



## Covid-19

### Global economic repercussions

- Safe port warranties updates
- Stowaways – an old issue resumed
- The dangers of enclosed spaces

## Powering Shipping

Maritime & Commercial on i-law.com  
is the leader in maritime law research.

[about.i-law.com](https://www.i-law.com/about)

i-law.com  
Maritime intelligence | informa





Volume 1 2020  
Lloyd's Law Reports  
Bound Volume  
available soon

# Law Reports: Bound Volumes collection

Informa Law is a specialist publisher in the field of law reporting. Our Bound Volumes collection dates back to 1919 and includes volumes for our leading reports and review journals in the fields of building, maritime and commercial, insurance and medical law.

## Bound Volumes Series

available as full sets, small bundles and individual units

### Make sure your legal library is complete

Our Law Reports Bound Volumes are your powerful reference resource for all your legal research needs. Each volume contains fully headnoted, verbatim judgments. Each attractively cloth-bound edition collates the most noteworthy legal decisions reported within the year.

- ▶ Access cases and precedents across the full print archive.
- ▶ Carefully crafted headnotes crystallise the most significant cases from the world-renowned courts of England and Wales.
- ▶ Recent volumes include the most influential cases from overseas jurisdictions.
- ▶ Our distinguished editors include high court judges, eminent professors, the Past Chair of the Bar Council and leading QCs.

## Lloyd's Law Reports 2020 Volume 1 available soon.

Our new Bound Volume feature analysis and verbatim text of the most noteworthy maritime and commercial court judgments to be handed down in the first six months of 2020. It is an essential reference tool for industry and legal professionals worldwide.

## Complete your Bound Volume collections with our 2019 and 2020 editions.

Find out more: ✉ [lawsales@informa.com](mailto:lawsales@informa.com) 🌐 [about.i-law.com](http://about.i-law.com) ☎ +44 20 7017 7565 (EMEA) ☎ 65 6508 2428 (APAC)



Editor: Liz Booth  
liz@lizbooth.co.uk

www.i-law.com  
www.maritime-risk-intl.com

*Maritime Risk International* is published by Informa Law, 13th Floor, 240 Blackfriars Road, London SE1 8BF. *Maritime Risk International* provides detailed coverage of legal, technical and insurance issues facing the shipping industry. This ensures you are fully aware of the implications of key court decisions as well as providing in-depth analysis and expert advice on topical issues such as loss prevention, carriage of goods, salvage, ship security, pollution and maritime law. Our maritime content is available online via single-user subscriptions or multi-user licences at [www.i-law.com/ilaw/maritimelist.htm](http://www.i-law.com/ilaw/maritimelist.htm) including our major reference works, *Voyage Charters* (ISBN 978 0415833608) and *Time Charters* (ISBN 978 1843117513).

© Informa UK Ltd 2020 • ISSN 1742 9404. All rights reserved; no part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electrical, mechanical, photocopying, recording, or otherwise without the prior written permission of the publisher, or specific licence.

**Client Services:** Please contact Client Services on tel: UK office: +44 (0)20 3377 3996; Asia office: +65 6508 2430, or email [clientservices@i-law.com](mailto:clientservices@i-law.com)

**Editorial queries:** Please contact Yvonne Knock, on tel: +44 (0)20 7017 5276, email [yvonne.knock@informa.com](mailto:yvonne.knock@informa.com)

**Print managed by:** Paragon Customer Communications

**Copyright:** While we want you to make the best use of *Maritime Risk International*, we also need to protect our copyright. We would remind you that copying is not permitted. However, please contact us directly should you have any special requirements.

Informa Law is an Informa business, one of the world's leading providers of specialist information and services for the academic, scientific, professional and commercial business communities.

**Registered Office:** 5 Howick Place, London SW1P 1WG. Registered in England and Wales No 1072954.

**Cover image:** PopTika/Shutterstock.com

While all reasonable care has been taken in the preparation of this publication, no liability is accepted by the publishers nor by any of the authors of the contents of the publication, for any loss or damage caused to any person relying on any statement or omission in the publication.

## In this issue

### REGULARS

- 4 News
- 7 Our Mutual Friends
- 26 Classified directory of services

### FEATURES

- 8 **Covid-19: running shipping aground**  
Nazery Khalid assesses the impact of the Covid-19 pandemic on global shipping
- 10 **On high alert in west Africa**  
As attacks by pirates become more frequent off the coast of west Africa, Wallem discusses ways to ensure the safety of seafarers
- 12 **Large shipping losses falling**  
West Africa remains a hotspot for pirates, but large shipping losses more generally are falling, according to Allianz Global Corporate and Specialty
- 13 **Using technology to tackle Covid-19**  
Peter Ståhlberg, of The Swedish Club, discusses how technology has been a game changer in terms of risk management through the pandemic
- 14 **Fuel quality questions answered**  
Ansuman Ghosh, of the UK P&I Club, looks at the most frequently asked questions on fuel quality
- 16 **Updates on safe port warranties**  
Andrey Perepelitsa and Mykola Kozachenko, of Interlegal, review developments on safe port clauses
- 18 **Problem solving through Covid-19 and beyond**  
Roger Evans, of the International Salvage Union, provides an assessment of the state of the marine salvage industry
- 20 **Stowaways return as a threat**  
Michael Yarwood, of the TT Club examines the situation on clandestine migration
- 22 **The dangers of enclosed spaces**  
Yves Vandenberg, of the Standard Club, asks why enclosed space entry fatalities are still happening
- 24 **Bankruptcies and credit risk during lockdown**  
The interdependence of the supply chain necessitates regular evaluation of all parties, writes Sebastian Villyn of *Lloyd's List*

### EDITORIAL BOARD

**Charles B Anderson** – Senior Vice President, Skuld North America Inc

**Dr Phil Anderson** – Managing Director, ConsultISM Ltd

**Ruben T Del Rosario** – Managing Partner, Del Rosario & Del Rosario, Philippines

**Nazery Khalid** – Malaysia-based commentator of the marine industry and contributor to MRI

**Dr Colin Ong QC** – The 36 Group (London) and Eldan Law LLP (Singapore)

**Dr Z Oya Özçayir** – Assoc Prof of Maritime Law, Maritime Law consultant and author, Izmir Law Bar, Turkey; Honorary Fellow, Exeter University, Law School

Maritime Risk International   
Business intelligence | Informa

**Maritime Risk International** is the definitive magazine in its field. It provides critical information, keeping you abreast of key issues affecting maritime businesses around the world. Established in 1987, **Maritime Risk International** provides you with detailed coverage of legal, technical and insurance issues facing the shipping industry.

- Independent, expert advice from leading industry practitioners, organisations and P&I Clubs
- Spot trends and developments in your industry
- A broad base of contributors from around the world ensuring full international coverage
- The latest advice on loss prevention, carriage of goods, salvage, ship security, pollution and maritime law
- News round-up of all the important risk issues facing the maritime industry
- Information about the activities of your competitors and their members

#### Find out more

Visit [www.maritime-risk-intl.com](http://www.maritime-risk-intl.com), call us on +44 (0)20 7017 7565 or email [lawsales@informa.com](mailto:lawsales@informa.com)

## IN BRIEF

### Modern slavery

A group of brokers and insurers in the London market has come together to announce a new approach to keeping the products of modern slavery out of the export supply chain. Fidelis, Aon and Marsh have developed a clause which makes it a condition of marine cargo policies that the insured complies with applicable legal and regulatory obligations in respect of forced and child labour.

### Company Act revisions

Watson Farley & Williams has assisted the Liberian International Ship and Corporate Registry in developing revisions to the Liberian Business Corporation Act (BCA) and the Limited Liability Company (LLC) Act. The legislation was revised in an effort to continue to make those laws more liberal, customer friendly and reflective of the corporate laws and standards of the state of Delaware and other US states. The revisions include, among other matters, adoption of non-statutory law of Delaware and other US states with substantially similar legislative provisions to interpret the BCA and adoption of non-statutory law of Delaware to interpret the LLC Act; eliminating the requirement of two officer's signature on filing documents; enabling acknowledgement of filing documents outside Liberia without notarization and apostille; codifying practices of electronic submission of filing documents, provision of shareholders' and directors' consent via electronic transmission, etc; and introducing a variety of provisions applicable to public companies.

### Expert witness

The Baltic Exchange's Expert Witness Association (BEWA) is ready to establish itself as the centre of the maritime expert witness world. Born from the previous Baltic Exchange Expert Witness Panel, BEWA boasts an array of expertise comprising shipbrokers, shipowners and operators, charterers, financiers, masters, surveyors, naval architects, engineers and more. It is managed by a council elected from BEWA members and is governed by its own rules. All BEWA members subscribe to the Baltic Code of Conduct.

## Above average hurricane season feared

The shipping industry is facing an above average 2020 Atlantic hurricane season, including the high Atlantic sea surface temperature (SST) and a potential La Nina, according to Beach & Associates' 2020 Pre-Season Hurricane Outlook report. This follows three consecutive active years, two of which saw very heavy losses. In 2019 the US was spared any significant hurricane loss events. However, the outcome would have been different if Hurricane Dorian had followed early forecast tracks and made a Category 5 landfall in Florida; it still caused devastation in the Bahamas, resulting in significant loss of life and property damage.

The Atlantic Multidecadal Oscillation (AMO) index published by the US National Oceanic Atmosphere Administration, a measure of how warm the Atlantic is relative to average, was at its highest level since 1948 for February and March and second highest level for April. High AMO is usually a strong indicator of an active season.

The report also covers factors that might provide grounds for less pessimism about the upcoming season, the strongest being the distribution of warm water in the Atlantic, which is unlike that of the active seasons with similar high AMO early in 2010, 2005 and 1998. In 2020, most of the anomalously warm water is outside of the Main Development Region and hence potentially not as effective in promoting hurricane genesis and strengthening.

Jason Howard, CEO of Beach, said: "Beach's analytical capabilities and intellectual firepower allow us to remain committed to providing market leading modelling, research and insight regarding the upcoming hurricane seasons. This year we see a strong possibility, given the factors listed above, of an above-average period of hurricane activity. Also, the disruption and cost Covid-19 has caused may mean that a hurricane landfall or near miss this year would be considerably amplified. We will continue to provide updates as the season progresses." **MRI**

## Covid-19 forcing changes at ports

The deadly spread of Covid-19, and the economic and trade disruption the pandemic has caused, is prompting port managers to examine new ways to improve risk management and digital processes, according to the latest biennial global ports survey conducted by Remy InfoSource. The 2020 iSpec Ports Industry Survey revealed that more than half (51 per cent) of port executive respondents now identify risk management as the key area they would like to improve on in the future, up from 32 per cent in the previous iteration of the iSpec Ports Industry Survey in 2018.

In 2018 the top two areas for improvements noted by ports and terminal executives were "shorter lead times" and "more standardisation". Risk management was also the leading reason pinpointed by respondents when asked to identify the most problematic issues they encounter when managing complex outsourced projects. In the 2018 Survey "tracking project compliance and delivery" was the most problematic area identified by respondents.

"I think it's no surprise that in such an uncertain world the importance of risk management has increased dramatically", said Pieter Boshoff, CEO of Remy InfoSource. "Disruption to supply chains has increased across the globe causing operational and investment uncertainty and, with social distancing rules, also changing the way we all conduct our business. Managing that risk has become a major challenge at ports, particularly when it comes to managing outsourced equipment tender and procurement projects that are often complex in nature and frequently involve multiple vendors."

Asked how the Covid-19 lockdown had affected the way ports were conducting business, 41 per cent of global respondents said the pandemic had required a shift to more digital collaboration, 49 per cent said more projects were now on hold, while 62 per cent said they were now working from home more often. The 2020 iSpec Ports Industry Survey also found that "quality" has become the leading reason for customer/supplier disputes. In the 2018 Survey "delays" was cited most often as the cause of customer/supplier disputes. **MRI**

## Urgent reform needed to handle misdeclared cargoes warns US NCB

A White Paper published by the US National Cargo Bureau (NCB) calls for urgent reform to stem the increasing number of container-related incidents caused by poorly stowed, undeclared or misdeclared dangerous cargoes. The NCB has revealed that a recent inspection initiative revealed an alarming number of containers carried by sea include misdeclared dangerous cargoes that represent a serious safety risk to crew, vessel and the environment.

