

The Report



The Journal of The International Institute of Marine Surveying

July - 2011

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Foreword

In common with many other marine surveyors I receive, subscribe to, and otherwise have access to many trade publications. Some of these are specific to a certain interest, some are recycled information from other publications, while others are a downright waste of time and effort to read; but in my opinion 'The Report' is the best, most all-encompassing magazine for marine surveyors I have ever come across. As my New York friends would ask: what's not to like?

This edition is packed with information and interest: some technical, some practical, but all entertaining and informative. What other publication includes so much input from around the world with the input coming, not from expat correspondents, but from people in the branches? When reading these articles, I am always struck by the experience and knowledge behind the authors and I wonder if the younger members of our profession sufficiently appreciate the opportunity this magazine gives them to learn from those who have 'done it' in the field and are willing to pass on their wisdom. I can only hope so, and I urge all readers to circulate 'The Report' as widely as possible to young people of their acquaintance. You never know, you may spark an interest which stays for life!

This particular issue of 'The Report' is as packed full as always, with items from Abu Dhabi to Port of Spain; from Trinity House to Freemantle; from quiet English waterways to the Japanese Tsunami from an Indian perspective; so many topical articles and insights provided by busy people prepared to give up their time and display their talent. I was

particularly struck by the article on containers and the problems and damages encountered. I must say that this is an area of surveying in which I have seldom delved, and it is clearly one which requires a great deal of practical knowledge. It also seems to be an area which will employ marine surveyors for the foreseeable future.

Chris Spencer's piece about valuations I found particularly apposite, not just because of the pitfalls of valuation, which are many, but because recent events tell us that surveyors seem to be fair game for law suits even from giant insurance companies, and we must all arm ourselves with as many practical safeguards and disclaimers as possible. Good practice and doing a good job may no longer be sufficient to keep the wolves at bay.

I think I am correct in asserting that IIMS is now the biggest and most international of all the organisations representing the interests purely of marine surveyors, and it is the guardian and driving force behind the registration of marine surveyors. This magazine reflects both of those facts and tells anyone prepared to listen, that the registered professional marine surveyors of the world are a vibrant, knowledgeable and committed group who are intent on gaining our profession the respect it deserves. I urge all readers to spread the word and to consider contributing to this first class magazine themselves.

John Lillie
MA, CEng, CMarEng, FIMarEST, FIIMS

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President's Review

The London conference is over and I am now able to concentrate on more mundane matters such as my work, watching paint dry – not very exciting.

For those of you who attended you will agree that it was a superb and excellent event with some very good papers presented. The venue "Trinity House" is truly impressive and certainly gives the overseas delegates (some 27 countries were represented) the "Wow" factor. During the annual dinner the sun gradually set opposite "The Tower of London", the Tower looked stunning. Indeed with the sunset it was a lovely backdrop. I do hope you all enjoyed it as much as I did, the plaudits received so far indicate that you did.

The evening before the conference virtually all directors and regional directors met for a combined "brainstorming session" to look at our future and an inwards/outwards review. This was highly constructive and some interesting viewpoints were expressed together with some serious food for thought. These ideas will now be assessed and where appropriate will be put into action into the coming months.

You will be aware the Institute presented to the Government of New South Wales Australia our top Crystal Award in recognition of their forethought and implementation of significant legislation regarding safety and surveying matters. They were so pleased with the award that we got a serious mention by the Minister



and recorded in Hansard . (the Official Report is the edited verbatim report of proceedings of the government.) Praise indeed. On the subject of Australia we are now well underway to forming a new branch. Their committee is being formed as I write.

Recently the IIMS signed a Memorandum of Understanding with the Institute of Corrosion to jointly develop a certification programme for "Marine Coating Inspectors". This will also in lead up to our RMIC Title "Registered Marine Coating Inspector™". It is anticipated that this will be completed by the end of the year or early next year.

The next big event on the horizon is a flagship conference in the exotic location Bali. 21st September. This will be a three-day event. Have you booked yet? Do not forget to bring your wives or partners, as this is really a lovely location.

Best Regards
Peter

President 2010-2012

Trend Setting

IIMS, Middle East Flourishing

UAE Branch Holds its first AGM in the Capital City

On 26th January 2011 the IIMS-UAE Branch held its 1st AGM at the Crowne plaza Hotel in Abu Dhabi.

*Contributed by Capt. Syed Khalid Humail
(Chairman of IIMS -UAE Branch)*



In yet another out of the box move, the Capital City of Abu Dhabi was selected for the first time to host an IIMS meeting as there was a conscious intent to take IIMS to newer cities in the region to spread awareness to the maritime fraternity and potential members of the surveying fraternity in the region. Abu Dhabi ranked as one of the fastest growing cities in the world has recently declared a number of marine projects and offshore expansion plans, was selected with an in-depth survey done on its potential.

Like every well planned survey the event was executed with utmost satisfaction, Abu Dhabi responded favorably with an interactive guest list of 49 attendees representing several sectors of the marine industry; including IIMS members, lawyers, ship owners, P&I clubs and their correspondents, ship agents and ship brokers to name a few. This was the highest number of attendees recorded for a regional meeting after the conference of 2009.

The event was opened by Capt. Syed Khalid Humail Chairman of IIMS -UAE Branch. A warm welcome was extended to all the guests, and attending IIMS members. A special thanks to Mr. Ahmed Omar Badhidouh and Capt. Shahid Jamal who had traveled from Saudi Arabia especially to attend and the kind of commitment we are looking to generate.

The Branch chairman introduced and welcomed the first guest speaker of the evening, Mr. Christopher Mills, a senior partner with Clyde & Co. legal consultants who has over 15 years experience working in the Arabian Gulf region with a reputation as one of the best marine lawyer in the region. Mr.

Mills spoke in depth about the continuous professional development program which is so well established at Clyde and Co. He drew inferences with how the Marine Surveying fraternity may be required to keep their knowledge updated and how they perceive the survey reports that are presented to Clyde & Co by clients for advice.

The Vice Chairman of the branch Capt. Gopal Khanna, introduced and invited our Second guest speaker Dr. Ravi K. Sishta, who is a senior Head from the Department of Transport for the Maritime sector in Abu Dhabi who holds a Doctorate in Maritime Contracts and Dispute resolutions and is involved in the training needs of Senior officers at D.O.T. spoke about how today's survey reports for him has more than just the traditional use for Underwriters' and clubs. His department sees a report to be the basis on which today's bureaucrats take decisions relating to various aspects of the Industry. A survey report today is a technical document and has to be presented with the highest level of competency, Dr Sishta said. Training and continuous development for Marine Surveyors today is of utmost importance in his view.

Following on from the speaker's presentations, the Vice Chairman invited the IIMS Middle East Regional Director Capt. Zarir Irani to present his views on the inaugural AGM meeting in the capital city of Abu Dhabi. Capt Irani presented a brief on the training and diploma program conducted by the IIMS in the region. He said, IIMS insisting upon CPD points being submitted for continued membership privilege, which indicates renewed competency of all IIMS member.



Presentation by Dr. Ravi Sishta, Senior Head of the Department of Transport, Abu Dhabi, UAE.

Letters of encouragement and accolades for the branch received from the IIMS President, CEO and Regional Directors, these were made available for attending members to review.

Capt. Irani extended his gratitude to the executive committee of the Middle East branch and well wishers viz. Capt. Khalid Humail, Capt. Gopal Khanna, and Capt. Peter Valles. He expressed his satisfaction of structured progress of the branch in effecting its Constitution to conducting regular bi-monthly members meeting which incorporated high powered guest lecturers who drew the attention of the industry.

Captain Irani declared the intent to host the IIMS Middle East conference in Dubai during end November /early December 2011. The UAE branch was invited to take lead in the organizing efforts. An invitation was extended to attending members to join the sub-committee, which already had the continued patronage and experience of Capt Antia and Mr. Uday Moorti extended from the last successful conference held in December 2009.



Mr. Cris Mills of Clyde & Co. receives a gesture of thanks from the Chairman. Capt Khalid Humail, also in the picture are IIMS Regional Director Capt Zarir Irani(leftmost) and Vice Chairman Capt Khanna(second from left)

An added bonus to the evening was a presentation by Mr. Krishna Prasad from the education committee of International Chartered Shipbrokers (ICS) and a prominent member of the UAE shipping fraternity to talk about the ongoing efforts of ICS in UAE on conducting various shipping related courses. Mr. Prasad said he looked forward to the ICS developing a symbiotic relationship with the IIMS.

A personalized token of gratitude was presented by Capt. Khalid Humail as a thank you gesture to the guest speakers at the end of the meeting. The PPT about IIMS and its achievements were left playing on the screen as the attendees networked over light snacks and cocktails which were courteously sponsored by Constellation Marine Services, Abu Dhabi Branch.

Picture Gallery of the IIMS AGM

– 26th January, 2011 Venue – Crowne Plaza (Abu Dhabi – U.A.E.)



Invitation For Speakers for "Loss Prevention – 2011" in Dubai

Further to the successful trend setting first ever IIMS conference outside London (DEC '09) , the IIMS UAE Branch invites speakers to present a paper at their upcoming conference on "Loss Prevention" scheduled on 30th November and 1st December 2011 in Dubai. Interested Maritime professionals may please express their interest via email addressed to branch Vice-Chairman, IIMS.DUBAI@EIM.AE (or) iims.uaebbranch@gmail.com

Japan's Earthquake and Tsunami

– Economic Implications

by Mr Milind Tambe, Secretary, Indian Branch



Rewind - 11 March 2011:

An earthquake of 9.0 on Richter scale hits near northeastern coast of Japan, creating extremely destructive tsunami waves. The earthquake and tsunami caused extensive and severe damage in north eastern Japan leaving thousands dead, injured or missing and millions affected by lack of electricity, water and transportation.



A few days later

BIMCO reports that while the earthquake and subsequent tsunami that hit Japan on 11th March 2011, immediately disrupted transportation and logistic operations throughout the country. The scale of disaster's impact on the shipping industry is still unknown.



Whether directly affected or indirectly, it will be a considerable period of time before a lot of Japanese manufacturers regain their normal output levels. Productivity is likely to remain affected due to power cuts. BIMCO further points out that, while this will have an immediate negative impact on the demand for export shipping, as the situation starts returning to normal, the demand for shipping may be higher in the medium to long term because of this natural disaster.

Lack of exports from Japanese factories may cause liner companies to leapfrog Japanese ports on their transpacific routes. Implications on import shipping too follow. Dry bulk shipping may be imported in many ways as Japan is a major importer of thermal coal for power generation, iron ore and coking coal for steel production and grains for food and feedstock.

Tanker shipping too will be impacted as refineries are on fire, which can affect product tanker demand. Nuclear power plant damages and shutdowns could also impact overall oil imports for power generation.

