



IUMI  
International Union of  
Marine Insurance



## Message from the President

Following the IUMI Winter Meeting 2015 in January, with the Executive Committee, the Technical Committee Chairmen, and the Salvage and Political Forum Chairs coming together, our initial activities are fully underway. During the meeting intense focus was given to IUMI's communication strategy, to making IUMI more political and visible while strengthening the lobbying work for the marine insurance industry. We have also launched an initiative to develop an IUMI education programme for our member associations which will concentrate heavily on Asia's growing markets and encourage the involvement of our Asian members.

In terms of the marine market in general, the year began with a number of accidents at sea, including some which tragically involved loss of life. From a marine insurance perspective, certain accidents have given cause for serious concern. One I would like to bring attention to is the car carrier *Hoegh Osaka*, which ran aground on a sandbank with 1,400 vehicles on board. After days of lying in a tilted position she was safely berthed at Southampton. There is a possibility that the vehicles, said to include 1,200 luxury cars, might be declared total losses, despite the fact that they show no external signs of serious damage.

This incident is a painfully clear and current example of the accumulation risk represented by automobile logistics. The vessels are huge, some able to carry up to 8,000 vehicles, top-heavy and susceptible to loss of stability due to strong wind drifts for example. Additionally, they are built without separate compartments or bulkheads for quick loading and unloading, resulting in risk of fast flooding in the event of an accident. This risk is further pronounced by the construction of the loading ramps which are potentially vulnerable to water ingress.

This latest grounding is just another accident following a number of such cases in recent years. These include the *Asian Empire* in April 2014 with 4,600 vehicles on board, the *Baltic Ace* in December 2012, carrying 1,400 cars, and the *Cougar Ace* in July 2006 with 4,703 cars on board that were declared as total loss. One contributing factor to the high volume of losses is brand protection clauses in automotive policies which give car manufacturers a broad cover in such cases.

Exposure is not limited to car carriers only: automobiles waiting to be loaded are highly vulnerable to hailstorms and flooding. Since 2004, we have seen 20 hail events with marine losses in Europe alone – a trend scientists expect to increase as a result of climate change. Superstorm *Sandy*, the largest marine cat loss event ever, flooded the port of New York, leaving 16,000 new cars and 3,000 trucks destroyed.

Returning to the IUMI Winter Meeting, we defined the principal theme of our next annual conference, planned for September in Berlin. It is summed up by: *“Technical, financial & human factors – Is there a new normal?”* In this context, we want to focus on external factors that are increasingly driving our business and will continue to do so for the foreseeable future. These include:

- Technical aspects such as massively increasing vessel sizes, complex oil & gas drilling or mega construction projects.
- Financial influences related to the financial crisis, the low interest environment, the current low oil price and alternative capital influx, as well as the growing importance of risk models, internal capital allocation and diversification effects, which we expect to be consistent drivers of our business
- Human factors such as the increasing difficulty of maintaining well-trained and qualified ship crews, as well as the importance of upholding the expertise in the marine insurance industry

With topics like these, the Berlin conference promises to be interesting and rewarding. I will keep you informed in this column as planning progresses.

Dieter Berg, IUMI President



## Safety of ro-ro passenger ships

By Nick Gooding FCII, IUMI Alternate Officer at IMO

Following the *Norman Atlantic* casualty, IMO's Secretary General has requested that the Maritime Safety Committee invite submissions on the findings of the incident and take immediate action, if required, to enhance current international regulations on the safety of ro-ro passenger ships.

The *Norman Atlantic*, a ropax ferry, caught fire in the Adriatic Sea in December last year resulting in the deaths of at least 28 passengers. Due to the international nature of the passengers and crew, IMO believes that an international response is appropriate and that action might be required to enhance the current safety regime for ro-ro passenger ships. IMO member governments are being urged to review the current level of safety standards of passenger ships at the forthcoming MSC 95 (starting 1 June) and discuss how IMO might strengthen its systems to prevent such an incident from occurring in the future.

Due to the increasing size in passenger vessels over recent years, a set of amendments to SOLAS to improve passenger ship safety became effective in July 2010 and these were enhanced by additional amendments in January this year following the capsizing of *Costa Concordia*.

Currently, a large body of work relating to passenger ship safety is ongoing within a range of IMO sub-committees and the MSC has established a working group to prepare a long-term action plan. The MSC is being urged by the IMO Secretary General to consider the findings of the *Norman Atlantic* casualty and take these into account when working on initiatives to strengthen the regulations concerning the safety of passenger ships. IUMI will keep a close eye on developments and report to the membership as appropriate.

# IACS Council Meeting with industry in December 2014

By Lars Lange, IUMI Secretary General

The International Association of Classification Societies (IACS) held its Council meeting, chaired by Philippe Donche-Gay of Bureau Veritas, current IACS chair, on 14 December 2014 in London. As customary, the meeting ended with a joint session of IACS council and representatives from several maritime stakeholders, one of these being IUMI.

The IACS / industry meeting had four key agenda items:

## 1. Common Structural Rules (CSR) project for Bulk Carriers and Oil Tankers

The flagship Common Structural Rules project for Bulk Carriers and Oil Tankers was discussed and a presentation was delivered to industry representatives who attended the closing session. The Rules will come into force on 1 July 2015.

