



The Swedish Club

# The blockchain revolution

– what does it really mean for  
the marine insurance business?

**Emergency Response Training with Stena Line**

**Smart contracts: Press the button carefully  
– there's no going back**

**Impact of the EU GDPR on the claims process**

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The Swedish Club

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## Dear members and associates

# No two days alike!

When I started with the Club some 30 years ago my boss told me that there are never two days alike in this business. "You will never know in the morning what will happen in the afternoon," he said. I am now the first one to testify that he was right. Working with the unknown, or uncertainty if you like, means that timing of events is beyond planning. What we do know, is that the next incident is just around the corner.

What we also know is the importance of being prepared. The Swedish Club's response team is always in 'stand by' mode, always ready to go. I have learnt that the first hours of a casualty can be absolutely critical for the whole case. This response readiness is of significant value. I have seen too many times when the 'this will never happen to me' attitude has been regretted. The Emergency Response Training initiative provides an excellent opportunity for us to be prepared together.

The Club delivered a good result last year with an underwriting performance just above 100%. The result came to USD 22.7 million or USD 18.6 million after the 4% premium discount given to mutual P&I members in August 2017. Underwriting is about delivering sustainable results over time. We have now produced a combined ratio of 98% over a nine years rolling period. Our Board decided at the end of March to offer another 5% premium discount to mutual P&I members. This should be well received. Mutuality is a two way street.

'Government intervention in marine casualties' is the theme of the panel discussion on Members' Day forming part of the AGM events in June 2018. We have speakers and panelists of high standing providing their experience in this field. There are not two cases alike, they are all unique on their own merits. Many cases however become political

where they arise, and requirements follow accordingly. How to manage? Only those attending our AGM will know. Don't miss it!

Many interesting topics and social events are featured in this edition of the Triton. There are never two Tritons alike. Enjoy reading. 📖

**Lars Rhodin**  
Managing Director

# Safety scenario

## Mixed messages lead to collision



By Joakim Enström, Loss Prevention Officer

Each month the Club's Loss Prevention department 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

A very large ore carrier, vessel A, was approaching port. The pilot had boarded and the tugs were lining up to connect to the vessel. It was evening with clear skies and a light wind. At the same time vessel B was outbound from the port without a pilot as he had just disembarked.

Both vessels had all the required navigational equipment. The Master, Third Officer, pilot and helmsman were on the bridge of vessel A.

The Master and pilot had carried out a pilot exchange and the pilot had received a copy of the pilot card. Three tugs would assist the vessel during berthing.

The vessel was making about eight knots on a course of 300°, with both steering pumps switched on.

The Master first saw vessel B both on the radar and visually when it was about 6 M

away and at 10° on the starboard bow. Vessel B was plotted on the Automatic Radar Plotting Aid (ARPA) with a closest point of approach (CPA) of 0.5 M. Vessel B was shaping up to pass down the starboard side of vessel A. The starboard green light and mast lights could be seen.

The pilot ordered the tugs to connect to the vessel as they were approaching the buoyed fairway. The pilot called vessel B on the VHF and asked to pass green to green which the Master on vessel B agreed with. One tug was connected forward, one on the stern and the third one was on standby.

About the same time the Vessel Traffic Service (VTS) called vessel B and informed it that vessel A was inbound. Vessel B's Master acknowledged that they were aware of vessel A and that they would pass green to green.

When vessel B was about 0.8 M off the starboard bow it began to alter to starboard and towards vessel A.

The pilot on vessel A was alarmed by vessel B and called on the VHF and yelled "green to green vessel B" and at the same time ordered hard to port and slow ahead.

Someone on vessel B replied "too close to pass port to port" and continued to alter to starboard.

The pilot on vessel A ordered dead slow ahead and then full astern but it was too late. Vessel A collided with vessel B's port side and ripped the shell plating from cargo hold 2 to cargo hold 6.

***The Master and pilot had carried out a pilot exchange and the pilot had received a copy of the pilot card. Three tugs would assist the vessel during berthing.***



## Discussion

When discussing this case, please consider that the actions taken at the time must have 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.

1. What were the immediate causes of this accident?
2. Is there a risk that this kind of accident could happen on our vessel?
3. How could this accident have been prevented?
4. What are our procedures regarding the use of VHF for collision avoidance?
5. How do we ensure that we are aware of the traffic situation while we speak on the VHF?
6. Do we use all navigational equipment on the bridge while sailing?
7. What sections of our SMS would have been breached if any?

## *The pilot on vessel A ordered dead slow ahead and then full astern but it was too late.*

### Issues to be considered

Discuss the following COLREGS rules and also what other COLREGS rules would apply.

#### Rule 5

Every vessel shall at all times maintain a proper look-out by sight and hearing, as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

#### Rule 7

(a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions, to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.

(b) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.

(c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.

#### Rule 8

(a) Any action taken to avoid collision shall be taken in accordance with the Rules of this Part and shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.



# Auxiliary engine damage

## - part ignorance, part economics

Following detailed analysis of its claims records The Swedish Club has established that more than half of all auxiliary engine damage on board vessels happens immediately after maintenance work has been carried out – often with catastrophic results.

Sloppy work, lack of checklists, a failure to follow procedures, lack of training and poor lubrication oil management are all contributing to a high volume of auxiliary engine damage cases, says Peter Stålberg, Senior Technical Advisor at the Club.

“It was in response to this situation that we developed the *Auxiliary Engine Damage* report, which goes to the very heart of the problem.”

Auxiliary engine damage claims received by The Swedish Club account for 13% of the total machinery claim cost and 16% of the volume, with an average claim cost of USD 345,000.

When measured in terms of frequency and cost, auxiliary engine damage comes third after main engine and propulsion claims, says Stålberg. “The trend has been steady for the past few years with no change in frequency – and that is what triggered our study,”

“We went through all of our claims reports in detail trying to pinpoint the exact root cause of these casualties, and we also analysed the running hours before the damage. The correlation was clear – 55% of auxiliary engine casualties occurred more or less immediately after maintenance work had been carried out.

“That is just like taking your car to the garage and then breaking down on the way home. Overhaul and maintenance work means the engine should be better, it shouldn’t lead to it breaking down completely and catastrophically.”

### Common causes of damage

Incorrect maintenance and wrongful repair are the most common causes of damage. Poor lubrication oil management is also a major contributing factor towards auxiliary engine breakdowns, the study showed.

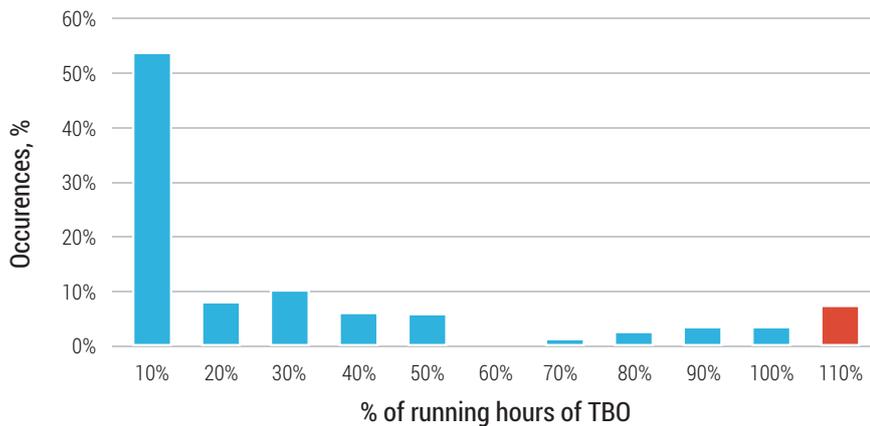
“This study has been an eye-opener for us,” says Stålberg.

“This issue is all about how the overhaul should be taken care of,” explains Peter Stålberg. “We are simply seeing examples of complicated matters handed over to unqualified personnel; or of crew knowing what they should do, but not doing it properly; or of crew not following strict procedures because they don’t understand their importance.”

Auxiliary engines run at high revolutions and have a common lubrication system for both cylinder and crank case lubrication. They are not under the same strict regime from the classification society as the main engine, and maintenance is often carried out by the vessel crew.

“Anyone can tighten a bolt. But tightening a connecting rod assembly must be carried out 100% correctly, or there could be a catastrophe.

## Casualties % in relation to time between overhaul (TBO) recommended by manufacturers



**Note:** In addition to TBO related occurrences there are several cases where a crew member has carried out regular maintenance shortly before the breakdown. Common mistakes include replacing the oil filter but leaving rags behind, or cleaning the oil cooler and damaging a packing. These types of cases have been incorporated as TBO=0 in the analysis.

Sometimes crew don't have the proper tools available. There can be an element of sloppiness - not following checklists or failing to carry out daily maintenance, or replacing an oil filter and leaving a rag behind."

### Call for specialist assistance

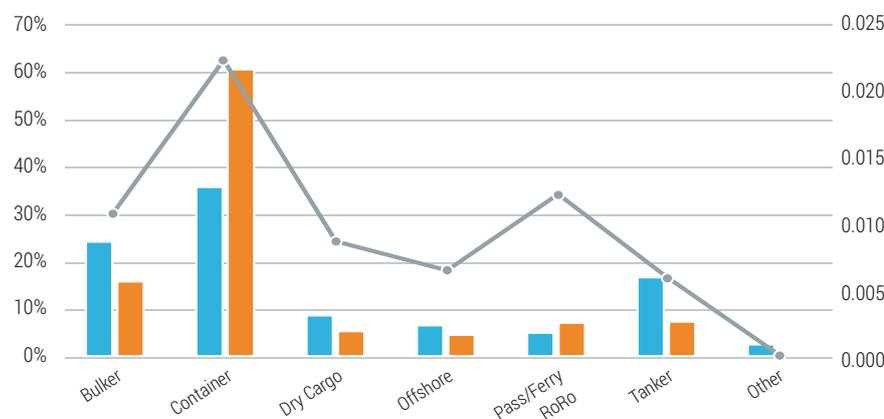
Some shipmanagers employ specialists to come on board and carry out the work while at sea, but the cost and complexities of coordination and planning can make this inefficient and not viable, says Stålbjerg. Another

effective option is to have professional supervision in attendance to ensure that crew are carrying out the work correctly.

"Our findings are related to part ignorance, part economics. For example, many times we have seen an engine being run with poor lube oil with water contamination, and nothing has been done about it. Vessels should have really good lube oil management – regular samples should be checked and proper action should be taken when something is detected in the analysis. Don't try to save money on lube oil – the resultant costs can be huge."

### Claims by vessel specifics

Auxiliary engine claims by vessel type, 2010-2016



**Note:** Container vessels have a significantly higher claims frequency due to the larger number of installed engines on these vessels. In addition, these engines have considerable output, hence the repair cost is greater compared with other vessels.



- Ensure you have the necessary knowledge and experience before commencing any overhaul work.
- If you have not received training on the specific engine model, consider engaging an expert from the manufacturer.
- Always strictly follow manufacturer's instructions.
- During overhaul, check and double check that stud bolts for connection rods and bearing keeps are tightened 100% in accordance with manufacturer's instructions.
- Ensure that required tools are available and calibrated as necessary.
- Regularly monitor the quality of your lubrication oil and take prompt action when irregularities are detected.