Japanese ports are reported to have handled 19 million TEUS in the year 2010; about 7% of these are reported to be shut off after the earthquake and tsunami.

Industry sources point out that there is significant damage to the ports of Hachinohe, Hitachi, Hitachinaka, Ishinomata, Kamaishi, Kashima, Ofunato, Onahama, Sendai-Shiogama and Soma. Following the damage to these ports, major shipping lines have already suspended their operations to

these ports. This is just one instance of supply chain disruption in this area.

About a week later

The issue is further exacerbated with the radiation threats looming around Japanese ports due to overheating of its nuclear power plant reactors. Shipping companies, with vessels sailing to Japan, are taking varied precautions since then in view of the country's threatened nuclear meltdown.

The effect is so far localized, but has ripples in form of an after effect, and is seen throughout the continent.

Reports are also received from trade that disruptions are seen in India's trade with Japan, which virtually ground to a halt with ships refusing to pick up cargo bound for the Far East nation from Indian ports. The disruption - as reported - could be temporary, and once the uncertainty over the nuclear radiation is over, normal ship movement to Japan would resume.

The Indo-Japanese trade was valued at US\$ 10.36 billion during 2009-10 of which, US\$ 6.73 billion accounted for imports from Japan and US\$ 3.63 billion for exports from India. The disruption of the logistics chain will certainly have impact on both the countries.

Japan is the second largest importer of Chinese goods and services (after US). About 8.5 % of China's exports were reported to be to Japan in February 2011, and 22.6 % of China's imports from Japan. China's share of imports from Japan is the largest amongst all countries, 12.3% of all imports coming from Japan in Feb 2011.

Japan's exports are likely to get severely affected due to the nuclear radiation fears. It remains to be seen how the Sushi and Kobe Beef importers worldwide react to the after effects of the disaster and nuclear radiation threat. Similarly with nuclear fallout threats and a few ports being inoperative, prices of Tuna could see ups and downs as Japan is a major importer of Tuna.

Above were typical illustrative examples. The collapse in bilateral trade for any country having trade ties with Japan will have a negative impact. There is also a broader implication to Asia

With the shipping and logistics chain from and to Japan disrupted, after effects will continue to be seen for some time to come.

A look at the Insurance aspect

- RMS predicts massive economic losses of \$200bn-\$300bn (it is yet to publish a loss estimate)



- Preliminary estimates from international marine insurers say (based on known ship losses), total hull losses of up to \$300mn from the earthquake and tsunami in Japan on 11 March, although the global market is still trying to assess damage to ports and cargo.
- Contingent Business Interruption (CBI) losses could bring quake-triggered claims on the other side of the world. With claims that will come out of Japan, claims are also expected in the rest of the world due to the disruption of the logistics chain that bring supplies from the affected nation to industrial facilities in the rest of the world and vice a versa to a grinding halt. Several commercial property policies include CBI protection as standard, which means that coverage will be widespread.
- The World Bank has estimated the total economic cost of the disaster at \$112bn-\$235bn, though modelling agency RMS has produced a higher \$200bn-\$300bn range as mentioned earlier.
- Barrie Cornes, an insurance analyst at Panmure Gordon & Co. in London, has warned that Japan's devastating earthquake and tsunami is anticipated to cost the global insurance industry as much as \$60 billion or even more, which would make the disaster the most expensive ever behind Hurricane Katrina (which led to global losses of an inflation-adjusted \$71 billion), according to early estimates.

- Global insurance stocks took a hit on 14th March 2011, as traders reacted to images of flattened towns and ravaged coast lines of Japan.

Bottom line

In today's increasingly interconnected economies, the economic fallout from a natural disaster is rarely limited or concentrated to the geographic area where it strikes. Natural disasters that take place hundreds and thousands of miles away, can leave a country's economy and your portfolios shaken up.

The bottom line is, it is difficult to imagine the extent of economic repercussions a major natural disaster - like the earthquake and tsunami of Japan, can bring about.

The disaster has indeed impacted the economy of Japan adversely, but it can have an impact on a larger scale as well, we will have to wait, watch and take notes.

There is little we can do to avoid mother nature's next calamity, we better prepare for it – both physically and financially – understanding the economic implications of a disaster is the first step towards that.

References: BIMCO, Insurance Information Institute, Also Sprach Analyst, Investopedia, Insurance Insider and several other Maritime, Print and Television media

Maritime Management Systems (ISM)

Internal Auditor and ISM Designated Person Training Sessions In Port of Spain, Trinidad, W.I.



A Report by Caroline Rostant, Supp MIIMS

Caroline Rostant, SuppIIMS, Director, Pivot Media Caribbean, Trinidad & Tobago, in collaboration with Capt. IJ Arora, MBA, Master Mariner, MSc., President & CEO of Quality Management International Inc of USA, recently hosted one of the very first ISM Designated Person Training Workshops in Port of Spain, Trinidad. Held over a two day period and attended by local members of the Maritime Industry, this workshop was presented in order to provide the local Maritime Industry with the knowledge required for taking on the role of Designated Person as per Annex to MSC-MEPC.7/Circ.6 – Guidance on the qualifications, training and experience necessary for undertaking the role of the designated person under the provisions of the International Safety Management (ISM) Code.

This Workshop provided the participants with training relating to the safety management elements of the ISM Code including knowledge and understanding of the ISM Code; mandatory rules and regulations; applicable codes, guidelines and standards as appropriate. Students were also provided

with insight into Crisis Management , Pre-Audit Activities & Audit Investigation, the DP as Awareness Leader , determining Conformity of the Safety Management System and writing Nonconformity Statements

Participants were introduced to Process Based Systems, integrating all parties involved in each process and producing an easily understandable 'swim-lane' or deployment flow chart, instead of the traditional 'silo type' system. Additionally, participants were provided with tools such as the 'fish-bone' cause and effect diagram and the P.D.C.A. Cycle (Plan, Do, Check, Analyse) in order to assist with their functions as Designated Person.

An initial two day Workshop was also conducted with regard to Maritime Management Systems Auditor Training using the International Safety Management (ISM) Code (RABOSA Certified). In this Workshop, students were introduced to maritime security management system principles, common



*Standing, L to R: Matthew Lambert; Capt Mark Forgenie; Nigel Cudjoe; Caroline Rostant; Capt IJ Arora; Devon Reece; Fedrison Jagessar; Richard Hospedales
Seated, L to R: Fred Archer; Arran Millar; Capt Jason Storey; Haydn Poon; Christopher Francis; Taran Sagrarsingh*



Day 1 – Samaan Tree Room, Kapok Hotel, Port of Spain, Trinidad.

system standards used by the maritime industry, interpretation of ISM Code with real-life examples, understanding system documentation and records, analyzing processes to identify resources and critical controls, planning, conducting and reporting ISM Code audits and recognizing realistic ISM Code deficiencies and corrective action.

Trinidad & Tobago has the unique perspective of having a large gas and oil industry that requires the support of non-convention size vessels on a full time basis. In order to ensure that the necessary Safety and Environmental Protection standards are maintained, the majority of the Oil & Gas operators have instituted the requirement for Safety Management Systems be in place for such vessels. As such, the majority of participants at the Workshop were members of organizations that are complying voluntarily with the requirements of the ISM Code in order to meet client contract expectations. This in itself presented several challenges with regard to the requirements of the Code and the size and capability of the organizations involved. It is Pivot Caribbean's intention, in collaboration with Quality Management International Inc, to continue providing training opportunities for the local Maritime Industry on a regular basis and to build on this first series of Workshops with additional offerings in the Maritime Sphere including:

- Quality Management Systems Lead Auditor Using ISO 28000;
- QMS Lead Auditor Using ISO 9001 and ISM Code
- EMS Lead Auditor Using ISO 14001 and ISM Code.
- Developing a Process-based Management System for ISM Code
- Developing a Process-based Management System for ISPS Code/MTSA Annual Security Exercises for ISPS A/13.1 & B/13.7

- Security and Pollution Control for Top Management and Vessel Command Teams
- Emergency Response for Vessel Command Teams and Company Emergency Response Teams
- ISPS Auditor (RABQSA Certified)
- Vessel, Company & Port Facility Security Officer (VSO/CSO/PFSO) Training (USCG/MARAD Approved)
- Uninspected Towing Vessels (UTV) Training
- Designated Person (DP Training)
- Quality Management Systems Lead Auditor Using ISO 28000
- Compliance with Maritime Labor Convention 2006

For further information, please contact Caroline Rostant at caroline@pivotcaribbean.org



Day 3 – Samaan Tree Room, Kapok Hotel, Port of Spain, Trinidad, W.I.

When is A Boat Not A Boat?

Eur. Ing. Jeffrey N. Casciani Wood

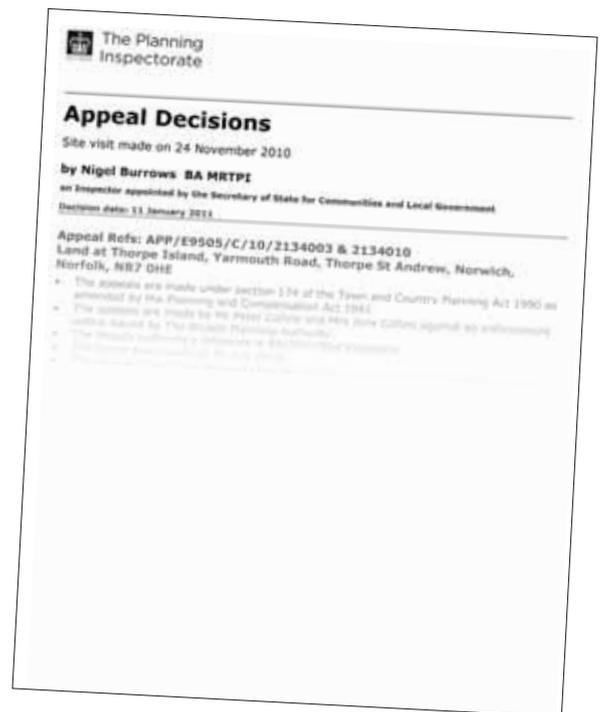
That may seem to be an *Alice in Wonderland* type question *vide* the Cheshire Cat but, following a recent loss of an Appeal against a Planning Consent Order it does have considerable relevance to those of us in the small craft section who, from time to time, have to deal with houseboats. The case was brought to my attention by a correspondent to the IIMS Web Site Forum as being mentioned in the magazine *Waterways World*. I followed the case up and was given some information on the matter by Ms. Cally Smith of the Norfolk Broads Authority. The recorded decision has considerable bearing on the value of a houseboat and the important points are as follows: -



The subject item was a wooden two storeyed structure on a steel flat bottomed barge some 7 metres long by 3.5 metres wide and it was noted that the barge had a rudder and a propeller but that there was no evidence that she had an engine. It was agreed that she could only be moved manually but the appellants stated that they intended to leave the vessel in a cut at the site. There were no shore side services such as electricity, gas or sewage but the vessel was connected to the land by means of mooring lines. It was noted that for the majority of the time she sat on the mud but did float when the tide was sufficiently high. The Broads Authority contended that the size and bulk of the structure rendered the barge incapable of navigation and prevented its movement over the water in any meaningful way.

