



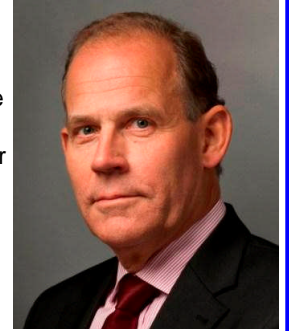
IUMI
International Union of
Marine Insurance



Message from the President

This month many of us will head to London for the IUMI 2013 Annual Conference that will address the theme "Marine Insurance - Building resilience and defining a sustainable future". Once again we have been able to attract a high calibre of speakers from across the world, for what will be an extremely important and informative four days for the industry. The issue of how the marine insurance market can build its resilience to the ever increasingly level of exposure we are being asked to assume for our clients in a continued low investment return environment is arguably our toughest challenge. We are expecting an extremely high number of delegates this year. This highlights the concerns the market has and the recognition that as an industry we need to look at how we approach the future. I look forward to meeting you in London.

Ole Wikborg, President IUMI



IUMI stats well received at IMO

IUMI's ongoing involvement with the IMO continued with the presentation of the Casualty Statistics (as of 1st January 2013), which were presented by Philip Graham, a member of IUMI's Facts & Figures Committee, to the IMO's Maritime Safety Committee in June 2013.

This was the third consecutive year where IUMI has been invited to make such a presentation, which was described by Mr Brice Martin-Castex of IMO's Secretariat as being of "very high quality".

Following the meeting IUMI has offered to make a second high-level presentation to the flag State Membership of IMO at the IMO Assembly, which comprises over 170 flag State Administrations.

The core messages in the presentation of recent trends in Casualty Statistics are that:

- The size of the Global Merchant Fleet continues to grow; although at a decelerated rate, where demolition rates are increasing (in particular in the dry bulk sector represented by INTERCARGO), and the average age of merchant ships has stabilised.
- The average size of merchant ships is increasing, where economic conditions for shipowners are extremely difficult at the moment;
- The number of Actual Total Losses continue to fall, and is trending to stabilise in GT terms. In other words, although there are numerically fewer losses, large losses are economically significant. Both the number and value of Serious Losses have risen; although these could be trending to fall in percentage terms.
- It should be remembered that there is a very important distinction to be made by marine (re)insurers between the numerical frequency of maritime casualties, which are published, and the economic severity of these maritime casualties, where issues of commercial confidentiality and client privacy of are paramount importance.

MSC London meeting looks at loss & piracy

IUMI was fully represented at the International Maritime Organisation's Maritime Safety Committee 92 meeting in London.

The two week meeting is the major annual gathering for the IMO and spanned a broad range of topics, with ship safety and the loss of the Costa Concordia high on the agenda. IUMI actively participated in the Working Group on Passenger Ship Safety presenting its own solo paper based on the interim report of the loss of the Costa Concordia.

Of interest to the marine insurance industry was the issue of evacuation within the Fire Protection Sub-Committee and the continuing development of a mandatory Polar Code which was noted, as was the need to take into account the temperature testing requirements of the ballast water management systems. The MSC also noted the gravity and extreme violence of piracy and armed robbery against merchant ships in the Gulf of Guinea off West Africa, and the deep concern for and condemnation of such activities.



If members have any questions they can contact the IUMI secretariat at info@iumi.com.

IMO holds session on ship safety

In June the IMO looked at the issue of ship safety - a special session. In 2014 it will be 40 years, since the SOLAS Convention was adopted in 1974, which now has 170+ flag State signatories. It will also be 100 years since the original SOLAS Convention in 1914, and the IMO Symposium saw a number of recommendations being made.

- To create a system to improve data collection.
- To consider how to provide a sound scientific and practical basis for the development of global safety regulations for international trade/transport by sea.
- To consider ways of encouraging a safety culture that goes beyond mere compliance with regulatory requirements;
- To consider undertaking a long-term comprehensive review of the existing safety regulatory framework (including SOLAS, 1974, and the International Load Lines Convention).