### Where the responsibility lies

Ultimately, says Stålbjerg, the responsibility is with the shipmanager. "They instruct the crew to carry out this overhaul and by doing that they must ensure they have the competence, time, training, tools and spare parts to handle that, and to complete the task correctly. If those factors are missing, you can't perform your work."

The report analysed vessels insured for Hull & Machinery (H&M) in 2010-2016 and included only damages in excess of the deductible, an average US\$105,000.

To read Auxiliary Engine Damage please visit [www.swedishclub.com/](http://www.swedishclub.com/) Publications / Loss Prevention and MRM brochures

# Slewing bearing failures on turret cranes

The Swedish Club sees a steady stream of crane accidents. Of particular concern is damage to slewing bearings – the main structural load-bearing device that attaches the crane to the pedestal. This bearing is a potential source for catastrophic failure. In the severest case reported to the Club, the crane housing detached from the platform and the crane operator fell from the cabin and lost his life.



By Peter Stålberg  
Senior Technical Advisor

Investigations into this type of failure often reveal many contributing factors, such as poor maintenance, overloading, improper use, blocking of safety devices and latent defects all which may contribute to a slewing bearing failure. Sadly, several of the slewing bearing failures we see could have been avoided by following simple maintenance and inspection routines.

The safe working load (SWL) marking on a crane jib indicates the maximum permissible load in the hook. The actual stress put on the crane has often very little to do with the SWL marking as it is influenced by the spectrum of different loads in the hook. For example, during operations at sea the dynamic loads induced by the ship's motions in response to wave conditions must be added to calculations for SWLs.

When a general cargo crane operates with a grab it will nearly always be with full grab which means a load spectrum with maximum load. A crane working cargo from a barge in unsheltered conditions will be exposed to shock loads. These working conditions will greatly reduce the lifetime of the slewing bearing and other critical components unless the SWL is adjusted accordingly. Detailed information about the design criteria and load limitations for the cranes can always be found in the maker's documentation – be sure you are on the safe side.

Greasing routines and tilting clearance measurements must always be followed strictly in accordance with the maker's instructions. Beyond this we also recommend carrying out analysis of the used slewing bearing grease at regular intervals. When carried out in a controlled manner, the used grease analysis is probably the most cost effective and reliable monitoring method to show the condition of the slewing bearings.

Finally, ship cranes are important machinery vital for the commercial and safe operation of the vessel. Sometimes they are too complex to be maintained by the vessel crew. Consider inviting an expert from the manufacturer at regular intervals to carry out a health check. 🚢



- Ensure you operate your crane within design criteria and operational limitations.
- Consider the dynamic loading spectra in addition to SWL limitations.
- Do not block or carry out unauthorised adjustment on safety devices.
- Grease the fittings around the slewing bearing's circumference at intervals recommended in the operator's manual.
- More is more – apply a generous amount of grease until you see old grease squeezing out of the bearing seal. Inspect purged grease and send samples for laboratory analysis. Contamination with particles or metal chips indicate a problem.
- Check and record the tilting clearance at regular intervals. Excessive movement of the structure can indicate a worn slewing bearing.
- Be observant of grinding noise and increased torque when rotating the crane housing.
- Check and record bolt torques on a regular basis and re-tighten the bolts to compensate for any creep phenomena.
- Plan maintenance and act in a timely manner. As with all bearings, a slewing bearing will eventually become worn. A well maintained bearing can be overhauled and repaired at a fraction of the cost compared with a complete replacement.

# The Swedish Club cooperates with DNV GL to test biodegradable lubricants

The Swedish Club is one of a number of top insurers invited to join with classification society DNV GL in testing the potential influence of Environmentally Acceptable Lubricants (EALs) on failures in stern tube bearings. DNV GL will oversee detailed laboratory testing of EALs by Leonardo Testing Services Ltd. at the University of Sheffield (UoS), UK.

The investigation has been prompted by an increase in stern tube bearing failures over the last few years. This coincides with the increased uptake of EALs after the introduction of regulations requiring

their use in commercial vessels trading in US waters in 2013, but also with the introduction of new propulsion system designs, such as single stern tube bearing installations and larger and heavier propellers operating at lower RPM.

The first phase of testing will be completed in the first quarter of 2018, with the results scheduled for publication later in the year.

“Very few studies have been conducted to compare the lubrication performance of EALs with that of traditional mineral oils in stern tube applications,” says Øystein Åsheim Alnes, Principal engineer at DNV GL. “With this new study we hope to gain a better

understanding of factors influencing the lubrication performance of EALs.”

The test programme will investigate such aspects as hydrodynamic oil film formation, oil film thickness under varying loads and temperatures, and potential shear thinning effects at high shear rates. State-of-the-art non-invasive ultrasonic techniques developed by UoS will be utilised to examine lubricant film behaviour in real-time.

“DNV GL supports solutions that can reduce the environmental impact of the maritime industry,” says Alnes. “Our aim in this study is to undertake a first-hand assessment of the performance of EALs in order to guide the further development of the DNV GL Rules.”

“Our aim in this study is to undertake a first-hand assessment of the performance of EALs in order to guide the further development of the DNV GL Rules.”

# Emergency Response Training with Stena Line

Earlier this year The Swedish Club ran an Emergency Response Training (ERT) emergency exercise with Stena Line. The exercise took place at the Swedish Sea Rescue Society headquarters and not only tested how individuals respond to a casualty, but more importantly highlighted the need for information sharing and good communications between the players involved in an incident.

*photos: Jonas Eklöf, JeNs Productions | www.jensproductions.se*

Magnus Gustafsson, Claims Manager, Marine, from Team Gothenburg, was one of the exercise leaders. He said: "A key element of dealing with any emergency is to make sure that you are never taken totally unaware. A crisis is not the time to be wondering what to do next and who to call for help. There are enough things that may be out of your

control without adding to the challenge by not having prepared, clear thinking and a coordinated response.

"The Swedish Club is all about risk mitigation. This includes reducing the risk of an incident happening, as well as reducing the risk of an accident getting worse if it does."

For maximum reality the scenario called for participants from all authorities and organisations that would be involved in a serious accident in the Gothenburg archipelago. Players, besides Stena Line and The Swedish Club, included DNV GL, Joint Resource Coordination Centre (JRCC) Gothenburg, the Swedish Coastguard, the Swedish Flag State Authority, the Swedish Maritime Administration, Port of Gothenburg, the Gothenburg Fire Brigade, the Swedish Defence Forces, the City of Gothenburg, Gothenburg Medical Services, the Swedish Lifeboat Association, SOS Alarm (the 112 call centre) and a local ferry operator Styröbolaget – all important players in a rescue operation of this size in this area.

The Swedish Club's **Joakim Enström** talks about reactions to the Club's Emergency Response Training and his experiences since the rollout of this important initiative.

The Swedish Club's Emergency Response Training (ERT) is very different to the exercises he carried out when working at sea or based in the office working in the safety department, explains Joakim. "We look at what happens during a complicated accident - how to be prepared, what to expect, and what external players are likely to be involved.



**Joakim Enström**, Loss Prevention Officer

## The scenario

In the scenario the Stena Danica, a 152m ferry carrying 230 vehicles and more than 850 passengers and 60 crew, collides with a container ship and the vessel is holed. Its stability is critical, and decisions must be made in the face of worsening weather conditions to work with the cast of third party support organisations to ensure the safety of the passengers and crew, and to protect the integrity of the vessel.

The level of success in handling a casualty is as much about the decisions that are made at key points as the casualty unfolds and the quality of the communication established as it is about environmental and procedural decisions.



Magnus explained: "The Stena exercise is an ideal example of how the Club's ERT training can lead to increased awareness of who needs to be making decisions, when decisions need to be

made, and importantly, when those decisions, actions and updates need to be communicated between the vast number of stakeholders involved in an emergency response."

## "Training, training and training is everything in order to be prepared for the unknown and the unexpected."

"The scenarios we have created have involved different accidents such as a collision, explosion, personal injury, grounding, engine breakdown, compliance issues, pollution, cargo damage and salvage."

Joakim believes that The Swedish Club's ERT adds something special to the ship owners' or managers' emergency preparedness, as it is very different to the normal drills carried out each year as per the company's ISM and vessel's SMS.

"During the session we discuss what happens in complicated accidents and highlight why it is imperative to be prepared and analyse your own emergency organisation," he explains. "I remember that when I was working at sea - and even ashore - I did not fully understand the complex issues that surround an accident, as the main focus was always on the emergency at hand. Whilst that is not necessarily wrong, it does mean that those involved in an incident don't have the complete overview which is needed to be able to deal with an emergency effectively.

"Our emergency response training helps with understanding complicated issues and gives a better understanding of what happens during a major accident."

The Swedish Club prides itself on offering a full range of marine insurance products to members, the Club's participants are a combination of claims handlers, technical experts, loss prevention agents and underwriters. This ensures that the scenario is dealt with in the most realistic manner possible.

The Swedish Club has also carried out a number of Stress Test drills which focus on the effects of an accident in real time. "We ran a large stress test drill in Norway where we tested the company's emergency preparedness in dealing with the media, fire on board, injuries, abandoning ship, next of kin and how to act when key personnel are missing from the emergency organisation," said Joakim. "This was in cooperation with media crisis management experts, Navigate Response. The exercise was

carried out in real time and the company's entire organisation was tested both in Norway and at their offices abroad."

Joakim is keen to stress that the purpose of the training sessions is not about finding who is at fault, but how the problem can be solved most efficiently to save lives and protect the environment. The purpose is to find areas which can be improved and also allows the Club to share its experience and knowledge in dealing with large claims.

"The more we share the better we will be prepared," he says. "I was told by the company at a recent exercise that "This was an excellent preparation for a worst case which will hopefully never come. We will also use this report in our organisation for training purposes." I find that encouraging."

The Swedish Club ran more than 40 exercises globally last year, and looks forward to continuing the good work in 2018. 🇳🇴



**Bjarne Koitrand,**  
Technical Operations Director

## The need for a communication strategy

Marina Smyth Samsjö, Manager, Marketing Communications, contributed to The Swedish Club Team. “One of the salient facts many participants took away from the exercise was the

importance of a communication strategy,” she said. “Participants were surprised when it was estimated that over 500 land-based people from various organisations could be involved in responding almost immediately to an emergency. These include the ship owner, response centre staff, police, hospitals, coastguard, voluntary responders, ambulance and coach drivers and passenger landing coordinators.

## Why a table top exercise?

A table top exercise is not as realistic as a full scale exercise out in the fairway, but it is also not as risky, explains Maria Boman a Search and Rescue Mission Coordinator at the JRCC of the Swedish Maritime Administration. Her role is to coordinate search and rescue missions, and she has been involved in some serious incidents around the Swedish coastline over the last 20 years.

She was also joint exercise leader, along with Magnus Gustafsson, in the exercise. “There are so many different government agencies such as police,

ambulance service, rescue services and other organisations that will be involved, it is good to have one dedicated body to coordinate this,” she said. “These table top exercises are very useful as you get to see the different perspectives of the organisations involved as well as gaining experience of what they may need to know and when.”



**Maria Boman,**  
Search and Rescue Mission Coordinator at the JRCC





The JRCC does carry out full scale exercises but there is always the concern about safety of everyone involved. "In a round table exercise we can discuss procedures and decisions in a way we cannot when we are out in the field" said Boman.