The Decision Document stated that, "In terms of fact and degree, the works that have been carried out do not appear to have involved the fitting out of a boat for the purpose of navigation or travelling over water. The works do not appear to include the provision of any means of propulsion or navigation aids and there is a noticeable absence of the equipment one might expect to find on a boat or a vessel intended for navigation.....In effect, the barge has been subsumed beneath a two storey structure intended as a holiday home and which, as the appellants confirm, is intended to stay *in situ*." "There is no doubt that the appeal structure can float, but the fact remains that not everything that floats is a boat".

It must be borne in mind that, as far as planning goes, water is considered to be 'land' and that, in considering whether or not something is a building; the law takes into account three factors, namely size, permanence and



physical attachment.

In giving his judgment, Mr. Nigel Burrows BA, MRTPI stated "With respect to size, the scale and bulk of the structure has necessitated its construction *in situ*, as opposed to its being brought onto the site ready made. In terms of permanence, the indications are that it is intended to stay in the cut and there is no evidence to suggest that it is likely to move any significant distance. The structure has not yet been fitted out internally but its overall design is indicative of the intention to use it as a dwelling, which reinforces the impression that it has been provided with a prospect of permanence. In terms of physical attachment there is no evidence of any services connected to the structure but it is attached to the land by ropes and it sits on the mud for extensive periods. The nature of the structure is such that it is able to sit on the land under its own weight for the majority of the time and occasional movement, such as floating on a sufficiently high tide, does not prevent it becoming part of the land".

The decision means that any 'houseboat' incapable of being moved under its own power is, in fact, a house and should be valued as such. Further anyone considering building a structure onto a dumb barge with the intention of making a permanently moored houseboat will need local planning permission.

There is a copy of the decision in the IIMS main office and any member wishing to see the original is recommended to contact the CEO for a copy.

UK Small Craft Working Group



Report by Colin South, Chairman

The recent small craft working group meeting at Portchester was well attended with the speakers John Kilhams and Jeffrey Wood playing to a full house.

John gave a short talk on Report Writing. This was a taster for the day training course being run at the moment and I would strongly suggest that all new Surveyors seriously consider taking this course. As I was told when I first started it's not what you put in the Survey but what you don't put in that trips you up. Jeffrey gave us an excellent lecture on stability and along with the course notes plenty of food for thought.

We have been discussing mentoring at the last 2 meetings and its importance to new surveyors. Nick Vass has agreed to act as the contact point for this.

Please contact him on nick@vassman.freeserve.co.uk to register giving him the area that you operate in and the distance that you will be prepared to travel.

It is not possible for a senior surveyor to come on your surveys and advise you as this contravenes PI cover rules. The only way this can be done is for you to go on surveys being undertaken by a senior surveyor.

The success of this depends on the number of Senior Surveyors willing to mentor and I would ask if those interested in doing this contact Nick and register with him. We have to keep up standards within the industry and this is a very good way of doing this.

Finally I have come to the end of my 2 year term as Chairman and would like to thank you for your support over this time. The current Vice – Chairman John Excell has agreed to take over as Chairman and I'm sure that you will give him your support as you did me. The nominations for the next Vice-President - open to full members only - will be voted on at the next meeting.

UK Small Craft Working Group Meeting 9th May 2011



The UK Small Craft Working Group met on the 9th May 2011 at the IIMS head office at Portchester. About 18 members spent the morning discussing issues ranging from coding of commercial craft to osmosis.

The afternoon visit to Seldon Masts at Fareham was an excellent opportunity to hear how the factory works and the complexities of manufacturing Carbon Fibre masts. Mast are made and assembled at the factory for all types of vessels ranging from dinghies to the very largest of yachts.

In the Photographs members discuss the merits of carbon fibre over steel and aluminium. The members were grateful to Seldon Masts MD Mr Steve Norbury for his hospitality

The pitfalls of “without prejudice” and how to avoid them

Intro

The without prejudice rule allows parties to a dispute to speak freely when negotiating settlements; without prejudice written or oral communications are not admissible in evidence should a settlement not be reached. However, there are certain exceptions.

Text

There are limited exceptions to the without prejudice rule and simply marking documents “Without Prejudice” or conducting discussions on a without prejudice basis does not automatically make everything inadmissible. Set out below are the ten exceptions to the rule where the “without prejudice” rule doesn’t apply.

- 1 Proof of an agreed settlement agreement;
- 2 Evidence of the negotiations to show that an agreement should be set aside on the ground of misrepresentation, fraud or undue influence.
- 3 Even if there is no concluded agreement, a clear statement made by one party and on which the other party is intended to act and then does in fact act, may be admissible (as estoppel).
- 4 If the exclusion of the evidence would act as a cloak for perjury, blackmail or other unambiguous impropriety.
- 5 Evidence that negotiations took place to explain delay in proceedings.
- 6 In a related claim, showing that a party has mitigated their loss, by establishing reasonable conduct during negotiations and conclusion of the compromise agreement.
- 7 Without prejudice except as to costs.
- 8 Matrimonial conciliation.
- 9 Rectification.
- 10 The interpretation exception. This will only apply where the parties have entered into a settlement agreement and where there is a genuine dispute in relation to the terms of that agreement.

To avoid the pitfalls of without prejudice, without prejudice communications ought to be limited and potential weaknesses should only be discussed with legal advisors, as these remain privileged.

The without prejudice rule is designed to encourage parties to speak frankly during negotiations. Commercial judgment needs to be exercised to determine and balance the benefit of open and frank disclosure with running the risk of having the matter discussed in open court. In order to reduce the risk of losing the without prejudice protection, the following points should be borne in mind:

- 1 Without prejudice communications must be genuinely aimed at settling the dispute;
- 2 When speaking to another party with the purpose of trying to resolve the dispute, you should state clearly at the outset that the discussion is without prejudice. It would be wise also to make a short note of the key points discussed during the conversation and to note down the date and the time;
- 3 Any written correspondence should always be clearly marked “Without Prejudice”. It is usually preferable that any correspondence to be sent on an open basis is set out in a separate letter to any correspondence intended to be without prejudice; and
- 4 In order to avoid any risk of the content of without prejudice discussion becoming admissible under the interpretation exception above, you should ensure that the terms of any settlement agreement are recorded in the clearest possible terms. If there is no ambiguity in the terms, there is no room for further dispute under which the without prejudice exception would apply.

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TARU

The Story of a Star



by Chris Bowman

My good friend RP Segsworth and I were having a quiet beer at a Fremantle waterside café discussing the concept of having a yacht which could be delivered anywhere in the world inside a shipping container. We had both done our fair share of blue water sailing over the years, but were now looking at the pleasures of world-wide cruising from a different angle. "You know CB, it makes a lot of sense. You just put your boat in a box in one part of the world, and a few months later you pick it up in another. It would be safe; there would be no wear and tear; and it would be cheap". I agreed with him. In theory it was a great idea. I never in my wildest dreams, however, would have thought that five years later I would be doing that very thing; shipping my own boat around the world inside a container.

Life does indeed work in mysterious ways. It would have only been a few days after that conversation that the Boxing Day Tsunami struck Sri Lanka, which in turn led to me taking a job in 2006 to build a timber and epoxy/glass composite twelve meter trimaran fishing boat in aid of the devastated fishing community on that ravaged south coast. That project was an intensive eighteen month introduction to the exotic, lushly tropical, culturally ancient, war torn Island formerly known as Ceylon.

Pierre Pringiers has been in Sri Lanka for over 30 years, in which time he has built up his Loadstar Tyre Company into a

huge multinational corporation. In the aftermath of the tsunami his company did much to help rebuild the communities of the south coast of the island. One of his visions was the creation of Building a Future Foundation (BAFF). Working with a number of donor organisations from around the world, a training centre was opened in a disused corner of the Loadstar warehousing complex in the village of Pelana. This included a fully equipped machine workshop, a welding shop, a computer training centre, a boatyard and a sail loft. Instructors were hired and the young trainees were taught the skills of fitting and turning, welding, metalwork, CAD and mechanical drawing, as well as English. The boatyard was set up under a high tin shed roof, and an old cool room was dismantled and moved in from the capital of Colombo, into which air conditioners were fitted to enable hulls to be laminated in a temperature controlled, low humidity environment. Next to this was a well fit out woodworking shop. It was here we built Jayasayura, the "Sashimi" boat.

An essential ingredient of this project was my job teaching twelve previously untrained youths of that community the skills of boat building. When we started these boys hardly knew the difference between a hammer and a saw. They had never seen a battery drill, let alone used a power planer or a router. The table saw, thickness planer, joiner and spindle moulder were all new to them. Their English was rudimentary at best. Few of them had ever built anything before, let alone

a fairly high-tech tri; they had never used epoxy resin, never seen a lofting floor, made moulds, or set up a boat. But they were polite, very respectful, bright eyed, punctual and very keen to learn. Building the "Sashimi Boat" was a great achievement for them. I picked up some Sinhalese and their English improved. I drew a lot of pictures and they soon caught on. In hindsight it was incredible how quickly they learned. Sixteen months after we started, the boat went fishing. What all of us had done was really quite extraordinary. The question was... what's next?

At the completion of Jayasayura Mr Pringiers was keen to see the boatyard continued to be utilised, and therefore encouraged me to stay in Sri Lanka and explore the possibility of building boats commercially there in association with BAFF. I too felt that there was a business potential there, and so as the completion of the trimaran drew near I spent my spare time pondering what a viable concept could be. I concluded that any product that I built in Sri Lanka would have to be exported as there was no local market for yachts, and to do that the product would have to fit in a sea container; transporting anything larger than that on the Islands chaotic roads was out of the question. The inside measurements of a 40ft high cube (the largest) container are 12 meters L x 2.35m W x 2.58m H (39-4 x 7-8 x 8-4). It is an inescapable fact that economical world-wide shipping is now governed by these

go, and what I came up with, was a design that was 11.9m long x 2.3m wide. To my eye these dimensions called for a classical shape with long overhangs and a short waterline. My inspiration came from Nathaniel Herreshoff. I remembered reading that he designed and built fin and bulb keeled yachts in the late 1800's. If the keel were removable the boat would fit, so I worked on this theory and developed the underbody accordingly. I calculated her to displace approximately 3,600kgs with the keel weighing a little over 1500kgs, a 44% displacement to ballast ratio. She would carry about 60 square meters of sail, and be gaff rigged so that the spars would all easily fit into the container.