## 2. Container Ship Safety

The IACS expert group on structural safety of container ships reported on a post "MOL Comfort" review, which it has carried out. This work has resulted in the development of two new IACS Unified Requirements (URs): UR S11A, which is a longitudinal strength standard for container ships and URS34 dealing with functional requirements and load cases for direct analysis of container ships. These two important URs will be delivered during the first quarter of 2015. Unified Requirements (URs) are minimum technical requirements adopted by all IACS members that refer to specific class rules requirements. URs are not intended to address all strength aspects of hull structures, as that is the function of the class rules of individual members.

## 3. LNG Bunkering Guidelines

LNG Bunkering Guidelines are presently being deliberated on by a number of organisations and the IACS initiative is trying to improve on what has already been introduced.

## 4. Complex on-board systems

"Complex systems" is a topic of vital importance for the industry as on-board systems develop rapidly in complexity. IACS is currently focusing on this subject with the formation of a dedicated Expert Group. At the last tripartite meeting (Shipowners, Shipbuilders and Classification Societies) in Shanghai in October, steps were taken to publicise these items to industry participants and this continued at the Council meeting, during which plans for future cooperation were discussed with industry representatives. Several industry representatives mentioned possible future threats by Cyber Risks in this regard.

# Commission to improve decisions for vessels in distress

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

IUMI has raised concern in the past over the industry's lack of involvement in developing draft operational EU guidelines for Places of Refuge (PoR). Hence, an invitation from the Commission's Directorate-General for Mobility and Transport (DG MOVE) to participate in a workshop with EU Member States, EMSA and the Commission in Brussels on 15th January was well received by IUMI and several other associations. IUMI was represented by its Secretary-General, Lars Lange, and Political Forum Chair Helle Hammer.

The new EU guidelines will build on the existing framework laid down in the 2009 EU Directive on vessel traffic monitoring and information systems, with a clear reference to the IMO Guidelines on Places of Refuge. The Commission's aim with the new guidelines is to ensure a consistent application of the legal requirements, and support the decision making process following a request made by a vessel in distress. IUMI and other stakeholders share this objective. Over the past few years the industry has campaigned that all coastal states prepare their relevant national plans in accordance with the IMO guidelines. Suitable places of refuge should be designated, and all requests must be considered independently and objectively with an impartial approach to all relevant criteria.

The draft guidelines promise to be a positive step in securing compliance with current regulations, although some details will need to be clarified before finalisation. IUMI stands, together with other associations, ready to assist and to provide information and expertise where required. Comments and recommendations are presently submitted through a joint group coordinated by the International Chamber of Shipping (ICS). In particular, IUMI has addressed the role of the lead H&M insurer in a salvage situation, the challenges of collecting information from all cargo owners of a container vessel and the mandatory requirement to share information following an incident. Together with the International Group, IUMI has also put together a brief explanation of the three types of marine insurance cover that will normally apply when a ship is in need of assistance and requests a place of refuge. The new guidelines will be published later in the year. For the industry, the true test will come once they are put into practice. In order to take into account lessons learned, the Commission has stated the guidelines be a work in progress; meaning that later amendments and clarifications can be made as required based on actual cases.



Stolt Valor



Maritime Maisie

# Focus on Car Carrier Safety?

By Mark Edmondson, Marine Class Underwriter, Syndicate 1882, Chubb and Chairman of the Ocean Hull Technical Committee

The recent casualty *Hoegh Osaka* has certainly caused concern amongst hull and cargo underwriters, potentially a much more serious incident had it occurred in different circumstances. Once again the question has been raised about the safety of pure car and truck carriers (PCC/PTCs), ship types with unique characteristics which define the particular risks inherent in underwriting hull or cargo interests for this type of operation.

The casualty in question certainly has precedent - the *Hoegh Osaka* incident bears many of the characteristics of the *Cougar Ace* loss in July 2006. MV *Cougar Ace* was en route from Japan to the Canadian West Coast carrying a consignment of 4,812 vehicles. After sustaining a serious loss in stability, and a 60 degree list developed during ballast water exchange off the Aleutians, the vessel was successfully righted and towed to Portland, Oregon at the end of August.



*Hoegh Osaka*

Although the salvage of the hull was ultimately successful, the casualty resulted in a total loss of the entire consignment of vehicles and the unfortunate death of a naval architect during the salvage operation. Whilst the casualty report for the *Hoegh Osaka* is yet to be published, the incidents show clear similarities. Aside from the recognised design features that make these particular vessels unusual:

- the high freeboard requires careful vessel handling in narrow channels and restricted waters,
- the forward position of the bridge contributes to difficult handling,
- the requirement for careful cargo stowage and securing, and
- the open deck space and free surface effect (as tragically demonstrated in the case of the *Baltic Ace* sinking in 2012), but also the management of ballast water is clearly particularly important during an operation of car carrier tonnage.

However, despite the risks inherent with the design of PCC/PTCs, enclosed sides and high freeboard are also features which may actually contribute to safety and seaworthiness, preventing major ingress of water in the event of a vessel assuming the degree of list experienced by the *Hoegh Osaka* and *Cougar Ace*.