For further information visit <http://www.imo.org/About/Events/FSS/Pages/default.aspx>.

IUMI conference welcomes new technology

This year's IUMI conference returns to London from 15-18 September and will feature a range of technological firsts.

Delegates who register for the conference will be able to access a new IUMI Conference App which can be downloaded on iPad and Android devices and will feature access to information on the venue and programme as well as the ability to network with other delegates.

The conference will also have a Twitter feed for the first time and will use electronic interactive voting systems in a number of sessions and will also allow delegates to rate speakers' and presentations instantly.

Neil Smith of the Lloyd's Market Association which is co-hosting the conference with the International Underwriting Association said: "London has always looked to innovate when we have hosted the conference and we believe delegates will get a great deal of benefit from the App. It will contain information on the agenda and delegates and will also allow delegates to communicate and network.

"The electronic voting system will also be a first and will allow the various audiences to have their say without the need to raise their hands.

"We hope it will encourage more delegates to share their views and being anonymous it will also hopefully generate some honest opinions.

"Delegates will also be able to rate the sessions and speakers instantly and that feedback is important to ensure that IUMI can tailor future conferences to the needs of the members."



Maritime piracy charity will benefit from IUMI London 2013

In another first for the IUMI conference this year there will be a significant charity element as the event also looks to reduce its carbon footprint.

During the conference there will be a number of initiatives aimed at raising funds for and awareness of the Maritime Piracy Humanitarian Response Programme (MPHRP). The charity helps seafarers and the families of seafarers which have been taken hostage by piracy gangs across the world.

It aims to provide both financial and emotional support to families during the period when the seafarer is held and will repatriate and support the seafarer and their family in the aftermath of their release. Neil Smith of conference co-hosts the LMA said the charity was chosen as it is a cause close to the marine insurance industry's heart.

"We wanted an international charity and one which supports the maritime industry. We will be looking at a number of fundraising initiatives during the conference and we hope this will be a theme that will be carried on in future events."

The conference will also look to its green credentials, with the delegate bags for this year made out of recycled material and steps taken to reduce the event's carbon footprint.



Conference day pass scheme is proving to be a big hit

This year's annual conference will see delegates able to obtain a corporate day pass for the first time and already demand is high. Those taking out full delegate places can access a limited number of corporate day passes which can be used by their firm. The passes are not for named individuals and will allow companies to send their underwriters to the sessions that are specific to their class of business and interest and they have proved extremely popular.

The LMA's Neil Smith (pictured) said: "The idea is to engage with a wider audience and allow them to access the conference to attend the sessions which interest them. We have priced these at a break even rate and the hope is that this will encourage a new generation of the industry to attend the conference and spark the interest of the IUMI membership of the future."



Iran Sanctions How can insurers and brokers protect themselves?

Insurers and brokers in the EU and US could be forgiven for something of a siege mentality as they continue to find themselves at the sharp edge of sanctions against Iran.

Regulators are increasingly using restrictions on the availability of insurance as a way to curtail trade with Iran, and insurers and brokers who have concerns in this regard

will need to conduct detailed due diligence on their assureds, as well as their assureds' trading activities, to ensure that the insurers and brokers are not themselves engaging in prohibited activities. EU based insurers and brokers need to be aware of a host of specific restrictions. In particular, they need to do the following:

1. Check that the assured and any other person who benefits from the insurance is not subject to EU sanctions.
2. Check that the assured is not the Government of Iran, its public bodies, corporations and agencies, or an Iranian person, entity or body, other than a natural person.
3. Check that no prohibited payments will be made, either by way of premium or payment of claims.
4. Check that the underlying transaction is not prohibited.
5. Take account of any US restrictions which apply (whether because the insurer or broker is owned or controlled by a US person, or because the sanctions have extra-territorial effect).
6. Ensure that the policy has an appropriate sanctions clause.

Some of these requirements can be satisfied by carrying out the usual due diligence and making other enquiries into the assured. Insurers and brokers are in a much more difficult position when it comes to identifying the assured's counterparties (and other entities which may benefit indirectly from the insurance), and the trade which they are engaged in.