In the white paper the NCB is calling for industry to adopt a comprehensive, holistic and coordinated approach to address this worrying trend. The inspection initiative also showed that 55 per cent of containers were non-compliant with 43 per cent failing to secure dangerous goods correctly within the container itself. Approximately 6.5 per cent of containers carrying dangerous cargoes had been misdeclared.

It has been reported that, on average, there is a major fire on a containership every 60 days. However, in 2019 there were nine major containership fires reported suggesting that the frequency of incidents is increasing. Tragically, these incidents often result in loss of life, severe damage to hull and cargo as well as a series of associated consequences including significant environmental impact. It is strongly suspected that these vessel incidents were caused by issues related to poorly stowed, undeclared or misdeclared dangerous cargoes. With more containers being carried and containerships getting bigger, risks are increasing in number, value and concentration.

Ian Lennard, president of the NCB explained: "The link between undeclared, misdeclared or poorly stowed dangerous cargoes and the increased incidence of catastrophic containership fires is hard to ignore. Because of the clear and present risk predominately to safety of life but also to ships, their cargoes and the environment, we are calling for all supply chain participants to work on a solution together. The reasons for issues with dangerous cargoes are diverse and include a challenging regulatory environment; cargo prohibitions; more complex supply chains; and varied levels of understanding and processes. Because of this, it is important that the stakeholders work together and adopt a range of measures that will address all potential causes."

The NCB white paper details 12 recommendations as part of its holistic approach, ranging from embracing a safety culture for dangerous goods compliance to practical measures for container and vessel inspections and monitoring. Taken together, NCB is confident that its recommendations will be effective in reversing the current trend of increasing containership fires. **MRI**

## Gard launches sustainability report

Gard has launched its first sustainability report as part of its commitment to the UN Global Compact. This outlines its ambitions for sustainable development, articulates how impact will be measured and illustrates the wide range of activities being carried out by the group in its day-to-day work placing sustainability at the core of its business.

Rolf Thore Roppestad, CEO of Gard explained: "Enabling sustainable maritime development is at the core of Gard's mission statement towards 2025 and beyond. We want to improve our own operations and aspire to be a driving force within our industry, as well as help members and clients, people and society make the most of opportunities offered by the blue economy. The sheer range of topics covered in this report illustrates very clearly that sustainability is broadly woven into our core business activities. Through risk prevention, risk reduction and risk sharing we help protect the lives and livelihoods of seafarers and make the oceans cleaner and safer.

"However, sustainable business is not just about what we do today. Change is happening all around us – climate change, energy transition, geopolitical tensions, digitalisation and cyber risks mean that our stakeholders demand more from us. So, this is also about what we can do to be better prepared for the future, ensuring that we meet the emerging needs and expectations of our members, clients, employees, supply chain partners and other business partners as well as the expectations of society at large", he concluded. **MRI**

## IN BRIEF

### Covid-19 rules launched for St Kitts and Nevis International Ship Registry

The St Kitts and Nevis International Ship Registry (SKANReg) has put in place a series of measures designed to help shipowners and managers as they embark on the road to normalising their own operations post-Covid-19. The newly implemented support measures are directed at new clients as well as existing clients and cover areas such as assistance with taxation, seafarer documentation and registration matters. The flag recently announced that it has held discussions with its recognised organisations about the possibility of conducting remote surveys because of Covid-19, and has issued flag state requirements should such recognised organisations propose a remote survey on behalf of the shipowner.

### Swedish Club virtual results

The Swedish Club made history when it conducted its 148th AGM virtually, live from Gothenburg Sweden. In support of global efforts to suppress the Covid-19 pandemic the Club reached out to members, business partners and staff around the world via video conferencing. At the meeting, Lars Rhodin, managing director of The Swedish Club, presented the Club's 2019 results. These delivered according to plan with an operating result of US\$24.6 million and an increase in free reserves of 12 per cent to US\$228 million. The Club's combined ratio continued to perform well, running at an average of 99 per cent over seven years.

### London P&I Club figures

Reporting results for its 2019/2020 financial year, The London P&I Club has recorded an operating surplus of US\$5 million and an increase in free reserves to US\$173.9 million. Earned premium income (net of reinsurance costs) increased by US\$13.7 million when compared with the previous year and the result included positive contributions from the Club's fixed premium products and FD&D Class. In addition, there was an overall 9.1 per cent return from the Clubs' investment portfolio.



## IN BRIEF

### New ebook range

The ever-increasing pace of digital connectivity on board ship has led to the rapid development of onboard communications. Digitalisation is challenging traditional shipping practices, and the shipping industry demands instant access to information. In addition to ensuring safe implementation of these new ways of working the International Chamber of Shipping (ICS) has now made a wide range of its essential maritime publications available as ebooks. The new ebook format will enable ship operators to build their ICS maritime library with a choice of formats to reflect the individual requirements of their fleets.

### Virtual training

Stream Marine Training (SMT) has re-opened for business offering a blended digital and classroom-based range of STCW safety critical courses to support the maritime industry's key workers. Having run dozens of the UK Maritime and Coastguard Agency-approved STCW webinars in the past weeks, the team at SMT put together a schedule that allows customers to do the theoretical elements of the Basic Safety Week and Refresher cycles using a live interactive digital platform. For the practical elements, new policies that comply with the HSE and government guidelines have been put in place on site to ensure safety.

### Methanol advice

The Oil Companies International Marine Forum (OCIMF) has published a joint information paper, "The Carriage of Methanol in Bulk Onboard Offshore Vessels", with the Maritime Safety Forum. The carriage of methanol in bulk is more common in the offshore oil and gas industry and, although there is technical documentation on methanol handling, guidance for offshore carriage by sea is limited. Methanol is a hazardous chemical with significant toxic, flammable, and reactive properties that can adversely affect human health and the environment. This paper provides guidance for the safe loading, carriage and discharge of methanol by offshore support vessels.

## Using technology to help crew safety and wellbeing key to future success

Inmarsat, the world leader in global, mobile satellite communications, has published a new report focusing on the way technology can benefit crew safety, health and wellbeing at sea, at a moment when Covid-19 has exposed the welfare of seafarers to global scrutiny. The report, "Welfare 2.0: How can the next generation of technology enable better crew safety, health and wellbeing at sea?", has been prepared by consultancy Thetius.

"When we first discussed this report last year with the author and the welfare organisations and charities we work closely with, none of us could have foreseen the impact that Covid-19 would have on the world, shipping, seafarers and their families", said Ronald Spithout, president, Inmarsat Maritime. "However, even then, we all felt that safety and crew welfare was being left behind in the technology stakes and much more needed to be done to look at how it could help improve the lives of seafarers."

The new report explores the underlying factors affecting crew safety, welfare and learning, and highlights those companies working to address the pain points. It shows that, while the maritime industry prides itself that seafarer safety and welfare is its highest priority, lack of investment in the digitalised technologies benefiting worker welfare, particularly compared to investment in other sectors, undermines the narrative.

"We are at a point in time when lack of shore leave, unplanned contract extensions, fear of job loss and separation from family are weighing heavily on seafarers worldwide", said Spithout. "Technology cannot provide a 'silver bullet'. However, its role is vital in embedding policies and practices to enhance safety and wellbeing on board. Data-based tools test what does and doesn't work for the 'human element' and track changes through time."

Covid-19 may itself have made maritime stakeholders more amenable to telemedicine services. More than 200 ships have already signed up to a new Covid-19 video consultation service from Vikand, facilitated by AI start-up FrontM and Inmarsat Fleet Connect bandwidth. Elsewhere, start-up Motion Ventures has repurposed a financial compliance tool to support secure healthcare monitoring for crews at home, on board or in transit. **MRI**

## Detention numbers by port state control increased slightly in 2019

The number of ships registered with Class NK that have been detained increased slightly in 2019 to 394, from 384 in 2018, while the ratio of detentions compared to ships registered remained static at 4.6 per cent. China suffered the most detentions, with numbers rising from 90 in 2018 to 120 in 2019. Australia remained second in the list with 61 detentions (compared to 53 in 2018). Russia saw a decline in detentions from 49 in 2018 to 36 in 2019.

In terms of the ship's age, most of those detained in 2019 were between 10 and 15 years, even though this group were actually only the third largest in number. This tallies with the experience in both 2018 and 2017. Ships aged between five and 10 are the most numerous at 2,515 but in this group detentions increased by one compared to 2018 to 95 and were down on the 2017 figure of 104.

Meanwhile, the Republic of the Marshall Islands (RMI) has reported it is ranked sixth on the white list of the Paris Memorandum of Understanding (MoU) Current Flag Performance List 2019. The Paris MoU's white, grey, and black (WGB) lists are based on the total number of inspections and detentions through a three-year rolling period for flags with at least 30 inspections in the period. Between the years 2017 and 2019, 4,481 RMI-flagged vessels were inspected by Paris MoU members, resulting in only 69 detentions. The WGB list is used for calculating the ship risk profile.

Port state control is a regime to inspect ships to verify their compliance with international conventions with respect to safety, security, pollution prevention, and seafarers' living and working conditions. **MRI**

## Gard

### NEW UK MANAGING DIRECTOR



Gard has named Magne Nilssen as new managing director of Gard (UK), effective from 1 July 2020. He took over from Thomas Nordberg who will return to Norway as head of claims services, a new position reporting to the chief claims officer.

## AAA

### PROMOTIONS FOR TWO NEW FELLOWS AND SENIOR ASSOCIATES



Nanami Hara



Rui Hao



James Willan



Jimmy Chen

The Association of Average Adjusters has warmly congratulated two members – Nanami Hara and Rui Hao – on stepping up to become fellows and a further two members – James Willan and Jimmy Chen – on becoming senior associates. The four achieved their enhanced designations thanks to their success in the Association's first round of 2020 examinations.

Nanami is a senior average adjuster with Richards Hogg Lindley (RHL), London. Rui Hao is manager, Charles Taylor (China). He is based at the group's Shanghai office with responsibility for day-to-day operation of the branch.

James joined RHL, where he works in the firm's Liverpool office, in August 2013, and qualified as an Associate in 2014. Jimmy is based in Taipei where he is supporting the Greater China offices of RHL, as a manager for both marine and non-marine claims.

## Chubb

### EXPANDED MARINE TEAM

Insurer and reinsurer Chubb has announced the continued expansion of its marine team within Chubb Global Markets (CGM) with a number of key appointments.

Frank Chu joins as marine cargo underwriter. He will be tasked with strengthening the overall capability of the existing cargo team within the CGM division.

Other recent hires include: Emily Bryant as yacht underwriter – a role in which she is responsible for managing and developing the CGM yacht portfolio; Ian Precious as marine liability underwriter – where he oversees the management and development of the marine liability portfolio within CGM; and Jack Buchan as hull underwriter – a role which sees him take responsibility for growing and diversifying the hull and wider marine portfolio.

## The Nautical Institute

### NEW PRESIDENT



The newly elected president of The Nautical Institute is Jillian Carson-Jackson. Jillian started her career in the Canadian Coast Guard (CCG), graduating from the Canadian Coast Guard College (CCGC) as a navigation officer. With more than three decades in the industry, Jillian has worked both afloat and ashore in the CCG, including 10 years as an instructor at the CCGC. Following an active role at IALA in the development of VTS Training, she moved to France to work with IALA as technical coordination manager. She then moved to Australia to work with the Australian Maritime Safety Authority (AMSA) as manager of vessel traffic and pilotage services.

In 2016 Jillian left AMSA to set up her own consultancy. In May 2020 Jillian was appointed a director of GlobalMET and represents The Nautical Institute at IALA as chair of the emerging digital technologies working group and the personnel and training working group.

## FOIL

### NEW TEAM FOR MARINE INSURANCE

In response to market concerns, FOIL and London FOIL have launched two new sector focus teams (SFTs) to address some of the global issues plaguing the marine and environmental sectors.

Shared concerns include the large number of marine vessels that are decommissioned and recycled in ways contrary to international law and the damage this causes to the environment. On top of this, London FOIL's Marine SFT

will be looking into some of the sector's challenges, from underlining where liability lies for misdeclared cargo, to the increasing size of cargo ships and liability for breaches of the 2020 emissions regulations.

## Survitec

### NEW DIRECTORS

Survitec, a global safety and survival solutions provider, has strengthened its board of non-executive directors with the additions of Nick Henry, Ian Plumb and Phil Swash. Nick has 36 years' experience in the commercial maritime field across a number of its sub-sectors, including global container operations and offshore services.

