME) within the IMSBC Code in relation to the revised MARPOL Annex V
3. Container Safety
4. Revision of DSC / Circular 12

The main point of interest was the working group on container safety which reported on the revised guidelines for packing of Cargo Transport Units which looked to finalize the supplementary material to the CTU code. The Working Group was also asked to look at issues identifying the further development of an ACEP (Approved Continuous Programmes) database.

The Working Group endorsed a recommendation to refer the draft CTU code to MSC 94 and to make it available for inspection on the IMO public web-site and forward it to the United Nations Economic Commission for Europe (UNECE) and to the International Labour Organization (ILO). Further terms of reference were agreed for a correspondence group to consider the roles of participants in the supply chain to further develop and promote use of the code in day to day practice. Following on from papers submitted by Sweden and the UK the Sub-Committee agreed that the IMO Model Course 3.18 (Safe Packing of CTU's) should be updated in co-ordination with ILO and UNECE which will need to be endorsed at MSC 94.

With regard to the development of the IGF code the debate centered around the draft SOLAS amendments to make the code mandatory and the work plan for the next stage of the development.

The Group looking at HME cargoes with the IMSBC code discussed the requirements for a non-mandatory information from cargo shippers and sought agreement to draft amendments to the IMSBC code related to HME substances.

In summary there were no particular matters that would be of more than a passing interest to our members other than perhaps being aware of the revised guidelines for packing of Cargo Transport Units. The report (CCC1/WP4 dated 10th September 2014) which is 183 pages long should act as a gold standard for the packing and logistics industry.

IUMI takes position on the renewal of the EU Insurance Block Exemption Regulation "IBER"

By Lars Lange, IUMI Secretary General, Hamburg

The European Commission has recently launched a new public consultation on the functioning and future of previous Insurance Block Exemption Regulation (IBER) adopted in 2010. The purpose of the public consultation is to consult stakeholders on the application and future of the IBER, which is due to expire in March 2017. Based on the contributions received the Commission will submit a report to the European Parliament and the Council by the end of March 2016. The Commission is consulting on how the IBER is being used and on stakeholders' experience in applying it. The Commission is also interested to hear about market developments and views on whether the regulation should be renewed, partially renewed or not renewed at all. The consultation shall help the Commission to decide whether a block exemption in the insurance sector is still necessary. The current IBER grants a "block exemption" for the cooperation on joint compilations, tables and studies and the forming of insurance pools under certain preconditions.

IUMI took part in this consultation process with a letter to the European Commission Directorate-General for Competition dated 14 November 2014. IUMI strongly argues that the IBER is still necessary. IUMI's key arguments are as follows:

- The absence of cooperation on joint compilations, tables and studies would result in a reduced knowledge of the risks, a more restricted choice in terms of providers and of products to the detriment of customers. As a result, small and medium-sized insurance undertakings and new entrants will not possess sufficiently representative and reliable data to enable them to carry out calculations on a reasoned basis and they will thus be excluded from the market.
- In the absence of pools, certain types of risks may not find any insurance coverage as individual companies would be reluctant to cover the risk individually or unable to insure the entire risk alone, both being to the detriment of customers. The options of companies for risk sharing would be reduced.
- Within soon, Solvency II is expected to come into force. This will have direct implications on product pricing and coverage, but also on the choice of the risks that the insurer will keep. Good risk management as a result will become even more important and implies the necessity of developing studies and statistics for the industry concerning risks to be insured.
- Especially for marine and transport insurance, data from individual companies is insufficient to allow proper analysis of risks characterized by a very low frequency and very high claims (example Costa Concordia, MOL Comfort, Rena...).
- IBER provides legal certainty. If IBER is not renewed, the EC will have to secure the legal validity covered by the current IBER through a new legal instrument to ensure same level of consistency and uniformity of antitrust rules across the EU.

IUMI has put its position very much in line with statements made by Insurance Europe. This shows the closeness of different insurance associations in their position that the IBER has to be renewed to ensure market access and diversity. More information can be found in the IUMI Political Forum Current List of issues that has been updated by the 29 October 2014

(http://www.iumi.com/images/gillian/PoliticalForum/Current_issues_IUMI_Political_Forum_version_29_10_2014.pdf) and in the IUMI letter to the European Commission Directorate-General for Competition (http://www.iumi.com/images/gillian/IUMI_Response_to_the_EC_Comp_IBER_Review.pdf).

Chemical Tankers, a special risk or risks to be considered more carefully by underwriters?

