



The Swedish Club

The global sulphur cap

working within the law

**The devil is in
the detail - Brexit**

US sanctions against Iran



Contents

Leader

Interesting times3

Loss Prevention

Case study: Grounding because of missed waypoint4
 Emergency Response Training in Vancouver.....6
 Claims at a Glance.....8

Sulphur Cap

Introduction to the Global Sulphur Cap10
 Exhaust gas scrubbers 2020 and beyond12
 Working within the law16

Interview

Brexit - the devil is in the detail18

Legal

Bunker quality disputes20
 Legal update.....24
 Treading the fine line between H&M and FD&D cover25
 US sanctions against Iran: The reinstatement.....26
 Slow cranes - A recent London arbitration.....28
 Defending soyabean claims in China29

Meet our crew

A time for optimism - Team Norway: Tore Forsmo32
 Waiting for the right opportunities: Erik Lund34
 A cosmopolitan background: Mats Fielding35

Maritime Resource Management

Human Performance and Limitations36

Club Information

Conference roundup38
 Notice board.....40
 Out and about42
 Staff news46
 Calendar/Quiz47



The Swedish Club

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Dear members and associates

Interesting times

Many things are happening in London at the moment, and with Lloyd's marine insurance market in particular. I believe it has less to do with the massive losses caused by hurricanes, earthquakes and fires in 2017, but rather the turmoil that is the effect of the ongoing review of underperforming insurance classes over a longer period.

Action plans are required to address loss making lines and to address deteriorating trends. As a result, quite a number of syndicates have decided to cut down, reduce, or stop underwriting marine risks.

The Marine side of our business is very competitive and it is apparent that capital providers have less patience with underperforming insurance business nowadays than in the past. The choice is to take sound action, or to quit.

The Swedish Club takes a long-term view; we provide stability and commitment in a cyclical market, which until now has been

soft to say the least. We have invested in people and resources to provide the service expected from us, even though pricing has been weak. Having said this, we do need to address the premium levels to stay in line with the underlying exposure. Members get a good deal by placing lead shares with the Club in this market - indeed, at any time.

Visiting members in different markets, I have many conversations that focus on 'the sulphur cap' and 'sanctions'. The common denominator of these regulations from a shipowner's perspective is the requirement of compliance.

There will be no grace period or phasing in; from 1 January 2020 the limit for sulphur in fuel oil used on board ships operating outside designated emission control areas, will be reduced to 0.50%. What to choose? Compliant sulphur blend fuel oil, gasoil, scrubbers or LNG? That is the question.

Tough US sanctions against Iran are now a reality, effective from the first week of November. The sentiment is that enforcement will be rigorous and less exemptions will be granted than in the past by the Office of Foreign Asset Control. We have experienced a very cautious approach by the US banking system; a reluctance to effect dollar transfers way ahead of the implementation of the sanctions.

The debate on these issues is covered in this edition of Triton, together with other features and the Club's social activities. I hope you enjoy reading it. 🇸🇪

Lars Rhodin
Managing Director

Safety scenario

Grounding because of missed waypoint



By Joakim Enström, Loss Prevention Officer

Each month the Club's Loss Prevention team issues a new safety scenario to assist members in their efforts to comply with international safety regulations and to follow best practice. Visit Swedish Club OnLine (SCOL) for more examples.

CASE STUDY

It was night and the vessel was sailing towards the next port close to the coast. It was also raining, so visibility was limited.

The 2nd Officer was on the bridge and acting Officer on Watch (OOW). The passage plan had been approved by the Master and the bridge team and it had been entered into the GPS and ECDIS.

Suddenly the vessel vibrated heavily and veered strongly to port. The OOW was confused as to what had happened. Soon afterwards the forepeak alarm sounded. The Master came to the bridge and asked what had happened but the OOW did not know.

The Master called the Chief Officer and asked him to check the forepeak. A couple of minutes later the Chief Officer informed him that there was water in the forepeak and that it was rising.

Suddenly the vessel vibrated heavily and veered strongly to port. The OOW was confused as to what had happened. Soon afterwards the forepeak alarm sounded.

The Master stopped the engines and the vessel drifted until the situation could be assessed. The Master realised that the vessel had hit the bottom and contacted the nearest Joint Rescue Coordination Centre (JRCC) and informed them that the vessel had grounded and was taking in water. He asked for assistance as he was unsure what had happened.

Fortunately there was no pollution or injuries and the steering gear, engines and

bow thruster were all operational. A rescue ship from the nearest port came to the vessel but no assistance was needed. The vessel was able to sail to the nearest port to assess the damage and berth without incident.

The vessel traded frequently in this area, so the voyage was not unusual. It was discovered that the navigation officer had forgotten to insert a waypoint in the GPS. This meant that the course took the vessel straight over a shallow area where it ran aground.





Issues to consider

When preparing the passage plan it is suggested that this is double checked by another officer to ensure all waypoints have been selected. The passage plan needs to be signed by all OOWs and the Master. It is prudent to carry out a two-person check of the passage plan and navigational equipment before departure. 🚢

The Master realised that the vessel had hit the bottom and contacted the nearest JRCC and informed them that the vessel had grounded and was taking in water.

Questions

When discussing this case please consider that the actions taken at the time made sense for all involved. Do not only judge but also ask why you think these actions were taken and could this happen on your vessel?

- What were the immediate causes of this accident?
- Is there a risk that this kind of accident could happen on our vessel?
- How could this accident have been prevented?
- Do we use all navigational equipment and reference publications when completing a passage plan?
- When the passage plan is completed, is it a requirement to carry out a two-person check?
- Is the OOW supposed to check the parameters of all navigational equipment e.g. ECDIS, GPS, Radar, VHF?
- Do we carry out a two-person check for critical operations?
- What sections of our SMS would have been breached if any?
- Does our SMS address these risks?

Emergency Response Training in Vancouver - a collaborative approach

Representatives from the Vancouver offices of Fairmont Shipping (Canada) and Valles Group were invited by Club Board member Jude Correa of Seaspan Ship Management to attend the latest Emergency Response Training exercise held at Seaspan's offices in Vancouver.



Jude Correa, Vice President, Seaspan Ship Management

Jude Correa had been following the development of The Swedish Club's Emergency Response Training programme since it began, and could see how it had benefited other organisations. Consequently, he invited the Club to run an ERT exercise at Seaspan Ship Management, saying: "We saw an opportunity to improve our processes and gain a lot from the exercise."

Realistic scenario

"The day was split into modules, which enabled us to identify our goals and evaluate how we had met them." He found the scenario was very realistic and relevant to Seaspan's business activities. "We discovered later that the exercise had been based on a real-life case that the Club had been involved with, and was a situation hitherto unknown to us," he says.

"We saw an opportunity to improve our processes and gain a lot from the exercise."

Contingency planning

Jude Correa found that one of the interesting elements of the training was the need to adapt the company's policies and procedures to the life-like situation that was presented. "It certainly helped to test our current policies and procedures and improve contingency planning."

All-in-one Club

"As The Swedish Club is a provider of both hull and P&I covers, it was particularly interesting to see how the various insurances applied, holistically, to the situation as it unfolded," he adds.



Captain Oscar de Gouveia Pinto, Valles Group

There is an element of risk in every maritime operation, says Captain Pinto – and the whole shipping industry is about managing that risk responsibly and being well trained and prepared for any emergency.

He was delighted to be invited to attend the ERT exercise alongside Seaspan, explaining: "Safety and safe operations benefit us all in the big picture, so we were delighted to be invited to join the exercise. It is a good idea to learn from each other. It is all about safety. After all, the officers manning another company's ship might end up on our ships. Well-trained crews are in all of our interests because we all fish from the same pool and there are only so many seafarers."

While Valles Group's business is focused on tankers, and therefore different to the container operations of Seaspan, Captain Pinto says there was still a huge amount of value to be gained from the exercise.

"Vancouver is a small city and we have good relationships with other businesses in the sector. So we see the value of sharing information to make it more productive – and we invite each other to events. It helps us to see how other shipping companies operate and this is a common good for us all."

Because Valles is in the tanker trade, it holds many regular drills and exercises, including working with the US Coast Guard and organising table-top exercises. "We have highly experienced crew and we do everything for safety," says Captain Pinto.

A new perspective

The Swedish Club ERT gave an added perspective on how dry cargo companies run their operations, he says.

"The whole exercise was based on a real event that happened a few years ago and played out very well. We were divided into groups, where we shared our insights into the situation and discussed what we would do in the particular scenario."



Captain Oscar de Gouveia Pinto
Valles Group

Overall, says Captain Pinto, the level of preparedness was put at around 90%. "The remaining 10% we took away with us, as helpful points we will learn from."

Seamless transition

"It was useful to know that we are on the same page and that most in the industry would act in the same way as

"The whole exercise was based on a real event that happened a few years ago and played out very well."

us. For us, an added benefit of the exercise was the fact that we could see how useful it was to be dealing with a club that offered a full range of insurances, with P&I and H&M claim teams working together seamlessly.

Preparedness

Also, the exercise involved a very persistent journalist from outside asking questions. Preparedness includes being ready to deal with the press – having a holding statement ready, not arguing with the press, focusing on key points, and ensuring transparency. That is also what we are trained for."

Captain Milan Tausan, Fairmont

The Swedish Club set up the ERT exercise very well, says Captain Tausan.

"First of all, it started with a fault from the ship's side – miscommunication. It was based on an actual case of a few years ago, so was very realistic. And it was not just representatives of the Club talking. The whole room took part and were very proactive; we all shared our opinions and explained our reasons behind them."

Communication

The exercise clearly demonstrated that the way in which an incident develops depends on how you handle it and the duties of each party, says Captain Tausan. "I have attended many exercises and they are often strictly technical. This exercise was very realistic – it started with the problem of miscommunication and emphasised the importance of knowing who to call,

"I have attended many exercises and they are often strictly technical. This was very realistic."

where to call and where to look for assistance. It's vital to talk to the right people and not to lose communication."

The maritime cluster in Vancouver is an open one, exchanging opinions and sharing experiences, says Captain Tausan. "We are in close contact with Seaspan and have a close relationship. Many of us served together with each other at sea. When there are general meetings or training courses or, in this case, The Swedish Club ERT, we take the opportunity to join in and exchange opinions."



Captain Milan Tausan
Fairmont

A fast changing world

He emphasises how important it is to keep carrying out a programme of emergency response exercises: "Things are changing so very quickly and you have to remember that." 🇳🇵

Claims at a glance

Interview with **Joakim Enström**, Loss Prevention Officer

The Swedish Club has launched its new edition of Claims at a Glance, a whistle stop tour of cases and statistics taken from its experiences in Loss Prevention over the last three years. Claims at a Glance offers the Club's own perspective on some of the real life cases it has recently dealt with and provides updates on some of the Club's key Loss Prevention publications from the last three years.

Claims at a Glance reviews both P&I and H&M issues ranging from cargo damage, navigational error and machinery through to piracy and injuries and illness.

The author of the report, Joakim Enström, Loss Prevention Officer at the Club, believes in the importance of

sharing the Club's knowledge base: "Accidents do happen and as an insurer we experience them every day. We believe by being transparent and sharing our statistics and experience from handling claims that we can raise awareness of issues and highlight best practices."

He understands that the outsider's perspective can sometimes be distorted. "Hindsight is a wonderful thing, and it is always easy to point the finger of blame following an accident. We may be in possession of the facts about how events unfold leading to an accident but what we don't know is exactly WHY these decisions were taken. It would have made sense for the individual at the time, so we need to find out exactly why that was the case and learn from that insight."



Some Claims at a Glance

Slips & falls



Slips and falls are the most common cause of injury claims, and are seen to be most common on bulk carriers and container vessels. This is of no surprise as most of these accidents happen while the vessel is loading or unloading

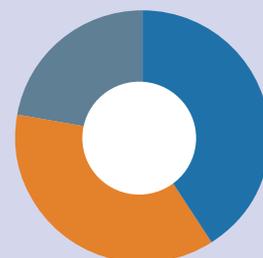
with stevedores on board and equipment lying on deck to secure containers or cargo hatch covers. During the cargo operation there is also a greater risk for crew members and stevedores to fall into the cargo hold.

Most common slips and falls*

(2013 – 2017)

Claims cost: => 5,000 - uncapped (USD)

Type of vessel: Bulk carrier, container, tanker



Sadly, the Club's case studies have shown that injuries generally occur because the injured person did not follow guidelines and procedures. However the question we should ask ourselves is why those procedures weren't followed?