Unsurprisingly the *Hoegh Osaka* is regarded a high profile casualty, particularly as the vessel is carrying a high value consignment of vehicles, with 824 vessels categorized as vehicle carriers in commission\*, the frequency of incidents of this specific nature is low. However, there is often enhanced financial exposure with such incidents not least by way of modern cargo policy forms that often provide cover even where there is little apparent physical damage to the vehicles in question.

In the light of casualties such as the *Hoegh Osaka* and the *Norman Atlantic*, the wider issue of RoRo and RoPax safety is likely to be high on the agenda for discussion amongst hull, cargo and liability underwriters at IUMI's Spring meeting and at the September Conference in Berlin.

\*source LMIU February 2015

## Theft of high value goods from trucks in central Europe

By Stefan Hattendorf, Lawyer, Battermann & Tillery, IUMI Professional Partner, [www.ba-ty.com](http://www.ba-ty.com)

Europe is increasingly turning into a terrain for criminals who specialise in stealing the cargo of trucks parked in motorway car parks and rest areas. The perpetrators lie low until the drivers go to sleep and then cut a hole into the trailer's tarpaulin to determine whether the transported goods are of high value.

There is no 100% protection against these so-called "tarpaulin-cutters" but the risk of theft can be minimised. One possibility is the use of monitored car parks. Yet, due to the requirement to comply with mandatory rest periods, drivers cannot always reach these car parks within the permitted time-frame. Also, monitored car parks are often overcrowded. Another measure is to utilise box-type superstructures. Moreover, some companies have specialised in the field of truck security. Although transport costs rise due to additional security, these measures should be considered when transporting high value items.

Often, there are not many leads to follow during an investigation of theft. What makes investigations even more difficult is that in most cases the drivers do not notice the theft until the next morning. It cannot be ruled out that the perpetrators use insider knowledge. In cases where the complete cargo has been stolen at a busy rest area, the question arises how the theft could have been carried out unnoticed. Sometimes drivers claim that they have been stunned with gas sprayed into the driver's cabin. This can be verified by means of a laboratory analysis of blood and urine samples. An evaluation of the GPS data and the tachograph can also provide clues to aid the investigation.

Additionally, it would be favourable if the manufacturers of products which have serial numbers immediately provided the corresponding numbers of the stolen items to the responsible criminal investigation departments. Unfortunately, this information is often submitted too late reducing the likelihood of tracing the stolen items.

**BATTERMANN & TILLERY**

# Q&A

## With Peter Hinchliffe

### International Chamber of Shipping (ICS)

*“I believe that my current role is the best job in shipping”*

*In the latest of our regular profile articles IUMI Eye puts questions to Peter Hinchliffe OBE, Secretary General of the International Chamber of Shipping (ICS) and its sister organisation, the International Shipping Federation (ISF). The International Chamber of Shipping (ICS) is the principal international trade association for the shipping industry, representing shipowners and operators in all sectors and trades. [www.ics-shipping.org](http://www.ics-shipping.org)*

#### **How do you view the marine insurance market?**

In short, the insurance market is generally responsive and aware of changing circumstances.

The environment of the oceans and of tight regulation make the insurance market – liability and property – fundamental to the operation of ships and to the business of ship owning. There is a requirement for ever-more secure, reliable and responsive insurance to meet growing obligations and to ensure the continuation of business operations in times of adversity.

It is interesting to see changes happening within the markets themselves. Insurance, of necessity, follows trade and with the centre of gravity of trade moving into Asia, it is natural to see growth in both insurance markets and expertise in the region. The movement of services to follow the front line of business is essential in maintaining the close lines of communication with customers and to understanding completely the business needs.

#### **Is there anything you would like to see marine underwriters do differently or better?**

Shipowners have traditionally been very close to their mutual P&I liability insurers and understandably so when the structure of the mutual insurance sector is borne in mind. It would be good if similar close and consistent relationships could be established also with property insurers – both hull and marine. This would foster a good understanding on the insurers' part of the shipowners' operations and, hopefully, help to deliver the appropriate products and service. We are beginning to see improvements but we have to be careful that the enormous capacity in the industry doesn't result in new insurance providers entering the market but without the same degree of understanding of the business and promoting new products which are not always required.



*Peter Hinchliffe OBE,  
Secretary General of  
the International  
Chamber of Shipping  
(ICS)*

#### **What is the biggest issue currently for ICS?**

The core of ICS work is on regulation; ideally, this would always be on an international basis but increasingly we are having to devote great energy to combatting national and regional regulators trying to go beyond the international consensus. This erosion of the 'level playing field' does the shipping industry no good. It will come as no surprise that on the environmental side we are heavily engaged in trying to smooth the implementation of the air emission regulations and the Ballast Water Convention. In the latter case, there is a huge amount of work to do to improve the original text. We need to deliver something that is workable for shipping and meets the original objective of the regulation. This work is undertaken under the shadow of yet more climate change related regulation that may emerge from the development of text for the global agreement that the Paris meeting of the UNFCCC aspires to deliver.

There is always safety related work – and rightly so – but, at present, the greatest effort is being expended in trying to limit the impact on shipping of migrants and refugees crossing the Mediterranean. Ships are at the very forefront of this humanitarian crisis and we lack joined-up political thinking to support the industry and to safeguard human life.