By Kurt Rye Damkjær, Technical Director, kurt.rye.damkjaer@surveyassociation.com
www.surveyassociation.com
Survey Association is IUMI Professional Partner since 2012

Many in the insurance and surveying industry believe chemical tankers pose a special risk. But what are the facts? Kurt Rye Damkjær, Technical Director of the Survey Association of Copenhagen, recently gave a presentation on the characteristics of chemical tankers, their trade and operation at the Old Library, Lloyds of London, drawing from his experiences with in the ship management function in Nordic Tankers who operated a fleet of up to 125 chemical carriers in the 4000-25000 TDW segment. The presentation initially provided guidance on the major differences between a sophisticated parcel tanker and a tanker having chemical notation.

Some very sophisticated carriers are involved in highly intensive coastal trades, with up to 100 voyages a year, whereas others are long hauling the Atlantic or the Pacific with considerably less port calls. These two different trades are known as "short sea" and "deep sea" within the chemical shipping industry. Short sea vessels are typical between 4-8000 TDW, in contrast to the majority of deep sea vessels where the typical size is between 12.000 to 23.000 TDW.

To get a better understanding of the complexity and therefore risk within a fleet being insured, underwriters were recommended to request certificates of fitness for any such vessels they may consider writing, which in connection with their IMO notations can allow Underwriters a better understanding of the risk they may be preparing to write.

It is however obvious that the short sea trade vessel will present a much higher exposure to incident and accidents as they trade between busy sea-lanes and ports. The many voyages can also lead to crew fatigue with an increased risk of claim in regards grounding, collision and machinery damage and cargo contamination. The deep sea vessels it is not unusual to find an arrangement of 30 or more individual tank - all capable of carrying a different grade of cargo. Maintaining separation between all of them can occasionally be quite challenging!

Kurt had no doubt that there are many different bodies working hard on promoting better safety and performance in the chemical fleet segment, but presented casualty statistics showing that there is still considerable room for improvement. Several graphic images of tanker explosion were presented during the lecture along with the findings of the subsequent enquiries.

Whilst then noting the relationship between the economic cycles and the frequency of incidents within the data presented, Kurt also demonstrated a correlation between casualty statistics and the various vetting regimes, commenting on their effectiveness.

In summing up, it was highlighted that the chemical segment is very specialised and complex area of marine trade which has by necessity, become inhabited by a limited number of highly experienced operators - despite which, serious claims continue. It may therefore follow that when considering some of the smaller operators, considerably more risk exists. Underwriters were therefore encouraged to be extremely inquisitive and cautious when considering offering cover for such risks.

A copy of the presentation can be requested from: kurt.rye.damkjaer@surveyassociation.com



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EC workshop on Places of Refuge leaves questions unanswered

By Helle Hammer, Managing Director Cefor and Chair of the IUMI Political Forum

The European Commission organized a workshop in London on 21 November to inform of their new operational guidelines on places of refuge. While setting at rest any concerns related to the introduction of new liabilities, the EC disclosed few details about the contents of the new guidelines and left several questions unanswered. The decision to introduce a full set of guidelines to all Member States in a meeting scheduled for 15 January without any prior industry involvement, raised concerns from several industry associations represented around the table.

IUMI, represented in the workshop by Nicholas Gooding and Helle Hammer, cooperate closely with the International Chamber of Shipping (ICS), the International Salvage Union (ISU) and the International Group of P&I Clubs (IG) on this issue. Without the input from stakeholders, the joint industry group is concerned that the guidelines may include misconceptions and unrealistic expectations on the role and functions of the various industry interests.

The draft will include guidelines on roles and responsibilities, incident reporting, monitoring and coordination, information gathering and sharing, request for a place of refuge, risk assessment and inspection, and finally decision making and outcomes. According to the EC, these are the particular points to note for the industry; enhanced uniform approach, information sharing, streamlined requests, contacts with authorities, right of competent authorities to instruct master and salvor and new HAZMAT guidelines. The EC plan to circulate the guidelines inviting comments from all stakeholders shortly after the 15 January meeting. IUMI will participate in a joint industry response to the new guidelines.

IUMI meets Asia during Hong Kong Conference September 2014

By Lars Lange, IUMI Secretary General, Hamburg

This year's annual IUMI conference took place in Hong Kong from 21 to 24 September 2014. The conference was attended by 490 official delegates and accredited underwriters from 40 countries throughout the world. The conference had 33 guest speakers. 9 affiliated member representatives are attending as well as representatives of 14 IUMI Professional Partners (IPP) and 47 sponsor representatives.