Ian is a highly skilled private equity professional following more than a decade of working within private equity firms. He has significant experience in all aspects of private equity exits, business transformations, acquisitions and refinancing projects. Phil has more than 25 years' experience in global senior leadership, transformation and P&L roles, with expertise in aerostructures, automotive, off-highway, global industrial operations, and lean and digital manufacturing.

## Hill Dickinson

### BOARD POSITION

Hill Dickinson's position in the Hong Kong shipping services sector has been further emphasised by the reaffirmation of its place on an important maritime board. Edward Liu, Hill Dickinson counsel in Hong Kong, has been reappointed by the Secretary for Transport and Housing as a co-opted member of the Hong Kong Maritime and Port Board, the advisory body of the Transport and Housing Bureau of the HKSAR Government, and will serve for a two-year period.

## Clyde & Co

### AUSTRALIAN HIRE

Clyde & Co has hired Nic van der Reyden to bolster its leading Australian marine group. Nic joins in Sydney from HFW and specialises in shipping and commercial dispute resolution and litigation. He has extensive experience in international commercial arbitration and mediation. Nic will work closely with Maurice Thompson, partner and national group head (maritime and commodities) and the marine group's other recent hire, partner Ernest van Buuren, who joined the firm from Norton Rose Fulbright.

# Covid-19: running shipping aground

**Nazery Khalid** assesses the impact of the Covid-19 pandemic on global shipping



Joe Roedle/Getty Images

**T**he Covid-19 pandemic has thrown the global economy into turmoil as a result of lockdown and movement restrictions of people, transportation and goods across supply chains imposed by governments to curb its spread. As at the end of June 2020, the virus had infected close to 10 million people and claimed nearly half a million lives globally. It had not shown any signs of abating and was still spreading around the world.

The impact of the pandemic on China, the world's most populous and second largest economy, has reverberated across maritime supply chains. Shipment of goods and materials from and to Chinese ports was severely affected as lockdowns were introduced, resulting in seafarers not being able to take shore leave and port workers not being able to clear cargoes.

Being a major supplier of parts and raw materials used worldwide, China has emerged as a key component of the supply chains that facilitate the flow of goods across global trade networks. In the past decades, this trade and economic powerhouse has emerged as a pillar on which large parts of the world's manufacturing and production networks pivot. Many of the world's leading multinational companies and manufacturers are highly dependent on China for supplies of equipment, components, systems and commodities of all kinds to facilitate their businesses and production.

It should therefore not come as a surprise that the global economy has felt the seismic shock of the tremors of China's

economic problems. As cargoes pile up at ports due to cancelled shipping schedules, the impact is naturally felt beyond China's borders and across the global supply chains. This underscores the extent to which China has emerged as the epicentre of world maritime trade. It not only dominates in terms of demand and supply of manufactured goods and raw materials carried by seaborne trade but also as a crucial component of global supply chains. Industries and businesses based in China have become so embedded and integrated in global supply chains that when its economy falters due to Covid-19, the rest of the world suffers.

## Shaken and stirred

The global economic contraction has adversely affected the marine industry. As the world economy dips into recession and seaborne trade sails south, workers in the marine industry – such as in shipping companies, shipyards and ports – are facing the prospect of losing their jobs. Mass layoffs of workers in the industry, which involves many activities involving specialised skills which take years to nurture, could prove to be damning to the global trade and economy that depends greatly on them.

As ports in China reel from severe disturbances along the supply chains, shipping companies naturally feel the brunt. Business conditions which were already challenging before the Covid-19 outbreak – with oversupply in shipping tonnage, low freight rates, high operating and compliance costs, tepid global trade growth and muted economic performance – has hit an



even bigger turbulence. Owners of various types of vessels such as ro-ro ships ferrying vehicles, container ships carrying much of the world's manufactured goods, and bulk carriers transporting materials such as grains, minerals and liquid cargoes, have had to lay off their vessels as the trades served seize up.

Amid the oil price freefall unleashed by Saudi Arabia and the falling demand for oil, many offshore support vessels are laid up and idle as oil majors scale back offshore exploration and production activities that require the services of these vessels. However, the tanker shipping trade has enjoyed a purple patch as demand for VLCC and ULCC has soared, pushed by oil producers looking to store unsold crude oil.

One of the pillars of the global supply chains and the complex, sophisticated and extensive international manufacturing/production networks is the marine industry which acts as a key enabler of world trade. This industry is made of activities such as shipping, port operations, shipbuilding, ship repair and a host of ancillary services supporting the movement of manufactured goods and natural resources which power the global economy.

This unleashes adverse domino effects on many other ports with connectivity to Chinese ports, which dominate three-quarters of the top 20 container ports by throughput handled. The shipping schedules gone awry and cargoes clogging ports have affected entire supply chains. Manufacturers reliant on parts and raw materials have had to scale back, and in some cases even completely halt, their assembly line activities. This results in failures to meet customers' needs, massive backlogs of orders, contractual breaches and force majeure invoked, with dire consequences to revenues and profits of many businesses and corporations, big and small.

The magnitude of the gridlock along supply chains caused by the outbreak should not be underestimated. Even when enterprises, factories, mines and farms in affected areas slowly come back to life and people start to resume activities when the virus subsides, they will continue to face problems getting their products to market as shipping and ports activities continue to be hampered by lockdowns and movement restrictions. Huge volumes of inventories are stuck across supply chains as there is scarce availability of trucks, even when governments try to jumpstart their stalled economies.

## Ran aground

Should the current situation prolong or worsen, the shipping sector will suffer tremendously. Cancelled sailings or even "blank sailings" (ships sailing with empty or less-than-load cargoes onboard due to weak demand for their services) will continue to adversely affect the pockets of shipowners. Shipping companies big and small have nowhere to run or hide from the decimating impact of the pandemic on global trade and economy. Those with huge vessels that thrive on economies of scale, which have investments in port terminals and have huge exposure to countries most severely affected by the outbreak, are especially vulnerable. The likelihood of many of them failing to meet their financial obligations in the months ahead is very high, especially if the outbreak escalates and continues to ravage world trade and the global economy.

Even smaller shipping companies are not going to be spared as they depend on the mainline operators and owners of large

vessels as much as the other way around. Smaller shipping companies, especially in a vast maritime area like south-east Asia that connect regional ports with the major shipping routes and maritime trading lanes, will also feel the pinch as the major players slash schedules to match slumping demand.

Big or small, shipping companies cannot escape from paying the loans for their vessels and the salaries of their personnel and from bearing the costs of chartering vessels and maintaining their ships in seaworthy conditions. As revenue stalls amid the virus crisis, many will face severe cash flow issues. Those without the financial might or sustenance, in all likelihood, will not be able to withstand the terrible conditions of this capex-intensive business for long. Financiers will come after them and with little choice available, will seize the ships they finance and stop them from sailing. This will make an already dire situation even worse as more containers and cargoes will be left idle at ports and production points as there will be fewer ships to link them to their intended markets.

If the terrible economic effects of Covid-19 prolong, the shipping ecosystem, which is already badly bruised, is going to be shaken to its roots. The domino effects will be felt far and wide across production systems, manufacturing networks, logistics linkages and markets, businesses and industries worldwide. Consumers will suffer as supplies of products and natural resources are disrupted and the rising costs across supply chains are passed down to us.

With shipping companies already feeling the brunt of the terrible market conditions and tough regulatory measures (such as the requirement to use the more expensive low-sulphur grade fuel to reduce their emissions), the heavy blow received from the Covid-19 outbreak will compound their woes and they will inevitably pass down the costs to the end-users to relieve their pain. That is certainly not desirable at a time when many people around the world have lost their jobs and have had to close their businesses; and many are facing the spectre of economic suffering as the world plunges into recession.

It is going to be a heck of a turbulence for shipowners in the months ahead should the deadly virus continue its rampage on lives, trade and economies worldwide. For the sake of the global trade and economic order, let us hope that most shipowners will come out of this unscathed to continue serving the supply chains and deliver goods to businesses, industries and consumers. We will be counting on shipping to rebound and restore a semblance of normalcy to global trade, economies and supply chains. But until that light at the end of this long tunnel comes, it is time for shipowners to prepare for the choppy waters and strong headwinds ahead. [MRI](#)



Nazery Khalid

Nazery Khalid, a former maritime policy researcher and a well-published and prolific commentator on the marine industry

# On high alert in west Africa

As attacks by pirates become more frequent off the coast of west Africa, Wallem discusses ways to ensure the safety of seafarers

**O**n 3 December 2019, 10 pirates armed with automatic rifles, guns, knives and axes boarded a tanker underway in Nigerian territorial waters. They quickly rounded up 19 crew members. Seven were able to evade capture and later managed to sail the tanker out of danger. However, the kidnapped crew members were held for almost three weeks until released by their captors four days before Christmas.

On 15 December 2019, six heavily armed pirates boarded a product tanker underway in international waters off Togo. They set about disabling the vessel by destroying equipment to cause a blackout. A distress call was sent during the melee, but the crew of 20 were eventually overpowered and taken hostage. By the time a Togo Navy vessel arrived on the scene, the pirates had fled and taken the crew with them, leaving the tanker abandoned. It was a month before the owners reported the crew's release – although one of the hostages had died due to illness during the ordeal.

On 30 December 2019 six armed pirates clambered on to a product tanker anchored in territorial waters off Cameroon. The crew managed to raise the alarm, but soon after were physically

restrained by the attackers, who proceeded to ransack the vessel, grabbing cash and whatever other valuables they could find. On leaving the vessel with their haul, the pirates took eight crew members hostage – as insurance – eventually letting them go three weeks later.

**“With little in the way of opportunity on land, a career as a pirate can be attractive and – with high vessel traffic in the area – potentially lucrative”**

## A growing problem

The common thread linking these incidents is location: they all happened in the Gulf of Guinea (GoG). According to the International Maritime Bureau (IMB) Pirate Reporting Centre (PRC), 121 crew were kidnapped in the region in 2019, compared to 78 in 2018. Today, the region accounts for a staggering 90 per cent of kidnappings globally. The spike in activity occurred against a backdrop of global decline in attacks on vessels: in 2019 there were 162 incidents compared to 201 in 2018 – a drop of some 20 per cent.

Piracy in the region is increasing for a number of reasons. On top of political and economic instability, corruption is rife, law and order are poorly enforced and poverty is widespread. Youth unemployment is also unusually high. With little in the way of opportunity on land, a career as a pirate can be attractive and – with high vessel traffic in the area – potentially lucrative.

In a unique twist, the region also faces the rise of the “petro-piracy” encouraged by the Movement for the Emancipation of the Niger Delta (MEND). The militant organisation aims to disrupt oil



### What is MDAT-GoG?

A 24/7 service operated jointly by the French and UK navies, MDAT-GoG (short for 'Marine Domain Awareness for Trade – Gulf of Guinea') acts as a hub for receiving and collating reports of incidents, sightings or other intelligence from around the region.

This information is dissected by a team of military experts to build a detailed picture and spot any patterns for unlawful or irregular activity in the waters off Africa's western seaboard. Based on the analysis, the team prepare and distribute regular updates and guidance to commercial ships operating in the region to help them stay out of trouble.

Vessels operating in the Voluntary Reporting Area (VRA, shown on Admiralty Chart Q6114) are encouraged to support these efforts by regularly reporting their positions.

production by overseas firms, expose exploitation or oppression and "re-appropriate wealth for the people".

In some ways, west Africa's emergence as the world's piracy hotspot highlights actions taken to address similar circumstances elsewhere. The Somali coastline was once notorious for hijackings and robberies but, having peaked in 2011, incidents have fallen away. The decline coincides with strong efforts to change attitudes towards piracy in the local population, building legal capacity to bring captured pirates to trial and the deterrent effect of firm multinational naval action.

### What is the pirates' modus operandi?

Approaches are typically made by high-power speedboats. While the use of motherships is not widespread, there is evidence of small cargo ships and fishing ships being hijacked expressly to launch attacks against larger merchant ships. The risk of an attack is higher when a ship is at anchor or is drifting off a port waiting for a pilot. Vessels moored alongside each other for ship-to-ship cargo operations are especially vulnerable.

While most pirates are selective about which type of ships they target, those operating in the Gulf are generally not overly choosy about their victims. Neither are they afraid to venture out of coastal waters in search of possible targets: two of the incidents described above took place more than 100 nm from shore.