"With a simulation like this, the participants get a much better view of everyone else's activities and responsibilities, they get to see directly how their own decisions affect the ongoing operations, and importantly how communication needs to be maintained."

Bjarne Koitrand, Technical Operations Director at Stena agreed. "Training, training and training is everything in order to be prepared for the unknown and the unexpected."

But he points out that training just once is not enough. "It is vital to know the roles and responsibilities of your team and colleagues. However real incidents have shown us that it is equally important that the team is flexible and can deal with new and unforeseen tasks."

## Importance of communication

His job is to be the communication link between the emergency team dealing with the incident and Stena Line; making sure that they have the correct and sufficient resources to deal with the situation.

An operator such as Stena has different vessels in different jurisdictions where

## "A key element of dealing with any emergency is to make sure that you are never taken totally unaware."

emergency responses can vary. "The emergency procedures involve the regional offices and the staff based there. The emergency procedures are continuously reviewed, updated and uploaded in our digital library ready to be printed," he said.

Boman, at the JRCC agrees that keeping a flow of information during an emergency is of critical importance

"The spread of information is very important," said Boman. "People need to know when there is information, but they also need to know when there is no more information. We need to know the limits."

She also explained that from a land-based response to an emergency it does take time for the information to build up, but being able to make a start, even with limited information is better than not being told anything.

## Class emergency response

Incorporated into the emergency response is the role of the classification society. Sat at the table, representing DNV GL was Pierre Nordin, a principle surveyor based in Gothenburg. After an

accident such as this, he explained, the vessel will be out of its statutory and class conditions, but once the temporary repairs are made, the vessel may be issued with restricted class conditions to allow it to make the single voyage to have permanent repairs made.

"We had a real-life situation where a vessel was involved in a collision in Sweden," he said. "The surveyor took the decision, as a Recognised Organisation, representing the vessel's flag, to allow the vessel to sail one trip, under restricted class to a Danish repair yard."

"We don't tell owners what to do," explained Nordin. "We support owners and give them suggestions."

DNV GL has two emergency response centres, one in Oslo, and one in Hamburg. Each has a team of experts that are permanently on call, and it is their job then to reach out to other experts within DNV GL as a situation develops.

"We have to be able to man those emergency response centres very quickly," said Nordin. "We practice up to 70 times a year with different clients, but we can have up to 55 incidents a year for real." DNV GL has the plans for over 4,000 vessels in its emergency response database. 🇳🇴

# Tankers: How to avoid the blame game

**Oil delivery shortfall? Cargo contaminated on arrival? It happens too often, according to Ian Hodges, Director of TMC Marine – and most of the time ships unfairly get the blame.**



It's not difficult to load and discharge a ship correctly, as long as everyone is doing their job properly on board and ashore, says Ian Hodges. However, poor quality inspection, human error, and occasionally simple corruption are just some of the factors that can lead to outturn loss or contamination.

As an experienced consultant in the field, Hodges – a Master Mariner himself – knows only too well what happens in the real world. It's unfortunate, he says, that as soon as a problem is suspected, the finger is immediately pointed at the ship. Based on his experience studying hundreds of cases over the years, he would say the ship is to blame only 10% of the time.

"In reality, most losses, whether of clean petroleum products (CPP) or dirty petroleum products (DPP) are in fact 'paper losses' – in other words, the cargo was never on board in the first place," he says.

"Those at fault are normally the suppliers or the receivers or their delegates (the inspection company), and the loss is at times due to sloppy practice or corruption. Rarely has the ship caused the problem."

He estimates about 70% of the time the problem has been caused by the

suppliers, or sellers at the load port, and perhaps 20% can be attributed to the receivers, or buyers, at the discharge port. The other 10% is down to the ship, primarily due to it being unable for whatever reason, to pump the whole cargo off, particularly with crudes which need heating or COWing (crude oil washing).

Cross contamination within the ship's tanks can happen at any time, but when it does occur it is usually during load or discharge, he says. "When this happens, 99% of the time this is due to human error, which can be as simple as opening the wrong valve."

Large losses on crude carriers are often due to a significant increase in water which was not detected at the load port. This is because after loading, water is not given enough time to settle out, especially when loading from an FPSO where the oil has just come from the seabed."

## Three stages

There are three basic stages required to achieve any shipment of oil, says Hodges.

1) the cargo is loaded from shore tanks to the ship's tanks at the load port.

2) the cargo is transported from one port to another in the ship's tanks.

3) the cargo is discharged from the ship's tanks to the shore tanks.

"Contamination or physical loss of the cargo can happen during any of these three stages, although (2) is the least common," he says.

Owners have no control over what happens onshore, he points out. But there are steps that the Master can take to avoid difficulties at port. "He must ensure he presents his ship 'ready in every respect to load the nominated cargo', he says. "Follow ISGOTT (International Safety Guide for Oil Tankers & Terminals) and ISM (International Safety Management Code) and the Master can do no more."

## The role of inspection companies

How do inspectors fit into this chain of events? Hodges says inspection companies are normally appointed jointly by buyers and sellers of the cargo, splitting the cost 50/50. "At the load port their primary role is to produce a certificate of quality, and a certificate of quantity which forms the basis of the bill of lading."

Masters should be aware that the inspector has absolutely no

contractual obligation to the owner or the ship. Sadly oil majors and trading houses don't pay inspection companies a lot. In recent years it seems that an inspection company would rather have long term steady business from an oil major with low profit margin, than unpredictable short term with higher margins. For this reason they often cut corners. For example, they are supposed to supply their own calibrated and certified equipment, but usually they are dependent on the ship's devices. Also, there are often delays when waiting for an inspector to arrive on board.

## Advice and support

TMC Marine, a Bureau Veritas Group Company, has been providing advice and support to the marine industry since 1979. In his role, Hodges works to identify what went wrong, when and why. That should be achievable when armed with all the information and in particular the full inspection report at load and discharge, he says. "Sadly, you rarely get the full picture, especially when representing owners, as the inspection companies do not have to supply their reports to owners. Owners have to request the reports from charterers, and charterers can send what they like." 🇬🇧

## The sequence of events:

**1:** Suppliers sell a cargo to receivers. Quantity and quality (Q+Q) are agreed and deal terms defined.

**2:** The charterer gives voyage orders to the Master, defining (amongst other things) the name and quantity of cargo to be loaded, and the load port.

**3:** Based on density and volume, the Master plans stowage of the cargo, deciding which tanks to load. On CPP trade, the compatibility of the last cargo must be considered and decisions made on what tank cleaning is needed, if any. It is up to the Master to present his ship 'fit and ready in every respect to load'.

**4:** Prior to loading the inspector measures and samples shore tanks, normally within 24 hours of loading. Lab tests on this batch usually form the basis of the certificate of quality.

**5:** The ship's tanks are inspected to determine their suitability to load the cargo. An OBQ (on board quantity) survey is performed in order to determine the amount of liquid left from the last cargo. On CPP trade this is normally zero.

**6:** The cargo is transferred from shore tanks to ship's tanks.

**7:** The inspector surveys shore and ship's tanks to determine the volumes transferred and received, He then produces a certificate of

quantity. Then he draws three sets of samples from the ship's tanks, one for buyers, one for sellers and one for the Master.

**8:** As long as there are no Q+Q issues, the ship proceeds to the discharge port.

**9:** Just before the ship arrives at the discharge port, the inspector measures shore tank quantities, and may take samples.

**10:** The ship arrives and the inspector takes samples from the ship's tanks, which are often tested before commencing the discharge. Ship's tanks are surveyed for quantity.

**11:** As long as Q+Q is the same as at the load port, discharge begins. Once the ship has been permitted to start the discharge, this is a good indicator there shouldn't be any further issues.

**12:** At the end of the discharge, the inspector measures the amount of cargo received onshore, which is the outturn figure. He also surveys cargo tanks to determine ROB (remain on board). The overall 'loss' is the difference between the bill of lading and the outturn. The acceptable industry loss is usually 0.3%.

**13:** If there are no Q+Q issues the ship can depart for its next cargo.

**"Those at fault are normally the suppliers or the receivers or their delegates (the inspection company), and the loss is at times due to sloppy practice or corruption. Rarely has the ship caused the problem."**

# The ICA and its operation

## Background

In 1970 the International Group of P&I Associations, frustrated at the time and expense which, even then, was being spent in resolving cargo claims between owners and charterers on the New York Produce Exchange form, drew up an Inter-Club Agreement to facilitate the settlement of such claims between the Clubs (the 'ICA').

During this time there have been a number of amendments and the ICA, and its operation, has been a remarkable success, with its similarity

to the knock for knock principle in motor insurance. Notwithstanding that it was originally an agreement between the Clubs, the ICA has for many years now been itself expressly incorporated into time charterparties and the ICA now routinely regulates the settlement of cargo claims between owners and charterers.

It is undoubtedly this 'mechanical' approach towards apportionment, combined with the fact that it is not necessary to look for moral culpability or blame, which has contributed so greatly to the success of the ICA.

prolonged period at anchor at the discharge port. All allegations against the owner and crew were rejected and the owners were awarded their hire in full. In considering the application of clause 8(d) the Tribunal held that 'act' was to be distinguished from something suggesting fault, breach or neglect and concluded that the ICA must regard charterers' decisions, both in terms of loading the cargo and their orders for the vessel to wait off BIK, as an 'act' falling within clause 8(d) such that they should bear 100% of the consequences. It is to be noted that it was accepted that the orders which charterers had given, and which were the cause of the loss, were orders which they were entitled to give.

## The case

The long held understanding as to how the ICA is intended to operate has recently come under threat in the matter of the MV 'Yangtze Xing Hua' when the English Court of Appeal handed down its decision in December 2017.

The claimants in the underlying arbitration are members of The Swedish Club. As the owners of the above vessel, they had chartered it to the Respondent Charterers, Transgrain, for a time charter trip carrying soya bean meal from South America to Iran. The charterparty was dated 3 August 2012 and was on the NYPE form. The vessel arrived off the discharge port, BIK, Iran in December 2012. Not having been paid for the cargo, the charterers ordered the vessel to wait off the discharge port for over four months, during which period the cargo started to overheat.

When the vessel was brought alongside and discharged in May 2013, damage was found and a claim was made against the vessel for some EUR 5 million. After lengthy negotiations involving the Club, the claim was settled in the sum of EUR 2,654,238. The owners claimed that sum together with hire in the sum of USD 1,012,740 from the charterers. It was common ground

that liability was to be settled in accordance with the ICA 1996, which had been incorporated into the charterparty. Clause 8 sub-paragraph (d) provides as follows:

*'8(d) All other cargo claims whatsoever (including claims for delay to cargo): 50% Charterers, 50% Owners*

unless there is clear and irrefutable evidence that the claim arose out of the act or neglect of the one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim.'

## Cause of the damage

The charterers alleged that the cause of the damage was the owners' failure to properly monitor the cargo temperatures. The Tribunal however found that the monitoring was not at fault and that the cause of the damage was a combination of the inherent nature of the cargo (and its oil and moisture content) together with the

**The ICA now routinely regulates the settlement of cargo claims between owners and charterers.**



# – a success story for our time

## Rather than considerations of fault or culpability, the critical question in considering how cargo claims should be apportioned under clause 8 is that of causation.