Finally, and not often in the press these days, ships are still being targeted by piracy in various parts of the world and the pressure on seafarers to deal with piracy on the one hand and large-scale rescue on the other has to be faced up to.

#### **If you were not in your current role what would be your ideal job?**

I believe that my current role is the best job in shipping and it is very difficult indeed to identify an alternative! However, all of my working life (and much of my leisure time) has been associated with the maritime world and above all I want that association to continue.

# Hamburg court rules on MOL COMFORT

By Dr. Marco Remiorz & Prof Dr. Dieter Schwampe, Dabelstein & Passehl, IUMI Professional Partner, [www.da-pa.com](http://www.da-pa.com)

The District Court of Hamburg has issued an interesting decision denying the liability of a freight forwarder for the loss of goods due to the sinking of the *MOL Comfort*.

The *MOL Comfort*, built in 2008, was classed by Nippon Kaiji Kyokaj (NKK). Shortly before the voyage class had been renewed in May 2013 based on NKK's special survey. The plaintiff alleged that the vessel, despite her classification by NKK, was not seaworthy due to cracks in her hull which had not been detected during the survey.

DABELSTEIN & PASSEHL  
Rechtsanwälte Hamburg · Leer

The bill of lading was subject to German law and jurisdiction. The defendant, a German freight forwarder, denied any liability for unseaworthiness, arguing that the cracks in the hull could not have been detected, leading to an exemption of liability based on § 498 of the German Commercial Code ("HGB"). Section 498 II 2 HGB provides that a carrier is not liable for unseaworthiness of its vessel if he can prove that the loss resulted from circumstances which could not have been prevented by a carrier exercising due diligence.



Prof Dr. Dieter Schwampe

The District Court of Hamburg dismissed the claim. The Court did not find any evidence for flaws in respect of stowage or stability of the vessel and concluded that the sinking could only have been caused by the cracks in the hull as consequence of a construction error of the *MOL Comfort*, which led to the unseaworthiness of the vessel. The Court then decided that the freight forwarder was not responsible for errors in construction of the vessel, observing that the defendant, undisputedly, had no knowledge of the cracks/unseaworthiness of the vessel. The Court reasoned that the defendant cannot be considered responsible for this lack of knowledge as there had been no indication whatsoever which would have required him to carry out investigations. In general, the defendant would be liable for any mistakes of the ocean carrier as his subcontractor. However, the ocean carrier was entitled to rely on the findings of the classification society before the final voyage. The Court further held that any possible misconduct of the shipyard or the classification society could not be attributed to the defendant either, as neither could be considered being the defendant's subcontractor.



Dr. Marco Remiorz

The judgment is one of the first dealing with the new German maritime law. The Court made clear that there is no obligation of the German freight forwarder, as carrier, to check the construction of the vessel booked unless there is an indication of something being wrong. The decision is not yet legally binding, and appeal is pending with the Hamburg Court of Appeals. The first instance judgment is discussed in Germany, and it is widely expected that the appeal court will take evidence on the (un)seaworthiness of the *MOL Comfort* before dealing with the question of a German freight forwarder's due diligence obligations when transporting goods on a foreign vessel from Asia to Europe. The hearing in the appeal court is scheduled for April 2015.

## Misappropriation: Time to put the cards on the table?

By Dirk Polfliet, Manager International Desk, DP Survey Group N.V. IUMI Professional Partner, [www.dpsurveys.com](http://www.dpsurveys.com)

After 15 years of dealing with multiple million Dollar losses, we believe it is time a few things were said about 'misappropriation' losses in the commodity trade. The two protagonists are as follows. Firstly we have a commodity trader sitting in front of a screen analysing the market to find the right moment to buy or sell. Therefore they are focussed on the best market conditions and not whether the commodity is actually there. Secondly are the warehouse operators who are under contract with the trader to manage the stocks and release them when the right moment arises. As best market conditions can be long awaited, the warehouse issues two certificates for the same stock to two different traders. Meaning the trader who comes first is served first, and the other is left empty handed. What normally follows is a long lasting trial which usually leads to an unsatisfactory recovery, as commonly warehouse operators are not multinational organisations with a few million dollars to spare.



It could be said there is a lack of physical stock control (usually by a mandated inspection company), but then it should also be recognised that there is difficulty identifying stocks belonging to a certain party. For example, bulk grains do not bear the name or bar code of the trading company, therefore cargo identification is a basic problem. Nevertheless, in most of the cases we have investigated, there was a clear neglect to properly establish the presence of the misappropriated stock. This neglect first needs to be eradicated and therefore, increasing physical stock controls is recommended.

At the same time, there is a tendency for misappropriation cases to be tried on the basis of documents only, which implies the warehouse certificate in itself is considered as sufficient proof of the stock's existence (local arbitration courts tend to recognise losses solely on such basis). Consequently the stock control actually becomes irrelevant from a legal point of view, but its importance is doubled, both as a prevention tool and as a means to demonstrate due diligence (or lack of same), from the parties involved.



At the end of the day, we are dealing with criminal behaviour of bailees. There is no Transported Asset Protection Association (TAPA) or other organisation setting out security standards against such criminal intent. Thus, in our opinion, the best the industry can do presently, is to set up transparent, shared control mechanisms. It is time to put the cards on the table, before anyone finds himself playing with a losing hand again.