The IUMI President Ole Wikborg introduced the common theme of the 2014 Hong Kong conference "Building expertise for a changing world" and gave on Monday morning a report on the IUMI 2015 programme "IUMI 2015 – Status and Outlook".

Agnes Choi as chairman of the Hong Kong Organizing Committee held the welcome speech by the host association HKFI. HKFI donated an 10.000,00 USD check to Sailor's Society, represented by Mr. Simon Doughty as chairman of the ambassadors of Sailor's Society in Asia. Sailor's Society and also IUMI expressed their gratitude for this generous donation.

Keynote Presentations were held by Mrs. Laura Cha, Chairman of the Hong Kong Financial Services Development Council. Her topic was "The shift to Asia and its implications". Prof. Denis Kessler, Group Chairman and CEO of SCOR Re held the second keynote presentation on "Expertise and knowledge management as key features of sustainable growth – the case for Asia".

During the Hong Kong IUMI Council Meeting Dieter Berg was elected by the council members as new IUMI President. In addition the following persons were elected by the IUMI council as new IUMI Executive Committee members: Frank Costa, USA, Mike Davies, Singapore, Alessandro Morelli, Italy, Lars Rhodin, CEFOR (Sweden), Richard Turner, UK – IUA, and Shinji Urano, Japan.

Also during the Hong Kong IUMI Council Meeting the new IUMI Articles of Association were approved by the IUMI Council. Many presentations touching all topical issues related to marine insurance were held in nine work-shops during the conference days. Nearly all are – as well as the meeting minutes of the conference - available on the IUMI homepage (<http://www.iumi.com/conferences/hong-kong-2014>).

Excellent coverage and many photos of the event are also available on the conference homepage (www.iumi2014hk.com). IUMI thanks the Hong Kong Federation of Insurers HKFI, the conference organizing company ICC and all persons involved in the preparations for this great event.

IUMI issues Position Paper on the Trade in Services Agreements "TiSA"

By Lars Lange, IUMI Secretary General, Hamburg

On 06 November 2014 IUMI issued a position paper related to the Trade in Services Agreements (TiSA). An IUMI Eye article by Jens Jaeger (GDV) had already informed in May this year about the issue.

The position paper clarifies the views of IUMI related to trade in services, arguing in favour of eliminating restrictions on marine and transport insurance.

In the position paper IUMI urges the participating countries to reevaluate and bind their current commitments on existing levels of market access and national treatment should be bound by means of a standstill clause so as to avoid future introduction of nonconforming measures. The TiSA should ensure that participating countries fully comply with existing GATS commitments.

IUMI states that the TiSA should encourage new commitments going beyond the compliance with current commitments, e.g. the negotiating parties should aim at creating horizontal market access and national treatment commitments.

The TiSA should include commitments on reinsurance specific issues that need to be addressed, such as compulsory level of (re)insurance to be placed locally, collateral requirements for reinsurance placements, excessive approval or licensing requirements, nationality requirements and investment restrictions.

The TiSA should eliminate restrictions on intrinsically global lines of insurance business, such as reinsurance, retrocession, large risks, energy as well as marine and transport insurance.

With regard to marine and transport insurance IUMI points out that these lines of insurance business are affected by a wide range of restrictive measures on doing business abroad such as limited movement of data across borders, unfair competition from state-owned enterprises, lack of transparency and due process of law, and forced local ownership and discrimination in obtaining business licenses and permits.

In addition marine and transport insurers face further domestic restrictions regarding import or export shipments which have to be insured in the country by a locally registered insurer.

Hence IUMI demands that TiSA should eliminate several restrictions such as the prohibition for the seller to insure exports abroad, the prohibition for the buyer to insure imports abroad, the prohibition for the seller to export on basis of the Incoterm FOB (Free On Board) or similar, the prohibition for the buyer to import on basis of the Incoterm CIF (Cost, Insurance & Freight) or similar and special taxes, extra charges.

The position paper is freely available on the IUMI homepage (http://www.iumi.com/images/gillian/PoliticalForum/IUMI_Position_Paper_TiSA.pdf). More information about the TiSA proceedings can be found in the IUMI Political Forum Current List of issues that has been updated by the 29 October 2014 (http://www.iumi.com/images/gillian/PoliticalForum/Current_issues_IUMI_Political_Forum_version_29_10_2014.pdf).