### Appeal

The charterers sought and obtained leave to appeal the Award and which appeal was heard by Mr Justice Teare on the 23 November 2016. Charterers submitted, inter alia, that the word 'act' means 'culpable act', that the phrase 'act or neglect' compendiously means 'fault' and that the Tribunal was wrong to hold that any act, whether culpable or not, was sufficient to constitute an 'act' for the purposes of clause 8(d) of the ICA. Justice Teare rejected the charterers' appeal but gave leave for the matter to be appealed to the Court of Appeal, and the matter was heard on 7 December 2017.

There, the charterers again submitted that the first and second versions (1970 and 1984) of the ICA were predicated on fault and that, had it been intended to drop the concept of fault in the 1996 version, that intention would have been clearly expressed. However, as in the High Court, the court held that the 'archaeology' of the ICA was of no assistance, that there had been substantial changes between the 1984 and 1996 versions (8(d) was an entirely new provision sweep-up provision), and that the effect of the changes was clear.

It was also submitted that sub-clauses 8 (a) and (b) in the 1996 version continued

to require fault and that it would be inconsistent with these provisions to construe 'act' in 8 (d) as not requiring fault. However, the Court of Appeal took the view that there was no requirement that claims arising out of unseaworthiness had to occur because the owner failed to exercise due diligence (to use the language of Article III rule 1 of the Hague-Visby Rules), and that an error or fault in the navigation or management of the vessel might encompass fault but did not require it. An error in navigation may produce a cargo claim even in the absence of fault, as might an error in the management of the vessel. It was observed that the same might be said with reference to 'failure properly to load, stow, lash, discharge or handle the cargo' and which did not require negligence or fault either.

### Concluding comments

Rather than considerations of fault or culpability, the critical question in considering how cargo claims should be apportioned under clause 8 is that of causation. What is required is a factual investigation into the cause of the underlying cargo claim and for the claim to be apportioned accordingly. Further, as counsel for owners submitted, this relatively simple question and the corresponding mechanical operation of the ICA, would be made significantly more complicated if claims handlers had to further consider questions of fault and/or culpability in deciding upon apportionment, rather than the simple factual scenario applicable. The Court rejected suggestions that apportionment based on causation would be difficult to

apply in practice and that interpreting the word 'act' in clause 8(d) to mean any act, whether culpable or not, would lead to unacceptably wide liability on the part of charterers.

The Court of Appeal's decision is to be welcomed. It confirms that apportionment is emphatically not 'a blame game'. The mechanical process of apportionment under the ICA has been very much successful, over what is now approaching 50 years, in avoiding a good deal of expensive and time consuming litigation. The suggestion that considerations of fault were required to be considered, not just under clause 8(d), but also in 8(a), (b) and indeed (c), had the potential to add a substantial layer of complexity to an otherwise simple process. The confirmation that considerations of fault or culpability are not proper parts of the apportionment process further confirms that the claims handlers' task is a relatively simple one.

It must be noted that the importance of the factual review carried out as part of the apportionment process emphasises the paramount importance of collecting accurate evidence at an early stage.

The charterer ended up required to pay the owners the unpaid hire and 100% toward the cargo claim the owners had paid plus costs and expenses. 🙏

*The Swedish Club thanks Bruce Hung, former Senior Claims Manager, Team Asia and Nicholas Nicholas Wilson of Bentleys, Stokes and Lowless who assisted the shipowners on this case and prepared this valuable article.*

## Rather than considerations of fault or culpability, the critical question in considering how cargo claims should be apportioned under clause 8 is that of causation.

# Claims for coral reef injury in three Pacific jurisdictions

As the world grows ever more interested in the protection of our precious coral reefs, we look at claims for coral injury arising from the physical impact of vessel groundings within three jurisdictions which cover a large swath of the North Pacific Ocean: the Federated States of Micronesia ('FSM'), Republic of the Marshall Islands ('RMI') and Hawaii. Claims for oil spills or wreck removal are a story in themselves, and so are not included in this article.



## by Nenad Krek

Nenad Krek is a partner with Adams, Miyashiro & Krek LLP in Honolulu, Hawaii. He has concentrated his practice in Honolulu on admiralty, maritime and insurance law since 1984, and has participated in maritime litigation in the Republic of the Marshall Islands and the Federated States of Micronesia since 1990.

## Who can claim

In Hawaii, claims are brought jointly by the federal and state government 'trustees' represented by the federal Department of Justice and Hawaii Department of the Attorney General. Claims are made under the Oil Pollution Act 1990 ('OPA'), upon the theory that the application of the OPA is triggered if the grounding involves any threat of an oil spill, no matter how remote or inconsequential such threat may be. Claims are brought informally and do not involve litigation, unless an impasse in negotiation is reached.

In the FSM, the federal government owns reefs outside the island lagoons. The ownership of submerged lands within island lagoons is governed by law of member states. In all states except Yap, submerged lands within the island lagoons are owned by the state government. In Yap, the entire lagoon,

including the submerged lands and the water column, is privately owned by family clans (tabinaw).

In Yap, recovery will be sought under general maritime law by class action by traditional chiefs on behalf of all affected residents. No proof will be required as to which specific tabinaw were involved and what part of the reef each of them owns. How any damages awarded will be distributed by the chiefs has been held to be no concern of the vessel owner who has to pay such damages.

In the RMI, the national government owns all marine areas below the ordinary high watermark.

Both in the RMI and the FSM (except Yap), claims are asserted by the national or the state Attorney General by civil action against the vessel in rem and its owners, and sometimes also charterers, in personam, under maritime law, which

generally follows U.S. maritime law. Claims may also be asserted under national or local pollution statutes for things like toxic hull paint scraped of the vessel and stuck on the reef. Such additional claims have been minor and commonly dropped along the way.

## What damages are recoverable

In Hawaii, the trustees will present a claim derived from computer modelling of reef injury and recovery. These models are not constrained by the federal rules of evidence, which do not



photo: Rusty Nall

**In Yap, courts have awarded damages on the basis of an arbitrary dollar amount per square metre of the affected reef, determined on the basis of past judgments and settlements.**



photos: Greg Challenger, Polaris Applied Sciences

**The governments of the FSM states other than Yap have been reticent to date in pursuing damages for groundings.**

## In Hawaii, the trustees will present a claim derived from computer modelling of reef injury and recovery.

apply to natural resource damage assessment under OPA. After that, negotiations will ensue. The owner is motivated to settle by the knowledge that if an impasse is reached, the trustees will present their claim to the National Oil Pollution Fund, which will pay it as presented, and will then seek recovery from the owner in federal court. In such an action, the owner has the burden of proving that the Fund's determination of damages was arbitrary and capricious. Claims are often negotiated on the basis of an agreed amount per square metre of injured coral. This requires overcoming disputes as to the area affected, and density and quality of coral within that area. Sometimes it is easier to negotiate settlement on a lump-sum dollar basis.

The governments of the FSM states other than Yap have been reticent to date in pursuing damages for groundings. In Yap, courts have awarded damages on the basis of an arbitrary dollar amount per square metre of the affected reef, determined on the basis of past judgments and settlements. In addition, damages have been awarded for the loss of subsistence by local residents, on the theory that the destruction of the reef resulted in the loss of fish which were supported by the reef ecosystem, and in introduction, present or future, of toxic dinoflagellates, which make reef fish unsafe to eat. Courts have allowed damages for the loss of subsistence to be established by expert testimony, and have not closely scrutinized the experts' methodology or data upon which their opinions relied.

The government of the RMI has recently filed an action against a vessel involved in a grounding, and the associated interests, alleging the same types of damages that are sought in class actions in Yap, and asserting that the national government can seek relief for

and on behalf of its citizens. No substantive or evidentiary rulings have been made yet. RMI courts have historically enforced RMI rules of evidence, which are patterned upon U.S. federal rules, and have restricted expert testimony accordingly.

Reticent though the FSM may be to pursue damages; if RMI courts were to hold that the national government can run class actions on behalf of its allegedly affected citizens, this may result in political pressure on other state governments within the FSM to do the same.

## Limitation of liability

In Hawaii, limitation of liability is possible, but generally not practical, due to the exacting burden of proof and high limits under OPA. Limitation of liability has, however, been asserted in connection with groundings in the FSM, which, by federal law, follows the Limitation of Liability Convention 1976. RMI law likewise follows the Convention, as amended by the 1996 Protocol. ¶35



photos: Greg Challenger, Polaris Applied Sciences

# The blockchain revolution

Interview with **Jack Hatcher**,  
Legal Director, Hill Dickinson

## – what does it really mean for the marine insurance business?

Blockchain. Everyone will tell you it's important, everyone talks about how it will change the way we do business ... and a very large percentage of those same people will secretly admit that they're struggling to understand what it actually is.

The term 'virtual ledger' is often thrown into the conversation, as if that explains it all. Beyond that, we all know that those who fail to embrace new technology are in danger of falling by the wayside.

So what's in it for us? Jack Hatcher, Legal Director in Hill Dickinson's marine, trade and energy team and a specialist in this area, lists speed, efficiency, transparency and reduced costs as benefits.

And the drawbacks? Transparency can also mean a loss of privacy – with potential impact on commercial sensitivities. And, while blockchain technology could be welcomed for saving us from some mundane or routine tasks, could it also, in the rush for speed, sacrifice something else that is so treasured in the shipping industry? If 'routine' meetings are gone, what does

that mean for our valued personal relationships, built up over time, with clients and colleagues?

### What is blockchain?

But first, to basics. There are a number of different ways to describe the blockchain concept, says Hatcher, but his preferred explanation uses the comparison of a safe. "Imagine you have a number of safes lined up; each safe has an identifying number and each safe has a slot which allows you or others to drop money into it. The safes are transparent so I can see inside – but no one can access your safe without the one particular number you have.

"The number can't be manipulated or changed. And once a transaction has taken place, it is irreversible – no one can go back and change the deal or the terms. That is an advantage and also a disadvantage; both parties are accountable by the complete terms of any agreement. That is why you have to make sure the deals you do are correct and that you agree to the parameters before you enter into that."



### Transparency – friend or foe

Hatcher agrees that there are issues about the transparency of the system. "The parties are going to have to trust each other more. But the benefits of transparency and an open market place will far outweigh the privacy concerns."

In theory, if a party wants to keep an element private they can drop out of the blockchain, he says: "But that would make people suspicious and goes against the whole point of it. Blockchain should give participants an increased awareness and detailed history of the counterparties they are dealing with –

**"The parties are going to have to trust each other more. But the benefits of transparency and an open market place will far outweigh the privacy concerns."**

something which at present relies to a large extent on due diligence, with an element of risk. That in itself creates more trust and puts pressure on parties to act correctly or risk a blighted reputation.”

## The benefits of blockchain

The World Economic Forum has said a 15% enhancement in world trade could be achieved if we remove the friction of sharing information in the supply chain. That’s no surprise – the paperchase and associated costs of so many supply chains have been well documented in recent times.

However, this is certainly not a one-size-fits-all panacea. “It does seem with any advancement in technology there are only certain processes or tasks that need to be automated, and until the technology is at the point where it does reduce costs or make life easier, you could ask yourself whether it is really worthwhile,” says Hatcher.

## Blockchain and the shipping industry

At which point, it’s time to ask for an example of the blockchain concept – one that can actually be understood in the shipping context.