Before going any further I thought I should have a professional opinion, so I took my drawings to my naval architect friend Jim Wilshire to evaluate. He ran the lines through his computer program and we found with a little tweaking that the design was basically sound. Jim worked out a standard keel bulb shape for me, printed out the offsets, and I was ready to go.

For construction she would be strip planked with western red cedar, then glassed with one layer of fairly heavy quadraxial cloth using epoxy inside and out. Laminated ring frames would be fit at every other station after glassing, or at one meter intervals, and they would be coved and glassed



Myself and the young builders of Taru; Sashimi Boatyard, Sri Lanka.

simple dimensions, and it was here that my mind went back to that conversation with R.P. several years before. Whatever it was that I built would have to fit inside those parameters... which from a design perspective made things challenging, but if possible could produce a yacht that could be transported anywhere in the world comparatively cheaply.

Returning home to Australia, I dusted off my drafting table and set to work. I pushed the parameters as far as they would

to the inside skin. The keel and backbone would be laminated Douglas fir. This construction makes for a strong, light, watertight, extremely stable hull with virtually no fastenings. All the fittings would be cast bronze and the spars would be fir. A 12hp Volvo-Penta Sail Drive diesel engine would also be fit.

The building of the yacht which I eventually named Taru, which translates to "Star" in Sinhalese, was a special, unique



Fairing the cedar strip planking before glassing.

experience. For one year I went to work every day building exactly what I wanted to build. I had a great group of young guys who were keen and dedicated and accurate in their work; I had access to on-site machine shops and welders who could make whatever we needed; I located (in the midst of the jungle) a traditional family foundry that could cast all of our fittings; and was supported and encouraged by all the great people at BAFF, Loadstar, and the local community in general.

And we made almost everything. We made the patterns for the bronze castings; we cast the lead bulb. All of the wooden blocks were manufactured by one of the boys, and we made all of the spars. The sails were made on site when my sail maker friend Graham Hill found time to get away from his business in Australia for two weeks and come and work with

the BAFF team and stitch them together; the engine installation was completed when Janis Kukuls, another old mate from Fremantle came for a "holiday" and assisted us with the final engineering. The teak for the deck was an incredible story... a Bangladeshi freighter smuggling teak from Burma to India had sunk off my beach, and the logs all washed up on shore in front of my house! When the Government release them at auction I was one of the first in line to buy my share.

From the beginning the aspect that gave me the most satisfaction was how far Ruwantha, Sampath, Kalhara, and the rest of my young crew had come in less than three years. From lofting to set-up, planking to fairing, painting to decking and spar making the work ran smoothly...the boys didn't skip a beat. The work was done with precision, thought, dedication, pride, and a lot of smiles. Less than a year from when we started, Taru was slipped into a container for shipment back home to Australia on what was to be the first of her voyages that would eventually take her right around the world.

I decided that to promote the concept and prove what she could do the boat would have to be seen on the international stage. When the first glimmer of the idea to build a sailing boat that would fit into a container entered my mind, the West Indies was right at the top of the destination list. I had spent 14 years of my life there after all, and I had not been back for 22 years. Not only that... I always had the urge to sail in the Antigua Classic Yacht Regatta, renowned as one of the premier sailing events in the world. So I took the plunge: Taru



Rolling out of the container, FKG Rigging, St. Maarten, W.I.

was hauled out at the Fremantle Sailing Club, packed away into a container and sent off on a voyage via Melbourne and the Panama Canal that would take her half way around the world.

The Antigua Classic Yacht Regatta ran from April 15th to 20th, and Taru was registered as the only Australian yacht. It was fantastic just to be amongst this plethora of masterpieces designed by the greatest designers the world has ever seen. There were yachts by Herreshoff, Alden, Sparkman-Stevens and Fife, alongside designs from Camper-Nicholson, Gruber, Milne, and Rhodes, just to mention a few. Valsheeda and Ranger were there, the massive 140 ft 'J' class sloops. There were schooners and ketches and classic yawls, their mirror-like varnished mahogany, teak decks and polished bronze reflecting off All-Grip paintwork amongst a forest of Oregon and Spruce spars. Later on in the morning we let go the stern lines and joined the procession headed out of Falmouth Harbour for the start line for the first race.

The regatta consisted of four days of racing, each race approximately twenty four miles long. In the end we finished equal first on points in our class, but overall second on a count-back. The Regatta was exceptionally well run, and Panerai were incredible sponsors, as was Mount Gay Rum. On Monday morning I woke up ready to race again, but everyone was sadly packing up to head out to all points of the compass. By mid-week the place was almost empty! It was now time for phase two of Taru's sailing odyssey.

I had decided to continue my Endless Summer of Sailing by sending Taru up to New England. In all my years of living in the Caribbean I had never made the sail north but had always wanted to visit places like Martha's Vineyard, Nantucket, Newport and Marblehead. Now was my chance. Millions of containers travel the oceans every day... the logistics of sending one anywhere you want is usually quite straightforward. A container carrying a sailing yacht, however, is a unique cargo. Shipping Taru to the States was easy enough; getting her through customs was slightly more work. The agents in Miami were very efficient, however, and after the inevitable bureaucratic wrangling Taru was given a ninety day duty-free exemption by US Customs and was soon on a railcar heading north from her port of entry at Jacksonville, Florida towards her final US destination of Wickford, Rhode Island.

Wickford is a snug little harbour tucked into a corner of Narragansett Bay, approximately 20 miles from Newport, the legendary centre of the America's Cup for so many years. A few miles away on the other side of the bay is Bristol, where



Fairing the cedar strip planking before glassing.

the famous Herreshoff Maritime Museum is located. Cape Cod, Mystic Seaport, Buzzards Bay and the off shore islands are all within a day or two's sailing. For me it was like landing in the epicentre of East Coast Yachting.

Panerai were continuing their classic regatta sponsorship in what they were calling the North American Challenge, which would be made up of three separate regattas; the Corinthian Classic Yacht Regatta in Marblehead; the Opera House Cup in Nantucket; and the Museum of Yachting Classic Yacht Regatta in Newport. In the midst of all of this was the Herreshoff Classic Yacht Regatta in Bristol. I wanted to make the most of my stay there and entered them all.

The regattas themselves each presented their own individual colour and character. The Corinthian Yacht Club in Marblehead provided two great days of sailing for a fleet of forty-one yachts. A friend had recommended two excellent young sailors from Boston to sail with me, and they were able to just step on to the boat and help me make her go fast enough for us to win our class.

The Opera House Cup is traditionally held on the third Sunday in August, and this was the 38th running of the annual event. Classic boats from all around converge for this prestigious race. The sixty-two entrants were a virtual classic roll call of American yachting. On a light but very pleasant day Taru finished twenty-fifth over all, which I was very happy with considering some of the boats that we were up against.

The following weekend we were in Bristol for the Herreshoff Classic, and again I had to pinch myself to make sure that I was actually moored in front of the legendary Herreshoff Manufacturing Company, a place that I had read so much about and that had created so many incredible vessels. Unfortunately the breeze let us down on this weekend when it dropped out to nothing in the afternoon of both days, but the mornings provided great sailing for at least a couple of hours.



Alongside at Pleasant Street Wharf, Wickford, Rhode Island.

There was no problem with wind in Newport for the Museum of Yachting Classic Yacht Regatta, the last of my North American regattas. Hurricane Earl had been working its way up the east coast all week, threatening to wreak havoc if it turned inland. Luckily Earl turned out to sea, but Saturdays racing was cancelled. There was a solid twenty-five knots blowing on Sunday and with the tide running against the strong sou'wester it made for a rather boisterous start and beat to the first mark. After rounding we turned and ran down into the flatter conditions of Narragansett Bay. With a reef and a small jib we were probably a little bit under-canvased in the end as the breeze never kicked in any stronger, and so we finished up seventh out of twelve in our class. Once again the sponsorship of Panerai was first class, as it was at the Corinthian

Yacht Club and the Opera House Cup. The overall Classic Series winner was the six meter Totem; the Spirit of Tradition winner was the twelve meter Valiant. Taru finish fifth over-all in this class, which wasn't a bad showing. Panerai handed out some great prizes as well; over-all winners received \$8,000 watches and I was given a beautiful barometer for the win in Marblehead, which at least would last longer than any bottle of rum that I had ever won in years gone by!

So with the northern summer of sailing finished I packed Taru back up in a container and sent her off back home. The route she took was west to east, and so when she was unpacked and put back in the water in Fremantle she had been around the world. She made the trip with hardly a scratch; the freight and handling for the whole trip cost less than twenty thousand dollars. I was incredibly lucky to have been treated with such hospitality wherever I went; ran into some great old friends and made many new ones; sailed quite a few miles in a wide variety of conditions, and needless to say had a fantastic time.

The only way the trip could have been better would have been to pick up an order or two for another Universal 40, but with the world economy as it is at the moment that just wasn't in the cards. Be that as it may, Taru has done everything that she was designed to do, and more. You can't ask for better than that.

For information go to www.malabarboatworks.com or email malabarboatworks@gmail.com



Anchored at St. Pierre, Martinique, West Indies.



Safety in container movements concerns International Labour Organisation

Article submitted by Bob Hawkins, MIIMS

One in every six container journeys results in damaged cargo, and many incidents are caused by bad packing, according to a report prepared for an International Labour Organisation (ILO) Global Dialogue Forum on Safety in the Supply Chain in Relation to Packing of Containers, held recently in Geneva, Switzerland.

The forum was attended by 83 representatives of governments, employers and workers' organisations, and relevant intergovernmental and non-governmental organisations.

Various sectors in the supply chain were represented, including shipping, ports, road transport, railways, shippers, freight forwarders and marine insurance.

The meeting sought to agree a common approach throughout the supply chain to ensure the application of the appropriate standards for packing containers.

According to Marios Meletiou, ILO's senior ports and transports' specialist, 'The majority of containers are from established shippers with sophisticated dispatch facilities, who understand the stresses and forces to which containers are subjected throughout the supply chain. However, there is also evidence that many accidents in the sector are attributed to poor practices in relation to packing of containers, including overloading.

If you think any fool can stuff a container, think again. One in six container journeys results in damaged cargo. Many incidents are caused, or made worse, by bad packing. Losses exceed US\$5 billion a year, according to the United Kingdom P&I Club, one of the oldest protection and indemnity insurers worldwide.

"This has caused major concern, particularly because the victims of accidents attributed to poor practices in packing containers can be the general public, transport workers or their employers, who have no control over the packing of containers.



"For a better understanding of the forces, packers should be invited to participate in interactive training programs that are readily accessible and appropriate. It would also be relevant to examine whether there is a need for accredited certification to demonstrate a candidate's successful completion of the course"

One training course is the ILO Portworker Development Programme, which includes two training units on packing containers.