An Update on Reform of the York-Antwerp Rules

By Ben Browne, Thomas Cooper LLP and Chairman of the Admiralty Solicitors Group

At its Conference in Beijing in October 2012 the Comité Maritime International (“CMI”) (who have the custody of the York Antwerp Rules (“YAR”)) established an International Working Group (“IWG”) to completely review the YAR. This article will now briefly summarise the main areas which are being considered by the IWG.

(a) Salvage: Under Rule VI YAR 1994 salvage is always reapportioned in GA because in some circumstances the salvaged values differ from the GA contributory values. Under YAR 2004 salvage contributions are left to lie as they fall save that if one party pays another’s salvage contribution it is credited in GA to the payer and debited to the party on whose behalf the payment is made. The IWG are now exploring a compromise whereby salvage is not covered in GA unless there was:

- o A subsequent accident affecting values; or
- o A “significant” GA sacrifice; or
- o The salvaged values were “manifestly incorrect”.

A fourth exception, differential settlements of the salvage claim, is also being advanced by the ICS and a few national delegations but IUMI opposes its inclusion.



THOMAS
COOPER

(b) Contributory values: Rule XVII YAR 1994 and 2004 provides that all extra charges incurred in respect of the property subsequent to a GA act should be deducted to arrive at its GA contributory value “except such charges as are allowed in GA”. The IWG is currently debating two new wordings.

(c) Wages and maintenance at a place of refuge: Rule XI YAR 1994 allows the wages and maintenance of the master, officers and crew while the vessel is detained at a place of refuge in general average. The 2004 YAR excluded this allowance. Although IUMI favours the position adopted in YAR 2004 it seems likely that the YAR 1994 position will have sufficient support to justify a return to the 1994 status quo ante.

(d) Port charges: Rule XI YAR allows the recovery of port charges incurred at a port of refuge in GA. It was unanimously felt by the members of the IWG that this was too narrow an interpretation of the word “port charges” in Rule XI and so an amendment to the Rule will probably be recommended to rectify this.

(e) Temporary Repairs: The YAR 2004 added a second sentence to the wording of Rule XIV (b) the effect of which is that recovery in general average of the cost of temporary repairs of accidental damage at a port of refuge is limited to the amount by which the estimated cost of the permanent repairs at the port of refuge exceeds the sum of the temporary repairs plus the permanent repairs actually carried out. It is likely that this amendment of Rule XIV will be retained in the next YAR.

(f) Low value cargo: The IWG has noted considerable support for the proposition that the YAR should specifically endorse a procedure, already adopted by the many average adjusters, of excluding from contribution low-value cargoes, when the cost of administering the collection of security, computation of the contributory value and the collection is disproportionate to the contribution and is preparing a suitable wording for consideration.

(g) Currency of adjustment: There is, at present, nothing in the YAR to enable an adjuster to determine what currency the adjustment should be done in: this is a matter of national law. The IWG is exploring possible ways of clarifying the currency of Adjustments.

(h) Interest: Under the YAR 1974 and 1994 interest is allowed at 7% on GA disbursements, sacrifices and allowances. Under the YAR 2004 the interest rate is fixed annually by the CMI’s Assembly “based upon a reasonable estimate of what is the rate of interest charged by a first class commercial bank to a shipowner of good credit rating”. Between January 2005 and December 2013 the average rate of interest was 4.3125% and the current rate is 2.75%. The ICS, supported by several adjusters and a few delegates, is pressing for a higher rate of interest on GA disbursements by amending the Guidelines.

(i) Commission: Rule XX YAR 1994 entitles the parties to the common maritime adventure to a commission of 2% on GA disbursements except crew wages and maintenance and fuel and stores not replaced during the voyage. Commission on GA disbursements is not allowed under the YAR 2004. In the present review most members of the IWG seem to accept that commission should not be recoverable under the new YAR.

(j) Treatment of cash deposits: Rule XXII YAR requires cash deposits collected in respect of cargo’s liability for GA etc. to be paid into a special account “in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both...”. Most banks will not now permit such joint accounts to be held or make it so difficult that it is impracticable. The IWG accept that some amendment is required but there are considerable differences of opinion as to what should take the place of the current Rule XXII.