### How can ships respond?

However, ships are not entirely powerless against pirate attacks. There are many measures that can be employed to deter attacks, many of which are catalogued in BMP5 – a guide to "best management practices", now in its fifth edition, jointly authored by BIMCO, the International Chamber of Shipping, INTERTANKO, OCIMF and the International Group of P&I Clubs.

Building on these basic recommendations, Wallem ensures that the vessels it manages are hardened with physical anti-piracy security measures such as chain-link fences and razor wire around the whole vessel – including lifeboats, which pirates are aware can often be less well defended. These measures are verified and signed-off by ship and company security officers (SSO and CSO).

Wallem-managed ships that are due to transit high-risk areas (HRA) are equipped with a toolkit including torch lights, Iridium phones, bulletproof vests and helmets, night-vision binoculars, additional pyrotechnics and aluminium plates. A ship and voyage-specific risk assessment must be carried out before entering the area to decide on prevention, mitigation and recovery actions.

The master then briefs the crew on these measures and crew participate in a full security drill including a citadel lockdown exercise, during which the Iridium phone is tested with a call to the CSO. Numbers for the Lagos Regional Maritime Rescue Coordination Centre (RMRCC), MDAT-GoG (see box) are also double-checked.

Outside work is limited to the absolute essentials and maintenance of engines and associated equipment is restricted so that power is immediately available for evasive manoeuvres or escape. Vessels must make situation reports to the CSO on a daily basis. Whenever any suspicious activity or attack is reported in the region, Wallem alerts vessels in the vicinity.

Based on the latest threat assessment and liaison with the charterer/owner, armed escorts or private security is arranged for a vessel entering/leaving or carrying out STS operations in Nigerian and Togolese waters. Even unarmed security contractors can be beneficial for interfacing and coordinating with regional law enforcement agencies, naval forces and coastguards. The latest local advisories and guidelines are requested in advance of calling on ports in known piracy hotspots.

### What can crew do?

Companies like Wallem urge all of its seafarers to treat emergency and security drills with the seriousness they deserve. If sailing in a HRA, ships should use radar on long-range scanning and keep sharp lookout. A constant watch for mother vessels and small crafts such as fishing boats, which could be used for mounting attacks on merchant ships away from the coastline should be maintained. When drifting, the ship's position should be regularly changed so that vessel behaviour is not predictable. Seafarers are also encouraged to come forward with ideas for improving onboard security. [MRI](#)



# Large shipping losses **continue to fall**

As we explored on the previous pages, west Africa remains a hotspot for pirates in 2020. However, the good news is that large shipping losses more generally are falling, according to the latest report from Allianz Global Corporate and Specialty

**L**arge shipping losses are at a record low having fallen by more than 20 per cent year on year to 41 total losses in 2019 among ships of more than 100 gt, according to marine insurer Allianz Global Corporate and Specialty's (AGCS) "Safety & Shipping Review 2020". However, the coronavirus crisis could endanger the long-term safety improvements in the shipping industry for 2020 and beyond, as difficult operating conditions and a sharp economic downturn present a unique set of challenges.

"Coronavirus has struck at a difficult time for the maritime industry as it seeks to reduce its emissions, navigates issues such as climate change, political risks and piracy, and deals with ongoing problems such as fires on vessels", said Baptiste Ossena, global product leader hull insurance, AGCS. "Now the sector also faces the task of operating in a very different world, with the uncertain public health and economic implications of the pandemic."

The shipping industry has continued to operate through the pandemic, despite disruption at ports and to crew changes. While any reduction in sailings due to coronavirus restrictions could see loss activity fall in the interim, the report highlights 10 challenges that could heighten risks.

"Shipowners also face additional cost pressures from a downturn in the economy and trade", says Captain Rahul Khanna, global head of marine risk consulting at AGCS. "We know from past downturns that crew and maintenance budgets are among the first areas that can be cut and this can impact the safe operations of vessels and machinery, potentially causing damage or breakdown, which in turn can lead to groundings or collisions."

## Gulf of Guinea sees piracy activity soar

Piracy remains a major risk for shipping. In 2019 there were 162 incidents of piracy and armed robbery against ships worldwide, down from 201 in 2018. This is despite the recent success in tackling Somali pirates. Somalia reported zero piracy incidents in 2019, a trend that continued through the beginning of 2020. However, Somali pirates continue to possess the capacity to carry out attacks in the Somali basin and wider Indian Ocean.

The Gulf of Guinea has re-emerged as the global piracy hotspot, accounting for 90 per cent of global kidnappings reported at sea in 2019 with the number of crew taken increasing by more than 50 per cent to 121 according to the International Chamber of Commerce's International Maritime Bureau (IMB).



Following an active 2019 there has been no let-up in piracy in 2020. There were 47 attacks reported to the IMB in the first three months of the year, up from 38 in the same period last year, mostly targeting tankers, as well as container ships and bulk carriers. Again, the Gulf of Guinea accounted for the highest number of attacks (21) although there were also five vessels boarded in the Singapore Strait and several incidents of armed robbery in Latin America.

"Piracy is typically local in nature but it can have a global geopolitical impact", says Captain Andrew Kinsey, senior marine risk consultant at AGCS. "It has proved to be an easy business model, especially in parts of the world where governments are dysfunctional or where there is little rule of law. There is a strong connection between piracy and unstable governments, which provides opportunities for pirates to carry out attacks where the state is not strong enough to properly police its coastal waters."

## Top loss locations

According to the report, the South China, Indochina, Indonesia and Philippines maritime region remains the top loss location with 12 vessels in 2019 and 228 vessels in the past decade – one in four of all losses. High levels of trade, busy shipping lanes, older fleets, typhoon exposure, and safety issues on some domestic ferry routes are contributing factors. However, in 2019, losses declined for the second successive year. The Gulf of Mexico (4) and the west African coast (3) rank second and third, with the east African coast fourth.

Cargo ships (15) accounted for more than a third of vessels lost in the past year, while foundered (sunk/submerged) was the main cause of all total losses, accounting for three in four (31). Bad weather accounted for one in five losses. Issues with car carriers and roll-on/roll-off vessels remain among the biggest safety issues. Total losses involving ro-ros are up year on year, as well as smaller incidents (up by 20 per cent) – a trend continuing through 2020.

In terms of smaller shipping losses, the number of reported shipping incidents (2,815) increased by 5 per cent year on year, driven by machinery damage, which caused more than one in three incidents (1,044). A rise in incidents in the waters of the British Isles, North Sea, English Channel and Bay of Biscay (605), meant it replaced the east Mediterranean as the top hotspot for the first time since 2011, accounting for one in five incidents worldwide.

There were almost 200 reported fires on vessels in the past year, up 13 per cent, with five total losses in 2019 alone. Misdeclared cargo is a major cause. Chemicals and batteries pose a serious fire risk if they are misdeclared or wrongly stowed. **MRI**

# Using technology to tackle the challenges of Covid-19

**Peter Stålberg**, of The Swedish Club, discusses the way in which technology has been a game changer in terms of risk management through the Covid-19 pandemic, but stresses there are still more improvements needed

**W**ith the onslaught of Covid-19, measures to prevent the spread of the virus have closed ports or meant strict quarantine measures for crew. Ports are operating with their own individual approaches to managing the coronavirus situation, making it difficult for the master to prepare the vessel – or the crew – for the challenges facing them when they prepare to berth.

Technological solutions, such as The Swedish Club's trade enabling loss prevention tool (TELP) have therefore proved useful to members in managing everyday operations safely.

The Club has been using TELP to guide vessels into ports around the world, helping overcome the difficulties in operating ships during the current coronavirus outbreak. The Club is currently sending more than 60 messages a day to its members, using information provided by the Club's network of correspondents and automatically triggered by ships' automatic identification systems (AIS).

It uses AIS technology to track vessels and automatically identify any that are moving towards an area that has been highlighted through the Club's own claims statistics as being of particular risk. Tailored advice is then generated and sent out about five days before arrival. An added dimension is that new alerts from local correspondents are added in where appropriate, which the Club says has proved invaluable in clarifying the picture regarding access at individual ports during the pandemic.

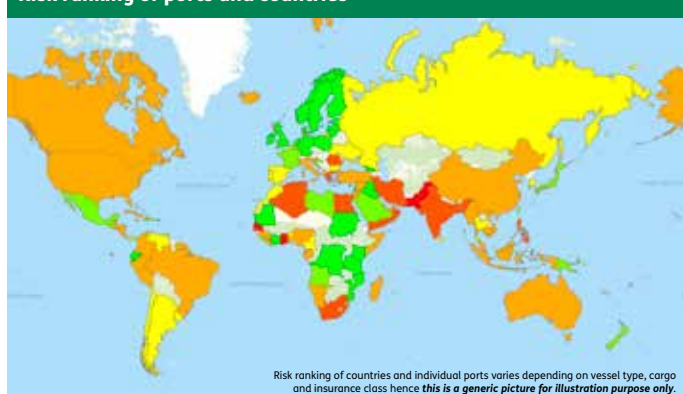
TELP underwent a pilot programme for four months at the end of 2019, involving a small number of members operating a range of vessel types, to help develop and refine the system.

Feedback from a pilot was positive. Masters appreciated the information supplied and would take it into consideration when calling at the specific port in the next few days. Users also appreciated the supply of "local" news, ie the information provided by the correspondents. With the circumstances we have all faced so far in 2020, and the industry need for immediate information on the ground, this feedback on the system proved to be very prophetic.

## Claims hotspots

The Swedish Club has identified around 30 "hotspots" around the world, based on actual data rather than what might previously have been anecdotal or even just a "feeling". As a result, the vessel positioning information is now integrated with where claims happen. In some cases, two different criteria for the same hotspot would apply – for example, navigational hazard and cargo problems. On the other hand, there were cases where there was the perception of a location being a difficult place, but the statistical analysis based on trading patterns showed something completely different. The data is being re-evaluated all the time – there are always new trades and cargoes to consider. The 30 hotspots are the places that stood out in the "first round".

Risk ranking of ports and countries



Source: The Swedish Club

Approximately 700 ships across a mix of vessel and geographical types are currently accessing the service and is now offered on an "opt out" rather than "opt in" basis.

## The value of local information

The positive feedback relating to advice from correspondents has resulted in the Club deciding to put all information received – anything from a stevedoring strike to navigational challenges – into the system, even if it isn't necessarily regarding a hotspot. Specific correspondents' advice is classified and time limited, and, where relevant, fed towards ships heading to that location. This fulfils the whole aim of the project: to provide relevant and timely information.

## Continuous improvement

Regular follow-ups are needed to check the effectiveness of the system. For example, if information was provided stating that an approach was particularly tricky, but the ship ran aground anyway, it needs to be ascertained whether the master saw the advice before the incident. The Club can also measure whether claims reduce in a specific hotspot. The aim of the initiative is to help make sure ship operations are safer – with the potential spin-off being fewer claims. *MRI*



Peter Stålberg

Peter Stålberg, The Swedish Club's senior technical advisor

# Fuel quality questions answered

From a legal, technical and compliance perspective, fuel quality remains an extremely prominent and complex topic as global shipowners throughout the maritime industry adhere to existing guidance and adjust to new regulatory changes. **Ansuman Ghosh**, of the UK P&I Club, addresses some of the most frequently asked questions around fuel quality claims, focusing on bunkering and sampling, sulphur and compliance, standards and Covid-19-related queries

## Bunkering and sampling

**Is it correct that “representative sample” is the one collected at the point of custody transfer and is the receiving ship’s manifold at this point?**

IMO guidelines state that the supplier should provide a MARPOL sample drawn by the supplier’s representative at the receiving ship’s bunker inlet manifold, meaning IMO only mandates the sampling location for the MARPOL sample (not for other commercial samples). The implementation of this requirement is left to individual flag states and marine authorities. In some jurisdictions, local regulations stipulate the sampling location for all samples shall be at the receiving ship’s inlet bunker manifold unless this is impractical for safety reasons.

However, some jurisdictions leave decisions on the sampling location to the supplier and buyer to agree. Many supply contracts specify the sampling location as the barge manifold and this is agreed to and signed by the fuel purchaser. Consequently, it is best to check all supply contracts in the first instance.

**Sometimes, the bunker is supplied by trucks. What is the sampling procedure for this, as there may be more than 40 supply trucks?**

In the case where the supply is from 40 supply trucks with 40 different bunker delivery notes (BDNs), a separate sampling for each truck is necessary. If the entire supply has been covered under one BDN, the BDN needs to specify all the 40 truck identifications. In that case, a continuous single representative sample can be considered. Supplying fuel oil in this manner will be very difficult to monitor and is best avoided.