"The ILO report shows that there is a multitude of stakeholders in the various sectors involved in the supply chain. An analysis of these findings demonstrates that the stowage and securing of goods, the establishment of responsibilities and implementation of rules, regulations and best practice, as well as the interlinking of all the players in the supply chain and communication (or lack thereof), will all have an impact on safety in the industry," says Alette van Leur, director of ILO's Sectoral Activities Department.

A report with a summary of the discussions which took place will be posted on www.ilo.org in due course

Importance of Packaging in Cargo Insurance

By Mr Ashok M Gawarikar

ICC (A) Marine cargo Policy is an all risk policy in which all perils are covered except exclusions provided in clauses 4, 5, 6 & 7. Exclusion 4.3 on adequacy of packaging is as follows:

Loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of insurance.

Therefore it is important for Marine surveyor to understand about packaging as he is certifying adequacy or inadequacy of packaging in Marine cargo survey report. I would like to discuss insurance policy provision i.e. exclusion & then about packaging for benefits of Marine surveyors & claim adjusters.

Marine all risk policy exclusion as per clause 4.3

(1982) 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this Clause 4.3 "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants)

This clause was amended in 2009 as follows:

(2009) 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a container and "employees" shall not include independent contractors)

The ambiguous term "lift-van" no longer appears and the term 'servants' is replaced by the word 'employees', with additional clarification that independent contractors are not to be considered as 'employees'.

This important exclusion will apply when: -
the packing or preparation is carried out by the Assured or their employees or - the packing or preparation is carried out prior to attachment of the risk.

This brings the treatment of packing into line with the narrower exclusion that had applied to stowage in containers.

This is more logical and more favourable to the assured. The new clause sets out the standard by which any insufficiency or unsuitability is to be judged – the packing or preparation must be sufficient "to withstand the ordinary incidents of the insured transit."



Court cases

1. This phrase was examined in 2004 in *Mayban General Insurance v Alston Power Plants Ltd* [2004]. A large and heavy transformer was loaded aboard a small vessel near Liverpool in January 2002 for transportation to Rotterdam and thence by container vessel to Malaysia. Heavy weather, with winds up to Force 8, was encountered on both passages and both vessels were recorded as rolling and pitching. On arrival it was found that the transformer had sustained damage and repair costs in excess of £1m were incurred. The damage was found to be due to the working and fretting of various joints and surfaces caused by the motion of the carrying vessels. Moore-Bick J. did not consider that a total of 30 hours bad weather during a voyage of this kind in January could be regarded as exceptional and he therefore concluded that the loss was caused by the inability of the transformer to withstand the ordinary conditions of the voyage rather than by the occurrence of conditions which it could not reasonably have been expected to encounter.
2. Unsuitability of packing or preparation can take many forms but one of the examples involved the use of green wood by the company responsible for palletising the goods, after the inland transit, ready to be placed in containers. As a result severe condensation occurred during the voyage which penetrated the bagged Titanium Dioxide. If the palletising had been carried out by the Assured there would have been no claim, but since the palletising was done by a third party during the insured transit the Assured could recover the loss.

Packaging was Deemed to Include Loading in Liftvan & Container

Earlier in 1982 clauses packaging was deemed to include adequacy of lift van & therefore overloading was considered

as inadequate & illegal provided it was carried out prior to attachment of risk by consignor/assured. Now in 4.3 clause lift van word is omitted but unfitness of conveyance is excluded as per exclusion 5.1 & read as follows :

1982 5.5.1 In no case shall this insurance cover loss damage or expense arising from, Unseaworthiness of vessel or craft, Unfitness of vessel craft conveyance container or liftvan for the safe carriage of the subject-matter insured, Where the Assured or their servants are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein.

5.2 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination, unless the Assured or their servants are privy to such unseaworthiness or unfitness.

2009 5.5.1 In no case shall this insurance cover loss damage or expense arising from

5.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein

5.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out prior to attachment of this insurance or by the Assured or their employees and they are privy to such unfitness at the time of loading.

5.2 Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.

5.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.

As with Clause 4.3 the "liftvan" has been dispensed with and 'servants' have become 'employees'. The exclusion applies if:

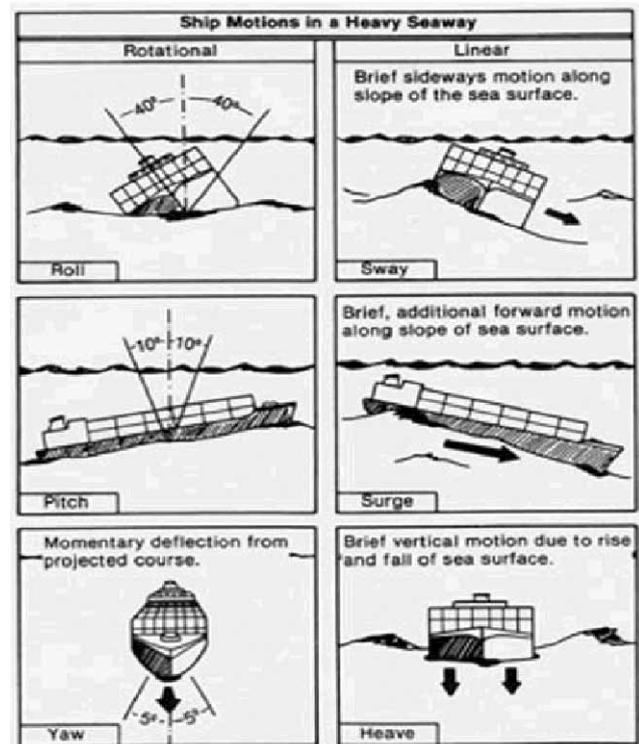
Clause 5.2 protects the position of an innocent party who has had the policy assigned to them as part of a binding sale contract, since it is assumed they are unlikely to be in a position to control or verify the suitability of the vessel or container.

Overall the effect is to narrow the scope of the clause.

Journey Hazards and Precautions for Container

To check adequacy of packing one should be aware of complex stresses experience by the packing during transportation. The ship has six degree freedom of motion and cargo in container or otherwise is subject to following liner and rotational movements as follows:-

- Rolling : side to side movement of the vessel sometimes through an arc of 50 to 60 degrees.
- Pitching : bow and stern rising and falling alternatively, with a compressive stress of 2 g acting on some containers in certain circumstances.
- Yawing; surging; heaving and swaying : all of which impose severe strains on the container, its cargo and the securing devices used within the container.
- Vibration : often continuous and heavy.



In road & or rail transportation the cargo pack or containerized cargo is subjected to:

- Strong acceleration (by road & rail 2-3 g)
- Violent deceleration (particularly during rail shunts e.g. sudden stop from 6 mph = 8 g)
- Horizontal centrifugal forces (e.g. cornering)

Packaging

It should be noted that considering various journey hazards packaging should be designed & packaging of European standards may not prove good on other road Standards & conditions all over the world.

Packaging is the art, science and technology of preparing

goods for transport and sale. Although, packaging is the last operation in production line, packaging forms an essential component of almost every manufacturing unit.

The functions of the package are to protect the article from damage and breakage to keep free from dust, dirt, moisture, water, heat, insects, rodents or other foreign bodies i.e. product should reach the point of destination in sound condition.

Package evaluation falls nearly into two parts (i) technical testing & (ii) consumer evaluation. Here from insurance points of views we deal with technical aspects of package testing.

Now why to test?

There are three major reasons for making tests on packages.

1. To predict performance in practice and to ensure that pack is satisfactory under all conditions of use at the minimum cost.
2. To control quality.
3. To obtain comparative information in order to modify, or to improve or deduce the cost of the package.

Testing itself can be, divided into two main areas:

1. Laboratory testing
2. Test is actual transportation.

Considering various journey hazards the packaging is subject to certain testing to qualify adequacy which can be classified as follows:-

- 1) Drop test
- 2) Inclined impact test
- 3) Vibration tests
- 4) Stacking tests
- 5) Rolling tests
- 6) Water resistance (rain test)
- 7) Water Vapour permeability tests.
- 8) Desert exposure test
- 9) Sand & dust test
- 10) Salt spray test
- 11) Sunshine tests
- 12) Fungus resistance tests

Out of these I give information on some of the tests pertaining to water and fungus etc. which is as follows:

- a) **Water resistance test**- The test for water resistance of packaging is carried out by spray method to determine water resistance of packaging. This test is made in conjunction with other tests made prior to or after spray test, such as drop tests, impact resistance and or drum test. Each packaging is tested on false floor of a test chamber in normal stacking position and water is sprayed by spray nozzle so spaced that 90-135 litres of water per hours falls uniformly distributed on each square

meter of floor area. On the completion of test for two hours the packages and contents are checked to find out water damages and adequacy of packaging.

- b) **Water Vapour Permeability Tests**- In these test the desiccant is used. When the test is made to determine the suitability of a specific packaging for a particular product is used as specimen instead of desiccant. Water vapour permeability is reported as grams of water per 30 days at tested temperature & humidity.

- c) **Fungus Resistance Test** – All materials used for packaging product should be tested for fungus resistance. A composite spore suspension is prepared and sprayed the test material with automiser spore suspension is prepared by taking 10 ml of distilled water containing 0.005% of Diocetyl sodium sulfasuccinate is introduced in each culture. The culture is raked by sterile wire and agitated. The material is placed in a humidity chamber maintained at humidity of 95% at 30 degree Celsius for 28 days. If 25% or fewer samples have fungus growth on more than 4% of their exposed surface the material is considered as fungus nutrient. The growth should be less than 2%.

- d) **Inclined Impact Test** – This test is carried out to find out impact resistance of packaging. On 10 degree inclined plane the package is released with dolly with variable speed. The test is performed with 8 miles speed per hour.

- e) **Drop Test** – Drops are simulated on all sides & edges & height selection is as follows:

GROSS WEIGHT IN KG	DROP HEIGHT IN CM.
1 - 10	105
10 - 25	90
25 - 125	75
125 - 250	60
250 - 500	45
Over 500 KG	30

- f) **Vibration Test** – Vibration test is conducted to find out ability of internal fitments. This is normally tested at amplitude varied from 20 to 360 cycles.

- g) **Stacking Test** – This is simulated by considering stack height & weight. 15 Kg. Concrete slabs are placed on package to simulated behaviour of bottom stack.

(I am not giving details of all tests considering limitations for this article; however the details can always be obtained from any internet site devoted to packaging.)