The IWG and its subgroups continue to work towards a firm set of proposals which will be debated by the CMI at its next colloquium in Istanbul between 7 and 9 June 2015 in the hope that a wording can be agreed in principle in time for the CMI’s conference in New York in May 2016 at which, hopefully a new York-Antwerp Rules 2016 can be promulgated which is acceptable to all those involved in shipping. More in-depth information can be found at the following links: <http://www.iumi.com/> and www.thomascooperlaw.com/update-reform-york-antwerp-rules/

English Court of Appeal extends "fraudulent claims" rule to "fraudulent devices"

By Emilie Bokor-Ingram, Holman Fenwick Willan LLP, London www.hfw.com
Holman Fenwick Willan is IUMI Professional Partner since 2010

To the relief of insurers everywhere, the Court of Appeal of England and Wales has held that an assured who uses fraudulent devices in support of an otherwise valid claim will forfeit the entire claim.

Background

In January 2010 the "DC MERWESTONE" (the "Vessel") suffered water ingress off the coast of Poland, flooding the engine room and incapacitating the Vessel.

The Owners presented a substantial claim to the underwriters. In the High Court*, Underwriters defended the claim on numerous grounds, all of which failed except one. The Judge ruled, with obvious reluctance, that Owners must forfeit their claim due to a "reckless truth, not a carefully planned deceit" told on behalf of Owners.

His decision was influenced in large part by the earlier Court of Appeal case *The Aegeon*** , where it had been suggested (obiter and "tentatively") that the "fraudulent claims" rule, whereby an assured who makes a fraudulent claim forfeits the whole claim, should apply equally to an assured who uses fraudulent devices in support of an otherwise wholly valid claim.

Appeal

Owners appealed on a number of grounds. The Court of Appeal focused on two key issues:

1. Should the fraudulent claims rule be extended to apply to fraudulent means or devices?
2. If so, can the rule stand in light of Article 1 of the First Protocol to the European Convention on Human Rights?

Extension of the fraudulent claims rule

Owners argued that the fraudulent claims rule is itself disproportionately harsh, and in seeking to penalise and deter it usurps the function of criminal law, but with a lower burden of proof and fewer safeguards. The rule also "provides insurers with a windfall and a powerful weapon". In any event, there is a crucial difference between a fraudulent or fraudulently exaggerated claim, where the assured is seeking to obtain a benefit to which he is not entitled, and a fraudulent device employed in the context of an otherwise valid claim. The "fraudulent claims" rule should therefore not be extended to fraudulent devices.

The Court disagreed, finding "several powerful reasons" why *The Aegeon* should be followed and the fraudulent claims rule applied. The basis for the rule is the duty of utmost good faith between insurer and insured. It is well-established that an assured who fraudulently exaggerates his claim forfeits the whole claim, and there is no reason why an assured who uses a fraudulent device should be treated differently.

The Court also noted that the public policy justification that the rule's draconian consequences apply only to assureds who are dishonest – honesty being key in the claims process where insurers rely heavily on information provided by assureds (though less so than during placing).

Proportionality and Human Rights

Owners submitted that if a fraudulent device were to forfeit a valid claim, it should do so only where the fraud in question is sufficiently serious and/or forfeiture is just and proportionate.

Underwriters accepted that forfeiture of an insurance claim must comply with the European Convention on Human Rights. Owners argued that the fraudulent devices rule is disproportionate, since it ignores the culpability of the device and makes no distinction between "a reckless untruth... told on one occasion" and a "carefully planned deceit".

The Court held, dismissing the appeal, that the relevant question was not whether the consequence in a given case is proportionate to the fault, but whether the rule is, overall, a proportionate means of fulfilling the aim of deterring insurance fraud. On this basis, it was satisfied that the fraudulent devices rule is just and proportionate.

Owners have sought leave to appeal to the Supreme Court.

* [2013] EWHC 1666 (Comm)

** *Agapitos v Agnew* [2003] QB 556



MARITIME SAFETY COMMITTEE 94TH SESSION

17th-21st NOVEMBER 2014

By Nick Gooding FCII, IUMI Alternate Officer at IMO

MSC 94 was attended by Lars Lange and Nick Gooding representing IUMI. The meeting was chaired by Mr. Christian Breinholt of Denmark. Three working groups and one drafting group were established as follows:

1. WG1 - Polar and IGF codes
2. WG2 - Goal Based Standards and Formal Safety Assessment.
3. WG3 - Amendments to SOLAS and Related Mandatory Instruments .
4. DG1 - Amendments to Mandatory Instruments.

The main point of interest for IUMI members was, finally, the Polar Code was adopted with a new chapter XIV being added to SOLAS. This will be deemed to have been accepted on the 1st July 2016 (unless prior to that date objections are communicated to the Secretary General of IMO) and the Code should enter into force on 1st January 2017.