*All data correct as of 23/04/2018

Pilot on board



In the time period studied the report finds that a pilot is on board ship during 30% of all collisions; 66% of all contacts and 58% of all groundings.

To enter and leave a port safely a pilot is most often required to be on board to ensure safe navigation. So why do such accident statistics occur?

A failure to integrate the pilot into the bridge team is very often the issue. For a successful pilotage the Master needs

to ensure that the pilot is fully briefed on the vessel and its limitations. At the same time the pilot needs to update the Master about the intended route, and if this is agreed with the Master, this route should be implemented into the voyage plan so that the OOW can monitor the vessel progress and voice any concerns to the pilot.

There also needs to be proper communication between the pilot and the bridge team with closed loop

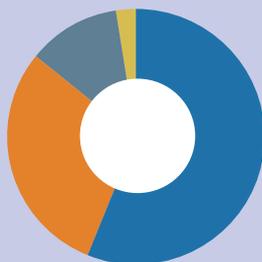
communication always preferred. How an efficient bridge team should be set up is defined, in the Club's *'Bridge Instructions'* booklet.

Proper communication is essential and the Club sees Maritime Resource Management (MRM) as the most efficient tool to communicate properly to ensure no information is missed or assumed.

Collision - pilot on bridge

(2013 - 2017)

Claims cost: => 10,000 - uncapped (USD)
Type of vessel: Bulk carrier, container, tanker

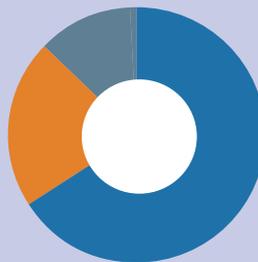


● No 56%
● Yes 30%
● Unknown 12%
● Not applicable 2%

Contact claims - pilot on bridge

(2013 - 2017)

Claims cost: => 10,000 - uncapped (USD)
Type of vessel: Bulk carrier, container, tanker

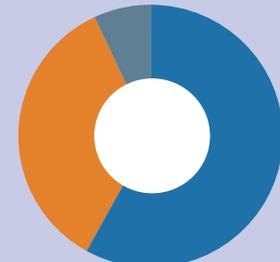


● Yes 66%
● No 21%
● Unknown 13%

Grounding - pilot on bridge

(2013 - 2017)

Claims cost: => 10,000 - uncapped (USD)
Type of vessel: Bulk carrier, container, tanker



● No 58%
● Yes 35%
● Unknown 7%

Claims at a Glance looks at what could and should have been done differently - would these actions have prevented the accident? Whilst there is often no guarantee that a different decision would have given a different result, Enström says "key learnings from the report should help identify when an operation is a high risk and encourage those involved in such activities to reevaluate the situation as it progresses.

"Unfortunately the most common causes of accidents are still poor communication, failure to follow procedures or that there are inadequate procedures in place on board to start with," he says. "In most accidents there are several well trained people involved. To ensure that the job is done successfully and safely, it is important that proper and efficient ISM/SMS procedures are in place. We

have to conclude that managers have to continue to focus upon training and ensuring that the crew on board and the shore department work as a team."

Claims at a Glance can be downloaded at www.swedishclub.com/loss-prevention/loss-prevention-publications/ or order a printed version by emailing marketing.comms@swedishclub.com

Introduction to the Global Sulphur Cap



Simon Bennett
Deputy Secretary General of ICS

The International Chamber of Shipping (ICS), is the principal global trade association for shipowners, representing all sectors and trades from 37 countries, covering more than 80% of the world merchant fleet.

One of the most immediate and pressing challenges facing ship operators is the impact of the global cap on the sulphur content of marine fuel, which will come into full effect on 1 January 2020.

In October 2018, the IMO MEPC re-confirmed that this major regulatory change will definitely go ahead in 2020 as scheduled, despite continuing questions in some informed quarters as to whether sufficient quantities of safe and compatible fuel will be available in every port worldwide.

The 2020 global sulphur cap is the requirement under amendments to Annex VI of the IMO MARPOL Convention, agreed in 2008, for all ships trading outside of sulphur Emission Control Areas (ECAs) to use fuel with a sulphur content not exceeding 0.5%. This is a reduction from the current permitted maximum of 3.5%.

This improvement in fuel quality will bring about huge benefits to human health in coastal areas not already protected by ECAs, where the majority of the world's population lives, as well as reducing shipping's impacts (albeit relatively small) on acidification of the ocean. This new IMO regime is fully supported by the



If, in 2020, oil prices remain at around USD 80 per barrel, it has been estimated that the differential between compliant low sulphur and the current cost of residual fuels could spike by as much as USD 400 per tonne.

global industry as represented by ICS. But the economic impacts of the resultant additional fuels costs are likely to be significant.

Cost implications

It is important to remember that the IMO decision in 2016 to proceed in 2020 focused entirely on the likely availability of compliant fuel and took no account of the possible purchase price.

The cost of low sulphur fuels is typically about 50% more than the cost of residual fuel, most commonly used by ships today when operating outside of ECAs that apply in North America and North West Europe, in which fuel with a sulphur content of 0.1% or less must be used. In response to the greatly increased demand for low sulphur fuels that will now arise in 2020,

the cost of bunkers compared to the current price of residual fuels is likely to increase considerably.

Even if the cost of oil stays at the lower levels which have applied since the significant fall in prices in 2015, this mandatory switch to low sulphur fuel in 2020 could mean that bunker costs for the majority of ship operators could return to their 2014 peak. If, in 2020, oil prices remain at around USD 80 per barrel, it has been estimated that the differential between compliant low sulphur and the current cost of residual fuels could spike by as much as USD 400 per tonne.

Implementation planning

To assist shipping companies prepare for implementation, ICS has produced comprehensive guidance on

implementation planning, to help ensure compliance across the shipping industry with this regulatory game changer.

Shipping companies may need to start ordering compliant fuels from as early as the middle of 2019, and they are strongly recommended to commence developing implementation plans as soon as possible.

If a ship, as now recommended by IMO, has a suitably developed implementation plan, then the ship's crew should be in a better position to demonstrate to Port State Control that they have acted in 'good faith' and done everything that could be reasonably expected to achieve full compliance.

This improvement in fuel quality will bring about huge benefits to human health

This need to demonstrate good faith could be particularly important in the event that safe and compliant fuels are unavailable in some ports during the initial weeks of implementation so that Port State Control authorities can take into account the ship's implementation plan when verifying compliance with the 0.5% sulphur limit.

The new ICS guidance explains that the implementation process will need to address the possibility that some ships may need to carry and use more than one type of compliant fuel in order to operate globally. This could introduce additional challenges such as compatibility between different available grades of fuel that could have significant implications for the safety of the ship as well as its commercial operation.

While ICS is committed to helping to make the 2020 sulphur cap a success, the full implementation picture is far from complete, and that primary responsibility for ensuring that compliant and compatible fuels will be available rests with oil suppliers, as well as those IMO Member States which have collectively agreed to implement this major regulatory change in 2020. 🚢



Exhaust gas scrubbers 2020 and beyond

Practical considerations





Tony Grainger
Marine Engineer, TMC Marine

With more than 20 years seagoing experience, Tony is involved in newbuild claims and disputes for owners and shipyards, machinery and propulsion problems, cargo fire and damage assessments and condition surveys for various types of vessels.

The challenge

1 January 2020 gives worldwide shipping possibly one of its greatest regulatory challenges for many years, providing the shipowner with a huge task ahead.

Many shipowners and operators were hoping that the IMO MEPC would recommend a delay in the implementation of the Regulation 14.1.3 of MARPOL Annex VI, which would have given them more time in which to make a decision as what their strategy will be regarding low sulphur operation or installation of exhaust gas cleaning systems. If there was a delay, it would have given refineries time to gear up for a production switch from high sulphur heavy fuels (3.5%) to low sulphur (0.5% or lower); however it now appears that the IMO will not deviate from the 2020 date, and an estimated production switch of up to 4 million barrels per day will be required to satisfy the demand of non-scrubber vessels. This requirement will place considerable strain on the worldwide infrastructure of marine fuel supply and consequently is likely to result in an expected rise in fuel prices of compliant fuel.

The anticipated rise in fuel costs is a big unknown and market analyst's figures range between USD 100 per tonne to USD 600+ per tonne, showing that even the experts have no idea of the potential cost spread between high sulphur (HS) and low sulphur (LS) fuel; this spread is seen as an opportunity by some operators but a massive risk by others.

One thing it will produce, at least at the beginning, is a two-tier charter market – scrubbers installed versus no scrubbers.

The options

Vessel operators have two choices, install an exhaust gas scrubber or burn LS or alternative fuels, and to make that choice there are a number of considerations including: vessel fuel consumption; operating profile; vessel age; power availability; and, probably most importantly, Return on Investment.

Once the choice of path has been made, and the owners have either chosen to install a scrubber, to benefit from the expected lower price and of the plentiful HS fuels, or 'bitten the bullet' by burning LS fuels and accepting a higher, possibly more volatile, fuel price; then a whole new world of challenges opens up, depending on their decision.

Technical issues

Due to the expected initial problems with the worldwide availability of low sulphur fuels it is expected that quality may be an issue, especially where fuels are needed to be blended. We are expecting a number of bunker claims and even engine failures until the initial supply problems and infrastructure are settled.

The burning of distillate fuel can cause issues with engine components such as fuel pumps due to the low viscosity of the fuel and can cause excessive wear and scuffing due to the inadequate lubrication properties. Many engine manufacturers have replacement parts for their fuel systems to prevent this but at a significant cost to the vessel operator.

Apart from the obvious non-compliance issues that will inevitably occur, we foresee a number of issues arising out of the installation of exhaust gas scrubbers. Firstly, apart from the obvious existing large manufacturers, there are so many companies that have started in the business of scrubber production that there will inevitably be failures of technology or even the financial failures of the entire company (as we have already seen with the Ballast Water Treatment Systems).

Outfitting

Due to the relative inexperience of shipyards in the installation of retrofit scrubber systems, it is expected that there will be quality issues with the outfitting. The potential problems will include; vibration issues, due to the additional structure required and the long pipework runs and corrosion problems due to the aggressive nature of the acidic properties of the sulphur. This corrosion is already manifesting itself in some existing systems' pipework and shell plating around the discharge area. The corrosion in pipework systems has now been somewhat mitigated by the use of Glass Re-enforced Plastic (GRE) pipework and higher grade, and sometimes coated, stainless steel pipework at the wash water outlet of the scrubber and at the ships side. We have already seen on newer projects the area of the shell plating where the overboard is located has had a chemical resistant coating applied to prevent any corrosion. It is of note that classification societies now require an annual inspection of the exhaust gas scrubber system pipework to check for corrosion.

Installation

The installation of a scrubber system may have an impact on the operation of any engine/boiler to which they are added, and may cause excessive exhaust system back pressure. When choosing a scrubber manufacturer it is important to calculate the new back-pressure of the system and liaise with the engine/boiler manufacturer to establish as to whether it is within the acceptable design parameters in order to keep the engine compliant with the certified NOx emissions and not affect the warranted fuel consumptions and the Energy Efficiency Design Index (EEDI) of the vessel.

Closed loop /hybrid systems

For closed loop/hybrid systems there is also the issue of the handling and storage of the bulk chemicals that are used to treat the acidic wash water, also the handling and storage of the waste products from the wash water treatment. The storage of such chemicals and waste can cause major

issues for shipowners as, currently, there is not a particularly comprehensive infrastructure for the supply of the chemicals, nor disposal facilities for the waste, therefore the vessel will be required to have the capacity to store and carry a large amount of these substances until they reach ports that can handle them on and off.

Failures

In case of system failures, it could be the case that the vessel does not have enough compliant fuel (if any) in order to get to a port where either the scrubber system can be repaired or compliant fuel can be loaded (assuming there are clean tanks). This scenario would mean that

The installation of a scrubber system may have an impact on the operation of any engine/boiler to which they are added, and may cause excessive exhaust system back pressure.



the vessel would be running on high sulphur fuel without any exhaust cleaning and, currently, there is no guidance as to whether the ship operator would be exempt from any potential penalties for non-compliance with the regulations due to technical problems with the scrubber system.

Outlook

We are still in early days with the installation and commissioning of retrofit scrubber systems and it is difficult to say whether or not all the systems will be a success and perform within the required regulations. However, it is clear that systems that have been installed previously at newbuild appear to be working well and with very few reported issues.