In addition, insurers and brokers need to be aware of any additional domestic legislation which imposes additional obligations on them (for example because they are a UK company, or are owned or controlled by a US company), and take steps to comply with that legislation.

In short, insurers and brokers will want to obtain as much information as possible about the activities of their assureds, and the particular transaction, to satisfy themselves that their assured is not engaged in a prohibited trade with Iran which could expose insurers and/or brokers, and they also need to check carefully the policy wordings.

For more information, please contact Daniel Martin, IUMI Professional Partner from the UK, on +44 (0)20 7264 8189 or daniel.martin@hfw.com, or your usual HFW contact.



Kruger Products Limited v First Choice Logistics Inc 2013 BCCA 3

A recent Canadian decision may have serious implications for insurers of cargo and their subrogation efforts. In *Kruger Products Limited v. First Choice Logistics Inc*, the trial judge had to deal with a claim for a fire at a warehouse.

Kruger Products Limited was the owner of paper products stored at a warehouse operated by First Choice Logistics Inc. First Choice was found to be responsible for the fire and fully liable for the large loss.

The trial judge rejected the position of First Choice that the warehouse agreement required Kruger Products to obtain insurance for the inventory and to name First Choice as an additional insured.

The judge held that First Choice did not have an insurable interest in the goods. First Choice had a lien on the goods and that was the extent of its interest.

The court also found that First Choice could not rely on a waiver of subrogation clause in the warehouse contract. The judge held that such a position would result in an impairment of the duty of care owed by First Choice to Kruger Products as a warehouseman.

The Court was advised that the claim was a subrogated claim – Kruger's property insurer had paid the claim and now sought to recover the amounts it paid to Kruger, from First Choice.

The decision was appealed. The importance of the appeal decision is the finding that the waiver of subrogation clause in the contract was valid and that the subrogated claim of Kruger was totally barred. Kruger's insurer recovered nothing.

The ruling has wide implications for any transportation or storage contract that contains a clause barring insurers of cargo from claiming against a party to a contract responsible for the loss.

The Court of Appeal also found that the warehouse had an insurable interest in the property that was destroyed by the fire. The warehouse was subject to the "possibility of liability" under the warehouse agreement.



For more information, please contact our firm.

Rui Fernandes, IUMI Professional Partner from Canada, can be contacted at Fernandes Hearn LLP, Toronto, Canada (www.fernandeshearn.com).

 **Fernandes Hearn LLP**
BARRISTERS & SOLICITORS

Soldiers on board - when things go terribly wrong The “Enrica Lexie” case

On 15th February 2012 the Italian oil tanker m/v Enrica Lexie was sailing from Singapore to Egypt with a crew of 34 and escorted by six Italian marines members of the Italian Navy “Vessel Protection Detachment”.

At approximately 4:30 PM, the ship was 22 nautical miles off the West coast of the Indian state of Kerala, while the Indian fishing trawler St. Antony was returning to the nearby port of Neendakara.

Indian and Italian sources give different accounts of the ensuing events.

According to the captain of the Enrica Lexie and the Italian marines, a boat of armed pirates approached the tanker, and the marines fired some warning shots to prevent them from boarding. The warning shots were preceded by signals with the ship’s searchlight.

According to the captain and owner of the fishing trawler, their boat was returning to Neendakara from a fishing expedition, and while waiting for the oil tanker to pass, security men onboard the Enrica Lexie fired at the boat without warning and “without provocation”.

The firing lasted for about two minutes, during which the boat’s helmsman was killed and another crew member was seriously wounded and succumbed to his injuries shortly thereafter.

The Enrica Lexie has been put under arrest and detained for several months and Indian authorities have charged two of the Italian marines with murder under Section 302 of the Indian Penal Code

The case is a painful reminder of the liability issues that may arise as a result of the employment of armed guards or soldiers.