**Is it the case only five sample numbers can be entered on a BDN in Singapore? What if there are more samples?**

This issue needs to be addressed with the supplier. There is no statutory requirements or guidelines on how many sample numbers are to be entered on the BDN. All samples in Singapore are drawn at the vessel’s manifold, closely monitored by the vessel’s staff.

**Is there any guidance or norms on testing protocols on the composition of retests once one or more parameters are out of range on initial tests?**

There are no norms or standards that stipulate how many additional parameters are to be tested during a fuel re-test. There have been scenarios where two completely different results occur on one parameter tested; one produced by the shipowner and another from the supplier, after retesting the binding sample in the presence of a surveyor following a dispute. This gives rise to doubts as to whether the samples are taken from the same source. The practice of testing parameters in addition to the one in dispute started so that the sample oil being retested can be finger-printed to the oil received onboard.

Usually, to enable finger printing, it should suffice to test the viscosity, the density and another parameter, such as water content along with the parameter(s) in dispute. This decision has to be made between the fuel buyer and the supplier. The root cause of this problem is the availability of two different locations for sampling; one at the receiving vessel’s manifold and the other at the bunker supplier’s barge manifold. Most bunkering ports do not have any clear guidelines on sampling location, so it



is often difficult for the ship's staff to monitor the process unless they go down to the barge. When the sampling is done in one location and witnessed, sealed and signed off in the presence of both parties, disputes can be reduced. Unless all ports and jurisdictions enforce this practice, the problem will remain.

#### **Why is finger printing necessary during retesting of fuel?**

This is to rule out any possible sample tampering or mix-ups. If other parameters such as viscosity, density, water content etc. are found to be the same, then we can be confident that the correct oil is being tested.

#### **Sulphur tolerance and compliance**

**Sometimes different tests on the same low-sulphur fuel oil (LSFO) bunkered show different results of sulphur content. What is the advice to deal with this? What is the official allowable tolerance?**

In terms of compliance with and enforcement of the sulphur cap/carriage ban, this will be dependent on how the relevant port state control (PSC) enforces these rules. When it comes to testing/verifying the sulphur content of a fuel stem, the PSC can test either the MARPOL sample or an "in use" sample of the bunkers onboard. Whether they will reference tests already conducted on the commercial samples is not clear.

MEPC.1/Circ.882 provides for two testing standards to be applied. In respect of the in use/onboard fuel oil sample, the relevant threshold for compliance is 0.53 per cent sulphur content. However, for the MARPOL sample, if the test reveals sulphur content above 0.5 per cent, the fuel is deemed non-compliant. In other words, there is a zero tolerance for any results over the 0.5 per cent limit for tests carried out by the PSC on the MARPOL delivered sample. In cases of marginal variances, we generally advise a retesting of the binding sample in the presence of independent surveyors.

**When owners or suppliers suspect that bunker delivery samples were contaminated and take samples from the bunker tanks on the vessel, will the PSC then accept these (on-spec) results rather than the also off-spec MARPOL sample?**

Samples taken from the bunker tanks are not representative of the entire bunkering operation, so there is the problem of no representative sample. Such issues should be discussed with the vessel's flag state and a written agreement reached with the PSC.

**Under which circumstances will the PSC test the MARPOL sample bottle?**

Generally, the PSC will test the in use or onboard sample. Only when the sulphur content is found to exceed 0.53 per cent and there is a doubt regarding the supply parameters, they might then check the MARPOL sample.

#### **Is there a solution to the sulphur tolerance problem?**

Retesting using the same principles of MARPOL sample testing has helped. This is done by dividing the sample into two parts, checking that each reading is within repeatability of the lab, and then averaging. The second and better option would be ordering fuel with a maximum sulphur content of 0.47 per cent. It would also be helpful if fuel suppliers and the entire industry can come to a consensus of not blending so close to 0.5 per cent.

#### **Fuel standards**

**Does the UK P&I Club have a position on encouraging its members to use ISO 8217: 2017 specs, which supposedly is the basis for the 0.5 per cent sulphur cap regulations?**

ISO 8217:2017 is not linked to the 0.5 per cent sulphur regulation. The ISO specs mention sulphur content "as per statutory requirements". We do encourage our members to use the latest specs whenever possible. Having followed various improvements of the specs through the years, we noted that provisions relating to CAT fine levels have been made stricter and acid numbers and H<sub>2</sub>S parameters, which were not available in 2005 specs, have been introduced. The 2017 specs have also introduced a number of improvements for distillate fuels. However, it is surprising to find that many supply contracts are still incorporating older specs.

**Does repeatability and reproducibility (R&R) tolerance generally apply to all parameters or only to sulphur?**

There are R&R tolerances for all parameters listed in ISO 8217 specs. In fact, it is usual in a test environment for all tests to have R&R tolerances. However, the R&R tolerance figures might differ between parameters.

#### **COVID-19 challenges**

**During the Covid-19 pandemic, many bunker barges are not allowing the ship's personnel to witness the tank sounding on board the bunker supplier barge, or the sampling at the bunker barge's manifold. What is the solution?**

Currently, there is no clear solution to the situation described; however, it's important to record and log such incidents. The use of explosion-proof cameras and video recorders in lieu of personnel being on site is a possible solution. The International Group of P&I Clubs is currently working on guidelines to address such scenarios.

**With the Covid-19 situation causing delays in getting samples tested, is there anything shipowners can do to protect against time bars?**

The Covid-19 situation has lengthened turnaround times for testing samples and created other problems, such as an inability to witness testing. Unfortunately, the short time bars applicable in many supply contracts may fall due before test results are received. In a best-case scenario, perhaps where there is a good commercial relationship, the supplier may agree to a time extension, although that seems unlikely in many cases. In any event, owners or purchasers are advised to notify the bunker supplier of the situation and seek to reserve their position. Whether or not such notice will protect them will depend on the applicable law of the contract and the wording of the time bar, but it is certainly a prudent protective step to take which may offer some assistance. *MRI*



Anusuman Ghosh

Anusuman Ghosh, director of risk assessment, UK P&I Club

# Recent updates on the treatment of safe port warranties

Andrey Perepelitsa and Mykola Kozachenko, of Interlegal, review developments on safe port clauses

**T**he issue of port and berth safety often raises various disputes between the interested parties. As there are many reasons for declaring a port or berth unsafe, every dispute is unique and hence all the applicable rules have to be applied individually for each case.

There have now been some developments in understanding the underlying rules for the interpretation of safety clauses and therefore determination of the respective responsibilities of the parties involved. However, before considering the updates, it would be reasonable to review the fundamentals of the terms for port safety.

The classic statement of safety was made in *Leeds Shipping Co Ltd v Societe Francaise Bunge (The Eastern City)* [1958] 2 Lloyd's Rep 127. It has been consistently approved by the courts, including the House of Lords in *Kodros Shipping Corporation v Empresa Cubana de Fletes (The Evia)* (No 2) [1982] 2 Lloyd's Rep 307, and is applicable to both ports and berths and to time charters and voyage charters. The definition is as follows: "A port will not be safe unless, in the relevant period of time, a particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship."

This definition covers the physical characteristics of the port (or, where appropriate, berth), for instance its depth, sea room to manoeuvre, tides, etc and also the characteristics of its fairways and approaches, as well as other non-physical circumstances (political, economic, social, etc). The definition is fairly wide, while also making reference to different stages of the voyage, namely: (a) entering the port; (b) staying in the port; and (c) leaving the port:

(a) Safely reaching the port or berth means a port or berth will be unsafe if the ship is unable to proceed to the port and to berth safely. For instance, a port could also be considered unsafe if the ship suffers damage during its passage on a river or channel when approaching a port. The particular cases may prove that the application of this rule is wide, eg the approach can extend to significant distances like 100 miles, or the vessel has an air-draft which exceeds the available clearance under a bridge that has got to be passed while proceeding to the port, etc.

(b) Safe stay at the port comprises safety of the particular ship for the duration of her stay. A ship may enter a port which is safe, but which becomes unsafe because of adverse weather for instance. A port will still be safe if the ship can safely leave the port. What makes a port unsafe is an issue of fact: weather, inadequate berthing and mooring facilities, obstructions and defective navigational aids may all render the port unsafe.

(c) The safety requirements for departure from the port are usually of an equivalent nature as for entering the port, but, of course, the circumstances of each case should be taken in consideration. As an example, the fully loaded vessel may

safely reach the port and complete discharging operations but would be unable to leave it as the air-draft in ballast becomes higher and subsequently does not provide sufficient clearance under the bridge.

It shall be noted that dangers which are avoidable by ordinary good navigation and seamanship would not render a port unsafe, making the crew's good conduct within the course of the voyage essential.

While the technical theory of what actually constitutes safety of the port or prevents the port from being considered safe is quite clear and widely established in various authorities of different jurisdictions, another practical issue arises, ie the determination of the rights and obligations of the involved parties.

**"It shall be noted that dangers which are avoidable by ordinary good navigation and seamanship would not render a port unsafe, making the crew's good conduct within the course of the voyage essential"**

In general, the safe port warranty is designed to assist owners and to offer them opportunities to avail themselves from being exposed to any danger due to the fault or negligence of the charterers. Thus, under the general circumstances the owners are entitled to the following:

- On the pre-voyage stage, when the master and the owner have just received the voyage instructions, they have in the first instance the "right to consider the order", which by its nature is the right of the master and the owner to have a reasonable time to evaluate the order and decide whether it may be considered as valid for safety purposes or not.
- Then the owner's right to reject the order steps in, if the master and owner decide that the ordered port would expose the vessel to danger which, either under the contract or by virtue of implied terms, constitutes the unsafety of the port.
- It is of utmost importance to note that if the owner, with full knowledge of the facts, complies with an invalid nomination, he may lose his right to reject it thereafter or to terminate the charter, but he would not, just by so complying, lose his right to damages for loss caused by his compliance.

As these provisions are general and may be used as the implied terms, it is essential to have due regard to the constructions of the particular clauses of the charterparty, which may alter the parties' rights in some manner.

Some standard charter forms, for instance, the Exxonvoy, Asbatankvoy and the Norgrain forms, contain an express





warranty on the part of the charterer's obligations to safeguard the safety of the loading or discharging port or berth, but, to the contrary, the Gencon form itself contains no express warranty.

In the absence of an express warranty, the question arises on whether any warranty of safety should be implied. There are dicta, summarised by Morris LJ in *Compania Naviera Maropan SA v Bowaters Lloyd Pulp and Paper Mills Ltd (The Stork)* [1955] 1 Lloyd's Rep 349, which could be read as meaning that the implication of a warranty of safety is automatic. However, it is now clear that there are no absolute rules and much depends on the particular terms of each individual charterparty.

Where the charter specifies the loading port or place, no further act of identification is required to enable the vessel to perform the voyage and it is accepted that absence of any express warranty in the charter would be deemed as there being no implied warranty on the safety of the specified port or place.

The position is the same where the charter provides for the nomination of a port or place out of a list of named ports or places, with no express warranty. Since all of the permissible ports are identified by name, it is unnecessary to imply any undertaking on the part of the charterer that it is safe and, if the owner does not stipulate for an express warranty, he may reasonably be assumed to be content to bear the risk of unsafety himself.

The next question is whether or not a warranty of safety should be implied where the charter provides for the charterer to nominate a port within a range, but which is not itself specified by name. No final decision has been reached on this question, which must ultimately depend on the terms of the charter. However, where the charter confers a right of nomination of this nature it might be appropriate, depending on the terms of the charter as a whole, to imply a warranty to avoid imposing on the owner a risk to which he cannot reasonably be assumed to have assented.

The last scenario to be discussed is when the charter may specify that a berth to be nominated will be safe without giving any similar warranty in respect of the port, and vice versa.

Where the charter provides for the nomination of a berth, without express warranty, at a warranted safe port, the obligations as to the safety of the port can be taken to embrace the safety of the berth within that port selected by the charterer. If the port to be nominated must be safe, it follows that the berth to be nominated within the port must impliedly be safe.

On the other hand, where the charterer's obligation is to nominate a warranted safe berth at a named port in relation to which no warranty is given, this brings no implication, at least as regards the approaches to the port, that the port also is safe.

However, while neither the port nor its approaches in this case have their safety impliedly warranted, the charterer's express obligations as to the safety of the berth must include the approach to and departure from the nominated berth within the port itself.