Fuel prices

Most of the current analysis suggests that after 1 January 2020 there will be initially a significant increase in low sulphur fuel prices and possibly shortages in some areas. During this

There are still many questions about how the emissions compliance will be policed around the world.

period, owners that have installed exhaust gas scrubbers will undoubtedly benefit financially, however it is unclear as to how long this period will be.

Local guidelines

There are still many questions about how the emissions compliance will be policed around the world and it may be the case that the local area authorities have their own guidelines. This will undoubtedly cause initial confusion and could lead to vessel fines, and possibly even detentions.

Discharge

A majority of operators are installing open loop systems and most, if not all, of these systems discharge all of the sulphurous wash water overboard in the open sea. It is of note that MARPOL ANNEX VI is concerned with air pollution and, whilst it is without doubt that the SO_x air emission reduction will be environmentally beneficial, it may be the case that we are just moving the problem elsewhere. It is feasible that countries will begin banning any overboard discharge from scrubber systems in their territorial waters, causing a rethink in the type of scrubber installed; it appears many owners are already considering this by installing open loop systems but 'hybrid ready', therefore conducting a pre-engineering survey for a hybrid system and installing the necessary piping connections in order to speed up the conversion to a full hybrid system.

There are interesting times ahead in the shipping industry's relationship with the marine fuels suppliers and this will likely be somewhat tested in the months following 1 January 2020. 🇬🇧



Working within the law

Snapshot:

MARPOL ANNEX VI - the international convention for the prevention of pollution from ships

.....
A global sulphur limit for marine fuel of less than 0.5% m/m will apply from 1 January 2020, and vessels without scrubbers will be prohibited from carrying non-compliant fuels from 1 March 2020. The current limit of less than 0.1 m/m inside ECAs will remain unchanged.

Legal framework

Regulation 14 of MARPOL Annex VI contains rules relating to Sulphur Oxide emissions, while regulation 18 sets requirements in relation to fuel oil quality.

Compliance and enforcement

Compliance is mandatory, and enforced by Port State Control (PSC) in coastal states which are party to MARPOL, who also decide the relevant 'control measures' in case of breach. These can include heavy fines or even detainment of the vessel.

Practical and legal issues

Future charterparties will need to contain specific terms which deal with the new regime and the issues will be different for vessels with and without scrubbers.

Existing charterparties which extend into 2020 and beyond may also benefit from a review, and if uncertainty exists, agreements should be reached to avoid potential disputes.



Paul Harvey
Associate, Piraeus, Ince & Co

Paul advises on a variety of wet and dry shipping litigation and is a member of Ince & Co's International Emergency Response Team.



Jamila Khan
Partner, Piraeus, Ince & Co

Jamila specialises in shipping and trade/commodities, advising on a variety of shipping and ITC disputes and also drafting/negotiation of contracts in particular MOAs.

Practical considerations

.....
shipowners are faced with a difficult decision. In addition to the practical aspects, what areas of the law will need to be considered? How will the new requirements affect a voyage?

Scenario

A ship is on long-term time charter using the NYPE 46 form. A clause paramount, the BIMCO Bunker Fuel Sulphur Content Clause for Time Charter Parties 2005 and the BIMCO Bunker Quality Control Clause for Time Charter Parties is incorporated. Bunkers (high and low sulphur fuel) on redelivery are to be about the same as on delivery, with prices specified for HSMGO (high sulphur marine gas oil) and LSMGO (low sulphur marine gas oil).

Seaworthiness

Owners must exercise due diligence to make the vessel seaworthy at the commencement of each voyage, including keeping the vessel in Class and comply and 'legally fit' for the chartered service.

Owners are not required by the charterparty to install scrubbers. Provided

the vessel can burn compliant fuels, including low sulphur fuel, the vessel will not be unseaworthy or unfit for the chartered service by virtue of having no scrubbers. In contrast, if a vessel needed modifications in order to be able to burn compliant fuel, this is for owners' cost and account.

If scrubbers are installed, generally, the time and costs associated with installing, maintaining and repairing them is for owners' account, and any break down of scrubbers would be an off-hire event under clause 15 if it prevented the full working of the ship.

Crew training is therefore crucial as scrubbers are a new piece of equipment, and owners will be liable should their crew not be properly trained in their use.

Cost of bunkers

Charterers must provide and pay for compliant fuel. The cost is for charterers' account, and vessels without scrubbers will not be able to burn cheaper, high sulphur fuel from 1 January 2020, nor carry it from March 2020. The potential costs saving on high sulphur fuel may

make ships with scrubbers more attractive to prospective charterers.

Quality of bunkers / removal of non-compliant fuel

Charterers must supply bunkers which comply with ECA zone rules, which comply with ISO 8217 standards, and which are 'of a quality suitable for burning in the Vessel's engines and auxiliaries'.

As mentioned, vessels without scrubbers will not be permitted to carry fuel with a sulphur content of more than 0.5% m/m beyond 1 March 2020. In case of breach, the relevant state shall take into account 'all relevant circumstances' when assessing the penalty (usually a fine). Where non-compliant fuel is all that is available, necessity may dictate that a vessel has to stem and burn non-compliant fuel.

If charterers have supplied non-compliant fuel prior to 2020, this will need to be removed from the Vessel by 1 March 2020, the cost of which is for charterers' account (it is their fuel). If a vessel is still carrying non-compliant fuel post 1 March 2020, whether any fines can be recovered from charterers will probably depend on the circumstances and how it has come to be that the fuel is still on board.

Vessels with scrubbers will not be required to remove non-compliant fuel, and will be able to continue being supplied with it, and burning it on or after 1 January 2020.

Bunkers on redelivery

The cost of HSMGO and LSMGO are provided for, but what does this mean post 2020? From 2020 there will be three categories of fuel: fuel with sulphur content of less than 0.1% m/m, fuel with sulphur content of less than 0.5% m/m, and fuel with sulphur content of less than 3.5% m/m. Fuel other than HSMGO and LSMGO on redelivery will be purchased from charterers at actual cost.

It is suggested that post 2020, in all cases, 'low sulphur fuel' should sensibly be interpreted to mean fuel with a fuel sulphur content of less than 0.1% m/m,

i.e. category (a) above. Vessels without scrubbers will not be able to burn category (c) fuel, and so 'high sulphur fuel' should sensibly be interpreted to mean fuel with a sulphur content of less than 0.5% m/m, i.e. category (b) above. Vessels with scrubbers will be permitted to carry and burn fuel falling under category (c) above, and so 'high sulphur fuel' would also encompass this.

A sensible solution would be for parties to discuss addenda to existing charterparties to deal with any uncertainty, by reference to MARPOL Annex VI.

Switching fuels

Different limits on sulphur emissions exist inside and outside of ECAs, and this will continue beyond 2020. Crew need to be trained to switch between fuels competently.

Performance warranties

Warranties given for specific fuel types may no longer be relevant, or may need revision. Owners should check the vessel's performance prior to giving warranties relating to new fuels – speaking to engine manufacturers is recommended.

As can be seen there are various issues which shipowners need to be considering.

Charterparties should ideally make reference to MARPOL Annex VI and appropriate considerations will need to be given to consumption warranties and prices on delivery and redelivery.

Vessels without scrubbers will need to stop burning non-compliant fuel on 1 January 2020, and have such fuel removed prior to 1 March 2020. Vessels with scrubbers will have a commercial advantage in the short term, but how long this lasts will depend on the oil industry's ability to respond to the technical issues faced in producing abundant quantities of compliant fuel.

If owners are in doubt about the provisions of any existing charterparties, or over what to include in future charterparties, we recommend that they should seek further advice. 

Brexit the devil is in the detail

Interview: **David Griffiths**, Executive Advocate - Claims and Client Services, Aon

'Brexit means Brexit', British Prime Minister Theresa May famously said. But for those at the sharp end in insurance and reinsurance, Brexit means a complex melting pot of implications – bringing in geography, liability, some big question marks over authorisation, and numerous other regulatory issues. Brexit, in short, means a very considerable amount of hard work to untangle it all.

David Griffiths, a qualified solicitor, says: "When you get into the detail, Brexit gets complicated. And sometimes it is quite difficult to see the wood for the trees."

He joined Aon five years ago and at the beginning of this year moved to the group's reinsurance team as Executive Advocate. "As soon as I arrived, I was asked to work on Brexit," he says.

There is no point in asking a general 'how will Brexit impact the insurance world' question – Griffiths is indeed straight into the detail.

"If you are a British domiciled (re) insurance company or intermediary, Brexit will have quite a considerable effect on the way your business is

structured, because all British-domiciled companies potentially lose their rights to rely on a EU regulatory passport," he says. "At the moment, such a company can sell a policy to a German policyholder, for example, without requiring additional authorisation. As it stands, with no deal, on 29 March 2019, that stops."

Contract continuity/performance

This creates an obvious issue on business going forward but also has implications going backwards, in terms of contract continuity/performance issues, he says. "If you have accrued claims on prior years' contracts, how can the UK continue to pay to a German policyholder? There was quite a lot of concern across the market, really amplified by this question mark over the ability of UK carriers to pay claims."

"Lloyd's of London has announced that it will pay claims regardless of any regulatory hurdles it might encounter; other industry participants have put plans in place to ensure claims can be paid," says Griffiths.

"Lloyd's and others are doing a good job in pressuring regulatory bodies to solve that crisis, because a considerable amount is at risk – i.e. the money that an insurer might owe to the policyholder, but for which it might not have the correct regulatory licence/approval to pay."

Options

There are a lot of proposals and information out there on how a UK company might deal with the situation. Carriers are establishing new European entities and splitting their EU and UK businesses, says Griffiths.

"The liability has to be in the right jurisdiction to pay claims. There are a number of carriers that have been planning for this scenario for a long time. Some have already received authorisation for their new companies and Part VII transfers. New companies have to be centres of substance and not just a 'name'."

Temporary Permission Programme

As to those at risk of not being paid for claims, that risk applies to small policyholders and large corporate commercial clients alike. The Financial Conduct Authority (FCA) and Prudential Regulatory Authority (PRA) have both provided for a temporary permission regime which should allow EU-based insurers and carriers to continue to pay UK domiciled clients. In short: "The obligation to pay claims still exists but the regulatory authority could be an issue."

According to the FT, experts say that USD 41 trillion worth of derivatives are potentially at risk in the event of hard, no-deal Brexit, so the problem is not specific to insurance.

"Lloyd's of London has announced that it will pay claims regardless of any regulatory hurdles it might encounter; other industry participants have put plans in place to ensure claims can be paid."

Business as usual

“On the insurance side, there are companies doing everything they can to make sure they have European operations in place to continue to write EU/EAA business. Lloyd’s has confronted the issue and developed its own Brexit solution by creating an insurance carrier in Belgium. This is a bold solution, because it becomes, in effect, fronting entity and allows people to access the London market at minimum cost. Lloyd’s went out quite early with its solution and it will be operational for the 1 January 2019 renewals.”

Griffiths says he would imagine that most UK companies now have Brexit plans in place to ensure they can continue to service their EU/EAA clients.

And he does have some positive words: “These plans focus on a worst-case scenario of no deal being agreed between the UK and the EU. But we hope there is a deal to make sure there is at least a transition period up until 31 December 2020 to allow the industry to be even better prepared for the new world when it arrives.”

Reinsurance

While this has been a ‘learning as you go’ exercise the issues are less profound for the reinsurance sector because the regulatory regime is different, says Griffiths. “Clients are, in the main, allowed to buy non-admitted reinsurance. This makes the regulatory issues different to direct insurance.”

Solvency II

The big question mark for reinsurance buyers is whether the UK will be granted ‘equivalence’ status under Solvency II.

The big question mark is whether UK will be granted ‘equivalence’ status under Solvency II.

“The UK is considered to be the most highly developed regulatory regime in Europe – it is considered ‘Solvency II plus’. There would consequently seem to be no reason not to grant ‘equivalence’ to the UK. However, there is no guarantee, and the industry is planning for that scenario.”

Moving forward

Given the global nature of the reinsurance industry, he is optimistic that the solutions being put forward for UK companies working with European clients should work – “hopefully ensuring there is minimum disruption to any policyholders”.

Aon is formulating a series of contingency options, says Griffiths. “We are the largest insurance/reinsurance broker globally, so we have an extensive infrastructure in Europe. We are looking at the ways in which we can service all our clients by utilising our presence in the EU in order to minimise disruption to our clients.”