Italy has recently enacted the legislation allowing the employment of security companies on board, but the employment of PMSC is considered as an alternative to the employment of soldiers, and in case the latter option is not available.

The difference between embarking military personnel vs. private contractors is very much focused on the chain of command, and while it is possible to stipulate with PMSC, the Guardcon standard contract (or a similar form), no such contract exist with soldiers.

Claudio Perrella is IUMI Professional Partner from Italy, his practice LS Lexjus Sinacta (www.lslex.com) is focused on shipping, marine insurance and international trade.



Assuring safety in a developing market

Technology moves quickly and the offshore heavy lift sector is a good example of where capabilities are developing rapidly. Traditional derrick crane fitted barges are limited to around 11,000 tonnes and increased capacity is now being delivered by the floatover market using rapid ballasting on purpose built vessels. These systems are already performing lifts upwards of 40,000 tonnes.

But progress does not stop there. Cutting-edge, ultra-heavy lift vessels are beginning to combine transportation with installation in ever deeper waters using dynamic positioning technology. Allsea’s dual-hull Pieter Schelte is a prime example which may deliver more versatility than has been available previously. There is more flexibility at the lower end of the heavy lift market too. A range of multipurpose installation vessels are coming onto the sector that combine large deck areas with lift capabilities of up to 4,000 tonnes along with S-lay, J-lay or reel lay systems to depths of 3,500 meters. Combining transportation, lifting and installation in a single hull is a great enabling innovation.

However, sometimes new innovations bring new risks and it is the role of companies like LOC to identify those risks and suggest solutions to reduce them to a manageable level. This becomes particularly relevant as offshore activities move further into previously undeveloped territories such as the Arctic, where weather conditions can be atrocious. It is also important to monitor closely the many new operators and contractors who, perhaps, are not used to the demanding standards required by the offshore sector.

Innovation and growth is part and parcel of the marine and offshore industry, but it must be achieved with the highest levels of safety and environmental protection. As a global provider of marine and engineering consultancy services with 32 offices in 15 countries and represented on all continents, it is vital that we stay ahead of the curve in all aspects of our business. We are retained by the world’s leading underwriters to deliver advice, expertise and warranty surveys on all types of marine and offshore installations and so we make it our business to maintain a deep knowledge of all that’s going on in our industry, particularly in areas of innovation.

David Ballands is a director of LOC Group and regional director, Americas. David will be speaking at the IUMI 2013 conference. LOC is IUMI Professional Partner from the UK. LOC is a leading international marine and engineering consultancy and survey company.
www.loc-group.com.



MOL Comfort - what happened?

By Lars Lange, Secretary General, IUMI

The Loss of the MOL Comfort in June this year again raises questions over the false declaration of the weight of containers. The vessel broke into two about 200 nautical miles off the coast of Yemen. Built in 2008 by the Japanese shipyard Mitsubishi Heavy Industries (MHI) the Comfort had had a capacity of 8110 TEU.

At the time the casualty occurred the vessel was carrying ca. 4.400 TEU. After the incident both sections remained afloat initially with the majority of the cargo intact. After charging a salvage company and beginning to tug the sections into a safe harbor, the aft section sank and the bow section two weeks later. All seamen were rescued, but the financial losses are expected to be very significant. The incident has got the market asking how could such an accident happen to a vessel which was only five years old from a highly respected shipyard and operated by a well recommended ship-owner.

The exact cause of the accident is not known and maybe will never be known, but it has led to a great deal of debate in the industry. One possible cause of the accident that has been suggested is a discrepancy in the weight of the containers on board the vessel. It has been long highlighted by the insurance community that the weight of a container has to be known if it is to be transported safely and misdeclaration of a container's weight (and its contents) is a recurring safety problem. Many containers are said to be much heavier than declared and for a container ship this may add up to a discrepancy of several 100 tons in total. This may lead to instability of the whole vessel which may lead in extreme cases to a major casualty, especially if it combined with heavy weather.