**The World Economic Forum has said a 15% enhancement in world trade could be achieved if we remove the friction of sharing information in the supply chain.**

“If you are a Chief Engineer, there’s a problem with the lube oil cooler and you need a new gasket, you send an email to the Master, he contacts the ship manager (if he can), the manager contacts the supplier, and the supplier checks what inventory they have and whether the part needs ordering or making. And all that communication goes similarly all the way back along the line.

“Now take a blockchain solution. The moment the Chief Engineer sends a message on the blockchain software that he needs a new gasket, the process begins; a number of suppliers in the blockchain can compete to provide that spare part. In other words, it is taking out the middle man process.”

## The human element

Will blockchain ultimately remove humans altogether? “Certainly operational functions are most at risk of automation. Buying and selling? I am not so sure. It depends what you are buying or selling and on the complexity.

“Where it is a commodity, yes, you could use blockchain for a sale and not need any humans at all. But if you are talking about a ship, you need to determine and certify how old it is, assess the quality of steel and gear, and so on – you would still need human interaction in the process.”

In short, humans will be needed for the non-routine stuff.

Brokers, for example, acknowledge that they can spend up to 80% of their time on administration, says Hatcher: “If you can take some of that workload away, then the 20% of time that they have to think about new business or identify risks has increased.”

**“Rather than see all this as a threat, intermediaries need to get in early and see how they can benefit from and support this technology,”**

## Blockchain and insurance

Personal injury claims, perhaps someone injured on a cruise, could be settled via a blockchain – with decisions and payment made based on level of injury, loss of earnings and local costs. Low-value Bill of Lading cargo claims might be put into a blockchain. Even marine insurance could be processed via a blockchain platform.

“Rather than see all this as a threat, intermediaries need to get in early and see how they can benefit from and support this technology,” says Hatcher. “Yes, it will potentially make back office activities redundant, but it will also put more emphasis on humans dealing with the ‘softer’ side. We will still need people in the industry to sit down and decide what is going to be included in a blockchain’s parameters and associated agreements. We will still need lawyers and other experts to make sure these contracts are legally watertight.

“Across the industry we are trying to predict what these developments will mean for us all. We are not going to prevent this advance of technology. We must all adapt to provide different services, identify new areas of work, see where we can add value. Change is coming.”

# Smart contracts:

## Press the button carefully – there’s no going back

Interview with **Nicholas Berry**, Partner, Norton Rose



Automatic, irrevocable: smart contracts have been rapidly gaining ground in the banking and finance sectors.

The insurance industry may be a little behind the banking sector but, nevertheless, we can expect to see smart contracts being developed at an increasing pace over the next few years, says legal expert Nicholas Berry. In particular, smart contracts will find their place in areas of more simple risks, where there are clear parameters relating to payment, the potential for disputes is low and the claims management process is uncomplicated or pre-determined.

Berry, a partner at Norton Rose Fulbright uses the vending machine as a comparison, to help explain the concept. When the money is paid and the selection made, an irrevocable set of actions is put in motion. The money is kept and the drink is supplied. The transaction cannot be stopped in mid-flow and the money cannot be returned when the drink is supplied.

Translate that to an insurance smart contract. A festival is organised. It is cancelled because of rain. A smart contract, based on sensors that detect the rainfall in the GPS area, automatically pays out cancellation insurance.

### The insurance sector

“It has been interesting to see how smart contracts are starting to pop up in the insurance sector; we are advising on platform type arrangements using blockchain technologies and we get the sense that whereas this time last year people were at the proof-of-concept stage, now they are really starting to figure out what is going to work and what it is not,” says Berry.

### What is a smart contract?

A smart contract is defined as an instance of coding and a software program that encodes performance conditions and outcomes. It can be written purely in code, or digital form, but doesn’t have to be exclusively so. It can be a ‘hybrid’ - a cross between ‘old fashioned’ and ‘smart’, so that, for example, the ‘smart’ element deals with the process fundamentals such as payments, and a linked written document deals with more complex or sensitive aspects.

“There are some in the tech community that think that a complex commercial contract can be entirely encoded, but if that will be possible, it’s likely to be some way off. More realistically and pragmatically, a ‘hybrid’ contract model is more likely in the short term,” he says.

Smart contracts effectively rely on people being able to trust a shared set of information and promises, and often this is linked to the use of blockchains. However, Berry says: “Smart contracts don’t need a blockchain to work, although they are ordinarily associated with a distributed ledger technology environment.”

“When the money is paid and the selection made, an irrevocable set of actions is put in motion.”

“The problem with smart contracts is they can’t currently deal with the complex elements within the insurance context. After all, there are a lot of nuances around the drafting of contracts.”

### The drive towards automation

There is a big drive to automate and digitalise processes, and smart contracts are a part of that, he says. “My view is that smart contracts are indeed great for automatic processes – for example, if there is an obvious figure for an insurance payout using a sensor or other trigger such as an index. What you will see is a modular approach, starting with the ‘easy wins’. The problem with smart contracts is they can’t currently deal with the complex elements within the insurance context. After all, there are a lot of nuances around the drafting of contracts.

“So initially smart contracts will be used in more simple ‘commoditised’ products or aspects of products. As people get better at this, they can then move on to increased complexity as the technology is proven. And there may well be a higher premium for people looking for sophisticated bespoke products rather than ‘smart’ and simple ones.”

There is evidence, says Berry, that customers in the retail sector want such products “Because of the sophistication of underwriting and the use of big data, part of the direction of travel is the development of new products people actually want. Smart contracts could actually support the development of these products.”

### Finding a balance

In more simple situations, automation of claims handling could also give better consistency, he says – but that still leaves open the fact that any nuances could be passed over. “Automatic claims settlement might be based on external triggers but might ignore the underlying losses of the insured; it may also not take into account human and commercial considerations.

“In the commercial world, with complex claims, I expect you will still have humans doing complex loss adjustment but aided by technology, including smart contract processes especially in the marine space.”

“Smart contracts effectively rely on people being able to trust a shared set of information and promises, and often this is linked to the use of blockchains.”

### The future

All of this raises questions about the skillsets of the future. “I think that coding experts will be the key,” says Berry. “Businesses need to consider their skillset going forward and whether coding and digital needs to be part of it.

“Collaboration is at the core. Some people have technology expertise, some have insurance expertise, some have selling expertise and some have regulatory expertise. For these things to work, you need to bring all the participants together.”



“Automatic claims settlement would be based on external triggers but might ignore the underlying losses of the insured; so it would make sense to embed dispute resolution as well.”

# Impact of the EU GDPR on the claims process



by **Anders Leissner**  
Director, Corporate Legal & FD&D

The EU GDPR (General Data Protection Regulations) will come into force on 25 May 2018, at which point it will have direct effect in the EU/EEA. As far as the Club/member relationship is concerned, the impact of GDPR will in particular be felt in claims relating to personal injury and illness or other cases involving data originating from natural persons, or individuals. Data originating from a legal entity that does not contain personal information, or information otherwise not related to natural persons is unaffected.

The aim of the GDPR is to protect the individual in relation to the processing of data. The Regulation applies to those bodies within the EU/EEA which may hold such data, but also to those outside the EU/EEA which may offer goods or services to those within that area, or send personal data to organisations within the EU/EEA, or send personal data to recipients within the EU/EEA.

Because the Club operates within the EU/EEA, the GDPR will apply to the Club. Similarly, GDPR will apply to members, and third-party service providers operating within the EU/EEA or offering goods or services to individuals within that area, and to personal data held within the EU/EEA belonging to individuals who are outside the EU/EEA.

## The aim of the GDPR is to protect the individual in relation to the processing of data.

### Data controllers, data processors and data subjects

- According to the Regulation, a 'data controller' is the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of the relevant data.
- According to the Regulation, a 'data processor' is a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.

For the purposes of GDPR, the Club acts as a controller. Further, where GDPR applies, members, brokers and external service providers such as Club correspondents, surveyors, and experts, will generally be controllers, since they are each independently likely to determine the purpose and means of the processing of the relevant data. If a processor determines 'the purposes and means of processing, the processor shall be considered to be a controller in respect of that processing'. This would be relevant only where the matter in

issue, for example a personal injury or an illness claim, contains personal data. In that case, the relevant individual(s) bringing the claim would be the data subject, benefiting from the rights provided in the GDPR.

### Sensitive personal data

Specific, stricter requirements apply to sensitive personal data. This includes data such as race, ethnic background, religious and political affiliations, and health and medical information about a data subject.

Processing of sensitive personal data is prohibited unless specific conditions apply, such as express consent or where processing is a necessary consequence of the establishment, exercise or defence of legal claims, or wherever courts are acting in their judicial capacity. It is recommended however that all members and their associated named assureds, brokers, agents, etc. consider including suitable GDPR wording in contracts, employment contracts, collective bargaining agreements, ticket conditions, etc. to allow the processing of sensitive personal data on a permitted basis.

### Transfer of data to a third country

Unless there is a valid legal basis for transferring data to a third party country outside the EU/EEA, then the transfer of data requires that either the EU Commission has decided that the relevant third party country has

## Principles for processing personal data

The principles for processing personal data can be summarised as follows:

### Lawfulness

– personal data should be processed only when there is a legal basis for doing so, such as consent, by contract, or where there is a legal obligation, or where it is necessary in order to protect the vital interests of the data subject, or where it is for the legitimate interests of the controller.

### Fairness

– those involved in processing personal data should provide the data subject with sufficient information about the processing and the data subject's rights.

### Transparency

– information should be provided in a concise and readily understandable manner.

### Purpose limitation

– personal data should only be collected and processed for specified, explicit and legitimate purposes and it should not be processed for reasons unconnected with these purposes.

### Data minimisation

– personal data should be adequate, relevant and limited to what is necessary for the purposes for which it has been collected and processed.

### Accuracy

– personal data should be accurate and up-to-date.

### Storage limitation

– personal data should be kept in a form permitting identification of data subjects for no longer than is necessary.

### Security

– using appropriate measures, personal data should be secured to protect against unauthorised or unlawful processing, accidental loss, destruction or damage.



established adequate levels of protection or that the controller or processor in the third party country has established or will establish appropriate levels of security.

Examples of this valid legal basis include where the transfer is necessary (due to a legal obligation) to bring an insurance claim, for example a personal injury claim. If a separate legal basis is required, the EU Standard Model Clauses can be used:

[https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/model-contracts-transfer-personal-data-third-countries\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/model-contracts-transfer-personal-data-third-countries_en)

The Club recommends that members to seek independent advice from a lawyer or their local Data Protection Authorities with a view to ensuring compliance with the GDPR regulation. 🇸🇪

*This is an extract of a longer article on the Club's website that can be found at [www.swedishclub.com / News/Circulars / Circulars / P&I Circulars / Circular No 2632/2018](http://www.swedishclub.com/News/Circulars/Circulars/P&I/Circulars/CircularNo2632/2018)*

# GDPR

# Cape Bonny: the case

On 14 July 2011, in the course of a laden voyage from Argentina to China, the oil tanker Cape Bonny suffered an engine breakdown while trying to avoid a typhoon. The vessel was towed to a South Korean port for a ship-to-ship transfer. General average was declared. The unfortunate vessel then had to be re-towed in order to avoid another typhoon. Cape Bonny was eventually released and berthed for repairs on 9 August 2011.