The views and opinions expressed in this article are the personal views of David Griffiths and do not necessarily reflect the official policy or position of Aon.





Bunker quality disputes

Testing methods for bunker fuels

Bunkers are usually ordered to ISO 8217 specifications, a standard which defines the fuel as consisting of 'hydrocarbons from petroleum crude oil' although it may also contain 'hydrocarbons from synthetic or renewable sources'. ISO 8217 'specifies the requirements for fuels for use in marine diesel engines and boilers prior to conventional onboard treatment' and provides a list of specifications primarily for the required physical qualities to ensure reliable engine operation, such as maximum limits for density and catalytic fines¹.

As a complex mixture coming from a variety of sources, there is no finite list of all the chemical compounds expected to be found in marine fuels, or the specific concentrations of each component. In general, this is addressed in Clause 5 of ISO 8217, which states that 'The fuel shall be free from any material at a concentration that causes the fuel to be unacceptable for use...' The wording of Clause 5 varies slightly across the different editions of ISO 8217, although the general idea remains the same, that is the fuel should not contain deleterious materials. However, the standard itself does not provide a specific test method.

Gas Chromatography/Mass Spectrometry (GC-MS) is a widely used method for detecting chemical compounds, in particular those that are present in low concentration levels. A standardised GC-MS method which allows for the quantification of chemical species at low levels in marine fuel oils and cutter stocks is available: ASTM D7845². However, the method is not widely used and instead many laboratories have developed their own in-house proprietary GC-MS methods for fuel oil testing. Various methods such as direct infusion, head space analysis, vacuum distillation, acid extraction, solid phase extraction (SPE), esterification, or pyrolysis GC-MS have been offered for investigative testing of fuel oil. The principal difference amongst these methods is the manner by which the sample is prepared or pre-treated prior to being actually injected into the GC-MS³.

¹ ISO 8217: 2017 Sixth Edition.

² ASTM D7845 – 17: Standard Test Method for Determination of Chemical Species in Marine Fuel Oil by Multidimensional Gas Chromatography/Mass Spectrometry.

³ As an example, head space analysis involves heating a sample in a sealed container at a certain temperature for a certain length of time, after which the vapour is taken from the space above the liquid (i.e. the headspace) and injected into the GC-MS. As one might expect, this method would detect the more volatile compounds.



Rene Angelo Macahig
Consulting Scientist, Andrew Moore & Associates, Singapore

Rene has extensive experience in research and academia, and expertise in structural chemical analysis

Bunker fuels are complex mixtures. They can be products of long and complicated supply chains, starting from the refinery to the point of delivery at the vessel's manifold.

Developments in refining technology as well as increased onshore demand for more valuable light products have had an impact on the quality of residual fuel. Further, statutory requirements for low sulphur fuel have led to extensive blending, and as such the fuel being supplied to the vessel can be a mixture of components from various sources. Fuel quality can be compromised at several points in the supply chain, up to and including delivery to the vessel, and best practices indicate that quality checks should be carried out and documented at each point of custody transfer along the chain.

Recent contamination cases

Our consultants and scientists have recently attended a spate of contamination cases, where bunkers were found to be mostly within specification for the routine ISO 8217 parameters, however when put in use were reported to cause machinery issues.

Many of these cases progressed to further testing for contaminants, using investigative techniques such as GC-MS.

There have been many reports from several large testing houses correlating certain chemical substances, which have been detected by GC-MS, to reported machinery issues on board vessels.

Given the variation in in-house GC-MS methods used by different testing laboratories, it became apparent that different methods could detect, and possibly quantify, different types of chemical compounds at different concentration levels. However this means that it becomes difficult to make direct comparisons between test results from different laboratories.

Further, although GC-MS provides a sophisticated method to detect and quantify various chemical compounds in fuel oil, half the challenge is interpretation of the test results. As far as we are aware, there are no published studies in scientific literature regarding the direct



cause-and-effect relationship between any particular chemical compound or type of compounds, and the reported machinery damage, aside from those explicitly included in ISO 8217 (e.g. catalytic fines).

ASTM D7845 notes 'A great many types and concentrations of chemical species are found in marine fuel oils. A root cause relationship between the presence of such species or their concentration in fuels and any failure modes allegedly induced by the use of these fuels has not been established.' Annex B of ISO 8217

also notes that '... in most cases, sufficient data are not available with respect to the effects of any one specific material, or combinations thereof, on the variety of marine machinery systems in service, on personnel or on the environment.'

Sample sizes

On the other hand, there have been many reports from several large testing houses correlating certain chemical substances, which have been detected by GC-MS, to reported machinery issues on board





In general, sampling should commence simultaneously with the bunkering operation. Care must be taken to ensure the sampling equipment (e.g. drip sampler, cubitainer) is clean, and secured during the duration of the sampling. To ensure homogeneity of the replicate samples, the cubitainer should be shaken, then poured into the sample bottles in multiple passes (at least twice) to fill each bottle in turn. The sample bottles should be secured with uniquely numbered tamper proof seals, and countersealed where

the same laboratory. Further, any in-house method would likely be challenged hence it is important the method is reviewed, agreed upon, and if possible, witnessed by the disputing parties. Given the recent prevalence of chemical contamination cases, there appears to be a backlog of samples to be tested at the laboratories capable of GC-MS, and turnaround times could take longer than usual.

Proper documentation

When vessels experience problems during the use of the fuel, and engine damage occurs, it is crucially important to document the circumstances thoroughly, including the dates and times of occurrences, the duration of use, the tanks used, and of course the type of damage noted. Samples should be taken from the fuel system at various points, including before and after the separators, at the inlet to the main engine and after the transfer pump, as well as samples of any sludge or sediment from filters and separators, and exhaust valve and turbo charger deposits. In addition, damaged components should be preserved and retained, and photographic evidence taken of any blocked filters and separators.



Dealing with problems

If bunkers supplied to the vessel are determined to be off specification, there are several possible scenarios to deal with the fuel, depending on the particular circumstances of the matter. If the fuel is only slightly off specification to certain parameters, it might still be used as it is, following the instructions provided by a third-party laboratory and/or a technical expert to ensure safe usage. The fuel may also be blended with another stem to produce a combined fuel that is within specification, although in practice thorough and effective blending on board may not be easily achieved and is warned against by insurers. The fuel can also be re-processed on board by using additives, although this may take some time and would require technical guidance from the additive supplier. Finally, the offending fuel can be de-bunkered, which may require additional time and costs, as well as replenishment of the bunkers. ⚠️

vessels. Correlation does not necessarily equate to causation - however in general any such correlation becomes stronger with increasing sample size, for example when similar machinery issues are experienced on vessels which have bunkered the same batch of fuel from the same supplier.

Practical advice when sampling

Bunker quality disputes will often hinge on the authenticity and integrity of the samples taken during delivery, which are generally the continuous manifold drip samples taken throughout the bunkering. It is further recommended that a crewmember is closely monitoring the bunkering and sampling.

When vessels experience problems during the use of the fuel and engine damage occurs, it is crucially important to document the circumstances thoroughly.

possible, the details for which should be well recorded in the respective sample labels and bunker delivery notes⁴.

In the case of disputes involving possible chemical contamination, it may be useful for any investigative testing to be carried out to the same method (e.g. a particular GC-MS method), and where possible at

⁴ In compliance with Standard Code of Practice for Bunkering SS600/TR 48, in the case of Singapore.

Legal update

Improved visibility in the muddy waters of sanctions

SANCTIONS  **SANCTIONS**

Hot off the press, the English High Court has provided useful guidance on the interpretation of sanction clauses in insurance contracts*. It is difficult to think of any more topical issue, with the US reinstating further sanctions against Iran on 4 November and renewals of P&I policies and reinsurance contracts just around the corner.

The question before Mr Justice Teare was whether the insurer, relying on a sanction clause, was relieved from paying a claim on the basis that the payment would expose the insurer to US sanctions. On the face of it, the situation was immensely complex; the incident happened in September 2012, the claim under the policy was made in March 2013, and the lawsuit was made in May 2018. During this period of time, the US sanctions had changed several times.

All about timing

The Judge did an admirable job to achieve clarity. Firstly, he concluded the term 'expose to sanctions' means that payment of the claim would trigger a

legal remedy, not merely that there is a risk for a legal remedy. Secondly, by thoroughly analysing the US sanctions regime, the judge concluded that the insurers were protected until 11:59 pm EST on 4 November by an exemption period in the legislation, meaning the insurers could lawfully pay the claim up to that moment (the judgment was handed down on 12 October). As a result, the insurers could not rely on any sanction exposure to refuse the claim. Thirdly, the relevant sanctions clause did not extinguish the insurers' liability to pay the claim – it merely suspended the obligation to pay the claim as long as the payment was prohibited. Notably, the insurers had been prohibited to pay the claim before 16 January 2016, then they were entitled to pay the claim between 16 January 2016 and 4 November 2018, and would subsequently be prohibited to pay the claim after 4 November.

The blocking regulation may not be so blocking

One additional query addressed by Mr Justice Teare concerned the EU's so called 'Blocking Regulation', which prohibits EU companies to follow US extra territorial sanctions. The



by Anders Leissner
Director, Corporate Legal & FD&D

claimants had argued that the insurers, due to the Regulation, could not rely on the US sanctions to refuse the claim. Although the question was superfluous – the insurers were deemed not to be exposed to US sanctions – the Judge helpfully provided his thoughts on the situation. The conclusion was that the Regulation was not applicable. If the insurers had been exposed to sanctions and refused the claim on that basis, the refusal would not have been due to complying with the US sanctions, but instead because of a contractual provision.

Iran sanctions will no doubt remain on the agenda for the foreseeable future. For further information about the latest developments (at time of writing) please turn to page 26. 📄

**Mamancochet Mining Ltd v Aegis Managing Agency Ltd & Ors* [2018] EWHC 2643 (Comm)

Treading the fine line between H&M and FD&D cover

Anders Leissner
Director, Corporate Legal and FD&D



FD&D waits its turn

Shipowners and charterers today demand a full spectrum of marine insurance cover, requiring seamless cover and service in the event of an accident involving several classes of insurance. Those insured with The Swedish Club have the advantage that the Club offers a seamless transition, and that any issue will simply be taken care of by the Club notwithstanding what badge the insurance is given.

One particular area of join that we see giving particular added value to members is between H&M and FD&D, the reason being that it is not unusual to see a claim against a third party for uninsured losses in the case of hull and machinery damage.

One example of this is when bad bunkers cause engine damage and time losses. The FD&D insurance does not apply in the case where a cost or expense is covered by another class of insurance (Rule 10:3). As a result, the situation will primarily be dealt with under the auspices of the H&M (and any Loss of Hire) cover in terms of management of the situation and reimbursement to the member. Then, if there are any remaining uninsured losses such as deductibles, the FD&D lawyer will assist the member to recover that loss from the wrongdoer. To the extent the claim against the wrongdoer will include sums paid for under the H&M policy, costs for the recovery should be apportioned on the files on a pro rata basis. The same principle applies in case of any damage caused by third parties such as stevedore damages.

In sum, if hull and machinery damage exceeds the H&M deductible the case should be dealt with under the auspices of that insurance. The FD&D insurance is triggered only in case of any uninsured losses. This distinction between H&M and FD&D, and the different interests that they serve to protect, is even more important should different insurers be involved.

Despite the seemingly secondary nature of FD&D insurance, it is important to keep in mind that the FD&D insurer must be involved as early as possible in a case, in order to be able to approve any costs incurred which is a condition for cover (Rule 6).

The line between H&M and FD&D may be fine, but it is also quite clear.

Those insured with The Swedish Club have the advantage that the Club offers a seamless transition, and that any issue will simply be taken care of by the Club notwithstanding what badge the insurance is given.

US sanctions against Iran: The reinstatement



By Laia Politou
Senior Claims Executive, Lawyer, Team Piraeus

On 8 May 2018 President Trump announced that the United States would withdraw from the Joint Comprehensive Plan of Action (JCPOA) causing a change of course between the EU and the US with respect to Iran. Despite the fact that the US indicated that the US sanctions which had been suspended in January 2016 would be re-imposed, the EU decided to uphold the terms of the Iran deal, including the sanctions relief. The different approach however, between the EU and the US creates a number of crucial challenges for companies. This is

especially the case for shipping, where it is a common scenario that not all the parties involved in a transaction are known

from the outset. This aspect makes the due diligence requirement a particularly difficult exercise.