# POD Propulsion – Where is the problem?

*Abstract from the Technical Paper by Massimo Canepa, Studio Navale Canepa and IUMI Loss Prevention Committee, with Andrea Gennaro and Giulio Gennaro, Studio Navale Canepa*

Azimuthal thrusters have existed in ship propulsion for many years in various forms. Their main purpose is to combine propulsion with steering to give the advantage of eliminating the rudder and enhancing steering and manoeuvrability of the ship through the slewing motion of the propeller.

Swapping the rudder for azimuth thrusters enhances the manoeuvrability of large ships in confined spaces and reduces the need for tugs. If fitted with an adequate number of units the vessel could also perform dynamic positioning activities. A characteristic of the evolved POD propulsion is that the propeller pulls the ship as opposed to the conventional, less efficient pushing action.

Installations of the increasingly powerful PODs were initially adopted for icebreakers, merchant vessels operating in ice-bound areas and navy ships. However, the break-through into the cruise industry began in 1998 when Carnival introduced PODs to the Elation. A wide-spread adoption soon followed.

Unfortunately, several ships – particularly those fitted with high-power installations – have experienced serious damage to the underwater propelling units forcing emergency dry-docking and interruption of cruise programmes.

The frequency of these incidents caused a temporary drop in the number of new installations, particularly onboard cruise ships. Recently this trend has been reversed, notably by the Royal Caribbean Cruise Line ordering four Azipod® units to be installed on two of its ships.

This technical article looks at the specific issue of the kinematic / geometric nature of POD propulsion and discusses how it has been addressed. Other issues investigated in the article include electrical and mechanical problems affecting the performance of PODs as well as bearing failure.

For the full technical paper on “POD Propulsion: Where is the problem?” please visit: <http://www.iumi.com/committees/loss-prevention-committee/links-loss-prevention>

# Expansion of ERS Scope

*By Henk Arntz BSc, Technical Secretary, IVR, [www.ivr.nl](http://www.ivr.nl)*

The Engine Registration System (ERS) developed by IVR and supported by 12 insurers as participants has, during the last year, again proven its use and effectiveness. The independent machinery claim database has tracked many structural failures of machinery on board inland navigation and sea-going vessels.

Structural failures were found and communicated to the manufacturers.

Solutions in respect of modifications were obtained in collaboration with the manufacturers, compensation of the cost was agreed upon and similar damages were avoided.

Following this success, ERS participants and the Board of Surveyors have decided to expand the scope of ERS from statistical information about main and auxiliary engines, gearboxes and thruster damage to include damage caused by problems with and/or by exhaust treatment plants.

Due to the tightening of emission level legislation and requirements on the use of low sulphur fuels, these costly exhaust treatment plants have become more commonly used and with that comes the risk of damage to or by these plants. Costly plants, with special maintenance requirements which if not fulfilled, can result in costly damage not only to the plant components but also to the engines themselves.

As the development and use of these plants is still relatively new, structural failures, failures due to incorrect maintenance, incorrect mounting and incorrect use will become more frequent and with it the impact on claim levels.

This new expansion of ERS to register damage to and/or by exhaust treatment plants/plant components, can and will assist in compiling statistics on these claims and identifying the major causes and of problems with this new technology. This should provide a greater insight into how claims might be avoided.

For the full article on the Expansion of ERS Scope please visit <http://www.iumi.com/committees/ify-committee/newsletter-ify>.

For more information please contact IVR's Technical Secretary Mr. Henk Arntz BSc re by phone at +31 10 411 6070 or email at [h.arntz@ivr.nl](mailto:h.arntz@ivr.nl). To get a glimpse of the ERS system, please view <http://ers.ivr.nl/> and click on demo.



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# The most significant changes to the law in a century: the Insurance Act 2015

By Richard Spiller, Partner, & Will Reddie, Associate, Holman Fenwick Willan, IUMI Professional Partner, [www.hfw.com](http://www.hfw.com)

The Insurance Act 2015 (the "Act") received Royal Assent on 12th February 2015, in the UK. The Act comes into force on 12 August 2016 and will make reforms in areas such as disclosure in business insurance, warranties and an insurer's remedies for fraudulent claims. The Act will introduce new law (replacing the existing common law) and, significantly, will amend parts of the Marine Insurance Act 1906 (the "MIA 1906").

The Act:

- requires an insured to make a "fair presentation of the risk" before the contract is entered into. This replaces the duties regarding disclosure and representations that are contained in the MIA 1906.
- introduces new legal and factual tests for determining the attribution of knowledge for the purposes of the duty of fair presentation.
- permits an insurer to reduce claims proportionately where the insured's non-disclosure or misrepresentation was not deliberate or reckless.
- prohibits "basis of the contract" clauses.
- repeals the provisions of the MIA 1906 which conclusively discharge an insurer's liability following a breach of warranty. Instead, breach of a warranty will suspend an insurer's liability from the time of the breach until the breach is remedied.
- limits an insurer's remedy for a breach of a term where the term is not relevant to the actual loss suffered.
- removes avoidance as a remedy for a fraudulent claim. An insurer is not liable to pay a fraudulent claim and may also terminate the contract with effect from the time of the fraudulent act. However, the insurer will still be liable for events occurring before the time of the fraudulent act.