In due course, an average adjustment was prepared which assessed cargo's contribution to general average at approximately US\$2.1 million. The owners brought a claim under the guarantee for this sum.

The defendant insurance company denied any liability and refused to pay, based on Rule D of the York-Antwerp Rules, alleging that the casualty was caused by an actionable fault on the part of the owners: their failure to exercise due diligence to make the vessel seaworthy before or at the beginning of the voyage.

During an eight-day trial, Mr Justice Teare heard evidence from seven witnesses of fact and four expert witnesses who all dealt with technical matters. The owners conceded that the vessel was unseaworthy at the commencement of the voyage, due to the presence of metal particles in the luboil system. However, the burden lay upon them to prove that they had exercised due diligence to make the vessel seaworthy before or at the start of the voyage, pursuant to the Hague-Visby Rules, which had been incorporated in the contract of carriage.

The owners argued that they could discharge that burden of proof because the main engine failure had been caused by sudden and catastrophic damage to the no.1 main bearing caused by a latent defect – a weld slag – dating back to the build date. The judge dismissed the weld slag theory as 'improbable' and proceeded to consider the insurer's alternative theories regarding the cause of the casualty, including chain coupling bolts, spark erosion, improper cleaning of the filters and foreign particles in the

bearings. He determined that it was likely that the cause of the damage to main bearing no. 1 which resulted in the main engine breakdown, was the presence of foreign particles in the luboil, which should have been removed but were not.

Since the presence of wear, foreign particles and damaged filters rendered the vessel unseaworthy at the commencement of the voyage, it was determined that the owners failed to exercise due diligence to make the vessel, and particularly the filters, seaworthy. Although, his failure did not cause the engine breakdown, the court concluded that 'a prudent engineer or superintendent' should have recognised and acted on the unexplained and significant difference in the crankshaft deflection readings taken by the crew. Therefore, it was accepted that this failure to exercise due diligence had been causative of the subsequent engine breakdown and it followed that the cargo interests were not liable to make a general average contribution. 🚢

Since the presence of wear, foreign particles and damaged filters rendered the vessel unseaworthy at the commencement of the voyage, it was determined that the owners failed to exercise due diligence to make the vessel, and particularly the filters, seaworthy.



## VIEWPOINT

### Does the due diligence question climb to new heights?

**Stelios Magkanaris, Marine Claims Adjuster in Team Piraeus, considers the implications of this ruling for ship operators.**

The approach to the matter of 'due diligence' adopted by Mr Justice Teare is very relevant to future cases.

Approximately 160 of the decision's 200 paragraphs make up a technical saga of arguments, counter arguments and opinions from a variety of experts, from which the judge was obliged to discover who was 'in the right'.

The judge went into depth to weigh up the opinions of various witnesses and reflect on the facts of the case. As a result, Justice Teare's judgment took the 'due diligence' requirement to new heights, going beyond considering whether the engineering crew and the

superintendent ashore failed to follow a standard procedure, checklist, or a process which was standard common knowledge in the industry,

In essence, he held the managers liable, not for failing to detect the worn condition of the main bearing but for their failure to check on its condition - despite non determinative surrounding parameters or readings.

**In essence, the judge held the managers liable, not for failing to detect the worn condition of the main bearing but for their failure to check on its condition.**



**by Stelios Magkanaris**  
Marine Claims Adjuster, Team Piraeus

This is important as the judge questioned the technical competency of the managers to evaluate information and take action.

Whether one agrees with his final decision or not, what matters is the thought process and the test applied by the judge, which may be of significance for the industry. 🇬🇧



## Legal update

### IMB membership for FD&D members

**The Swedish Club has subscribed to a block membership agreement with the International Maritime Bureau (IMB) in London which grants its Freight Demurrage and Defence (FD&D) members direct access to the IMB Chartering Experience Programme.**

The IMB is a non-profit making organisation, established in 1981 to act as a focal point in the fight against all types of maritime crime and malpractice.

Under the terms of the membership, FD&D members wishing to check on the background of any particular charterer can contact the IMB directly with the details of the chartering company requesting whether the IMB has any information related to that company which would be relevant when considering whether or not to charter a vessel to that company.

FD&D members are encouraged to take full advantage of this service free of charge from the IMB, which it is hoped

will assist in reducing the risk of fixing to charterers who are likely to fail to honour their charterparty obligations.

Notably, FD&D is an important supplement to the ship operator's insurances providing cover for costs up to USD 10 million in disputes arising in connection with the owning and operating of the entered vessel. Membership has increased significantly during the past years and the Club covers 1,046 vessels for FD&D risks. Join the Club! 🇬🇧



**by Martyn Hughes**  
Senior Claims Manager FD&D,  
Team Gothenburg

**Members can be asked in their day to day business to do things by their contractual counterparties which risk prejudicing their P&I cover. Usually this is in exchange for a Letter of Indemnity (LOI) to be provided by the party making the request.**

In some situations, the contract governing the relationship between the member and party making the request already will have made provision for this: a rider clause, for example, saying that in a specific situation, owners agree to accept an LOI signed by, say, charterers alone.

Where members agree, for commercial reasons, to carry out an action which prejudices or is likely to prejudice their P&I cover, it is not appropriate for the Club to offer advice on the LOI wording: the member is responsible for ensuring that it is adequately protected by an LOI replacing its lost P&I cover.

All too often, however, inappropriately worded LOIs cross our desks at the Club. While the commercial reality of these situations might mean that LOIs are honoured in the spirit in which they were provided, there is no guarantee that an LOI received, will not have to be enforced in the future.

### Getting the wording right

It is, therefore, better to get the wording of the LOI correct from the outset. The following pointers may assist members in drafting a 'DIY LOI':

# DIY LOI

- 1 Ensure the LOI is on the letterhead of and signed by/on behalf of the party providing it. Using the words 'Authorised signatory' under the space left for the signature, may help.
- 2 Ensure the LOI is correctly addressed to the party receiving it.
- 3 As with the International Group (IG) wordings, ensure the vessel, voyage, cargo and bill(s) of lading involved are correctly identified.
- 4 Accurately describe what has happened and what the party being given the LOI, has been requested to do. In short, tell the story: e.g. the vessel has loaded a cargo of 'x' and is now being asked to load a cargo of 'y' on top. Or, the vessel has been asked to continue to load the cargo of 'z' during periods of light rain.
- 5 Insert the operative words : 'In consideration of your complying with our above request, we hereby agree as follows:-'

**Focus on what the party receiving the LOI is being requested to do. Describe it in sufficient detail.**

- 6 Add the indemnity paragraphs. The indemnity paragraphs can be based on the IG 'INT GROUP' wordings. Make sure, however, that they refer correctly to what the party receiving the LOI is actually being asked to do. It ought to be obvious that if the LOI is being given for issuing clean bills of lading, then the indemnity paragraphs should not refer to delivering cargo without production of bills of lading - but that is exactly the sort of inconsistency seen.

Concentrate on point 4 above. Tell the full story. Don't make do with general words such as 'carry out specialist

operations' in the description of what is being requested.

If you have sufficiently described, firstly, what has happened and, secondly, what is being asked of the party receiving the LOI, then the following generally worded indemnity paragraphs ought to be sufficient:

- 1 To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of your complying with our request.
- 2 In the event of any proceedings being commenced against you or any of your servants or agents in connection with your complying with our request as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
- 3 If, in connection with your complying with our request as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the ship, or any other ship chartered by you (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or

other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.

- 4 The liability of each and every person signing this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
- 5 This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

### Attempts to limit the extent of the indemnity

Finally, the party making the request may try to limit the extent of the indemnity provided, arguing that the indemnity should cover the consequences only of what it is asking the member to do but should not indemnify the member for mistakes or

negligence of their own crew. The answer to that is that the member is being asked to do something which puts them in a position where such a mistake might have serious consequences. The member would never have been in that position but for the counterparty's request to do something which prejudices cover.

Take for example, a vessel with seven segregations capable of loading seven different grades of cargo into seven pairs of tanks. Charterers ask the vessel to load 14 different grades using each segregation to load two separate grades through the same lines. During the operation, the crew in error allows two grades to be loaded into the one tank. Charterers ought to be responsible for that error since each separation is not designed to be used to load two separate grades, in the first place.

### The serious nature of the LOI

LOIs are a commercial reality in the industry. The Club does not turn a blind eye to them being used, but since they invariably concern prejudicing P&I cover, the Club cannot be expected to 'conjure up' their wording. Members must satisfy themselves that they are happy with, and happy to accept an LOI in exchange for losing their P&I cover. Members must also bear in mind they might not be able to legally enforce an LOI. It is hoped this article will help members draft LOIs for the situations not already covered by the INT GROUP wordings 

**All too often, inappropriately worded LOIs cross our desks at the Club. While the commercial reality of these situations might mean that LOIs are honoured in the spirit in which they were provided, there is no guarantee that an LOI received, will not have to be enforced in the future.**



# Cautionary tales: Serving notice of arbitration

Commencement of arbitration under English law is relatively straightforward.

However, two recent English legal decisions highlight the potential hazards involved in serving a notice of arbitration.



by James Bamforth  
Head of Claims – Claims Manager,  
Team Piraeus



## Glencore Agriculture BV v Conqueror Holdings Ltd (The 'Amity') [2017]

Disputes arose under a time charter party of the *Amity*. Claimant owners sent various communications to an email account of Mr Oosterman, an employee of the charterers, Glencore. These communications included a notice of arbitration. No response was received to this notice, nor to any of the other messages sent by the claimants and by the sole arbitrator. Ultimately, an award

was issued in favour of the claimants, which was sent by post to Glencore.

Glencore said the award was the first time they had been made aware of the proceedings. They applied to the Commercial Court to set it aside on the basis that the notice of arbitration had not been validly served by being sent to Mr Oosterman's personal email address.

email address is different, as whether it constitutes good service depends on the particular role and authority the individual has.

Ultimately, the Court held that the service upon Glencore was ineffective, as Mr Oosterman had neither actual nor ostensible authority to accept service on behalf of Glencore. Accordingly, Glencore was granted relief under Section 72 of the Arbitration Act.

This decision serves as a reminder that caution should be taken when serving arbitration proceedings by email. If you do not have confirmation that a particular individual is authorised to accept service, it is safer to use a generic email address for the company, or, better still, to send the notice of arbitration by fax and registered post.

**"If you do not have confirmation that a particular individual is authorised to accept service, it is safer to use a generic email address for the company, or, better still, to send the notice of arbitration by fax and registered post."**

The Court distinguished between the use of a generic email address and that of an individual employee. Service to a generic email address where that email address is held out by the company as their only email address may well be effective, because it gives rise to legitimate expectation that service of documents will be dealt with appropriately: see *The Eastern Navigator* [2005]. An email sent to an individual's

## Sino Channel Asia Limited v Dana Shipping and Trading PTE Singapore [2017]

Dana commenced proceedings against Sino under a Contract of Affreightment ('COA'). The actual day-to-day operation of the COA was performed by another company, BX, and Sino merely signed the COA. All correspondence following signature of the COA was between Dana and a Mr Cai. Dana believed Mr Cai worked for Sino, but in fact he was an employee of BX.