Container Stuffing

The container are either stuffed in factory premises or in docks by stevedores appointed by Vessel Agents. Whenever containers are stuffed by consigner & or Assured the clause excludes loss if attributed to improper stuffings & or poor condition of container. In import consignment considering Transit clause indicating risk is attached when consignment moves out of premises would automatically excludes losses attributed to poor container & stuffings being prior to attachment of risk. Thus Exporter & consignors should take proper precautions in stuffing as follows:

- Pack the cargo into an immovable stow. Where unfilled areas unavoidably exist extra materials designed to inhibit movement should be inserted; e.g. sheets of cardboard, pads of corrugated paper or expanded polystyrene between pallets; dunnage between loose gaps; judicious packing with shredded paper, old tyres, etc. or proper wooden supports.
- Separate hard packages from soft; e.g. spares from machineries; cases from bags etc.
- Heavy items may need individual securing. It is vital that initial movement be inhibited.
- A Good distribution of weight over the container floor. It is most important that the center of gravity be kept as near the center and as low as possible.
- Heavy items should not be stowed over light goods.
- If the container is removed from its trailer for packing operation to be carried out at ground level, the correct handling gear must be used, and the container must be on flat even ground and supported by the four corner castings.

Restraint

It is always necessary to restrain the cargo for one or more of the following reasons:

- To prevent collapse of the stow while packing, unpacking, or during transit (e.g. Rolls of linoleum on end).
- To stop any movement during transit of part loads or of single heavy items (e.g. large pieces of machinery). The heavier the item the more damage it will do if allowed moving.
- To prevent the 'face' of the stow collapsing and leaning against the container doors – to fall out when the doors are opened at final destination or for customs inspection.

The more common methods of securing cargo are ;

- Shoring** bars, struts and spars located in cargo voids to keep the cargo pressed against the walls or other cargo.
- Lashing** ropes, wire, chains, strapping or net secured to proper anchoring points and tensioned against

the cargo.

Wedging wooden distance pieces, pads of synthetic material, inflatable dunnage to fill voids in the cargo and keep it immobile against the container walls.

Locking cargo built up to give three-dimensional brick wall effect

Proprietary Securing Equipment

Track locating dunnage which fits into slots in the container walls.

Temporary Decking

heavy duty beams used to support a temporary intermediate floor

Free locating shoring Bars

expand and lock into tension against container walls.

Flexible Laminated Bulkheads

strips glued to container walls before stow is completed and tensioned round the finished stow by straps or other arrangements.

There is no simple formula to work to when securing cargo. Each stow must be treated on its own merits --- the type of cargo; the way in which it is stowed; equipment available; permanent fittings in the container. But the following points should be borne in mind when applying restraint;

- Always use any built in securing points, dunnage brackets etc. which are provided. For obvious reasons comply with the safe loading limitation on the securing points as indicated by container operators.
- Any timber used must be dry and seasoned. It may also have to comply with certain quarantine regulations.
- If nails have to be used to secure cargo to a wooden floor, they should only penetrate about 2/3 the thickness of the floor to achieve adequate grip without total penetration. Holes must not be drilled in walls or floor.
- Any shoring which presses against the container wall should have extra timber laid longitudinally between the wall and point of support to spread the weight over two or more side posts.

Useful filler pieces for wedging or preventing chafe are:

- Old Tyres
- Polyurethane slabs
- Manceraed paper pads
- Unless an identical stow is anticipated on the return journey, (a closed circuit operation) It is best if the lashing equipment be chosen and considered as expendable.
- Where synthetic strapping material is used, terylene is preferable to nylon for heavy loads – less stretch.
- Top heavy articles should be wedged, shored and lashed to prevent toppling.
- Heavy weights should be secured to stout ring-bolts

(usually in the floor) and/or be shored with timber. Chain or wire with bottle-screws (e.g. ½" bottle screws: 3 ton Dee shackles is adequate for lashing cargo up to 18 tons in weight).

- Resilient loads can cause lashings to slacken – this may sometimes be overcome by introducing elasticity (e.g. rubber rope) into the lashing pattern.
- In 65% instances there is a space (1" to 24") remaining between the face of the cargo and the container doors. It is emphasised once more that the cargo must be prevented from collapsing into this space. This can be achieved in a variety of ways, but the following have proved their worth:
 - i) Use of suitably positioned lashing point with wire, rope, strapping, etc. woven across.
 - ii) Simple wooden gate for the wider gaps and heavier cargo.

- iii) Filler pieces i.e. macerated paper pads, polystyrene, wood wool pads, etc. for the narrower gaps and lighter cargoes (e.g. cartons of biscuits).

Loading in Vehicle

It would be prudent to inspect a vehicle nominated to carry cargo for road worthiness & some of the organizations such as M/S Castrol India Ltd. takes a lot of care in selection of vehicles including inspection of 22 points checks of transport to ensure safety of property & men & also prevention of pollution due to accidents. Majority of organizations are not concerned about condition of vehicles. In any case if a vehicle is overloaded it would be considered as inadequate packaging as per packaging clause & loss would be beyond scope of the policy of insurance. ICC (A) clause 5.1 excludes loss attributed to overloading with privities of insured/consignor.

Package Form (Corrugated Carton)

In one of the loss prevention studies of corrugated cartons, I developed a check list /form for analysis of adequacy & is as follows:

Sr. No	Description	Details
1	As per which standard existing package is designed.	
2	The package is tested as per IS7028 and 12 tests to know performance meets specifications. The test results of package during design stage would have been conducted. Please give copies of test results.	I) stacking test using test method li) vibration test using low liii) horizontal/inclined impact test Iv) vertical impact drop test V) rolling tests Vi) compression tests Vii) low pressure tests Viii) water spray tests Ix) stacking test using compression tester X) water immersion test Xi) toppling test Xii) vibration test using sinusoidal variable frequency
3	Existing BOX Corrugation	Single wall Double wall Triple wall
4	No. of pieces kept in individual packaging and Net wt. of individual pieces and Gross weight of the carton.	
4	Flute profile	K A C B E F N
5	Dimensions (outer)	

6	Dimensions of inner box if any and cushioning provided	
7	Board combination Existing in GSM	
8	Box strength Parameters	BCT _____ Kgs. BS _____ Kg/Cm ² GSM _____
9	Describe complete Inner packaging Media Thermocole/poly cover etc.	
10	Number of straps and strength and details of closures.	
11	Details of sending	<ul style="list-style-type: none"> • Time taken to Reach furthers destination in days _____ • How much time it is stacked factory Transport Warehouse • Minimum and maximum temperature during Stacking Factory Transport Warehouse • Humidity maximum and minimum % RH.
12	TRANSPORT	Open trailer/covered truck/ closed container type body /any other details.
13	Height of stack	In factory Transport Warehouse

Example to Check Corrugated Cartons

A 3 ply, B flute box with 150/127/150 combination is measuring 300 x 250 x 220 what would be BCT (Box compression) of box? Both liners are test liners.

BCT = Box compression - This is end user's requirement

ECT = Edge compression – This is Corrugator's need

RCT = Ring Crush - This is paper makers specifications

Step 1 – ECT calculations. $ECT = 1.28(RCTL1 + mRCTF + RCTL2)$

Where RCTL1 = RCT of outer liner, RCTL2 = RCT of inner liner. RCTF = RCT of fluting medium, m = take up factor of the flute, which is 1.42 for C & 1.32 for B

(RCT value can be obtained by actual testing for this example it is assumed 1.6 for liner & 1.0 KN/m for medium)

$ECT = 1.28(1.6 + 1.32 \times 1.0 + 1.6) = 5.8 \text{ KN/m}$

Step 2 - Perimeter calculations = $Z = 2L + 2W = (2 \times 300) + (2 \times 250) = 1100 \text{ mm}$

Step 3 – Thickness of the board = $t = 3 \text{ mm}$ (B Flute)

Step 4 – Application of McKee's equation, $BCT = 0.6 \times ECT \times \sqrt{Z} \times \sqrt{t}$

$$= 0.6 \times 5.8 \times \sqrt{1100} \times \sqrt{3} = 200 \text{ Kg}$$

Box compression BCT would be 200 kg. Therefore for stack of 10 cartons each box can have gross weight of 22.22 Kg.

The "Normal Conduct of a Valuation Survey"

Captain C F Spencer

This document was first written in 1998 / 1999 in response to an enquiry from solicitors who were at a loss on how to proceed with a case when there appeared to be no written clear references as to what might be the norms for a valuation survey and what might be included and what might be excluded from such instructions.

I therefore penned the following document as a guide for the solicitors without any knowledge of the matter that was in prospect. The matter did eventually go forward to the Royal Courts of Justice where I attended as an expert witness in defence of a surveyor being sued in respect of his part (the valuation survey) and the loss of the fishing licence for the particular vessel and subsequently the collapse of company and the repossession of the private dwelling house of the owner in respect of a mortgage taken to support the purchase and operation of the vessel.

It is likely that having addressed as many aspects as possible and some considerable time having past this document may now need updating. Anyone with amending views or comments is therefore invited to submit them to the author with a view to updating the document and providing an updated authoritative paper for the Institute.

Chris Spencer, March 2011

A Report on The "Normal Conduct of a Valuation Survey"

The valuation of any vessel is a combination of as objective a view as is possible of the craft, together with a balanced judgement of the current "state of the market" for that craft.

The first aspect is an overview of the vessel, her condition, status of documents, equipment, fittings and general maintenance. This is not to be construed as a condition survey which is much more detailed but a view from a knowledgeable seaman using mainly his observational senses rather than any investigatory or explorative procedures.

The second aspect of the valuation is the market condition for assessing the price.

Price may be on an:

- (1) As is where is basis in "the market"
- (2) Value to the client in an earnings related role.
- (3) A "book" value for a Joint Venture Settlement.
- (4) Devalued replacement cost basis.

Values may vary considerably, typically a jackup drilling rig may have little value to her builders due to the depressed "state of the market" but to a Contractor who is busy and a potential new contract it could be of immense value. Market knowledge is therefore a prerequisite in many cases but may simply not be available to the Surveyor.



Although large vessels and small craft necessarily operate in different markets many of the valuation assessments are on the same basis but for the purposes of this report we will deal with them separately.

Large Commercially Traded Vessels

Remarks	Approx % Value
Age	60
The age of the vessel is the first indicator of value and will immediately slot the vessel into a particular price category.	

Condition	± 20
The condition of the vessel is of course of great interest, and provides the basis from which to assess (up or down) the basic price against the age.	

The condition of the vessel will be assessed largely on appearance both internally and externally and include the fabric and rigging of the vessel. Deduction for poor condition will be based on improvement costs to new owners.

Equipment	± 10%
Of much lower importance but nevertheless of significance in terms of a well equipped vessel with everything working, against a poorly equipped vessel with little operationally efficient equipment.	

However, this may be a larger proportion of the total if she is a specialised vessel with particularly specialised equipment separate from hull and machinery.

Certificates	± 5%
The absence of Statutory Certificates can be an indicator of much that is wrong with the vessel and thus also indicate a cost factor to prospective purchasers in trying to obtain them.	