Richard Spiller



Will Reddie

HFW has published two briefings on the Act (which at the time was before Parliament in the form of a Bill) which explain these changes in detail. The briefings can be found at <http://www.hfw.com/The-Insurance-Contracts-Bill-July-2014> and <http://www.hfw.com/Insurance-Bill-makes-progress-through-UK-legislative-process-February-2015>.

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Richard is Chairman of the Insurance Law Committee of the City of London Law Society and Will is its secretary.

## Containerisation issues

By Nigel James, Master Mariner and Associate Director, LOC Group, IUMI Professional Partner, [www.loc-group.com](http://www.loc-group.com)

Cargo containerisation is a standardised system with many non-standardised elements. What can appear as straight-forward – the documentation of cargo, packing and stacking of twenty and forty foot containers onto large, purpose-built ships, is in fact a far more complex and nuanced operation. Most of the time the operation works well; the vast majority of containers move from A to B with no problems. However it is possible for errors, both intentional and non-intentional to be made involving the non-standardised elements of the system. When these combine with other exceptional circumstances, such as bad weather, incidents can occur.

At a basic level, containerisation can be broken into two stages, commercial and operational. The commercial stage involves the declaration of cargo to be shipped. Misdeclaration of cargo can occur as the result of a simple mistake or for more calculated commercial reasons. Shipment of hazardous cargo involves a great deal of paperwork and consequently mistakes are sometimes made during declaration. At the operational stage – packing of the cargo and stowage on board – a whole range of errors can creep in, some because of lack of knowledge and others owing to the speed of the logistics chain. Just-in-time (JIT) logistics can be very efficient and leaves little room for error when stowing containers – a problem if stowage software systems malfunction.

While most container lines use automated stowage software, it is very important for operators to really understand what they are doing – container stowage should in no way be thought of as a computer game. Operators' commercial focus should never detract from their obligation to guarantee safety, however the container industry is an extremely competitive industry and the boundaries are regularly pushed to the maximum. Occasionally when all affairs are in order on paper, in terms of total cargo weight and distribution, a ship simply doesn't look right in the water. Open dialogue is needed between all parties to ensure that concerns are highlighted.

The topics of container stowage, hazardous cargo, stowage software systems and cargo declaration each constitute a serious study area and will be the focus of future individual articles.



Nigel James



# America eases embargo, but Cuba still not open for business

By Joe Grasso & Josh Taylor, Wiggin and Dana LLP  
[www.wiggin.com](http://www.wiggin.com)

Late last year, United States President Barack Obama announced a policy shift with regard to the U.S.'s relationship with Cuba. Reaction to this announcement was perhaps more dramatic than the actual changes themselves, which comprise amendments to certain U.S. regulations, implemented by the U.S. Treasury and Commerce Departments.



Josh Taylor Joe Grasso

While whisperings of implications and future actions abound, the amendments do not substantially impact the business that U.S. marine insurers may write on Cuban risks. In its recently released preliminary guidance on the new rules, the Treasury Department made a point to remind U.S. entities that "the Cuba embargo remains in place" and "[m]ost transactions between the United States, or persons subject to U.S. jurisdiction, and Cuba continue to be prohibited."<sup>(1)</sup>

**WIGGIN AND DANA**

In substance, the new rules are meant to ease restrictions on the export of certain items which will improve the quality of life for, and otherwise empower, the Cuban people. Among other things, they allow for exports and re-exports (and incidental transactions such as insurance - see 31 C.F.R. § 515.533) of certain consumer communications devices (see 15 C.F.R. § 740.19), and building materials and tools (see 15 C.F.R. § 740.21). However, designation of specific exportable items under the rules will likely require highly fact-specific analyses. Overall, the rule changes are specifically targeted to "further engage and empower the Cuban people by facilitating authorized travel to Cuba by U.S. persons, certain authorized commerce, and the flow of information to, from, and within Cuba."<sup>(2)</sup>

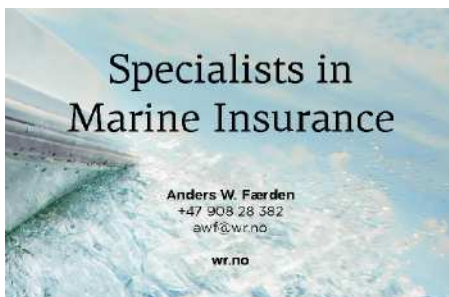
The changes do not implicate all areas of commerce, nor do they relax the embargo in any sweeping way. The baseline remains that "[p]ersons subject to U.S. jurisdiction are prohibited from doing business or investing in Cuba unless licensed by OFAC"<sup>(3)</sup>. Underwriters subject to the U.S. regulations should therefore remain vigilant and should seek or await further guidance on the new U.S. approach to Cuba before engaging in any transaction which was previously prohibited.

(1) *Frequently Asked Questions Relating to Cuba, Office of Foreign Assets Control (January 15, 2015)*, available at [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba\\_faqs\\_new.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba_faqs_new.pdf).

(2) *Id.*

(3) *Id.*

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# Report from IMO

By Nick Gooding FCII, IUMI Alternate Officer at IMO

Recently, we have attended the Maritime Environment Protection Committee and the Maritime Safety Committee as well as spending time building relationships with industry bodies that are aligned with IUMI's interests, in particular IACS and the ICS.