Disputes subsequently arose under the COA, and Dana commenced arbitration against Sino. Notice of arbitration was sent via broking channels. The brokers forwarded this and all further correspondence to Mr Cai. No response was provided, and an award was ultimately given in Dana's favour. Sino claimed the first they knew of the proceedings was when the award was

**"This case offers a reminder that brokers or other agents may also not be authorised to accept service of an arbitration notice, and a party commencing arbitration should always give careful consideration to exactly who that notice is to be served upon."**

sent to their offices by post. Sino applied to have the award set aside, on the basis that Mr Cai had not been authorised to act on their behalf.

Sino were successful at first instance. Dana challenged the decision of the Commercial Court.

The Court of Appeal looked at the course of dealings under the COA and found that BX had implied actual authority and ostensible authority to act on behalf of Sino, including in relation to accepting a notice of arbitration.

However, the Court of Appeal acknowledged that it was in very rare cases that such authority would be implied.

This case offers a reminder that brokers or other agents may also not be authorised to accept service of an arbitration notice, and a party commencing arbitration should always give careful consideration to exactly who that notice is to be served upon. It is good practice to ask any counterpart to expressly confirm that they are authorised to accept a notice of arbitration. 📧

# Meet our crew

## Back to the coffee shop

**Sometimes, a coffee is what's needed. Edward Lloyd knew it when he opened his famous Lloyd's Coffee House in the 17th century; maritime insurers, brokers and traders who patronised the facility in the City of London obviously knew it too.**

Three hundred years later, getting together over a coffee can be just as important, says Lars Nilsson, Manager of The Swedish Club's London office. "It is very important to have personal meetings, particularly if you want to discuss more complex and major deals or contracts," he says. "In common with others, our sector is looking into digital ways of doing more repetitive and simple business tasks – but the more important things are done person to person."

**"London is the most important insurance market in the world and specifically the most important marine insurance market in the world."**



The Lloyd's Collection



**Lars Nilsson, Manager, London Office**

Ask him the main reasons for having a London office and he doesn't hesitate: "London is the most important insurance market in the world and specifically the most important marine insurance market in the world.

"Almost all the major brokers have an office in London and, as marine insurers, this is still a people business. And, of course, the International Group of P&I Clubs is headquartered in London and we participate in a number of IG committees and working groups. For example, I am on the reinsurance subcommittee, which meets at least once a month."

Lars and his colleague, underwriter Kristoffer Lindqvist frequently meet members, brokers and reinsurers as part of their day-to-day work.

"There are always people to meet every day. Funnily enough we still use coffee shops and cafes. Short meetings over coffee keep us involved in the market and well informed on what's happening."

Apart from the UK itself, the London office focuses on business development in other European and overseas markets too. The team also supports colleagues from the Club's other offices: "We from

the London office are ready to assist with services, issues and personal contacts," says Lars.

"In common with others, our sector is looking into digital ways of doing more repetitive and simple business tasks – but the more important things are done person to person."

"Having a London office also enables us to attend important functions – just five minutes up the road rather than a flight from Gothenburg."

Inevitably the 'B' word comes up in the conversation – Brexit, the UK's exit from the European Union. So far it is unclear how the status of the office will change, but options are being followed up. "What will not change is this: it is important to be in London and it is also important to be seen to be in London."

"It is very important to have personal meetings, particularly if you want to discuss more complex and major deals or contracts."



**Kristoffer Lindqvist, Underwriter, London Office**

# The changing face of HR

This year, change is in the air, as we wish a happy retirement to Helena Wallerius Dahlsten after 36 years with the Club, and we bid welcome to Britta Patriksson, the Club's new Director of HR.

## Helena Wallerius Dahlsten

**In interviews, candidates are frequently questioned by HR people on their strengths and weaknesses. So, we put the question to Helena Wallerius Dahlsten shortly before her official retirement as The Swedish Club's HR Director.**

"I have never been afraid and I do trust that things will be OK. That has been both my weak point and also my strength," she said. "I have always been calm and work on the assumption that things will be all right in the end."

That attitude was helpful right from the start of her career. After studying maritime and transport law, Helena joined The Swedish Club on a summer traineeship in 1982.

"That summer never came to an end," she said, "because I am still here! I was asked to stay on to cover for a colleague and then I was offered a permanent job as a P&I claims handler."

"HR today is part of the strategic planning for the organisation and vital to a lot of structural issues. There needs to be consistency in an organisation's approach to personnel."



From the outset, Helena was allowed to deal with many aspects of cases on her own, albeit with guidance from the team manager. "I learned by handling cases and gradually took on more responsibility. Then one day the manager said to me: 'Did you bring your toothbrush? You have to go to Philadelphia.'

"We had a ship loaded with newsprint from Finland, and water had leaked in through the hatch covers and damaged the reels in the hold. He felt it was a good opportunity to go and see in real life how claims were handled."

Helena worked as a claims handler and supervisor in various roles for 20 years, until a major reorganisation of the Club in 2003.

"It was decided at that stage to set up an HR department. Until then, the Finance Director handled HR, basically being responsible for salaries and vacation dates – and the rest was the department managers' responsibility. There was no centralised process for recruitment or development of staff."

Helena took on a joint role as HR and Corporate Legal Director, as well as Secretary of the Board.

"At that time I was ready for a new challenge. I was curious and happy to enter a new arena. And although I had no HR knowledge as such, I think that people were happy that HR was being taken on by someone who knew the company and the people."

After seven years, HR and the legal side were split into two roles, and Helena became HR Director in 2010.

"HR today is part of the strategic planning for the organisation and vital to a lot of structural issues," she said. "There needs to be consistency in an organisation's approach to personnel."

How would Helena sum up her priorities in HR? "Firstly look at the company's perspective, and then look at how people can help grow the company. You can only do this if people are happy, and then you will deliver the result. I am there to deliver from the human perspective."

"My background in P&I has meant that I understand what my colleagues do. A very large part of my job has been supporting the managers - the HR role provides the distance and objective view."

## Britta Patriksson

**The Swedish Club's new HR Director is no stranger to the world of shipping – or, indeed, the world of P&I. Britta Patriksson grew up in a shipping family; her father owned Transatlantic (previously B&N and now part of Viking Supply Ships) and he served on The Swedish Club board for 30 years. Both of her grandfathers were seafarers.**

"I grew up with shipping; every summer the whole family went to sea with my father," she says. "There were not so many regulations in those days and we went ashore everywhere. I remember when he decided to leave the sea, we were crying because those fantastic trips were over."

Britta started her own career in the mid-1980s working for American Express, after studying finance and computers. As she puts it: "I worked there because it was a company that had a computer!"

She went on to work in the marketing department of SAS, eventually joining Transatlantic as a marketing assistant in 1993. At that time, the shipping company had 1,500 employees – the vast majority at sea – and no HR structure.

I will continue where Helena has left off. That means continuing to focus on developing staff and leadership. I am really looking forward to working strategically and to be representing HR issues within the management team."

"New challenges in HR are definitely emerging. The 'millennials' want to be flexible. They want to know what value the job brings to their lives, as well as how they can contribute."

After helping with HR and studying the subject alongside her other work, Britta served as HR Director from 2001 until 2016. From then, until joining The Swedish Club, she worked as a consultant.

"At its peak, Transatlantic had 1,300 seafarers – but towards the end, it was nearer 200," she says. "We always had our P&I cover with The Swedish Club, so I was a member. Now it is a lot of fun to be on the 'other side!'"

What are Britta's priorities as she joins the Club? "Of course I will continue where Helena has left off," she says. "That means continuing to focus on developing staff and leadership. I am really looking forward to working strategically and to be representing HR issues within the management team."

"New challenges in HR are definitely emerging. The 'millennials' want to be flexible. They want to know what value the job brings to their lives, as well as how they can contribute. HR will become even more important in the years to come, as it must reflect and confirm what the company itself stands for."

Outside work, Britta has a big interest in food – for the past five years she and her partner have owned a French bistro restaurant near Gothenburg.

However, it seems likely that shipping and HR will continue to dominate the family conversations. She has two sons – Patrick is a shipbroker and Hugo is an insurance broker. And her daughter Elsa, aged 20, is studying HR administration. 🇸🇪



MRM training session at Azalea Maritime

## MRM Training Provider focus: **Azalea Maritime**



**by Lorraine M. Hager**  
Strategic Development Executive,  
The Swedish Club Academy

Azalea Maritime Training Centre has been running Maritime Resource Management (MRM) training courses for eight years, and has taken on board the ethos of MRM to such an extent that it now runs MRM courses which involve all members of the crew – bridge, engine and cargo team.

“One of the main goals of MRM training is to bring people together,” explains Igor Onisko, Operational Manager and Training Coordinator at Azalea Maritime. “Integrating the various teams operating on board a vessel has proven to be far more effective than having these teams in separate training sessions.”

**“The feedback from those attending our MRM training is always very positive and exceeds expectations compared with resource management courses found elsewhere.”**

Martin Hernqvist, Managing Director of The Swedish Club Academy, agrees: “Why separate people in training who work together on board? We don’t think that’s a good idea and this is in fact the main reason we moved from the ‘old’ term Bridge Resource Management (BRM) to Maritime Resource Management (MRM) in the early days of concept development.”

Established more than twenty years ago, Azalea Maritime, based in Bijela, Montenegro, became a licenced MRM Training provider in 2010. It already offered a broad range of mandatory training courses, and saw how influential MRM could be in supporting learning by changing attitudes in the workplace.

Igor Onisko explains that the MRM training conducted at the Azalea Maritime Training Centre focuses on case study based workshop sessions. “This is to foster a good learning environment where there is a fruitful exchange of ideas between the participants from different backgrounds,” he says.

“The feedback from those attending our MRM training is always very positive and exceeds expectations compared with resource management courses found

elsewhere. Most delegates have previously attended resource management training, but have never experienced the levels of cooperation and common problem solving that can be achieved through this approach to MRM training.”

Onisko has found that having the opportunity to work together and approach issues and problems, through a joint effort offers a valuable opportunity to improve communication and teamwork. “The common goal,” he says, is to achieve ‘the highest industry standard of flawless vessel operation.’”

Martin Hernqvist adds: “The commitment that Azalea Maritime continues to put into maritime training is indeed very positive. I am delighted that Azalea Maritime shares our passion for MRM training and the results that may be achieved through effective training in human and organisational factors.”

# The Club supports tanker safety forum

The Swedish Club were proud to sponsor the latest Informal Tanker Operators' Safety Forum (ITOSF) which took place earlier this year in Athens at the Grand Bretagne Hotel.

ITOSF is an exclusive group of 70 tanker owners which meets every four months to exchange safety information for the benefit of the greater good. Participants do not discuss commercial matters and rigorously protect the confidentiality of members and proceedings.

The Swedish Club was invited to share its broad knowledge of casualty handling coupled with its unique hands-on approach. The Club stood up to the challenge with a presentation from Stelios Magkanaris, Marine Claims Adjuster, Team Piraeus, entitled 'Due diligence and seaworthiness ... how confident are you?'. This focused on the new decision from the High Court of Justice, London, regarding the 'Cape Bonny' which is covered on page 26 of this issue.