The International Maritime Organization (IMO) recognizes the problem. During its meeting in September 2012, the IMO Sub-Committee on Dangerous Goods, Solid Cargoes and Containers (DSC) considered proposed draft amendments to SOLAS Chapter VI/2 to require mandatory verification of gross weight of containers. A Correspondence Group (CG) was founded and IUMI is represented on the CG.

Whatever the reason for the loss may have been, IUMI will continue its efforts to enhance ship safety, especially with regard to the issue of misdeclaration of container weights. IUMI supports all measures that improve the monitoring of containers and their weight/contents and IUMI will actively support the industry initiative for mandatory (international) measures to verify container weights, including the proposed amendments to SOLAS Chapter VI/2.

Attempt to improve York Antwerp Rules

By Lars Lange, Secretary General, IUMI

The International Maritime Law Association "Comité Maritime International, CMI" has made new moves to rework the York Antwerp Rules following its conference in Beijing in November last year. The YAR are internationally used for treatment of GA cases. The core driver behind the initiative is that the current YAR 2004 has not become accepted by the involved parties and most contracts continue to use the previous YAR 1994.

CMI founded a working group under the chairmanship of the Dane Bent Nielsen. IUMI is represented on this working group and IUMI's Salvage Forum, founded in 2011, is steering IUMI's activities on this. As a first step the CMI working group has, in April 2013, released a questionnaire to all national maritime law associations who are CMI members in order to get an as broad as possible spectrum of opinions for its work.

The IUMI Salvage Forum developed a guidance paper for all national IUMI members in order to enable them to take part in the national discussions in answering the questionnaire and in order to stress marine insurers' interests in GA and in future YAR rules. These interests centre on finding fair solutions for the distribution of salvage costs in GA and for the crew costs in a port of distress. During a two day meeting at the next CMI assembly in Dublin at the end of this month, the working group on the YAR will evaluate all replies to the questionnaire received from the national maritime law associations and will further discuss the way forward. In addition to the guidance paper IUMI's Salvage Forum will, along with all relevant IUMI bodies, create a discussion paper stating marine insurers' needs and interests. IUMI will continue to monitor this process and report progress to members.

IUMI joins Costa Concordia loss debate

By Andrew Higgs, IUMI Liaison Officer at IMO

The lessons learned from the loss of the M/S "COSTA CONCORDIA" and its implications have been a significant topic both the marine insurance industry and the wider maritime community. The official interim report by the Italian authorities in to the events leading up to the loss was produced in May before for the International Maritime Organisation's Maritime Safety Committee's (MSC) meeting in June. IUMI presented its first ever solo paper intervention to the MSC at IMO on "Passenger Ship Safety", following the two day Symposium on the "Future of Ship Safety".

The paper was an important part of the discussions across six separate working sessions at IMO in June, there were 31 expert Moderators or Speakers, including 12 naval architects and 6 marine engineers. The core themes of the paper were:

- That the primary or root cause of the casualty was human error, crew negligence and/or poor navigation, which was fully insured by hull & machinery marine insurers.
- The important factual finding that the immediate flooding of 5 WTC, where most of the vital equipment for propulsion was located, was well beyond the survivability of the Passenger Ship, being only designed to withstand the flooding of 2 WTC.
- That the segregation and redundancy of vital equipment for propulsion, steering and navigation under SOLAS regulations for safe return to port should be reviewed.

The paper received vocal support from the German and Chinese delegations, as well as RINA and IFSMA and while IUMI has co-presented papers in the past this was the first time that IUMI has been the sole author of a formal paper intervention and presentation to the IMO.

IUMI's representative at the IMO Andrew Higgs said: "The issue of passenger ship safety was at the top of the agenda and there was a broad debate over the lessons to be learned from the loss. IUMI's paper was extremely well-received. It addressed views of marine (re)insurers to passenger ship safety and the areas where underwriters continue to have concerns.

"This was a wide-ranging discussion, and timely review of Passenger Ship Safety in the wake of important lessons to be learnt from the COSTA CONCORDIA Casualty."