A specific area of interest is the Polar Operational Limit Assessment Risk Indexing System (POLARIS) and the ports of refuge issue. POLARIS is being championed by IACS and an IMO correspondence group has been tasked to finalise guidance on a system for determining limitations for operating in ice conditions.

In addition, a January meeting of the Pollution Prevention and Response Sub-Committee discussed air pollution from ships, evaluation of safety and pollution hazards of chemicals and guidelines for Port State Control under the 2004 BWM Convention. Later, in February, the Human Element, Training and Watchkeeping Sub-Committee's agenda included the validation of model courses including those on chemical, oil and LNG cargo operations, maritime English and engine room simulators. Guidelines for seafarers rest hours and carriage of dangerous goods in packaged form by sea were also discussed.

Separately, we were approached by the International Group to strengthen their efforts to lobby against the winding up of the IOPC 1971 Fund. With IG, we submitted a joint paper to the plenary session which, unfortunately, failed to prevent the winding up.

2015 will see change within IMO as both the Secretary General and his deputy stand down. We will watch the elections with interest and will continue to attend the committees and report issues of interest to the membership.

## Theme announced for 2015 Annual Conference

During the IUMI Winter Meeting in London, the Executive Committee agreed its common theme for the 2015 conference:

"Technical, Financial & Human Factors – is there a new normal?"

The theme was carefully chosen to reflect the significant impact that external factors are beginning to have on the marine insurance industry. The market faces unpredictability through rapid advancements in technology, the increasing size of new vessels and construction projects; much larger scale drilling activities and more complex salvage work.

Concurrently, the financial crisis has also impacted the industry. Our President Dieter Berg said "there is a low interest environment and alternative capital is entering insurance markets. Solvency capital regimes and efforts to further diversify portfolios will have an influence. With the volatile oil prices we are uncertain as to how these factors will play out. Human expertise has become one of the most important foundations of the business. Expert personnel are needed to guide clients and it is essential the next generation of insurers are encouraged and trained."

According to IUMI, these factors are combining to create a "new normal" in the market. IUMI members will address these challenges at the much anticipated 2015 Annual Conference in Berlin (13th – 16th September).

For more information please visit – [www.iumi2015.com](http://www.iumi2015.com).





# Fire - the ever-present risk on container ships

*Abstract from Uwe-Peter Schieder's article on "Fire – the ever-present risk on container ships"  
By Uwe-Peter Schieder, GDV and Vice Chairman of IUMI Loss Prevention Committee, www.gdv.de*

Over the past few years, marine construction has been going in one direction only – bigger! The danger with this trend is that the financial risk in the event of loss grows as the size of the vessel increases. The same cannot be said however for fire protection at sea, quite the opposite in fact, as no progress is being made at all in this area. If we are to get to grips with the risk of fire, on-board firefighting facilities must be modernized.

From a marine insurer's perspective, it is a simple equation: The larger the vessel, the more cargo it will carry, and hence the greater the sum insured will be. The value of the entire vessel including cargo can amount to 700 million euros. If two such vessels were to collide, a single event could lead to losses running into billions of euros.

A recent concern is that marine insurers are increasingly noticing a casual approach to hazardous goods and declaration regulations. In a few cases, companies have published tips for circumventing hazardous goods regulations on their web pages. Incorrectly declared cargo, in particular chemicals, have frequently proved to be the cause of fires on board.

The size of vessels and the on-board technology have been subject to a constant process of optimization. But safety measures, in particular in respect of fire protection, have been left lagging behind in the face of ever bigger, ever better container ships. Fire protection has not adjusted to the fact that over the last 60 years, cargo has been increasingly transported in containers.

What could a modernized system for containing and extinguishing fires look like? Unlike fire protection in buildings, it is nearly impossible to extinguish a fire on a container ship because the container protects the fire. Therefore, a three-pronged approach is necessary to isolate and contain the fire in the containers. Firstly, a water based extinguishing system is needed under the deck to contain the fire and cool the steel construction of the ship. Secondly, the use of water curtains on deck is essential to establish fire sections. Thirdly, the installation of monitors is required for the purpose of active firefighting. Fire protection on board is not unlike fire protection in buildings: If a fire breaks out and is not quickly brought under control, all that is left is a ruined shell, fit only for the wrecking ball. In turn, in the case of ships, a total write-off. However, with the above mentioned modernized approach to firefighting facilities, the crew has a fighting chance at containing the fire and keeping damages to a minimum.



*Stern in flames: When the Hyundai Fortuna caught fire in 2006, the flames were so ferocious that the crew were helpless to take any measures to combat the fire. The 27 crew were rescued by a Dutch warship in the Gulf of Aden.*



*CSCL Globe*

For the full article please visit: <http://www.iumi.com/committees/loss-prevention-committee/links-loss-prevention>

## New regulation for the weight control of containers

*By Frédéric Deneffe, Insurance Director, CESAM & GAREX, and Chairman of the Legal & Liability Committee*

Overweight containers is one of the greatest dangers for the carriage of goods by sea. It is a worryingly frequent occurrence which affects the safety of vessels and their crew as it compromises the ships integral stability risking an accident. Furthermore, there is a risk of fatalities during the container carriage or transshipment operation. In the worst case, overweight containers can cause the total loss of the vessel, meaning losses for cargo interests and other exposed insurers such as H&M and P&I.