The presentation was extremely well received and sparked a lively discussion which continued during breaks, over lunch and also during dinner. Delegates were particularly concerned about how the 'non-shippping' world, such as the legal profession, seems to view the shipping

community - even those operators maintaining the highest level of standards. As a result of the concerns arising from Magkanaris' presentation, several high profile oil companies have requested additional, tailor-made, presentations for their companies. 🚢



# Notice board

## Implementation of the EU GDPR

The EU General Data Protection Regulation (GDPR) will come into force on 25 May 2018. It will have direct effect in the EU and the European Economic Area (EEA), which united the EU member states and the three EFTA states Iceland, Liechtenstein and Norway.

A brief introduction to the GDPR as relevant to the Club and its members can be found in the Club's P&I Circular No 2632/2018 dated 22 February 2018

The impact of the regulation will most often be felt in claims relating to personal injury and illness or other cases involving data originating from individuals. This is covered in more detail on page 24 of this issue of Triton.

## Cyber security measures – 6 May 2018

The EU Network and Information Security Directive (NIS) was adopted by the European Parliament on 6 July 2016 and became a directive in August 2016. EU Member States had 21 months to transpose the Directive into their national laws and six months more to identify operators of essential services.



The NIS requires maritime transport and other essential services to demonstrate that they have implemented 'appropriate and proportionate' cyber security measures.

The NIS will come into force on 6 May 2018. The largest port or harbour authorities and maritime transport companies headquartered in the EU will be directly impacted by these new provisions and there will inevitably be a trickle-down effect on small companies that contract with those organisations.

These measures will be in addition to the other new cyber laws, such as the General Data Protection Regulation (GDPR), which are about to come into effect.

## MARS reports

The Mariners' Alerting and Reporting Scheme (MARS) is a confidential reporting system run by The Nautical Institute to allow full reporting of accidents (and near misses) without fear of identification or litigation.



MARS reports regularly include alerts condensed from official industry sources, so that issues resulting from recent incidents can be efficiently relayed to the mariner on board. With access to the internet from vessels becoming more affordable, the MARS database is a valuable risk assessment, work planning and loss prevention tool and a training aid for crew and management.

MARS reports are held in a publicly-accessible database and can be accessed from The Nautical Institute website and is also published at [www.swedishclub.com/LossPrevention/Services/Cases/MARS-reports](http://www.swedishclub.com/LossPrevention/Services/Cases/MARS-reports).

## Two new guidelines from CINS

The Cargo Incident Notification System working group (CINS), a shipping line initiative launched in September 2011, has issued two new guidelines:

1. *Guidelines for the carriage of metal scrap in containers.*
2. *Guidelines for the carriage of cocoa butter in containers.*

The guidelines are aimed at increasing safety in the container supply trade by highlighting the risks involved in the carriage of these cargoes and identifying the best practices in packing and carriage methods to avoid issues.

CINS aims to increase safety in the supply chain, reduce the number of cargo incidents on board ships and on land, and to highlight the risks caused by certain cargoes and/or packing failures.

## BIMCO, ICS and INTERTANKO issue interim security guidance on passage through the Southern Red Sea and the Bab al-Mandeb strait



In response to the threats arising from the conflict in Yemen, BIMCO, ICS and INTERTANKO have published interim guidance on maritime security in the southern Red Sea and Bab al-Mandeb. Shipowners and operators should be aware of new threat patterns in the area.

The European Union Naval Force (EUNAVFOR) and the Combined Maritime Forces (CMF) have advised that a range of threats other than piracy, such as sea mines and water-borne improvised explosive devices (WBIEDs), are potential risks in the area.

It is important that company security officers and ship Masters are informed of these new threats, as the threat patterns and mitigating measures differ from the more familiar regional threat of piracy.

The guidance stresses the importance of using the Maritime Security Transit Corridor, registration with Maritime Security Centre Horn of Africa (MSCHOA) and reporting to United Kingdom Maritime Trade Operations (UKMTO), as well as reviewing and updating risk assessments and plans to include these new threats. The guidance also includes advice specific to identified threat types, including WBIEDs and similar.

The guidelines can be read in full on the BIMCO, ICS and INTERTANKO websites.

## Nairobi International Convention on the Removal of Wrecks.

On 3 February 2018, the Nairobi International Convention on the Removal of Wrecks was incorporated into Swedish national law, in the Swedish Maritime Code, chapter 11a.



It requires Swedish flagged vessels to carry a certificate stating that the ship has an insurance (or other financial security) covering the liability for removal of a wreck.

The Convention was adopted on 18 May 2007 and entered into force on 14 April 2015. It provides a sound legal basis for coastal States to remove, or have removed, wrecks which pose a hazard to the safety of navigation or to the marine and coastal environments, or both. It makes shipowners financially liable and requires them to take out insurance or provide other financial security to cover the costs of wreck removal. It also provides States with a right of direct action against insurers.

The Convention aims to fill a gap in the existing international legal framework by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea.

**SAVE  
THE DATE**



**13-15 June 2018**  
Gothenburg

# Out and about



## Breakfast Seminar in Oslo, 13 March

The Swedish Club breakfast seminar in Oslo was held at Tjuvholmen Sjømagasin on Tuesday 13 March. More than thirty brokers, ship owners and adjusters attended the event, for what has now become an annual tradition.

Area Manager Tore Forsmo was the first to speak, presenting his views on the business environment facing both the marine insurance industry as well as the shipping segments that Team Norway serve. If 2017 was dominated by wintery market conditions in most markets, perhaps 2018 will be the year when spring arrives?



From left: Bjørn Slaatten, Norwegian Official Average Adjuster, and Henrik Mjaaland and Thomas Kjersem Jacobsen, Bergvall



From left: Tom Jebesen, Arne Blystad AS, and Jeanine Krogh Borg, Truls Kvalnes and Thomas Eik Gabestad, Willis Towers Watson

The Swedish Club State of Affairs address was given by Managing Director Lars Rhodin highlighting solid performance over the past few years. Peter Stålberg, Senior Technical Advisor at the Gothenburg head office was the morning's quiz-master when he also took the audience on a guided tour through engine damage and claims with a particular emphasis on auxiliary engines. All together a morning well received and appreciated by all those attending. 🍷

## The Swedish Club welcomes WMU students



Earlier this year, the World Maritime University (WMU) paid its annual visit to The Swedish Club head office to enable its latest cohort of students to gain an insight into the marine insurance business. These visits have become a valued tradition which began 19 years ago.

The students were given an introduction to important aspects of the marine industry, such as Loss Prevention, Risk Assessment and Marine Casualties, as well as an introduction to P&I, FD&D and Marine insurance. A short presentation on computer fraud wrapped up the day.

The WMU is based in Malmö Sweden, and is a postgraduate maritime university founded by the International Maritime Organization (IMO). In addition to offering a unique postgraduate educational program, it undertakes wide-ranging research in maritime and environmental studies. 🌊

## Cefor visits the Club

This March The Swedish Club once again hosted new students of the Cefor Academy at its Gothenburg headquarters. Young professionals from all areas of the industry came together to complete the fifth module of the Nordic Marine Insurance Education Programme.



# Staff news

## GOTHENBURG



### Malin Högberg awarded professional qualification in P&I

Malin Högberg, Senior Claims Executive P&I and FD&D, Team Gothenburg, is the first employee of The Swedish Club to successfully complete the International Group of P&I Clubs prestigious P&I Qualification (P&IQ).

First launched in 2010, P&IQ is a rigorous programme of education through which those working in the industry can gain invaluable knowledge of P&I, including the structure of the shipping industry, the history and operation of the Clubs and the different types of liabilities insured.

The P&IQ programme consists of seven modules covering the following topics:

- The shipping business
- P&I insurance history, operation and practice
- Underwriting, loss prevention and claims handling
- People risks
- Cargo risks
- Collision, FFO & pollution
- Towage, salvage, general average & wreck removal



### Britta Patriksson

Britta joined the Club as Human Resource Director on 1 February 2018. She succeeds Helena Wallerius Dahlsten who recently retired on 1 March 2018. Britta has a solid background in human resources and extensive experience in management and shipping. For full interview see p37.



### Rafaela Konstantinou

Rafaela joined Team Gothenburg in March 2018 for a period of six months as Assistant Claims Executive. Rafaela holds a BSc and MSc in Shipping Management from ALBA Graduate Business School in Athens plus a diploma in Maritime Law from Stockholm University.



### Ellinor Borén

Ellinor joined Team Gothenburg in January 2018 for a period of one year as Assistant Claims Executive. She holds a BSc in Nautical Science and an LL.M in Maritime Law. Ellinor has served as Second Officer on ro-ro and tanker vessels.



### Debra Xie

Debra joined Team Gothenburg in December 2017 for a period of one year as Assistant Underwriter. She has previously worked in Singapore as an Assistant Broker with Edge Insurance Brokers and as Technical Assistant with Arthur J. Gallagher.



### Kleopatra Georgantzi

Kleopatra has accepted permanent employment as Senior Claims Executive, P&I in Team Gothenburg.



### Linda Wilén

Linda joined the Club on a permanent basis in September 2017. She holds a degree in Finance and Insurance and is working as Reinsurance Assistant in the Underwriting, Reinsurance & Risk Control department.

## HONG KONG



### Cheryl Yu

Cheryl joined Team Asia in January 2018 as Senior Claims Executive, FD&D and P&I. Cheryl holds an LLB from the Dalian Maritime University and an LL.M (with distinction) from the Tulane University. She has previously worked with leading international law firms for several years.



### Kaare Langeland

From 3 April 2018, Kaare will take up the role of Senior Advisor in Team Asia. He has returned to The Swedish Club having worked several years for WK Webster in the UK and after that as Casualty Investigator at Holman Fenwick Willan in Hong Kong and in London.

# Club Quiz

# Club Calendar 2018

**1 – On board ship, what is housed in a binnacle?**

- 1. Seafood
- X. Compass
- 2. Charts

**2 – Which of the following is not a type of sailing vessel?**

- 1. Ketch
- X. Sloop
- 2. Topper

**3 – What does the Club’s acronym MIC stand for?**

- 1. Maritime Insurance Certificate
- X. Marine Insurance Course
- 2. Maria, Irma and Charlotte (working with claims)

Mail your answer to [quiz@swedishclub.com](mailto:quiz@swedishclub.com)

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

**Winner of Club Quiz 3 – 2017**



Congratulations to winner of Club Quiz No 3-2017, Capt Jens Lindhe of Maran Gas Maritime Inc. Greece, who has been awarded a Club giveaway.

The answers to Club Quiz No 3-2017 are:

- X **Average Freight Rate Assessment**  
(What does afra stand for in an aframax oil tanker?)
- X **1869**  
(When did the official opening of the Suez Canal take place?)
- 2 **Harvey, Irma and Maria**  
(What does the recently coined acronym HIM stand for?)



10 April	Club Evening Bremen
11 April	Club Evening Hamburg
25-26 April	Marine Insurance Seminar Istanbul
25 April	Member Lunch Piraeus
26 April	Club Dinner Istanbul
14-18 May	Marine Insurance Course Gothenburg
7 June	Open House Piraeus
13 June	Board Meeting Gothenburg
13-15 June	AGM Events Gothenburg
<b>14 June</b>	<b>Annual General Meeting Gothenburg</b>
4 October	Board Meeting New York
6 December	Board Meeting London

# SCOL

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Get 24 hour access to your:

- Insurance documents
- Claims
- Records
- Advanced frequency analysis



**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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