## Updates

There have been significant recent updates in US case law, which in our opinion reflect the common trends in resolution of such cases. In *CITGO Asphalt Refining Co v Frescati Shipping Co Ltd, No 18-565* (US Supreme Court, 30 March 2020), *Athos I*, a 748-ft oil tanker, collided with a nine-ton anchor abandoned on the bed of the Delaware River. The anchor punctured the tanker's hull, causing 264,000 gallons of heavy crude oil to spill into the river. As required by federal statute, *Athos I*'s owner and the US covered the costs of the clean-up operation. They then applied to reclaim those costs from the company which had chartered *Athos I* for the voyage that resulted in the oil spill. According to the owners and the US, the charterer had breached a contractual "safe berth clause" obligating the charterer to select a "safe" berth that would allow *Athos I* to come and go "always safely afloat".

The question before the court was whether the safe berth clause was a warranty of safety imposing liability for an unsafe berth, regardless of charterer's diligence in selecting the berth.

The safe berth clause here provided, that: "[t]he vessel shall load and discharge at any safe place or wharf, ... which shall be designated and procured by the charterer, provided the vessel can proceed thereto, lie at and depart therefrom always safely afloat, any lighterage being at the expense, risk and peril of the charterer".

The court then held that the safe berth clause embodied an express warranty of safety "made without regard to the amount of diligence taken by the charterer". Thus, the charterer was held liable to compensate the owners and the US for the clean-up costs as they resulted from the charterer's breach of the warranty of safety.

The conclusion may be made that the current common law practice is ready to set the highest standards for the protection of the owners in matters relating to safe port warranties by applying the absolute responsibility of the charterers under the warranty terms. Meantime, there is still room for limiting such liability by virtue of construction of the particular warranty clauses in the charterparties, thus upholding the common principle of freedom of contract. In other words, there becomes more clarity in the understanding of well-known principles, but their interpretation is subject to the circumstances of each case. **MRI**



Andrey Perepelitsa



Mykola Kozachenko

Andrey  
Perepelitsa,  
senior associate,  
and Mykola  
Kozachenko,  
lawyer, Interlegal  
law firm



# Problem solving through Covid-19 and beyond

**Roger Evans**, of the International Salvage Union, provides an assessment of the state of the marine salvage industry

**T**he worldwide coronavirus has caused huge issues and challenges to the shipping industry. Members of the International Salvage Union (ISU), many of which are shipowners and employ their own seafarers, have been affected and salvage operations have been made more complex logistically. There have been concerns about delay when salvage teams have been forced by quarantine requirements to wait – in some cases for weeks – before being able to proceed to a job, or to de-mobilise, and travel restrictions have made crew changes difficult. The IMO has campaigned for seafarers to be nominated as “key workers” to enable them to move more freely which ISU supports.

Despite the difficulties, ISU members have continued to provide vital services – recently handling groundings, fires and immobilisations of various classes of vessel and in all parts of the world. It shows their determination to function regardless of the circumstances, while respecting the safety of their teams and meeting the requirements of the relevant authorities.

Salvors are nothing if not problem solvers and their priorities are always to save lives, protect the environment and save property, so maintaining services to shipowner clients during the pandemic has been important. Salvors are in fierce competition but often work together in the service of clients and transparency and cooperation between all parties is essential both at industry level and during operations, particularly in the high-pressure setting of an emergency response case, and that appears to have remained the case during these extraordinary times.

More generally, the salvage industry has continued with its drive to re-position itself, showing that it recognises there have been challenges and changes on both the demand and supply side of the industry. As part of the re-positioning, the ISU wanted

to better understand, through formal research, what stakeholders think of the Union and the salvage industry. A wide-ranging international survey was conducted last year with respondents from the insurance, salvage, shipowning and professional services communities. The results were positive. The overall satisfaction that respondents had with the ISU was, according to the analysis, high at 7.44 out of a maximum score of 10.

For the overall perception of the professional salvage industry, the highest scores were for the industry being competent, reliable and safe which was encouraging. But of course, all stakeholders must guard against complacency and there is always more that can be done to improve.

The focus of the industry must always be on supporting the client, the shipowner, who must be aligned with their property insurers and liability insurers to create the best conditions for the contractors to use their skills and experience to prevent disaster.

Many ISU members have diversified their offering, but one part of their work remains critical and that is care for the environment, which is socially and politically more important than ever. Shipowners must respond properly if their vessel threatens pollution and professional salvors are the world's foremost resource in protecting the marine environment from disaster. This is demonstrated most clearly in the ISU's most recent pollution prevention statistics.

**“The focus of the industry must always be on supporting the client, the shipowner, who must be aligned with their property insurers and liability insurers to create the best conditions for the contractors to use their skill and experience to prevent disaster”**

In 2019, members of the ISU provided 214 services to vessels carrying 2,308,756 tonnes of potentially polluting cargo and fuel – including 400,000 tonnes of crude oil. The results of this survey show clearly that salvors' operations protect the environment from great harm – not all of those cargoes was at risk of going into the sea, but many of them could have had significant consequences.

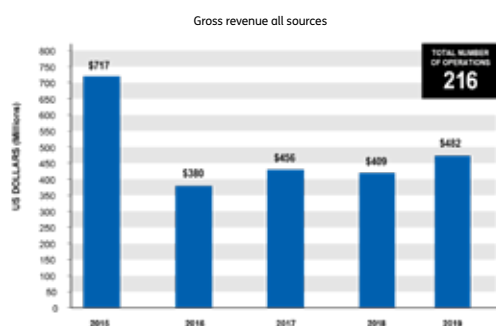
Attitudes to the natural world have changed dramatically in recent years and the environment is now at the centre of political and business decision making. It is essential that there continues to be global provision of expert salvage services to respond to



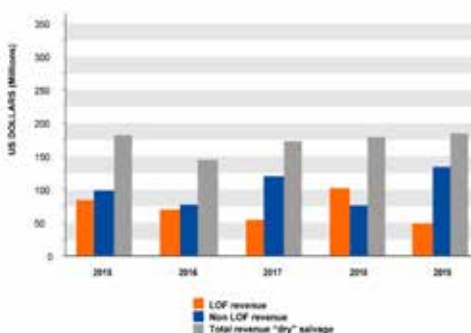
Samkam Amporn/Shutterstock.com

Source: ISU

## Global sanctions risk



## “Dry” salvage revenue sources

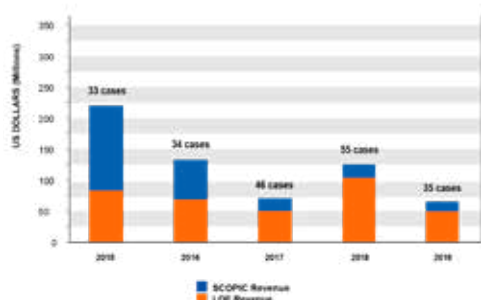


LOF case in 2019 was \$1.4 million, representing 10 per cent of the average LOF-salved value.

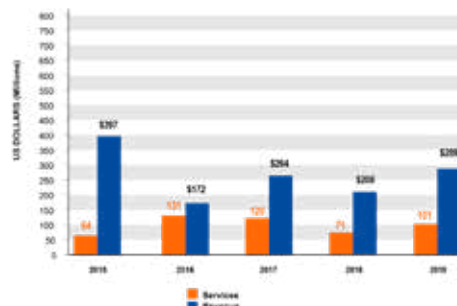
Revenue from LOF cases represented 27 per cent of all “dry” (emergency response) salvage revenue and LOF cases accounted for 16 per cent of all “dry” salvage cases in 2019. SCOPIC revenue at \$17 million was the lowest since 2001. Revenue in 2019 from operations conducted under contracts other than LOF (commercial terms) was \$131 million – up from \$75 million the previous year. Average revenue from non-LOF contracts was therefore \$723,000 per case.

ISU members are also excellent project managers and wreck removal continues to be a substantial part of the industry. In 2019, 101 operations were reported with a gross income of \$284 million – 59 per cent of total income.

## LOF and SCOPIC revenue



## Wreck removal



maritime emergencies and, in most cases, it is only the professional salvors who have the experience and equipment to make those interventions and prevent environmental catastrophes.

In the period 1994 to end-2019, ISU members provided services to casualty vessels carrying 33,728,360 tonnes of potential pollutants, an average of more than one million tonnes per year. It is therefore essential that there remains competent, capable provision of salvage services globally. But that provision has been eroded considerably by market pressure and we have recently seen the demise of Ardent, joining the famous names of Titan, Mammoet and Svitzer which have all disappeared from marine salvage in the past few years. Time will tell whether the capacity of the industry remains adequate to provide the professional global response capability that is relied on to mitigate further exposure.

The financial state of the industry is best shown by the ISU's recently published 2019 annual statistics. These are collected from all ISU members by a professional third party, which aggregates and analyses them. The statistics do not include the revenues of non-ISU members but are the only formal measure of the performance of the marine salvage industry. The statistics are for income received in the relevant year but that can include revenue relating to services provided in previous years and therefore there is an element of “lag”. The statistics are for gross revenues from which all of the salvors' costs must be met.

Gross revenue for ISU members in 2019 was US\$482 million, up slightly on the 2018 number of \$409 million. There were 216 services compared with 234 the previous year. Income has therefore rallied somewhat but the numbers are still well below the levels of several years ago when annual income was typically more than \$700 million, driven by large-scale wreck removals.

In 2019 there were 35 Lloyd's Open Form (LOF) cases for ISU members generating income of \$49 million. It compares with 55 cases worth \$104 million in 2018. Average income from each

The sums of money and financial risks in wreck removals can be huge and the ISU supports the trend for the wreck removal tendering process to be more rigorous and transparent. We recognise that risk needs to be considered in a methodical way; both during the tendering and execution phase. It will drive up performance all round if the process is transparent, fair and ethical. This is an area for further high-level discussion and we must ensure there remains a competitive set of contractors able and willing to bid for this kind of work.

There is economic pressure on the industry, but our members have confidence that they provide critical services for shipowners and insurers – protecting the environment, reducing risk, mitigating loss and keeping trade moving. They are, nevertheless, concerned about the sustainability of their businesses and the model on which their services are historically being compensated.

It is essential that there remains global provision of a professional salvage capability so that owners, insurers and wider society can have confidence that marine casualties will be safely and cleanly managed by contractors with the right skills, experience, people and equipment. **MRI**



Roger Evans

Roger Evans, secretary general,  
International Salvage Union

# An age-old problem rears its head as stowaways return as a threat to shipping

Clandestine migration, also characterised as stowaways, has been a problem for the maritime and freight transport sector for some time now. The risk during the current Covid-19 crisis has not diminished; in certain places it has increased. **Michael Yarwood**, of the TT Club examines the situation and offers advice on mitigation measures

**T**he smuggling of people into North America and Europe has increased in recent years as migrants flee civil wars or persecution in their own countries, or simply seek better economic opportunities. Political imperatives in target countries have led to stricter immigration restrictions and increased government action, but this has generally resulted in more devious clandestine activity as criminals exploit increasing desperation.

The stowaway phenomenon has become a persistent threat to the global supply chain. All modes of transport and types of cargo transport unit (CTU) are exposed to this issue and no mode of transport can be considered exempt. The risk is greatly heightened for the road modality. In Europe, statistics from BSI Supply Chain Services and Solutions highlight that 86 per cent of recorded incidents involve road freight. In many cases of course, depending on the intended destination, a sea crossing is involved. Freight containers and road trailers carried on deep-sea or short-sea ships can be exploited and those involved in multi-modal transport need to be wary.

Nor has the current Covid-19 pandemic lessened the dangers. The effect is more that enhanced border control measures and travel restrictions have merely shifted the focus or means of smuggling activities temporarily. Indeed, according to a recent report from the European Migrant Smuggling Centre, part of Europol, migrant smugglers have been increasingly using small boats to cross river borders and the English Channel. More significantly for the freight industry, the report goes on to say there has also been a shift “to hiding of irregular migrants in concealments in freight vehicles and cargo trains that still move across the borders” during the Covid-19 outbreak.

Criminal organisations are more often than not behind these movements and the resources and facilities they bring to the activity make combating the situation particularly challenging. Such organisations know that one of the simplest ways to move migrants across international borders is to hide them in legitimate freight transport. To combat the criminal threat and the aspirations of the migrants, the varied stakeholders in the supply chain – shippers, forwarders, shipping lines and ferry operators, road hauliers, ports, cargo depots and terminals – need to be constantly vigilant.