Types of re-imposed sanctions

These reimposed US sanctions will impact on a wide range of companies which trade with Iran, including those which engage in trade relating to metals, the petroleum industry - petroleum, petroleum products and petrochemical products - and Iran's automotive, energy, shipping, shipbuilding, aviation and insurance sectors. In addition, the status of a number of Iranian entities will change, meaning that companies will need to check whether they are still able to trade with their Iranian counterparts.

On 6 August 2018, US sanctions were re-imposed on activities including but not limited to the sale, supply or transfer to or from Iran of graphite, raw or semi-finished metals such as aluminium and steel, coal and software for integrating industrial purposes. Further sanctions are being re-imposed on 4 November 2018, including those concerning:

- Engaging in, conducting or facilitating a significant transaction for the purchase, acquisition, sale transport or marketing of petroleum, petroleum products, petrochemical products or natural gas from Iran.



- Exporting, selling or providing refined petroleum products or petrochemical products to Iran.
- Investment, including participation in joint ventures, and supplying goods, services, information technology or technical expertise or support for Iran's oil, gas and petrochemical sectors.
- Assisting, providing goods or services, in support of, or knowingly conducting or facilitating a significant financial transaction on behalf of any Iranian person on the US SDN (Specially Designated Nationals) list or any persons whose property is blocked.
- Providing significant support to, or other goods or services in support of a person determined to be part of the energy, shipping and shipbuilding sectors of Iran or to operate a port in Iran, or to an Iranian person on the US SDN list. OFAC (Office of Foreign Assets Control) has indicated that routine payments paid for the loading or unloading of non-sanctioned goods at Iranian ports would not be a sanctionable activity, provided no US SDN listed entities are involved and these payments do not materially exceed standard industry rates.

The EU Blocking Regulation

The European Union has replaced the Annex to Council Regulation (E.C) No. 2271/96 with a new Annex which sets out, amongst others, the United States laws, regulations and other legislative instruments relating to trade with Iran from the Iran Sanctions Act 1996 onwards that have been subject to waivers under the JCPOA (Joint Comprehensive plan of Action, or 'Iran Deal') since 16 January 2016. This is aimed at maintaining the principles established under the JCPOA framework, to facilitate the continuation of trade activities between European businesses and Iran, and to counteract the extraterritorial effect of US secondary sanctions,

However, those waivers cease to have effect on a phased-in basis from 6 August

2018 with a final date of 4 November 2018 for certain trade activities (see above), including the transport of oil cargoes, by which date the performance of contracts must be either executed or terminated.

Under the Blocking Regulation, a national of an EU Member-State or a legal person incorporated within the European Union who suffers a detriment as a result of another legal person in the European Union complying with the US measures, may seek recovery of damages arising from that legal person.

Section 1.5 of the Guidance Note, however, reflects the right of an EU operator, consistent with the provisions of the Blocking Regulation, to make its own assessment of the economic situation and its decision on whether to commence, continue or cease business operations in Iran. The complexity of the situation means that the way in which the Blocking Regulation is implemented and enforced in Member States may vary from country to country.

It is suggested that shipowners incorporated within the European Union, who believe that they might face a claim for damages from another entity incorporated within the European Union for failure to perform under a contract involving activity subject to US sanctions, may wish to consider seeking an authorisation under the Blocking Regulation in order to protect their business interests from the risk of enforcement action by OFAC for breach of US sanctions.

Action taken by the International Group

EU operators may feel the double peril of US extraterritorial sanctions and the EU Blocking Regulation. The International Group has engaged extensively with the OFAC in the US, the European Union External Action Service, European Commission, the U.K Treasury and Foreign Office and EU Member States in order to explain some of the practical effects arising from the reactivation of the US secondary sanctions on shipowners, and the potentially complex legal scenario that could arise as a result of EU national and legal persons complying on

the one hand with the reinstatement of US measures while on the other hand facing a potential exposure to a law suit by virtue of a civil action taken under the Blocking Regulation.

Protective measures

Members involved in a business that may trigger Iran sanctions should consider the following recommendations:

1. To identify applicable US primary sanctions - for instance those which apply because of a US nexus, such as the involvement of US entities, US nationals or US dollar payments – in order to determine whether these, rather than the US extraterritorial sanctions which are the target of the EU Blocking Regulation, prohibit trade with Iran.
2. To review the extraterritorial sanctions which will be imposed, with legal advice as necessary, in order to determine whether their commercial activities would actually infringe US extraterritorial sanctions.
3. To analyse carefully all of the circumstances associated with the business activities in Iran in order to establish whether, in the absence of US extraterritorial sanctions the parties would start work, continue or cease business operations in Iran. Undoubtedly, there are other difficulties associated with trade with Iran at this time, and EU guidance makes clear that decisions about trade with Iran should be concluded on the basis of the operator's own assessment of the economic situation. In particular, banks have proven to be very reluctant to make any transactions in any currency if the transactions has any nexus, albeit remote, with Iran.
4. To maintain careful records in order to document the reasons for any decision to stop work or cease business operations in Iran on the basis of the EU operator's own assessment of the economic situation, as opposed to the US extraterritorial sanctions which are the target of the EU Blocking Regulation. ¶



Slow cranes

- a recent London arbitration

In *London Arbitration 4/18*, the charterers claimed that loading had been delayed because it took the vessel 1.89 days longer to complete cargo operations compared with vessels recently loading the same cargo at the same port. According to the charterers' engineers, the cause was inefficient hoisting and slewing. The owners argued that inefficiency lay with the crane drivers. They also argued that the charterers' engineers had used the wrong system to measure the cranes' performance. All for a claim of just over USD 16,000.

But the relatively small value of the claim is irrelevant to the larger issue at stake. What did the owners undertake and the parties agree?

Undertakings and agreements

The owners undertook nothing, it was held: there was no warranty regarding the speed of the cranes in the charter party. Neither was crane underperformance listed as a cause or event within the wording of the off-hire clause.

The charterers' only hope was to seek to invoke the general maintenance provisions appearing in Clause 1. This also failed, for two reasons.

First, the owners were obliged only to take reasonable steps within a reasonable time to maintain the vessel.

Second, the charterers' engineers admitted that the certificates and documents relating to the cranes were in order, and that the vessel's cargo gear was in good condition.

According to the Lloyd's report, a mere visual observation of the cranes performing more slowly than anticipated was not enough. It was 'at best ambiguous evidence and fell well short of the standard of proof required for the charterers to establish any failure by the owners to maintain the vessel's cranes'.

Avoiding this type of claim

Clearly a shipowner cannot rest in the comfort of having a contract similar to the one debated in the case above. A prudent shipowner will continue to follow all of the customary procedures necessary to avoid this type of claim: routine inspections; compliance with the vessel's Planned Maintenance System (PMS); keeping records of crane performance and condition; and always maintaining an efficient system for monitoring the operation of the cranes.

Evidence

If, nonetheless, a dispute arises, evidence is key. Defending a claim has the best chance of success if an owner can present detailed statements attesting to stevedore negligence. It will assist to have relevant entries in the vessel's log books, and timely attendance by an expert to rebut any allegation of a lack of maintenance. If an owner can produce



By Oliver Hutton
Senior Claims Executive, FD&D and P&I,
Team Piraeus

Defending a claim has the best chance of success if an owner can present detailed statements attesting to stevedore negligence.

video or photographic evidence of the acts or omissions of the vessel's crane drivers, so much the better.

London Arbitration 4/18 considers performance in more ways than one. It serves as yet another reminder of the power of inconspicuous abbreviations or acronyms written in or around details in a vessel's description – so long as those details are given in good faith. Having warranted that figures relating to the vessel's speed and consumption were 'about' and 'WOG' (without guarantee), the owners prevailed under this head too. 🚢

Defending soyabean claims in China

Soyabean cargo claims arising at discharge ports, particularly in China, have become infamous amongst shipowners for their frequency, as well as for the difficulties in defending such claims in local courts. Almost every year, the Club has encountered claims where shipowners have been unable to successfully defend and/or recover for claims for damaged soyabean cargoes, despite the damage not being due to the

fault or negligence of the shipowners, but due to the inherent nature of soyabeans or pre-shipment conditions.

Global demand for soyabean production has grown rapidly in recent years with China leading the way. Imports of soyabeans in the current crop year are currently forecast by China's Ministry of Agriculture and Rural Affairs to be 93.85 million tonnes.



by Julia Ju
Senior Claims Manager, P&I,
Team Asia

A tricky cargo

The problems with transporting this cargo have been well documented. The two main problems with soyabean cargoes that the Club encounters are discolouration of the beans and self-heating cargoes.

Discolouration

Discolouration of beans can occur due to self-heating, the growth of a fungus or by dirt. If the soyabeans are not damaged or discoloured internally, they are considered sound.

Self-heating

When a soyabean cargo is loaded with an elevated moisture content, the relative humidity of the air surrounding the beans will increase. Generally, a relative humidity above 70% promotes the growth of various species of mould spores. An advanced stage of mould growth in a soyabean cargo is manifested by 'caking', whereby the growing fungal filaments intertwine and form a cohesive mass of beans.

As mould grows, heat is generated by microbial respiration and remains mostly localised in the caked portions of a cargo, because soyabeans are poor conductors of heat. Thus, the temperature in a caked cargo steadily rises, heating the cargo up to about 60°C. This phenomenon is denominated microbiological 'self-heating'.

Above 60°C, mould is killed by the elevated temperature, and oil molecules within the soyabeans begin to break down, generating heat in a self-sustaining process that can further increase the temperature of a caked cargo above 100°C.

Storability of a soyabean cargo depends on the combination of three main factors: moisture content, temperature and time.

Almost every year, the Club has encountered claims where shipowners have been unable to successfully defend and/or recover for claims

Inherent vice

Self-heating soyabeans should be recognised as an 'inherent vice' under the Hague-Visby rules. The burden of proof is on the carrier to show the cause of the damage to the cargo (i.e. that reasonable care was taken by the carrier and that the effective cause of the loss was solely due to the inherent nature of the cargo). Although the Hague Visby Rules are not enacted in Chinese law, the Chinese Maritime Code (enacted 1993) provides for a similar 'inherent vice' defence, specifically Article 51 which states that:

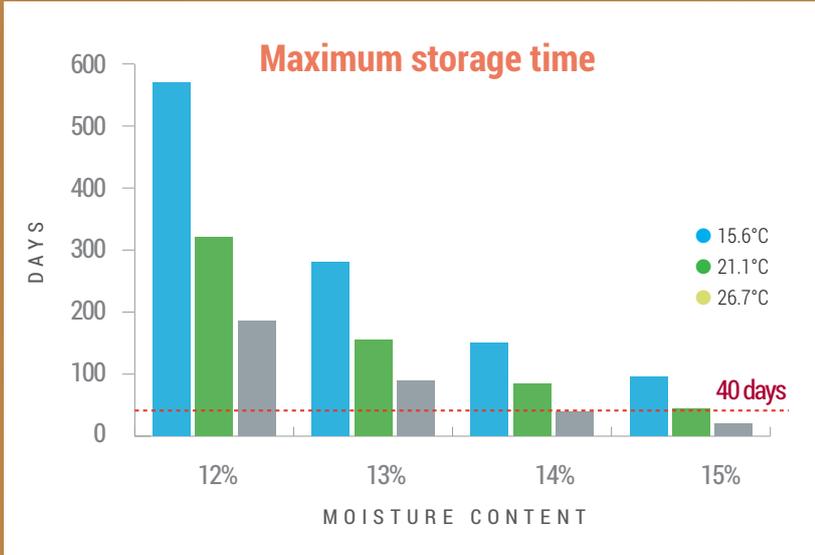
The carrier shall not be liable for the loss of or damage to the goods occurred during the period of carrier's responsibility arising or resulting from any of the following causes (9) nature or inherent vice of the goods;

That said, since the 1990s, shipowners have unfortunately been unable to rely on the inherent vice defence in the Chinese maritime courts with the courts giving the following reasons:

- The carrier failed to take proper measures to ventilate the cargo
- The carrier failed to prevent a prolonged voyage which was a factor in cargo damage
- The carrier failed to discharge the burden of proof by showing that the cargo damage was caused by the nature or inherent vice of the cargo

The Chinese courts have firmly maintained these reasons in their judgments against carriers even where the shipowners are able to adduce expert opinion which confirms that the heat damage was caused by the inherent vice of the cargo and that cargo ventilation had no connection to the heat damage.

The temperature in some of the holds reached over 70° C as a result of self-heating.