Other considerations ± 5%

Unrepaired damages and recommendations of previous surveyors may affect price, but the amount will depend on the significance of the damage or recommendation and the state of the market. For instance, if the tail shaft has a welded repair, that reduces dry docking intervals by 2 years then that would normally affect the value.

Some damages are noted for "record only" with no recommendations or subjects attaching, but they may very well represent a higher risk of further failure or increased operating costs.

The effect of these will be inverse proportion to the age; however, as they become progressively closer to their useful commercial life expectancy.

There is also the situation where the value is noted as based upon some premise such as delivered, gas free at Scrap Yard. The cost of getting there usually being offset by the carriage of a last cargo to a port local to destination.

The following vary tremendously but can be very important, particularly the identity of the previous owners, the main trade and the trading area, all of which are excellent indicators as to how the vessel has been managed, operated and maintained.

Also of interest would be:

- Country of Build
- Extent of High Tensile Steels
- Life Extension Programme
- Classification Society
- Current Charterers
- (AND OIL COMPANY APPROVED INSPECTIONS in the case of Tankers.

Smaller Commercial and Fishing Vessels

A very difficult market for Valuations due to the variety of vessels and rules affecting them.

Age and condition are still important, but the earnings ratio is relatively more important for these vessels as they tend to be operated on a self employed basis and are available for work for longer periods. Similarly, the country of build, standard of equipment, Certification and ratings are all of greater significance.

Remarks	Approx % Value
Age	50%

A very basic starting point as the other aspects will affect the price considerably.

Condition ± 10%

The condition of the vessel will affect the price to some extent but the two (age and condition) are largely interlocked unless a rebuild has been undertaken.

NOTE: In the case of a rebuild these factors could even be reversed.

Equipment ± 20%

A very significant factor particularly in relation to fishing vessels. The costs of nets, floats, fish finders etc are considerable.

New equipment could exceed the value of the craft in some cases.

Certificates + 15%

An important consideration for compliance with EEC and UK legislation.

They will also determine the types of fish that can be caught and thus be an indicator of returns.

Rules and Ratings ± 5%

This will determine the areas of operation and types of work that the vessel can undertake. This could be "smooth water areas", "partially smooth water", short International voyages etc.

Other factor that may affect the price of a vessel are:

Moorings ± 5%

This may be a significant factor particularly in established areas which are crowded and booked for several years ahead.

Location + 5%

Delivery costs may be a significant factor if the vessel is required elsewhere, similarly licks and docks charges for movement.

Guarantees: A percentage will be added to purchase price but wordings should be carefully checked.

Encumbrances Caveat Emptor

A check should be made that the vessel is free of all mortgages, hire purchases, liehs, unpaid bills from Charterers etc.

Brokers + 8%

A private purchaser using a broker can expect to pay around 8% plus VAT.

VAT: Not paid on second hand boats.

Bunkers & Stores

Under the Norwegian Sale Form - Unless otherwise agreed,

the buyers shall take over and pay the current market price at the port of delivery for provisions, remaining bunkers, unused oil and stores.

It would be useful to check prices at port of delivery before accepting.

Exclusion Clauses

These are quite normal and a selection are appended:

1. This examination has been made without making removals, or opening up to expose parts ordinarily concealed, or tests for tightness, or trying machinery and is subject to any conditions which would have been revealed if such procedures had been accomplished.
2. No determination of stability characteristic has been made and no opinion is expressed thereto.
3. No determination of structural integrity has been made and no opinion is expressed thereto.

Specific Items for Consideration

Large Vessels

For a full survey it would be normal for a team of 3 to undertake such a survey viz:

1. Master Mariner
2. Naval Architect
3. Marine Engineer

who would individually look at their areas of expertise and then collectively compile a comprehensive report for final analysis and conclusion.

Small Vessels

It is usual for a surveyor undertaking a condition survey to do no more than check engines and electrics in a somewhat cursory manner. If they are regarded as a significant cost factor then a Marine Engineer would be appointed either by clients for the survey or by the surveyor to add to his own report.

General

Similarly, it is not possible to check all documents on either type of vessel. If they are given in good faith and recorded then they are accepted as such.

For instance, only a Class Surveyor can undertake Class Surveys and likewise a Department of Transport surveyor can undertake the Statutory Surveys. Similarly, only the Class Committee or the Minister of Transport can withdraw such certificates.

The Report

On completion of a Valuation Survey it would be normal to submit a report to client fully documenting the vessel thus:

- a) Introduction
Place and Date of Survey
On whose behalf survey was undertaken
Other persons in attendance
Purpose of Survey
- b) Survey
General Description of vessel
Principal Dimensions
Principal areas of vessel - Description
Major defects
Classification and Certification
- c) Other Aspects and Notes
Recommendations
Market Aspects
Maintenance
- d) Conclusions
Valuation
Exclusion Clauses

The Survey Aspect of The Valuation Survey

Description of Vessel and Principal Dimensions

Unless there is some reason to doubt any of the particulars they will be accepted and noted in good faith. The surveyor usually noting the description in his own style and adding the dimensions possibly after checking with a register of Ships/Yachts/Fishing vessels. Afloat/ashore (normally afloat for valuation).

Principal Areas of Vessel

The Surveyor will record sufficient details of each compartment to assess its overall condition individually and for the vessel on a corporate basis.

It may be that the specialist areas are of great significance and require greater attention in some cases:

TANKER - PUMPS/PUMPROOM/TANKS & LINES/IG/COW

REEFER - REEFER COMPARTMENTS/COMPRESSORS REFRIGERANTS/FANS/TEMP MONITORS

For fishing vessel one might expect such areas as:

- MAIN ENGINE POWER
- WINCH POWER
- TRAWL GEAR
- FISH FINDERS AND SO ON

to take a proportionately higher interest in the assessment/

Major Defects

Typically if there are:

- 1) Outstanding Class Items
- 2) Port State/Inspection recommendations
- 3) P&I exclusions on policy
- 4) Hull damages

or any other "major" commercial considerations such as high engine maintenance costs, auxiliaries not working or close to end of useful life would be recorded here.

If there are obvious areas of concern (which are detectable by the Surveyor or on which he has been asked to consider) that clearly restrict the use of the vessel in her proposed role then that should be stated. Typically - u/l now of scrap value only.

Class and Certificates

A documented list of certificates attaching to the vessel with their issue and/or expiry dates.

Again little can be done by the surveyor beyond accepting the data and interpreting a value thereon.

It is not part of a valuation to determine the worthiness of the vessel as a fishing vessel, tanker or what have you but, accepting it as such to determine its value.

USS Constitution

"Old Ironsides"

Made of timbers felled from Maine to Georgia, armed with cannons cast in Rhode Island and fitted with copper fastenings provided by Paul Revere, the USS Constitution is a national treasure. Launched in Boston on 21st October 1797, she first put to sea in 1798. In the War of 1812 she met and defeated the British Frigate HMS Guerriere, earning her nickname when someone saw a British shot bounce off her side and shouted "Huzzah her sides are made of iron". Today she is the oldest commissioned warship in the world still afloat.

Presented to the IIMS by Capt Zarir Iran of Constellation Marine, Dubai. 23 May 2011





Newsletter from New Zealand

From the chairman — Harry Jorgensen

There are a number of matters I wish to bring to your attention, namely:

1. Our seminar was very successful and congratulation to the organising committee. A summary of the event will be sent out to our NZ membership and some pictures should be in the next issue of The Report.
2. A closer relationship with the IIMS Australia was discussed with Peter Lambert and various members during recess at the Seminar. Australia is forming a branch.
3. MNZ have adopted our Module "R" for training in-house So that is another success for IIMS and the NZ branch
4. I sent a letter to SSM companies re forming a coalition for training which has met with mixed response. 3 SSM companies supported the initiative, one was less than enthusiastic. Overall it was rather like I expected. If there is a group within IIMS NZ branch that will push this we have an opportunity to make a difference and provide leadership. After my term as chairman herding SSM companies will not be high on my "to do" list. I expect to withdraw from all regulatory surveys and focus on the work I enjoy.
5. The working groups needs to be more pro-active and provide the initiatives that bring surveyors together at least 4 times a year. If we fail to do this our organisation risks to stagnate and become irrelevant. We need to explore ways to facilitate this better.
6. The NZ branch is now in a strong financial position we ought to consider how we can foster better benefits for the out of Auckland members and how to get more members. Do we run something in Picton? Or Nelson? A shortened version of our report writing or insurance risk survey?
7. The Captain Barry Thompson Scholarship will select a candidate again this year so if you know of a candidate let them know the can apply.

8. The AGM is coming up and nominations for the management council will be welcomed

Successful IIMS-NZ Seminar

The Seminar and Workshops held in Auckland on 10 & 11 March were a great success with attendees from Australia, China, Papua New Guinea, Germany, Hong Kong and England – quite a representation!

On Thursday 10th 28 people were at the workshop on 'Insurance Risk Surveys' and 33 for the Report Writing' workshop. A well-attended cocktail party was held for attendees and partners at the Copthorne Hotel in the evening.

The seminar papers presented the following day were on a wider range of topics but with less detail — 51 people, mostly surveyors and insurance staff, were present. — while the dinner on the Friday evening attracted 41 including partners.

The Branch is most grateful to all the speakers, who gave their services at no charge. Without the help also of our generous sponsors, Vero Insurance (Marine and General Insurance) and McElroys (Maritime lawyers), Henleys Propellers & Marine Ltd and Kerr Marine Surveys Ltd, we would not have been able to make the occasion the success that it undoubtedly proved to be.

The upcoming Annual General Meeting

Members are reminded that our AGM will take place on Wednesday June 15 2011 in Auckland. Notices concerning voting and other matters will be sent out well in advance.

Please give some thought to either getting yourself nominated, or at least nominate or second another prospect for the Management Committee.

There is a constant need for fresh thought and energy on this committee whose Chairman, after two years in office, stands down this year.

With the election of your new Chairman there will also be a place for a new Vice Chairman to be elected too. This is an important role to fill as this person will not only be an essential back-up for the Chairman but will, in turn, probably succeed to the position.

Perhaps you have something valuable to contribute and could be considered for this or other role on the committee — you do not have to be Auckland based.

(The Management Committee is considering ways in which it may be able to introduce some form of Skype conferencing. Also see the next item.)

Fuller involvement by out-of-Auckland members

At a recent Management Committee meeting it was resolved that much more effort should be made to find ways in which out-of-Auckland members can be made to feel more involved in Branch activities.

With our geographical spread this is difficult but it should be possible to do it more effectively.

For a start, the Management Committee is acutely aware of its current make-up. It is all Auckland based.

While the large number of Branch members in the Auckland area is largely responsible for this (over 50% of total membership) the Committee wishes to encourage other members to offer themselves for service on the Committee.