The risk exposures are varied in nature:

- Risk to life – both workers and migrants.
- Physical damage to cargo, including soiling and contamination.
- Additional freight costs.
- Vehicle, equipment and/or cargo detention.
- Fines and penalties.
- Reputational damage.

The level of risk may vary from mode to mode. For instance, access to rail infrastructure and inland waterways is generally more restricted, controlled or simply challenging for migrants, while “curtain-sided” road trailers are the most vulnerable, particularly prior to a ferry crossing. However, stakeholders who regularly undertake cross-border freight shipments should give careful consideration to the preventative guidance governmental authorities produce. This guidance supports their activities and allows each stakeholder to implement increasingly robust defences appropriate to the threats presented.

Where migrants are discovered within packed CTUs, the first consideration must be with their well-being. They are often victims of criminal activities and their lives and health are inevitably at risk. After that, there are frequently concerns over the condition of the cargo, which are especially sensitive when it is intended for human consumption.

Compounding contamination with damage gives rise to large potential exposures. It is vital in such circumstances for the interested parties to notify their liability insurer at the earliest opportunity and employ an independent expert to inspect the cargo. There have been many cases where the cargo interests incorrectly assert that the cargo is a total loss, simply because migrants have been discovered. However, when expert distressed cargo inspections are undertaken, the evidence frequently shows that damage and contamination has been restricted to a very small proportion of the cargo, reducing costs and unnecessary disposal.

## Risk mitigation

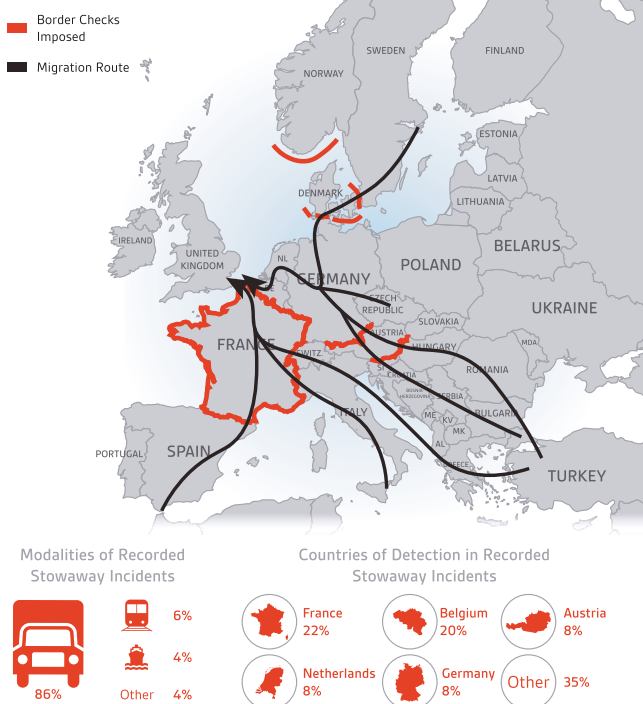
By its nature, road transport provides a range of relatively low-risk and easy entry points for stowaways. Much freight is moved across borders employing road haulage exclusively, but virtually all maritime journeys of cargo units will commence with a road segment however short. Road vehicles use publicly accessible spaces and necessarily are stationary at various points during the journey. The following three steps are fundamental in mitigating the risks:

- Provide adequate training for drivers on how to avoid risks associated with clandestine migrants. This should involve producing written security procedures.
- Deploy robust security devices to secure the vehicle, goods and cargo spaces. Ensure that drivers are fully briefed on their use.
- Monitor compliance with all procedures.

Once procedures have been agreed, there are numerous practical security measures that can be implemented, depending on the nature of the operations. Without seeking to be exhaustive, TT Club’s StopLoss advice on Clandestine Migration, outlines a number of suggestions.



## Stowaway Risks in Europe



While freight containers may be harder for migrants to access from a physical perspective, generally requiring a greater level of complicity and sophistication in the criminal logistics, once there, detection can be more challenging, particularly with temperature-controlled units.

Container operations are most typically “lift on, lift off”, but stakeholders need to consider the actual routing for a particular unit in order to assess the risks thoroughly. Generally, the precautions that can be taken against opportunist stowaways in freight containers are many; there are only a few places where checks for stowaways can be made and ensuring that the export terminal has implemented appropriate security measures and carried out checks could be sufficient. However, similar assurance needs to be gained from any transshipment terminals.

### Terminal operations

Maritime, rail and road terminals are crucial nodes in the international supply chain and offer obvious opportunities for stowaways to conceal themselves in a CTU. Effective security will make the intentions of the stowaway, or their criminal assistants, much more difficult to realise. Such terminal locations need to maintain, and be able to demonstrate, robust security measures. They must ensure that perimeter fences are secure and in good condition, all gates are permanently shut or continuously guarded, and CCTV systems are monitored and stored. Lighting in terminals can be increasingly sophisticated and linked to security systems (eg passive infrared controls triggered by movement).

Maritime terminals will typically comply with regulatory requirements to verify legitimate movements of people with formal identification. Terminal operators should seek to:

- Identify areas where people may hide close to the perimeter fence, such as bushes or adjacent buildings, and check

these areas regularly. Where possible, such hiding places should be removed.

- Check any storm drains that cross the terminal boundary, as they are often large enough to accommodate people.
- Bury the base of fences in the ground to stop intruders from burrowing underneath. If possible, leave an open area between the perimeter fence and the container stacks or vehicle parks so that intruders can be easily spotted.
- Where empty CTUs are received, ensure thorough checks are made internally and, on completion, attach and record seals. Check the internal length of the CTU to verify that a false internal wall has not been installed.
- Where possible, check packed containers arriving for shipment using portable CO<sub>2</sub> meter equipment.

Stowaways are usually desperate to get out of their own country and have possibly paid all of their life savings to a “middleman” to get them to another country. This middleman does not care what happens to the stowaways once he has been paid and has “arranged” passage. Desperate people take desperate measures, so be very cautious once stowaways have been discovered – always call the proper authorities.

### Incident response

In the event that stowaways are discovered in transit, immediate action is clearly required and those involved may find the following guidelines useful as a checklist for such action:

- Report the incident to the authorities and cooperate with them.
- Do not confront the migrants.
- Do not move the vehicle/CTU until an inspection has been conducted.
- Once the migrants have been removed, check the condition of the cargo and CTU.
- Advise customer/cargo interests of the incident. Working openly with the customer from an early stage will assist in mitigating additional costs and manage reputational damage for all actors.

### Conclusion

Constant vigilance and awareness are the only ways to combat stowaways. Vehicles should be checked regularly en route to ensure that they have not been entered; precise security procedures and robust security devices to secure the vehicle, goods and cargo space provide a considerable advantage.

While owners, operators or drivers may contract with third parties to conduct the required checks on their behalf, they are likely to remain liable to any penalty and/or loss incurred. Consequently, due diligence in the selection of such contractors remains critical. [MRI](#)



Michael Yarwood

Michael Yarwood, managing director  
loss prevention at the TT Club

# The dangers of enclosed spaces

Yves Vandenborn, of the Standard Club, asks why enclosed space entry fatalities are still happening



**D**espite the well-known risks and the numerous publications and articles available on the topic, enclosed space entry fatalities continue to account for a significant proportion of deaths at sea to date. More drastic measures are required if the industry wishes to turn this tide.

The most recent in a long list of such incidents is the death of a chief officer who entered a fumigated hold to inspect the cargo condition. In this case, detailed instructions for the fumigation of the cargo were given to the vessel clearly stating that the fumigant was potentially dangerous. Even though the chief officer checked the hold atmosphere prior to entry, unfortunately the gas detector he used was not capable of measuring the concentration of toxic phosphine gas. Further, the confined space entry was made using only a mask, absent was the correct self-contained breathing apparatus (SCBA), leading to fatal consequences. Hence, it is vital to ensure that all possible risks are taken into consideration before one enters an enclosed space.

Despite knowing the dangers and risks, and with the importance of taking appropriate precautions continually reiterated to seafarers, there remain incidents where these precautions have not been followed by the crew. A thorough investigation into these incidences, by industry bodies such as Intercargo and P&I Clubs, reveals that it is not always due to carelessness by the seafarer or a blatant disregard of the precautions. Some of these incidents include instances of ill-attempted rescues of co-workers, where the crew in their urgent attempt to render aid to their co-worker, rush into enclosed spaces without proper care for themselves. These circumstances are understandably critical, but it is crucial that

proper safety procedures are abided by, otherwise there will be multiple lives at risk.

There have also been a few inexplicable cases reported where crew circumvented safety procedures and entered through the access hatches, which display prominent warning signs, without proper protective gear. Many toxic gases or vapours cannot be seen or smelled, so it is vital to remember that one should never trust their senses to determine if the atmosphere is safe and instead follow correct entry procedures.

**“Due to the pandemic, there are more instances of crew being tasked to handle fumigant materials. This means that ship operators and crew, who do not have necessary expertise to handle toxic materials, are exposed to a new operational environment”**

Insight into recent enclosed space-related casualties show that most incidents were caused on board dry cargo ships; and that several of such incidents were easily preventable if the necessary procedures were followed. While most of the tanker companies understand the risks concerned with enclosed spaces, the dry sector seems to be lagging. This is not limited to risks associated with enclosed spaces, but equally stretches out to cargo handling. Knowledge of the risks attributed to liquefaction, fumigation, stowage, ventilation etc is required

to safely manage the wide variety of cargo which is able to be carried on dry cargo ships.

Lack of awareness, for both ship and shore personnel, is perhaps the major cause of such incidents. From the shore side, the shippers are not necessarily aware of the IMSBC or IMDG code requirements; and quite often the cargo is misdeclared. From the ship's side, not following the relevant safety management procedures is most likely the single major contributing factor.

Under section 7 of the International Safety Management (ISM) Code, the company should ensure that the enclosed space entry procedures are included among the key shipboard operations. As of 1 January 2015, the amended SOLAS Regulation III/19 requires mandatory enclosed space entry and rescue drills to be held every two months. SOLAS Regulation XI-1/7 states a requirement for mandatory carriage of portable atmosphere testing instrument(s) from 1 July 2016. Additional guidance has also been provided through following IMO circulars:

- Revised recommendations for entering enclosed spaces aboard ships (resolution A.1050(27)); and
- Guidelines to facilitate the selection of portable atmosphere testing instruments for enclosed spaces as required by SOLAS Regulation XI-1/7 (MSC.1/Circ.1477).

As previously mentioned, another high risk posed on dry cargo ships is regarding fumigation. Due to the current pandemic, there are more instances of crew being tasked to handle fumigant materials, as qualified fumigators are either not available or restricted to travel. This means that ship operators and crew, who do not have the necessary expertise to handle toxic materials, are exposed to a new operational environment.

SOLAS VI/4 on the use of pesticides in ships, states that "appropriate precautions shall be taken in the use of pesticides in ships, in particular for the purposes of fumigation". IMDG and IMSBC Codes provide similar recommendations to ensure safe and effective fumigation. Further guidance related to the fumigation of cargo is laid down in the following IMO circulars:

- Revised Recommendations on the safe use of pesticides in ships (MSC.1/Circ.1358);
- Recommendations on the safe use of pesticides in ships applicable to the fumigation of cargo holds (MSC.1/Circ.1264, as amended by MSC.1/Circ.1396); and
- Revised Recommendations on the safe use of pesticides in ships applicable to the fumigation of cargo transport units (MSC.1/Circ.1361).

Although the regulatory requirements are well laid out, and safety standards should be improving, the increasing trend of casualty statistics indicate otherwise. A review of causation reveals that the majority of casualties happened either due to a lack of awareness or poor knowledge. It is therefore vital that the training element is strengthened to improve crew awareness to ensure that they are able to identify and assess risks effectively and implement appropriate mitigating measures.

Currently, the standards of training and drills vary on each ship. Unfortunately, drills are often done as a tick-box exercise to comply with the regulatory requirements; and the crew is either not aware of the confined spaces onboard or the fact that the adjacent spaces to a confined space might be posing similar hazards. Drills need to be realistic, focused, varied, interesting, challenging; and they need to test skills, knowledge, and responses, while giving a scope to improve and develop. Crew need to take these drills

seriously and they need to realise that these drills are not just compliance requirements, but life-saving practices as they help to ensure a better response in the case of an emergency.