During the Plenary there was a paper put forward by IACS presenting the Polar Operational Limit Assessment Risk Indexing System (POLARIS) for determining limitations for operation in ice. This was proposed as an update to the draft text in part 1-B of the draft Polar Code. The ensuing debate was very supportive of the concept but the Committee in noting that POLARIS is an excellent tool but needs further detailed consideration which at this late stage may affect the adoption of the code. The Committee noted, with appreciation, the work done by IACS and Member Governments on POLARIS and instructed a working group to prepare terms of reference for a correspondence group to finalize guidance on a system for determining limitations for operation in ice based on documents already submitted.

Cybersecurity was considered following a thought provoking paper put forward by Canada. See Helle Hammer's article on page 1. On the topic of Passenger Ship Safety the Committee agreed to include a new unplanned output in extending, to existing passenger ships, computerised stability support for the master in case of flooding. The item was added to the long-term action plan. It was noted that the ILO Governing Body has now approved the IMO/ILO/UNECE Code of Practice for Packing of Cargo Transport Units (CTU Code) without change. All three UN bodies have now approved the Code so it can begin to be formally referenced in applicable documents.

With regard to Piracy and Armed Robbery against Ships it was noted that attacks in the Gulf of Guinea were down. The importance of reporting incidences, of attack, was highlighted. The Maritime Trade Information Sharing Centre (MTISC) in Ghana is undergoing a trial with 500 ships a month reporting in to it. The MTISC and IMO websites have available an updated version of the Guidelines for Owners, Operators and Masters for Protection Against Piracy in the Gulf of Guinea Region.

Following the submission of a paper on Place of Refuge For Ships in Need of Assistance by 2 Flag States and 5 NGO's they were invited, at the Plenary, to forward their proposal to amend the IMO's current guidelines to a future session of the Committee.

Address by the IUMI Secretary General

The year draws to a close. Also in the last quarter IUMI saw many events and changes. The speed of IUMI's modernization maintains high and the "IUMI 2015" programme is developing well.

- With Dieter Berg of Munich Re a new IUMI President was elected during our Hong Kong conference. Dieter is a well experienced IUMI officer visiting our conferences for decades and sharing his knowledge with IUMI for many years first in the IUMI Facts & Figures Committee and then in the last few years as member of the IUMI Executive Committee. The IUMI secretariat looks forward to continue the "IUMI 2015" process together with Dieter.
- The Hong Kong conference saw also some other changes to the IUMI Executive Committee: Lars Rhodin from Sweden, Frank Costa from the United States of America and Shinji Urano of Japan were newly elected by the IUMI council for the EC. At the same time the term of Robert Gallagher, Kiyooki Sano and Ole Wikborg ended. As already mentioned in our last IUMI Eye, IUMI is more than grateful for their great achievements for IUMI and their excellent services. Many things have been turned for the better in these four years and many important things and changes were initiated, e.g. the Political Forum, the new Articles of Association, the renewed secretariat in Hamburg or the increased and goal-oriented work at the International Maritime Organization IMO. All of these achievements will be aligned with Ole Wikborg's name.
- The IUMI council meeting during the IUMI Hong Kong conference in September 2014 approved the new IUMI Articles of Association. The new Articles are a big step forward in the modernisation of IUMI and all new achievements will be implemented step by step within the next few months. They are available on the IUMI homepage (<http://www.iumi.com/about-iumi/general-information/articles-of-association>).
- Four of IUMI's seven Technical Committees changed their chairmen after the IUMI Hong Kong conference:
 - Mark Edmondson of Chubb, London is the new chairman of the Ocean Hull Committee following Lars Rhodin who was elected at the IUMI EC in HK.
 - Frederic Deneffe of GAREX, Paris, is the new chairman of the Legal & Liability Committee. His predecessor Stephen Barr stepped down after HK.
 - Michael Csorba of IMU/OneBeacon Insurance, New York, is the new chairman of the IFY Committee. His predecessor Paul Miller also stepped down after Hong Kong.
 - Simon Williams of HISCOX, London, is the new chairman of the Offshore Energy Committee. He follows Frank Costa who was also elected in the IUMI EC in Hong Kong. IUMI would like to thank all the outgoing chairmen for their work and achievements and IUMI welcomes the four new chairmen and wishes them success for their work with the committees in the next few years.
- Aage Sørensen stepped down at HK as chairman of the IUMI Nominating Committee after 25 consecutive years of IUMI committee membership. He is followed by Tim Pembroke. IUMI thanks Aage for his long year excellent services for IUMI and wishes Tim success for his future tasks at IUMI.

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