Case 1 Self-heating

The vessel was loaded with soyabeans in two South American ports with discharge ports in China.

At the first discharge port, soyabeans were unloaded from two holds in sound condition. However, soyabeans discharged from the other holds at the second discharge port were badly damaged. There was no significant delay in the shipment, but it would later be determined that the cargo was loaded with a high moisture content, which resulted in self-heating. The temperature in some of the holds reached over 70° C as a result of self-heating.

A Letter of Undertaking (LOU) was issued to the consignee as security. The Club secured a counter security from the charterers who were entered with another International Group (IG) P&I Club at the same amount, as per the Inter-Club Agreement.

Court proceedings were started by the cargo owners in China for a claim against the vessel owners.

The Club's logical conclusion is that a carrier should not be held liable where the shipowners provide the same standard of care and management over various cargo holds containing the same type of cargo (i.e. soyabeans) all loaded in sound condition; but results in different outcomes in terms of damage.

This case is on-going.

Case 2

Discolouration

The ship loaded soyabeans in South America. It was found that a very high percentage of the cargo had purple spots on the beans. After a joint survey, it was determined that 7% - 8% of the cargo displayed these marks.

Accordingly, the Master claused the mate's receipt, which the shipper protested about. The charterers and sub-charterers were also called upon to resolve the matter. Eventually, mate's receipts were issued clean in exchange of letters of indemnity issued by the charterers and sub-charterers.

At the discharge port, no claims were made in relation to the purple spotted cargo as the receiver had been

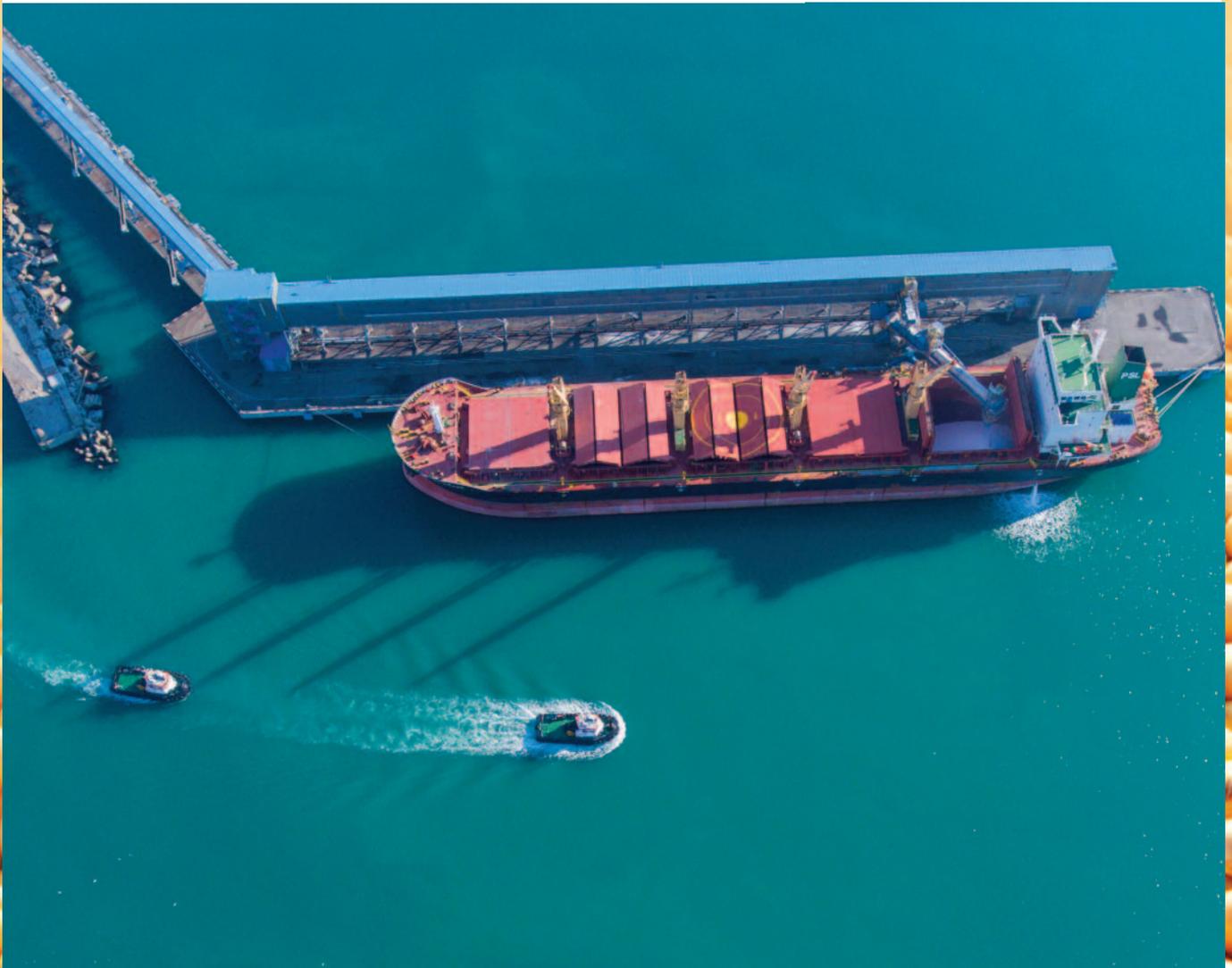
informed of the discolouration prior to loading. This demonstrates the importance of engaging in a dialogue with all relevant parties when the discolouration is first discovered at the loading port, rather than the discharging port.

The Club strongly recommends that members pay close attention to the apparent condition of the cargo prior to loading.

Members should always be ready to provide the Master with any assistance necessary in recording appropriate remarks on the bills of lading. When in doubt, the Club's assistance should be sought immediately. Such a proactive response by members could significantly change the outcome of a soyabean cargo damage claim.



The Club strongly recommends that members pay close attention to the apparent condition of the cargo prior to loading.



Team Norway

A time for optimism

Team Norway is one of The Swedish Club's newest offices. Located in Oslo since 2010, the office has grown steadily, with a particular focus on offshore business.

As oil prices plummeted in 2014, it was inevitable that an office in Norway was going to take a hit too. But now is the time for optimism, says Area Manager Tore Forsmo.

"Our office has obviously been heavily involved with the offshore segment, including drilling and production units, floating units and offshore supply vessels," he says. "When the oil price dropped, it inevitably took down our portfolio in terms of premiums and lay-ups. We lost some accounts because we weren't able to go down to the level the market demanded – but we didn't lose that many.

A positive outlook

"However, we believe that we have been through the worst in the market we are operating in – and we also believe that our members and potential members probably have been through the worst as well. We have a positive outlook on the coming few years and we think both shipowners and insurers will be able to generate profits."

There is still latent potential in terms of offshore units being reactivated, so that is an important part of future growth, says Tore. "When that will happen is another question – we have an oil price that has been fluctuating between USD 60 and



Tore Forsmo, Area Manager, Team Norway

USD 80 per barrel but there is still overcapacity in the oil market. So, it remains to be seen how many units now in lay-up will be reactivated."

His belief is that we won't see too much happening too soon – but that things will start to move in late 2019 and early 2020. Having said that, geopolitical issues and consequent oil price volatility are difficult to foresee and impossible to control.

Marine

Tore is also positive on the Marine side, especially as a number of Lloyd's

"We believe that we have been through the worst in the market we are operating in – and we also believe that our members and potential members probably have been through the worst as well."

syndicates have pulled out of the sector. “From January to September this year, we saw USD 100m retracted from the Marine market in London,” he says. “As syndicates close their Marine books, that takes some of the capacity out of the market – and that will help to firm up a market that has been soft for years.”

The Club has been clear from the outset regarding the ambitions of the Norway office, he says: “Steadily grow our claims lead business and P&I and be a provider of services. We have the advantage of being in Oslo; Norway is still a strong maritime nation, and Oslo is its maritime capital. We are part of a significant maritime cluster which includes shipbuilding, ship owning, finance, classification and insurance.”

Understanding the business in Norway

In his career before joining The Swedish Club, Tore had a view of the shipping industry from various angles – including working in classification, for the Norwegian Maritime Directorate and for the Norwegian Shipowners’ Association.

“Certainly, the maritime industry is important for us in Norway,” he says. “In

Oslo, we have brokers and shipowners sitting a few hundred yards from where we are, and coffee bars where we can meet. Equally, our office is one open room for all six of us, so the communication flow is very good – everyone knows what is happening.”

There is a high level of innovation in the Norwegian shipping market, partly prompted by the IMO’s upcoming low-sulphur regulations (in 2020) and also the requirements of the Ballast Water Convention, with investments in scrubbers, says Tore.

“What we do see is that some shipping companies are getting larger – we still have ship owning families and companies that started with one captain coming ashore and buying a vessel, but we also have companies that are more industrialised. We also see that newly established companies are often financed with equity, so are able to invest.”

Autonomous vessels

Another part of the Norwegian maritime story is the development of autonomous vessels. A prime example is the Yara Birkeland, which will be the world’s first

fully electric and autonomous container feeder ship, with zero emissions. Being developed jointly by Yara and Kongsberg, the vessel will transport products from Yara’s Porsgrunn plant to Brevik and Larvik ports, replacing more than 100 truck journeys a day. Hence it will reduce noise and dust, improve road safety and reduce NOx and CO₂ emissions.

Innovation

Also on the environmental side, there is a lot of discussion in the Norwegian media about ‘green’ ship recycling, with the shipowners’ association encouraging its members to pay extra for the green approach.

“There is a lot of competition in Norwegian shipping – and that leads to companies trying to do things differently, efficiently and in an innovative way, and also embracing digitalisation,” says Tore.

And talking of innovation – he is proud that The Swedish Club’s Emergency Response Training (ERT) first started life in the Oslo office. “We have been doing ERT from the start. It is part of our focus on service to our members and we are proud of our record,” he adds. 🇳🇴

“There is a lot of competition in Norwegian shipping – and that leads to companies trying to do things differently, efficiently and in an innovative way, and also embracing digitalisation.”



Waiting for the right opportunities

The market is certainly firming up, says Erik Lund, Team Norway's Senior Underwriter. "Although it isn't a hard market, it is much firmer than it has been for the last few years. With the different Lloyd's syndicates pulling out of the business, there is less capacity in the market. I think we will see a further shift, with business moving out of Lloyd's to other markets, including Scandinavian markets.

"We need to get our underwriting right; we can't balance the books by depending on investment returns. We need to be measured in our response to the market."

Cautious optimism

Team Norway has already seen the impact, with an influx of possible new business in the last few months, says Erik – but he says caution is the important word here. "Of course there will be opportunities for us going forward and we are prepared for that. However, it is not about just jumping on anything that lands on the desk – we need to wait for the right opportunities."

He explains: "Often when the market gets firmer, the first potential business to come our way would be the business that is difficult to place from the start. We need to get our underwriting right; we can't balance the books by depending on investment returns. We need to be measured in our response to the market."

shipowners have clearly struggled in recent years and while those in the bulker, container and tanker sectors are seeing better times at last, life is still tough for

sectors such as offshore and car carriers, says Erik. "But overall, we have a positive outlook for shipowners."

The Oslo team

Having started his career in the shipping industry in 1997, Erik has, of course, seen the ups and downs of the market over the years. He joined Team Norway in 2013 and has a clear view of the Oslo office's USPs.

"We are a small and very tight team that is extremely focused on our clients," he says, "so we don't need to have a lot of meetings! If there is a claim coming in, we all know straight away. We have a very clear picture about everything that comes in, including documentation, claims and underwriting. Even if you are a small client with only four or five ships, you are important to us and you will get the same service as if you were a very large company. All our clients are important to us."

It is all about personal contact and 24/7 service. "If a client has something urgent to discuss, they will get an instant reply on the phone or email, whether it's 8pm on a Friday or over the weekend. If we can't

"Even if you are a small client with only four or five ships, you are important to us and you will get the same service as if you were a very large company. All our clients are important to us."



Erik Lund, Senior Underwriter, Team Norway

give an instant answer, we will confirm that we are looking into it and make sure we are always updating the client."

From a client's point of view, the worst thing is sitting waiting for an underwriter or claims handler to get back to them, and having to chase for an answer. "That is not something that happens here," says Erik. "We pride ourselves in giving frequent feedback and updates, so the client knows they are being looked after." 📞

A cosmopolitan background

Mats Fielding, the newest arrival at Team Norway, brings something of an international perspective – with a Swedish mother, he grew up in Australia, where he graduated in Adelaide, left his home country to study maritime law in Norway, and then carried out a traineeship in hull claims with The Swedish Club in Gothenburg. His wife is from Argentina, and one of their two sons already has three passports!