**“Unfortunately, drills are often done as a tick-box exercise to comply with regulatory requirements; and the crew is either not aware of the confined spaces onboard or the fact that the adjacent spaces to a confined space might be posing similar hazards”**

Likewise, training is a two-pronged approach. Alone, seafarers taking it seriously is not enough; shipping companies must also recognise the importance of training and invest in it. In terms of training, there are some companies who invest in sophisticated training and education tools, but there remains to be many that do not. Investing in training does not stop at quality tools and education methods; it extends to the execution of how it is delivered. Careful thought must be put into how these training sessions are carried out, from a systematic execution of the training courses and syllabus to the scheduled review of the seafarers understanding of what has been taught. Quality is of great importance, as no company would want their crew being oblivious to the dangers surrounding them on a daily basis.

Usually on tankers, the level of specialised training is quite detailed and crew knowledge is tested during the regular vetting inspections. There are a number of IMO model courses in place for the different types of tankers, designed for the various crew proficiency levels. Officers and crew are, therefore, well informed of the specific requirements of handling cargoes and well versed in their understanding of associated risks. This approach has, through the years, seen a reduction in the general number of enclosed space entry incidents on tankers. Unfortunately, this is not the case on dry cargo ships. The dry cargo handling courses are usually very generic in nature and do not address the specific hazards associated with various kind of dry cargoes, be it in packaged or in bulk form. Training courses and drills must be specifically tailored to a dry cargo environment for it to be effective and applicable.

As the STCW Convention is the driving factor in crew certification and training, perhaps having a few standardised IMO model courses for dry cargo ships would assist in making seafarers aware of the risks, not just for enclosed space or fumigation, but also for other pertinent issues such as liquefaction, dynamic separation, cargo ventilation and so on. [MRI](#)



Yves Vandenberg

Yves Vandenberg, director of loss prevention, Standard Club



# Bankruptcies and credit risk during lockdown

The cracks in the market have begun to show – bankruptcies are at the door. The interdependence of the maritime supply chain necessitates regular evaluation of counterparties, their customers and suppliers, writes **Sebastian Villyn** of *Lloyd's List*

**S**hipping was not anticipating the 2020s to be quite the roaring decade. At the beginning of the year, the industry was braced for companies struggling under the cost of implementing the IMO's new sulphur cap rules, a final shot across the bow for a number of shipowners.

Shipowners and operators who found 2019 tough, with old tonnage, weakened cash flows and outstanding supplier payments, were likely to find this year even tougher.

The *Lloyd's List Intelligence* credit risk team sharpened their pencils and were preparing for a series of credit rating downgrades. Questions were raised throughout 2019 as to who would be the next OW Bunkers or Hanjin.

In January, *Lloyd's List* flagged that Pacific International Lines (PIL), one of the world's largest container lines, had several ships sitting loaded but idle, unable to source low-sulphur fuel oil (LSFO). *Lloyd's List Intelligence*'s vessel-tracking data confirmed the status of the vessels. One of our credit risk analysts in Singapore contacted marine fuel suppliers in the market.

It became apparent that PIL's woes ran deeper than simply a lack of available LSFO. Bunker suppliers said they were considering vessel arrests due to payment delays.

Since then, *Lloyd's List* and *Lloyd's List Intelligence* have been monitoring the situation closely, with credit risk reports published on Pacific International Lines (Private) Ltd in January and June. In June, a proposed debt restructuring backed by Heliconia Capital Management, an affiliate of Singapore's sovereign wealth fund Temasek, was under review.

By May, bunker prices for very low sulphur fuel oil in Singapore had dipped as low as \$200 per tonne and it was not the IMO sulphur cap, but the complete lockdown of the global economy that acted as a catalyst for bankruptcies and restructurings which will likely ripple well into 2021.

In the first six months of 2020, the *Lloyd's List Intelligence* credit risk team downgraded the credit guidance for at least 20 per cent of companies reviewed across all regions, recommending secured cash terms for at least 10 per cent of all

companies investigated. A holistic approach is taken, examining 12 core factors contributing to the overall risk of a company.

In late March *Lloyd's List Intelligence*'s credit risk analysts heard reports of Hin Leong Trading, at the time the third-largest bunker supplier in Singapore, facing financial difficulties. An updated credit report was released in early April, recommending secured cash terms. *Lloyd's List* followed up with a series of articles in April and May, and in June this year PwC released its report detailing alleged fraud in Hin Leong's trades.

**“Finance costs have been increased, the banks ask for bigger and, in some cases, more liquid collateral, while at the same time reducing or even cutting credit lines completely”**

There are serious concerns about the viability of several companies in the Asia-Pacific region. Hin Leong is just one of more than 250 maritime-related companies *Lloyd's List Intelligence* has investigated in the region during the past six months.

“There is an overall ongoing and growing concern around lack of transparency and a weak regulatory framework around commodity and energy trading houses in Singapore, and recent developments may intimate a wave of regulatory changes which may shape the sector going forward”, said Vassilis Mitrelis, credit risk manager at *Lloyd's List Intelligence*.

From a credit perspective, banks with APAC exposure and especially in the aforementioned sectors are cutting losses and revaluating portfolios. “Finance costs have been increased, the banks ask for bigger and, in some cases, more liquid collateral, while at the same time reducing or even cutting credit lines completely”, said Mitrelis. “This creates a vicious circle and adds extra pressure to sectors that operate with razor thin margins and have a risky and volatile operational structure.”

## Detention and demurrage calculator reveals hidden costs

*Container carriers have often tried to obfuscate the real costs of detention and demurrage. A new calculator shows the cheapest routes and services available to shippers, writes **James Baker** of Lloyd's List*

The lack of transparency and varying costs applied by different ports and carriers for detention and demurrage has long been a major complaint of shippers.

The scale of those variations in charges has now been laid bare through a new calculator from container repositioning service Containers xChange.

In a report on the scale of fees charged by terminals and carriers for detention and demurrage, the Hamburg-based company said that while there was an ongoing discussion between shipping lines and freight forwarders and beneficial cargo owners, about the applicability and level of charges, until now there had been no transparency on how expensive charges can get and no possibility to effectively compare shipping lines and ports.

Using data collected from the top 10 container lines and top 20 ports, the report found that both demurrage and detention charges rise quickly after initial free days to an average of US\$123 after seven days and \$537 after 14 days across ports and shipping lines for a 20 ft dry container.

Charges vary by \$190 on average across the 20 biggest ports, with Busan being the cheapest, at an average of \$6.46, and Los Angeles the most expensive at \$196.88 per day.

"Comparing charges across ports is an economic necessity", the report said. "If you're shipping to Europe, Antwerp is the most

attractive port followed by Rotterdam (demurrage and detention charges up 9.1 per cent) and Hamburg (+ 32.7 per cent)."

One of the issues surrounding detention and demurrage charges was the lack of transparency, with shipping quotes often mentioning them in the comments to quotes, without giving exact figures, despite the fact that they can rapidly escalate to hundreds of dollars a day. The total cost of 10 x 20 ft containers being stuck in Los Angeles for two weeks during a period of port congestion, for example, could be at least \$25,000.

Not only does the port in question matter, but carriers will vary their costs between ports. "In Hamburg, for instance, costs for a 20 ft dry container range between \$29 per day for CMA CGM and \$95 per day for Hapag-Lloyd two weeks after free time expires", the report said. "In Jebel Ali, Ocean Network Express is the cheapest at \$13.50 per day, while CMA CGM on the other hand charges \$37.80 per day if free days are exceeded by 14 days."

"However, comparing carriers still makes sense as charges levied by shipping lines range from \$21.80 to \$136.25 for 20 ft containers on Day 14", the report said. "As a result, Hamburg can be \$60 per container per day cheaper if you choose Yang Ming (\$21 per container per day) instead of Maersk (\$76 per container per day) in Antwerp."

As the average cost for demurrage and detention charges is \$123 in the first week after free time and \$537 in the second week, it was critical to be able to compare charges, Containers xChange said. "If you're shipping to Europe, choosing Antwerp over Hamburg can save you 32.7 per cent of total demurrage and detention costs."

## What to watch for in 2020 and 2021

While the sulphur cap signalled a looming risk of bankruptcies, the coronavirus outbreak will have sealed the fate of many companies.

As reported by *Insurance Day*, trade credit insurers are bracing for insolvencies and payment defaults on a scale surpassing that of the financial crisis of 2008-2009. No sector is untouched, including tankers, dry bulk and containers. As witnessed with Hin Leong, traders and physical suppliers as well as shipowners with older tonnage in all segments, should be monitored closely.

The offshore drilling sector is not ready for another storm. Seadrill, for instance has just exited chapter 11 bankruptcy protection but will likely soon find itself in another round. As its share price has traded below \$1 for more than three months, it has also announced it will delist from the New York Stock Exchange.

Unexpectedly, the cruise ship industry, which seemed unstoppable, now finds itself in a very precarious situation. Carnival Cruise Line has been given a significant downgrade in credit guidance and financial condition by the *Lloyd's List Intelligence* credit risk team, as the team has closely scrutinised the top players in the sector.

Every crisis presents opportunities for the discerning investor. *Lloyd's List* reported that CMA CGM landed \$1.1 billion in state-guaranteed loans, whereas South Korea's HMM raised funds from \$600 million convertible bonds issued to policy lenders.

Evergreen and Yang Ming have also revealed that they were set to receive loans totalling TW\$16 billion (\$568 million) guaranteed by the Taiwanese government.

The industry has already seen significant consolidation through mergers and acquisitions in the past 10 years and continued capital injections from respective government funds as salvagers, and private credit investors with a distressed focus, mean more change is to come.

**"While the sulphur cap signalled a looming risk of bankruptcies, the coronavirus outbreak will have sealed the fate of many companies"**

By now there's no doubt that the coronavirus pandemic will have a profound impact on the viability of a number of shipping companies, commodity players and traders. It is the worst global recession since the Great Depression and an industry that was ready for a shake up now finds itself in a whirlwind. Understanding which companies will stay, and which will fail, may be critical for your own company's weathering of this storm.



These articles first appeared in our sister publication *Lloyd's List*. For more on *Lloyd's List*, visit [www.lloydslist.com](http://www.lloydslist.com).



Business intelligence | informa

i-law.com delivers expert case reporting, commentary and analysis across eight specialist areas of commercial practice. Our industry expertise means we don't just provide you with the information: our analysis tells you what it means for you, your clients and your business. And connected content and powerful search functionality gives you the broad perspective you need when conducting legal research.

Go to [www.about.i-law.com](http://www.about.i-law.com) to find out more

## Chinese Maritime and Commercial Law Reports

Business intelligence | informa

### Now available on i-law.com Chinese Maritime and Commercial Law Reports

Informa Law are delighted to announce we are now the publishers of the English language edition of **Chinese Maritime and Commercial Law Reports**. Providing guidance for lawyers when advising clients on cases or contracts for the region and casting a light on enforceability in China.

For more information visit [www.about.i-law.com/maritime](http://www.about.i-law.com/maritime), email [lawsales@informa.com](mailto:lawsales@informa.com) or call +44 (0) 20 7017 7565

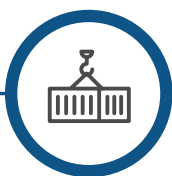






## Container Tracker

# Save time. Stay compliant.



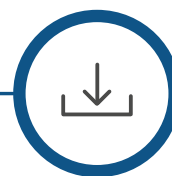
Track containers,  
not just ships

Simplify transshipment tracking with end-to-end downloadable data trails on containers – by container number or Bill of Lading.



Complete checks in  
minutes, not hours

Save time, with all the data you need in one interface, supported by tracking intelligence from over 600 Lloyd's agents worldwide.



Download  
the evidence

Downloadable reports ensure you have the necessary documentation to prove compliance, including specific end-to-end transshipment reports and more.

Request a demo:

America Tel: +1 212-520-2747

EMEA Tel: +44 20 7017 5392

APAC Tel: +65 6505 2084

[lloydslistintelligence.com/containertracker](https://lloydslistintelligence.com/containertracker)

**Lloyd's List Intelligence**  
Maritime intelligence | informa



# Achieve more with Maritime & Commercial on i-law.com

i-law.com is your essential online legal companion, combining user-friendly functionality with our quality maritime law content. Our extensive shipping law library, including Lloyd's Law Reports dating back to 1919, provides the information you need at the right time, anywhere in the world.

Discover the power of i-law.com  
today at [about.i-law.com](https://about.i-law.com)

