

Don't get caught out by fraud and never let crime pay, says IUMI



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A recent, high-profile fraud case has highlighted a number of issues that marine insurers should recognise and learn from if they are to continue to provide a comprehensive service for their assureds and retain their viability as commercial businesses. This was the topic at today's Legal & Liability Workshop as part of IUMI's (International Union of Marine Insurance) annual conference in Edinburgh.

The workshop drew on the extremely topical and complex fraud case involving the vessel *Brillante Virtuoso* and took the opportunity to debate a number of reminders that marine insurers would be wise to consider.



Background

In July 2011, the Suezmax tanker *Brillante Virtuoso* (149,601 DWT) was fully laden with a cargo of fuel oil worth around US\$100 million and en route Ukraine to China. It was reported that the vessel was under attack by Somali pirates off Aden who (it was said) had fired rocket-propelled grenades into the vessel causing a fire in the accommodation block. The crew were rescued by an American warship and, after a few days, the resurgent fire was extinguished and the vessel towed to safety.

The warship found no evidence of pirates and a subsequent investigation by a surveyor (Captain David Mockett) acting on the instructions of the hull insurer found no signs of a rocket attack. Tragically, he was killed in Yemen by a car bomb a few days later.

Although the vessel was purchased for US\$46 million, its value in June 2011 was only US\$13.5 million but it had been insured for US\$77 million. The hull war insurers, suspecting foul play, fought a lengthy court case and, in 2019, the High Court in England ruled that an attempted insurance fraud had, indeed, taken place and implicated the vessel owner, the master & chief engineer, and Poseidon, the Aden-based salvor in deliberately setting and fueling the fire on the vessel. The judgment can be found here - <https://www.bailii.org/ew/cases/EWHC/Comm/2019/2599.html>.

Whilst the hull war insurers were not required to pay-out, the shipowner's bank had taken out Mortgagees Interest Insurance (MII) which provides back-up cover to the bank should they lose the benefit of cover provided by the hull policy. Additionally, this MII cover included a clause preventing the MI insurers from suing the shipowner to recover the loss even though the shipowner was found guilty of fraud.

Charles Fernandez, Chair of IUMI's Legal & Liability Committee said:

"Tragically, the surveyor who first attended the vessel, Captain David Mockett, lost his life and that should not be forgotten. The ship was carrying a large cargo of fuel oil which, if spilt, would have caused a significant environmental disaster. Added to this, although two ship's officers were implicated, the remainder of the crew were innocent but the onboard fire had the potential to endanger their lives. The key lesson to learn is that underwriters must challenge suspected cases of fraud at the earliest opportunity to ensure wrongdoings are not perpetuated or repeated. By doing this, they might protect lives, livelihoods, the environment and their assureds".

"A sad reflection from this case is to realise that for some, crime does pay. The insurance community paid-out around US\$100million. The bank was reimbursed. A significant salvage claim was paid even though Poseidon, one of the sub-contractors was subsequently implicated in the fraud. The shipowner's loan was also paid-off. It was the insurers who picked-up the bill even though the High Court had ruled that a major insurance fraud had taken place. Individual insurers should learn from this case and take steps to protect themselves, and others, from this sort of crime."

The conference workshop highlighted a number of issues that would benefit from further investigation:

- The practice of insuring vessels for more than they are worth. If the *Brillante Virtuoso* had been insured for US\$13.5million and not US\$77million then there would not have been the incentive to commit fraud.
- There was no valid reason for the Mortgagees Interest Insurance to contain a clause that prevented the MI insurers from claiming against the owner when the owner's fraud had been

established. Although this clause is often included to protect the bank's relationship with its client, MI insurers should resist it.

- Like other markets, hull insurers strive to provide an effective and prompt claims service but complex claims need to be fully investigated.
- Underwriters must know who they are insuring and be certain to look beyond shell companies or similar.
- The surveyor who was sadly killed was appointed by the insurers. As a community, insurers should offer support to the family of anyone they appoint who is injured or killed while working on their behalf.

Charles Fernandez concludes:

"I'm extremely pleased that our conference has been able to highlight the many issues this complex fraud has raised in the hope that we can encourage further discussion and, hopefully, bring about some much needed and meaningful change to how certain aspects of marine underwriting is conducted."

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For further information contact:

Mike Elsom

Phone +44 7968 196077

Email mike@mikeelsom.com

About IUMI The International Union of Marine Insurance e.V. (IUMI) is a non-profit association established for the purpose of protecting, safeguarding and advancing insurers' interests in marine and all types of transport insurance. It also provides an essential forum to discuss and exchange ideas, information and statistics of common interest for marine underwriters and in exchange with other marine professionals.

IUMI currently represents 42 national and marine market insurance and reinsurance associations.

International Union of Marine Insurance

Grosse Elbstrasse 36, 22767 Hamburg, Germany

Phone +49 (0) 40 2000 747-0

Email info@iumi.com