"I left Australia in 2008 – I wanted adventure and someone told me about maritime law. I started to research different programmes and found that Oslo offered a very good Master's in maritime law," he says. "The Swedish Club was my first job after university – I did a one-year traineeship in hull claims which was extended for six months."

Mats went on to work elsewhere in Hull and P&I claims, before rejoining The

"As a member of a small team, I can get involved in different aspects – there is the opportunity to work in H&M, Offshore, P&I and FD&D, and that is quite unique."

Swedish Club as an underwriter in Team Norway in September this year.

A broad scope

"I like the philosophy and strategy of the Oslo office and believe there are real opportunities for growth," he says. "As a member of a small team, I can get involved in different aspects – there is the opportunity to work in H&M, Offshore, P&I and FD&D, and that is quite unique. In a larger organisation, you tend to focus only on one discipline."

He also likes the personal atmosphere of Team Norway: "Since it is such a small office, you get a better understanding of what others are doing in the team and what is happening with clients. That means we can provide a 'one voice' approach to clients. The clients know what to expect and they do get a lot of attention. I think that is one of our selling points – as a small team, we like to maintain relationships and service our clients."

A close community

Oslo is a tight-knit community of maritime specialists, many of whom know each other, says Mats. "Once you are inside, it is a great cluster to be part of."

"Personally, my ambition is to get out into the market and get to know people and build relationships. It is important for me



Mats Fielding, Underwriter,
Team Norway

and for the entire team to be in the spotlight and really show the brokers and potential members that we are here, that we offer a good product, and that we can do the same as the competition, but better – especially regarding personal service. We are here, ready to grow and ready to assist."

And another target – Mats is focusing on his Norwegian speaking skills. "Erik and Tore only talk to me in Norwegian, to help me," he says. 🇳🇴

And also introducing.....



Victor Bogesjö
Senior Claims Executive
Marine



Pia Gotaas
Assistant Underwriter



Marcus Lindfors
Claims Manager

Human Performance and Limitations

The Academy is pleased to announce the latest release of the Maritime Resource Management (MRM) module on Human Performance and Limitations (HPL). This module tackles issues that affect our performance and the challenges we face in the work environment, helping participants recognise the most common challenges and distractions that we usually give in to.

Our limitations

Limitations due to human physiology and psychology can impact our performance in the work environment. To help us improve task performance, we need to have a better understanding of our limitations and how external factors affect us. It will also assist us in developing and applying countermeasures to increase safety and efficiency at work.

Distractions

Smartphones and social media are primary examples of distractions in the workplace. For many, instead of effectively using their mobile devices, it becomes a factor preventing them from working properly. How can we manage these factors so that they don't affect our

performance at work? In such a safety critical sector as the maritime industry, awareness and effective handling of such challenges and limitations are vital.

With this updated module, the focus is to empower seafarers to make the best use of their physical and mental abilities in the demanding day to day work on board vessels.



by **Lorraine M. Hager**
Client Support Manager,
The Swedish Club Academy

The MRM modules can be used as stand-alone topics during seminars and officers' conferences or as part of a regular MRM course.

The updated MRM module on Human Performance and Limitations is published at the Academy WebPortal and is available for use by our MRM facilitators and students.

The MRM modules can be used as stand-alone topics during seminars and officers' conferences or as part of a regular MRM course. If you would like to take advantage of the benefits of MRM for your fleet or company, please contact us at the Academy. 📞



This module tackles issues that affect our performance and the challenges we face in the work environment





MRM Facilitator Training, Gothenburg

The Academy recently conducted a MRM Facilitator Training Day in Gothenburg at The Swedish Club, with seven companies and academic institutions represented during the course. The participants with different backgrounds and roles in the shipping industry, shared experiences and ideas that made the discussion lively and interesting.



From Gothenburg to Manila

The increasing demand of MRM related events and activities in Asia has prompted the Academy to focus on its clients' needs in the region. The Academy has had a busy autumn visiting current and prospective clients in Asia.



On 25 October 2018, MRM Facilitator Training was carried out at the Belmont Hotel Manila where 11 companies involved in various areas of the industry - from shipmanagement to crewing - took part in the event. Companies from Singapore, Thailand, and Manila based representatives of Japanese and Australian shipping

companies were present. The group was composed of a good mix of new and experienced MRM Facilitators which led to fruitful discussions and brain storming during and after the course. Upcoming MRM events are lined-up and will be published on our website.



Limitations due to human physiology and psychology can impact our performance in the work environment.



Conference roundup



IUMI update: adapt and survive

Tore Forsmo, Area Manager, Team Norway

This year's IUMI Conference, the 144th of its kind, was held in Cape Town, South Africa, from 16th-19th September, with 'emerging risks and exposures' as a key theme for the event. In his opening address, IUMI President Dieter Berg impressed on delegates the need to "manage the unthinkable". Losses that until recently would have been assessed as "unthinkable" will according to Berg become more commonplace and underwriters must adapt to manage them effectively.

The International Union of Marine Insurers (IUMI) annual jamboree attracted nearly 550 attendees from 38 different countries, held this year for the first time ever on the African continent. It was a bittersweet event for The Swedish Club when the Club's Managing Director Lars Rhodin, who until 2014 chaired the IUMI Ocean Hull Committee, stepped down from the IUMI Executive Committee after four years of service as Vice Chairman.

Not only does the IUMI Conference provide an important meeting place for market updates and developments, but it also creates a forum for mutual learning.

IUMI's perspective on the market

Even though the benign claims environment in some sectors provides a

positive backdrop, according to IUMI there is an increasing mismatch between premium income, covered risks and claims costs. On a global average basis, buffers to cover extraordinary situations or accumulated losses are non-existent.

The political landscape

Overall marine premium income reached USD 28.5 billion in 2017 which represents a 2% increase compared to 2016. This upswing is largely attributable to growth in trade plus strengthening of European and other currencies against the US dollar. At the same time the political landscape is also changing with an increase in sanctions and disruption to trade agreements. Trade wars, increased protectionism and the impending Brexit continue to cause instability globally and within the Eurozone and will ultimately also impact the marine insurance industry.

Underwriting

The marine hull market recorded a global underwriting income of USD 6.9 billion in 2017, representing a 2.3% reduction from 2016. An estimated USD 100 million of capacity has been removed from the market over the past year due to very low start-up activity and the withdrawal of several high-profile insurers. According to Mark

Edmondson, Chair of the IUMI Ocean Hull Committee, the deterioration of underwriting results has appeared to have triggered a brake in the decline in market conditions. Also, the segment is still enjoying a long-term downward trend in the frequency of hull claims in general and for total losses specifically. The frequency of total losses seems to have reached its possible minimum with a recent fluctuation between 0.05% and 0.1%. However, and despite major losses not having significantly impacted the sector for some years, Cefor figures illustrate that the most costly 1% of all claims account for a minimum of 30% of the total claims costs in any given year.

Safety

Shipping is becoming safer with more than 700 vessel audits and inspections performed every single day, but according to Dr. Torkel Soma of Propel, on average three seafarers are killed and 30 injured each day of the year. One ship is lost and around USD 50 million is paid out in claims daily. Shipowners need to change the safety culture thinking from 'attempting to make everything safe' to a 'manage failures' mindset.

Also on the safety side, an overview of the severity and impact of containership fires showed that the industry can expect to

see a major fire on board a boxship every 60 days. Clearly the argument for a new approach to safety culture and safety thinking is a valid one.

Offshore

In the offshore energy segment, premium income dropped 5% from 2016 to USD 3.5 billion in 2017. This comes on top of the 21% decline from 2015 to 2016. Losses in this sector, particularly from hurricanes, have been modest in recent years with

2017 recording just two upstream losses valued at more than USD 1 million. A high degree of this development can be attributed to a general low activity in the sector but with a rise in oil prices, new offshore projects initiated, increase in activity and re-activation of current lay-ups this picture could quickly change. Also, oil prices are currently driven by geopolitical considerations in countries such as Venezuela and Iran in addition to OPEC’s and Russia’s ongoing discussions. Margins between supply and demand are

thus thin and can create further volatility in the market.

The substantial cost cutting by oil companies since 2014 and its impact on safety was addressed by the IUMI Offshore and Energy Committee. According to Kevin Jarman, Chief Executive of MatthewsDaniel, there have not necessarily been shortcuts in safety, but when things are engineered finely, the margin becomes thinner and the risk profile will inevitably increase. 🚢



When repairs don't go as planned



Stelios Magkanaris
Marine Claims Adjuster, Team Piraeus

The 2018 International Marine Claims Conference (IMCC) took place on 26-28 September, as customary, in Dublin. The event is by invitation only, and once again the number of potential delegates exceeded the number of places available to the marine claims community.

This year The Swedish Club was represented by Stelios Magkanaris, Marine Claims Adjuster, conducting a workshop session on ‘Abortive Repairs.’ Stelios explored damage that occurs to a vessel following repairs, and the difficult path to tread when following the causation links. 🚢

The Swedish Club’s Claims Handlers’ Conference 2018

Ellinor Borén, Assistant Claims Executive, Team Gothenburg

Every other year, The Swedish Club’s claims handlers meet at head office in Gothenburg for a two-day conference. The focus of this year’s event was on skills and knowledge sharing. By drawing conclusions from previous incidents, re-evaluating standard routines and implementing new procedures, our casualty response capabilities will further improve. This strengthens our ability to handle claims on an individual level, as well as at a Club level.

One focus of this year’s programme was the Club’s Emergency Response Training. This session raised a variety of complex questions which led to many fruitful discussions. It was

enjoyable but also challenging to switch roles and follow a casualty from a member’s perspective. Claims handlers from different offices and insurance classes had the chance to share their experiences and lessons learned from cases they had previously dealt with. Following this experience we have introduced a number of actions into our daily work.

The Claims Handlers Conference is a great way to streamline our business. Our members should be confident that no matter which office they are dealing with, they always receive a service based firmly on The Swedish Club’s core values – proactivity, reliability and commitment. 🚢

Notice board



Continuing Warranty of Seaworthiness

The Club is aware that, occasionally, members have been offered contractual terms with counterparties that require the shipowner to provide a continuing warranty of seaworthiness for the entire duration of the voyage. Should this situation arise, the Club would urge members to exercise caution before entering into contract terms, since such a warranty could prejudice their P&I cover.

Cover for cargo risks is conditional upon the member not contracting on terms less favourable than the Hague Visby Rules (HVR). Article III paragraph 1 of the HVR states that the carrier must, before and at the beginning of the voyage, exercise due diligence to:

- Make the ship seaworthy
- Properly man, equip and supply the ship, and
- Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation

Under the HVR 'exercising due diligence' means taking all reasonable precautions to see that the vessel is fit for the contemplated voyage. The carrier is not obliged to give an absolute guarantee of seaworthiness and the ship only needs to be seaworthy at the start of the voyage.

If a cargo owner can show that their loss was caused by the carrier's failure to exercise due diligence to make the vessel seaworthy before and at the start of the voyage, the resulting loss will fall under Club cover. If, however, the loss was shown to have been caused by some event which affected the vessel's seaworthiness only during the voyage then, assuming the due diligence test in Article III paragraph 1 was passed, the carrier would not be liable to the cargo interests under Article III paragraph 1 of the HVR.

A continuing warranty of seaworthiness throughout the voyage alters that position and would make the carrier potentially liable for any and all events affecting the vessel's seaworthiness during the entire voyage. This would represent terms less favourable than the HVR and so place any resulting claims outside the Club's cover.

Members are therefore advised to seriously consider the potential ramifications of cover for contracting on terms that give a continuing warranty of seaworthiness and to contact the Club for guidance before fixing on this basis.

Legal issues arising from new bunker sulphur regulations in MARPOL

The Club has issued legal guidelines to members on the new MARPOL regulations regarding low sulphur fuel. See FD&D Circular No 53/2018 on www.swedishclub.com.

Updated International Group (IG) FAQs for members regarding the Maritime Labour Convention (MLC)

The entry into force of 2014's amendments to the MLC on 18th January 2017 raised a number of complex and novel questions. The IG has developed a series of FAQs intended to provide guidance to assist members and Clubs in complying with the amendments.