Why is this happening?

It is difficult to highlight one single reason for this occurrence, particularly as the marine insurance industry is often at the forefront of unprecedented challenges.

One possible explanation is incorrect weight declarations purposely being made on the Bills of Lading, and/or other documentation, to allow for profitable savings on freight and tax. It may also be the result of the various intermediaries involved in the cargo selling and shipping process who do not follow up accurately on the net weight information. Additionally, different measurement systems and net or gross weight calculations may be to blame.

As mentioned in the "Developments in container weighting" article by Matthew Gore and Max Thompson (Homan Fenwick Willan) in the December 2013 IUMI Eye edition, the IMO has implemented a new regulation which comes into force on 1 July 2016 to help manage this issue. Shippers and operators will be legally required to determine and verify cargo weight according to new criteria.

There are two methods which the shipper may use to calculate the weight:

1. Weighing individually each packed container with certified equipment
2. Weighing all cargo (crates, pallets, individual items, etc.) of the container separately and then adding that to the net weight of the container.

In collaboration with various shipper associations, freight forwarders, operators and others, IMO states are required to develop rules and guidelines to ensure the implementation of this new regulation.

Once this methodology is in place, each container ready to be shipped will have the exact weight declared and verified determined by these new methods of calculation. As a result there will be better management of containers during the whole transport operation and hopefully a reduction of losses due to overweight containers.

# Address by the IUMI Secretary General

By Lars Lange, IUMI Secretary General

I am happy to report IUMI's modernisation process continues at high speed and the last quarter of 2014 has had several new milestones:

- As the IUMI Executive Committee (EC) is aware, accurate and focused media and press work are of the utmost importance for the work of a modern association, in 2014 a new "Communication Strategy" for IUMI was initiated and developed. IUMI is pleased to announce that a strategic partnership has been formed with the London based PR and Communications Company, Navigate PR Ltd., [www.navigatepr.com](http://www.navigatepr.com). Together, Navigate and IUMI aim to modernise the public's perception of IUMI and to improve communication with both membership and all other interested parties.
- During the IUMI 2014 Conference in Hong Kong in September 2014, the IUMI Council approved the new Articles of Association. The IUMI secretariat is currently implementing all modernisations arising from these new Articles. In March 2015 the re-election procedure for all Technical Committee members, including a limited tenureship of 3 years in future and certain admission requirements for membership of the committee, commenced.
- During its 2015 Winter Meeting in January 2015, the IUMI EC decided to develop an IUMI Education Programme. IUMI is of the strong opinion that education is one of the most important topics in regard to ensuring the future quality of marine insurance. We will be delighted to keep you informed.

Some brief announcements regarding important dates:

- IUMI's Technical Committees will meet this year in Brussels from 22-24 March 2015 for their traditional Spring Meeting, [www.iumispring2015.com](http://www.iumispring2015.com). The meeting is hosted by the Belgian Marine Insurance association, ABAM, and will enable the Committees to work on all topical issues related to their line of business and to prepare their workshops for the Berlin conference.
- The Istanbul Colloquium of the Comité Maritime International CMI, due to take place between 7th and 9th June 2015, is now up and running at [www.cmi2015istanbul.org](http://www.cmi2015istanbul.org). One of the two main working themes of the colloquium is the on-going efforts of the CMI's International Working Group on General Average, whose work is to review and amend the York-Antwerp Rules. CMI hopes that sufficient progress will be made before, during and after Istanbul to enable the WG to aim for amendments of the Rules to be carried at the next full CMI conference in New York in May 2016.

IPP advertisement:

## Dieter Schwampe of IPP Dabelstein & Passehl wins Client Choice Award 2015

Dieter Schwampe, partner at the Hamburg-based law firm Dabelstein & Passehl, has been awarded the prestigious Client Choice Awards 2015 for Germany in the category Insurance. Dieter is well-known to IUMI as a member of the Legal & Liability Committee. His law firm, Dabelstein & Passehl, was one of the first IUMI Professional Partners, a member since 2010. The Client Choice Awards, established in 2005, honor lawyers around the world who stand out for their excellent client care and the quality of their services. "The criteria for this recognition focus on an ability to add real value to clients' business above and beyond the other players in the market. Uniquely, law firms and partners can only be nominated by corporate counsel"

(<http://www.clientchoice.com/>). Part of the process is that a nominated lawyer identifies clients who are interviewed by the organizers. The answers form the basis of the awards. Dieter Schwampe says "We identified 10 of our major clients, amongst them some of the world's largest reinsurers, general insurers, marine insurers and insurance brokers. I thank them for their support. Assisting them in their legal matters is always a challenge and a reward."

Dabelstein & Passehl is a boutique law firm specialising in maritime commercial law. With 30 lawyers, the company is a leading firm in Germany. Dieter works mainly in shipping and marine insurance law. Dieter says: "The award is a great honour for me. I am now even more motivated to continue delivering the most professional and high quality legal service as expected by my clients - all of them being market leaders in their individual fields."



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