New EU safety directive

By Helle Hammer, Chair of Political Forum

On 12 June, the European Union launched a new directive on safety of offshore oil and gas operations aimed at reducing the occurrence of major accidents and limiting their consequences. With reference to financial security, the Commission is asked to undertake further analysis and studies. A first report on the availability of financial security instruments and handling of claims shall be presented by 31 December 2014. Another report on the Commission's assessment of the effectiveness of the liability regimes in the EU in respect of the damage caused by offshore oil and gas operations is to be submitted by 19 July 2015. This report will include an assessment of the appropriateness of broadening liability provisions. The IUMI Political Forum will continue monitoring the financial security assessment and participate in discussions with the EU as appropriate.

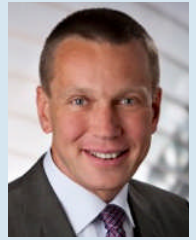
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Data and insight would help understand rising risks

In the first of a series of interviews IUMI puts some questions to Tom Boardley, Marine Director at Lloyd's Register, the global classification society who is one of our speakers at the Annual Conference.

Tom has enjoyed a varied and successful career across the maritime industry. Prior to Lloyd's Register, Tom held several senior management positions in the container shipping and ports industry. At the Japanese shipping giant NYK, he had managed the European operations for the container shipping division, including the co-ordination of related activities including inland logistics and supply chain management for major Japanese manufacturers. At P&O Ports, Tom had led business development and acquisitions activity, helping build a global network of container ports that was acquired by Dubai Ports World in 2006. He had also managed the Canadian business post-acquisition, based for a year in Vancouver B.C. For the first 24 years of Tom's career, he was with the container shipping division of P&O, originally trading as OCL and subsequently as P&O Nedlloyd. He held various management roles in the UK, Taiwan, Korea and Japan before being appointed as Director for Australia and New Zealand, based in Sydney, in 1996. Tom is an engineering graduate of Oxford University and is also a fellow of the Royal Institute of Naval Architects. His term as Chairman of the International Association (IACS) of Classification Societies was completed in June.



• How do you view the marine insurance market?

The marine insurance market is vital to world trade and global business. In a globalised world it is impressive that such breadth and depth of cover is available. The risks insured today are substantial and growing. It is impressive that the market acts as swiftly and effectively as it does to pay claims.

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

At Lloyd's Register the relationship with the insurance market is very important. In looking for continual improvement there may be ways for Lloyd's Register to help provide insurers with data and insight to better support the underwriting of marine risk. The rising concern over the concentration of risk in one hull with large cruise ships and containerships is one area where more assurance is required by some.

• What is the biggest issue currently for Lloyd's Register?

There are some significant challenges being faced by our clients today. Helping shipowners, designers and shipyards develop more fuel efficient designs is probably the most pressing of these. At its simplest level, classification exists to reduce the risks associated with the hardware of a ship. Constant efforts are made to improve technology, and the way in which it is implemented, in order to reduce risks. However, risk often seems to move around, or manifest itself in a different area after being reduced in another. New technologies and new regulations may introduce new risks. Recently, IACS has been helping the IMO to ensure that ships are not designed to comply with the Energy Efficiency Design Index (EEDI) by being fitted with engines that don't give enough power to cope in rough seas. Additionally, we are expanding ever more into the 'softer' side of risk management. There is a growing awareness that, while we can reduce risk through better regulations, better rules and better enforcement, risk has to be managed by people and we need increased focus on the human element and can also add value through all sorts of area of consulting. Another example is the opening up of Arctic sea routes by the changing climate. A route that was previously too risky for mainstream shipping may start to become commercially attractive to a wider range of vessels. Engine, hull, navigation and communication technology developments help to reduce the risks associated with such passages, but there will still be more vessels exposed to these risks. We need to take a systematic view of the whole risk picture, including the crew on a ship and the company which plans how the ship will be used.

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

Ideally? Retired multiple Wimbledon champion – but if I had taken a different fork in the road? Maybe I would have become an automotive engineer.

• What is the most important thing on your desk?

For business? My phone.