Please see the updated Group FAQs for members on the The Swedish Club's MLC-website at www.swedishclub.com/loss-prevention/human-related/maritime-labour-convention. While all efforts have been made to provide clarity, uncertainty remains about some aspects of the financial security requirements. There may also be differences in the way some states implement and enforce the amendments. These FAQs should not be regarded as providing definitive legal advice and members should also consult their flag state authorities.

New charterparty clause promoting the use of the Inter-Club Agreement

Introducing a new charterparty clause promoting the use of the Inter-Club New York Produce Exchange Agreement 1996, as amended September 2011:

Reference is made to circular No 2614/2016 dated 4th May 2016 referring members to the Inter-Club New York Produce Exchange Agreement 1996 (the 'ICA'), as amended in September 2011, that provides a mechanism whereby liability for cargo claims arising under the New York Produce Exchange Form (NYPE) or Asbatime charterparties and/or contracts of carriage authorised under such charterparties, can be swiftly and fairly apportioned between owners and charterers.

In order to promote the application and incorporation of the 2011 Agreement into all NYPE/Asbatime charterparties, circular 2614/2016 dated 4th May 2016 referred members

to a recommended charterparty clause drafted by the International Group of P&I Clubs (IG).

However, a recent London arbitration finding has given the IG cause for concern, with the tribunal finding that the charterparty clause only incorporated the liability provisions of the ICA and not the requirement to provide security as contained in clause 9 of the 2011 Agreement.

As a result, the IG has amended the recommended charterparty clause wording issued in 2016 in order to take this recent finding into account and encompass the 2011 Agreement requirement for security to be provided. The amended clause for recommendation is as follows:

'Cargo claims as between Owners and the Charterers shall be governed by, secured, apportioned and settled fully in accordance with the provisions of the Inter-Club New York Produce Exchange Agreement 1996 (as amended 2011), or any subsequent modification or replacement thereof. This clause shall take precedence over any other clause or clauses in this charterparty purporting to incorporate any other version of the Inter-Club New York Produce Exchange Agreement into this charterparty'.

**SAVE
THE DATE**



12-14 June 2019
Gothenburg

Out and about

NSB Cup 14 September 2018 – ‘Faster, higher, further’

by **Frida Rhedin**, Claims Executive, Marine, Team Gothenburg

‘Faster, higher, further’ was the motto on the sports ground this year when the annual NSB Sports festival took place. There were shades of the Olympics as we watched the officials carefully setting up the various sporting activities. More than 150 participants enjoyed competing in running, the high jump, long jump and shot put. And even though the atmosphere was relaxed there was definitely some serious competition between the individuals.

Unfortunately, we weren't skilled enough to win one of the wooden trophies, but we made the most of the traditional dances, dinner and the party which took place in the evening.

The NSB family made us feel very welcome and we had a great day in their company. 🇸🇪



From left: **Alex Macinnes** (Tatham Macinnes LLP), **Sanne Hauschildt** (NSB), **Frida Rhedin** (The Swedish Club), **Sora Jeon** (Tatham Macinnes LLP) and **Victor Bogesjö** (The Swedish Club)

Frida Rhedin and Victor Bogesjö, the two contestants representing The Swedish Club this year.



London Reception – 27 September 2018

The Swedish Club cocktail reception in London on 27 September was well-attended by brokers and business colleagues alike.



The Club's London Manager, Lars Nilsson, welcomed the guests and was followed by Managing Director, Lars Rhodin, who highlighted three key reasons for doing business with The Swedish Club - stability, casualty response and product range.

Tord Nilsson, Director Underwriting, Reinsurance & Risk Control, closed the formal part of the proceedings with the Club's views of the P&I and Hull market and the business going forward.

Following the introduction the guests had the opportunity to network, eat and listen to some good jazz by Josephine Warren and her band.



Best Conference 2018 award for The Swedish Club

The Swedish Club has been awarded 'Conference Organiser of the Year' in the Clarion Best Conference Awards 2018.

The event, organised by one of the largest hotel groups in the Nordic region, Nordic Choice Hotels, took place on 19 November at the Clarion Post Hotel in Gothenburg.

Eva Van Heek Lilljegen represented The Swedish Club at the gala. On being presented with the award, she was told: "This year's winner is The Swedish Club for their fantastic Annual General Meeting which was top-class from the beginning to the end. The theme of the event is recurrent, but the Club always succeeds in improving the event experience every time. The keywords are style and quality in new packaging."



New York Reception 4 October 2018

Following the Club's recent Board meeting held in New York, a reception took place at the New York Yacht Club.

Managing Director Lars Rhodin was delighted to see that so many valued business partners and prominent guests took the opportunity to meet Board members and staff from The Swedish Club.

A warm thank you to all those who joined us at the reception.



From left: **Michael Vinnen (F.A. Vinnen)**, **Elizabeth Breton (Gen Re)** and **Anders Källsson (Erik Thun AB)**.



From left: **Lars Rhodin, Managing Director, The Swedish Club**, with **Charlie Shamieh, Chairman of Gen Re**.



From left: **Thomas Leeds (Leeds & Leeds Co.)**, **Lars Rhodin (The Swedish Club)**, **Lars Forsberg (Reed Smith LLP)** with his wife **Kelly**.

P&I seminar at Donsö – 24 October 2018

The Club invited members to a seminar at Isbolaget on the island of Donsö, focusing on Bills of Lading, best sampling practices for liquid cargoes and Letters of Indemnity.

The seminar was opened with an introduction from Underwriter Daniel Kilgren, followed by Area Manager Johan Kahlmeter, Malin Högberg, Head of Claims P&I and Fredrik Bergqvist, Claims Executive, Team Gothenburg delivering a joint presentation which showed how to apply the legal framework to the reality facing our members on a daily basis. The interactive seminar gave rise to lively discussions and highlighted the difficult balance facing shipowners operating in the liquid cargo segment, between commercial reality and the legal framework surrounding Bills of Lading.

The event was attended by around 30 participants from various Swedish members operating in the liquid cargo segment out of



Donsö and Gothenburg. Following the seminar, the attendees were treated to an exclusive release of the latest branding film about The Swedish Club and its members featuring Lars Höglund, CEO of Furetank.

A delicious buffet was served during which the lively discussions continued. The seminar was the first in a series of talks on topical, legal and practical issues which the team will be hosting on Donsö. 🍴

Bergen and Oslo Seminars – 23 and 24 October 2018



As is the tradition, Team Norway again held its annual lunch seminars this year: in Bergen at the 'Grand Konferense- og Festlokaler' on Tuesday 23 October and in Oslo at 'Tjuvholmen Sjømagasin' on Wednesday 24 October. There was a good turnout at both events, with insurance brokers, shipowners and the legal community, who were treated to a well-balanced menu for both heart and soul.

Both events followed the same programme, beginning with a presentation by Area Manager Tore Forsmo focusing on the Club's state of affairs, the general state of both shipping and marine insurance, followed up with a review of the Club's activities and Team Norway's ambitions.

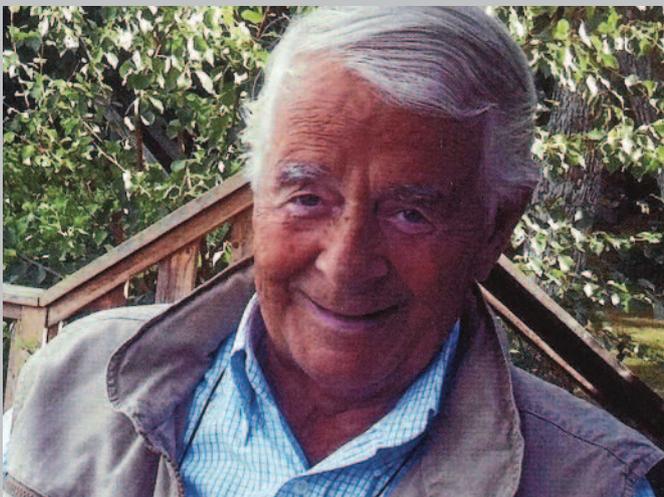
This was followed by a presentation on the Club's Emergency Response Training (ERT) programmes, led by Magnus Gustafsson, Marine Claims Manager at the Club's Gothenburg

office and supported by Team Norway claim staff Victor Bogesjö and Marcus Lindfors. *(Please see page 8 for information on the Club's latest ERT initiative.)*

The afternoon sessions were rounded up by Partners Morten Lund Mathisen and Herman Steen from the law firm Wikborg Rein's Oslo office. Their topic – 'Lawyers' perspective in marine casualties – practical examples', was particularly relevant given the always challenging practical and legal environment when larger casualties occur. The presentations focused on large casualties, in various jurisdictions, where Wikborg Rein has been involved assisting ship and oil/gas offshore owners and their underwriters. All were complex situations with authorities, salvors and other parties generating costly experiences.

Thank you to all who participated and hope to see you soon. 🙏

In Memoriam Lennart Delfs, 'Mr P&I'



It is our sad duty to inform you that Lennart Delfs, a former P&I Director at The Swedish Club, passed away peacefully in August this year at the age of 87. Lennart started his career at the Club in 1957 and retired in 1988 after long and successful service to members. Following his retirement he wrote the comprehensive guidelines for the understanding and practical application of The Swedish Club's P&I insurance conditions, known as 'Rules & Exceptions', a publication widely used in the industry. Lennart's knowledge of P&I insurance was second to none and he was known to the shipping community as Mr P&I.

Lennart was a very sociable person and met many professionals in the business, who over the years, also became his personal friends. We will always remember his caring personality and friendship and our thoughts are with his family.

Lars Rhodin
Managing Director

Staff news

GOTHENBURG



Malena Edh

Malena has accepted permanent employment as an Assistant Underwriter in Team Gothenburg.



Per Karlstrand

Per joined the Club's IT department in October 2018 as System Integration Engineer and has a Masters in Mathematics/Computer Science.

OSLO



Mats Fielding

Mats joined Team Norway in September 2018 as an Underwriter. He has a LL.M from the University of Oslo and a BA in International studies and Commerce from the University of Adelaide.

HONG KONG



Andrew Bates

Andrew re-joined Team Asia in November 2018 as a Senior Claims Manager, FD&D and P&I. He has a LL.B from the University of Canterbury, New Zealand, and is a qualified solicitor in the UK. Andrew has several years' experience in P&I and in-house legal work.



Ng Fangyao

Ng Fangyao joined Team Asia in October 2018 as a Senior Claims Executive, FD&D and P&I. He is a qualified lawyer in Singapore and has been working in the legal and P&I industry for close to 10 years.



Haven Hang

Haven Hang joined Team Asia in September 2018 as a Team Assistant. She has an MSc. in International Shipping and Logistics and a B.Eng. in Maritime Management.

Club Quiz

Club Calendar 2019

1 – What is a bulk carrier of 80,000 DWT called?

- 1 Handymax
- X Panamax
- 2 Capesize

2 – When a ship skids on the water rather than pushing through it, what is it called?

- 1 Planing
- X Boating
- 2 Surfing

3 – What was the name of Lord Nelson's flagship at the Battle of Trafalgar?

- 1 Triton
- X Victory
- 2 Invincible

Mail your answer to quiz@swedishclub.com

The first correct answer pulled out of the hat will win a prize.

Winner of Club Quiz 2 – 2018



Congratulations to the winner of Club Quiz No 2-2018, Ranjith Kunduvazhi of Gulf Agency Company, Oman, who has been awarded a Club giveaway.

The right answers to Club Quiz No 2-2018 are:

- X **Ferdinand Magellan**
(Which Portuguese explorer was the first to lead an expedition to sail around the world?)
- 2 **Twenty foot Equivalent Unit**
(What do the initials 'TEU' stand for on container ships?)
- X **283**
(How many guests attended the formal dinner following the Club's AGM 2018?)



28 March	Board Meeting Hong Kong
6-10 May	Marine Insurance Course Gothenburg
12 June	Board Meeting Gothenburg
Date	Event Place
13 June	Annual General Meeting Gothenburg
12-14 June	AGM Events Gothenburg
3 October	Board Meeting Istanbul
5 December	Board Meeting London

For further upcoming events, please refer to www.swedishclub.com





The Swedish Club is a mutual marine insurance company, owned and controlled by its members. The Club writes Protection & Indemnity, Freight, Demurrage & Defence, Charterers' Liability, Hull & Machinery, War Risks, Loss of Hire insurance and any additional insurance required by shipowners. The Club also writes Hull & Machinery, War Risks and Loss of Hire for Mobile Offshore Units and FPSOs.

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