To encourage at least one out-of-towner to consider putting their name forward for possible election at the next AGM, the Management Committee has agreed to meet travel costs for one such member for each committee meeting.

This is one way out-of-towners can become more involved and, if elected, this would involve four, and possibly up to six, attendances per year in Auckland.

Please consider this carefully and offer yourselves for election so that more consideration can be given to out-of-towners' wishes for the Branch.

But let's not limit the outreach simply to involvement in Branch Management to those outside Auckland. Please put forward any ideas you might have which the Committee can put in place to enable you to get more benefit and enjoyment from your IIMS membership.

Membership

Our membership currently stands at 38 — 34 North Island and 4 South Island.

In addition IIMS-UK informs us that there are 8 New Zealand resident Diploma Course students. We are encouraging them to look to our members and Branch activities for help with their studies and, for those who intend to become (or already are) surveyors, we wish to offer some assistance with their further development.

A membership Secretary

Because the Management Committee sees contact and support for our members so important we are looking for a member to offer to become our Membership Secretary; especially an out-of-Aucklander.

This will definitely not be an onerous task and will have its rewards in the contact made with members from time to time, especially the students.

The role will require a few ideas on how to increase membership, keep in touch with and get to know present members, check by Email with IIMS-UK occasionally, and also update the Branch Secretary/Treasurer on any changes to numbers or classes of membership when requested.

Someone, please put your hand up and ask the Branch Secretary for a little more info on the role of Membership Secretary.

The Captain Barry Thompson Scholarship

This scholarship, offered by IIMS-UK each year to a New Zealander recommended by this Branch, provides reimbursement of the fee for one IIMS Diploma Course chosen by the successful awardee.

It is not a requirement that a surveyor should be an IIMS member and of course members are eligible for the scholarship.

Members are requested to be on the look out for suitable candidates for the scholarship and submit their names to the Secretary/treasurer as soon as possible so that arrangements can be put in hand for their interview.

Candidates can be of any discipline suited to a career as a marine surveyor, and there are a choice of three diploma courses to cover the mainstream surveyor categories.

Please do not let this opportunity pass and only one scholarship is awarded each year.

Hasty judgment

Doubtless we all vividly recall the Deepwater Horizon tragedy in the Gulf of Mexico last year and the haste with which the politicians and American public, urged on by the media, hurriedly heaped almost all the blame on British Petroleum.

Lloyd's List on 26 April carried an interesting article. It stated, *"A catastrophic "maritime safety net" system failure that involved several parties beyond lease operator BP was the root cause of the April 2010 Deepwater Horizon casualty has preliminary US report has found."*

I include below some extracts from the article because there is an important message for surveyors involved in casualty investigation from time to time.

It is simply that we must never draw too many conclusions before we obtain all the facts.

I recall Mr Justice Mahon's criticisms of the Erebus accident investigator whose efforts he likened to some of the failed Police investigations where 'facts' are found which only support already hastily drawn conclusions.

The Lloyd's List article on the report included:

"Rig owner Transocean and flag state Marshall Islands find mention as parties who fell short, but the US regulatory regime is also fingered for containing loopholes that facilitated the tragedy.

"Particularly relevant to maritime and seafarer interests is the concern over the 'dual command structure' on Deepwater Horizon, which was a mobile offshore drilling unit and therefore a ship under USCG definitions.

"The master was in charge when the unit was under way or in an emergency, while the offshore installation manager was in charge when it was latched on to a well. The report contends this situation arose because of a Marshall Islands 'clerical error' in listing Deepwater Horizon as a self-propelled MODU instead of a dynamic positioned vessel, which enabled Transocean to implement a dual-command organisation structure onboard".

The article went on to mention,

"The report pinpoints 'serious safety management system failures and a poor safety culture' at Transocean".

It notes:

"Although events leading to the sinking were set in motion by the failure to prevent a well blowout, numerous systems deficiencies, and acts and omissions by Transocean and its Deepwater Horizon crew, had an adverse impact on the ability to prevent or limit the magnitude of the disaster.

"These deficiencies indicate that Transocean's failure to have an effective safety management system and instil a culture that emphasises and ensures safety contributed to this disaster."

So, the much castigated BT was not the only 'fly in the ointment' and a lot of hasty, wrong conclusions were drawn.

English High Court says Ship remained on hire while held by Pirates

For those members with a taste for legal decisions relating to shipping the following will be of interest, principally to cargo surveyors. (Thanks to Maritime Advocate On Line whose brought this to my attention.)

The "Saldanha", a 38,000 dwt Panamax bulk carrier, captured by pirates in the Gulf of Aden, remained on-hire for the subsequent period of detention, according to a ruling in the English High Court in June, writes Daniel Evans of the UK Defence Club.

According to the Club, this was the first English Court judgment which specifically addressed the charter party implications of piracy and provided guidance on an "issue of great relevance to owners and charterers alike." (The "Saldanha") [2010] EWHC 1340

On 22nd February 2009, the "Saldanha", on a standard New York Produce Exchange charter, was en route from Indonesia to Kope, Slovenia with a cargo of coal when seized by pirates. She was taken to a location close to Eyl, Somalia and released on 25th April 2009. The charterer did not pay hire during the detention, claiming the ship was off-hire since its seizure.

The UK Defence Club supported its owner member in his claim against the charterer.

A London arbitration tribunal found the ship had remained on-hire throughout its detention. The charterer had argued that the ship was off-hire by referring to clause 15 of the NYPE charter:

"...in the event of the loss of time from default and/or deficiency of men including strike of officers and/or crew or deficiency of stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, dry-docking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost."

The charterer argued that the seizure by pirates amounted to a "default and/ or deficiency of men" or "detention by average accident." He further claimed that the words "any other cause" as found in the clause could include an external event such as the actions of pirates.

The charterer appealed the tribunal's decision in the English High Court where Mr. Justice Gross found that the appeal failed on all counts.

So far as default or deficiency of men was concerned, the judge agreed with the tribunal that this related to the owner's failure to supply enough crew or a refusal by a crew to perform their duties---and not to the negligent act or inadvertent performance of their duties, as the charterer had argued.

Nor did seizure by pirates amount to "detention by average accident." This would have required some damage to the ship and an element of fortuity, neither of which was present. Further, the words "any other cause" in the NYPE off-hire clause could only refer to some sort of deficiency or detention of the vessel or crew and not to some completely external influence.

The judge concluded that if parties wished to treat seizure by pirates as an off-hire event under a time charterparty,

there should be specific wording to that effect. He suggested that if the off-hire clause had been amended to refer to "any other cause whatsoever" then this might have made a difference but this was not certain. The charterer has since been refused leave to appeal to the Court of Appeal.

Daniel Evans of Thomas Miller commented: "The judgment is a very important one with wide ranging implications for the shipping industry, as pirate attacks remain prevalent. Unless there is clear wording to the contrary, this ruling means that a ship chartered on unamended NYPE terms will remain on-hire if seized by pirates. It is very much a landmark ruling."

And finally

A further reminder about the AGM and especially about your involvement as a Branch member in the future of the Branch.

All correspondence to the editor: shipmaster@ihug.co.nz

Marine surveyors in Indonesia Learn about IIMS

12th May 2011

The IIMS Regional Director for SE Asia Capt Irawan Alwi invited Indonesian marine surveyors to a socialisation meeting to discuss the IIMS and what it can do for them.

The meeting was attended by some thirty surveyors and they were briefed on the benefits of membership. Capt Alwi the RD spoke about the work of the Institute in education, training, seminars and conferences and of course encouraged all present to attend the Bali conference in September.



IIMS India Branch Meetings Held at Mumbai and Chennai



Article by Mr. Milind Tambe, IIMS Secretary, IIMS-India Branch.

The IIMS India Branch held its first two Members Meetings, the first one at Mumbai on the 16th of February 2011, followed by the second one at Chennai on the 4th of March 2011.

Mumbai Meeting

A Members Meeting was held at the Walchand Hirachand Hall, Indian Merchants Chamber, Mumbai on the 16th of February 2011 followed by a Felicitation Ceremony of the Honorary Members namely Dr. Satish Agnihotri, Captain J. C. Anand, Captain M. Karanjia and Mr. Tony Fernandez (In absentia).

It is a great pleasure to advise you all that the members meeting was well attended by the Members from Mumbai, with one of the prospective member Mr. Sachinn Ajmera coming all the way from Aurangabad for the meeting.

The Regional Director, Capt. Satish Anand, welcomed all Members to the first-ever Members Meeting after the IIMS India Branch was officially declared open in the IIMS Mumbai Seminar in October 2010. The attendees were apprised with the Strategic Plan and Aims of the Institute. The Branch Secretary, Mr. Milind Tambe, later gave a brief on the developments of the Branch Activities so far and proposed action plan for the year 2011.

This was aptly followed by a paper by the Chairman of the Branch, Capt. Mukesh Gautama, on The Decline Of Marine Surveying Profession (the attending members accrued CPD points for the same). Some interesting facts were brought-forth during this paper presentation, which all members

found to be intriguing and worth noting for improving the system.

A short refreshing break before the Managing Council welcomed the Chief Guest, the Honorary Members and Invitees for the Felicitation Ceremony.

The Chairman warmly welcomed all attendees, which was followed by the Felicitation of the Honorary Members by the Chief Guest, Captain Amulya Singh, Director, M/s A. K. Services, Mumbai. The brief but an excellent ceremony concluded with the Secretary informing the attendees of the Librarian Concept introduced by the Institute during the Singapore Conference in November 2010. It is a great pleasure for me to advise you all that the Regional Director-India, Capt. Satish Anand, has been declared as one of the Librarians by the Institute to whom members could approach for Maritime related information.

The ceremony was followed by High Tea and snacks which was thoroughly enjoyed by all which was evident from the active networking that was seen to take place between the Members and the Invitees. All in all a good meeting to set the ball rolling for the IIMS India Branch.

The Chennai Meeting

... which was organized at The Seafarers Club on 4th March 2011, was attended by 44 attendees of which 5 were confirmed members, a couple of new applicants and the others invitees. The meeting was well arranged by the Chennai Members namely Dr. P. Misra, Mr. P. Sridharan and Mr. T. S. Shrinivaasan and ably assisted by Capt. T. Rajkumar. The Managing Committee extends their heartiest congratulations to the Chennai members for making this Meeting a grand success.

The Meeting was attended by 39 invitees from a broad spectrum of the Maritime field including Training Institutes, Ship Owners and Managers, CFS operators, Government Surveyors and Cargo Surveyors. The Regional Director

impressed upon the attendees the importance of the IIMS as a professional body for Marine Surveyors and all supporting the values promoted by the Institute. He also gave a brief on the 5 yearly Strategic plan of the institute. The Branch Secretary advised the attendees on the various membership levels of the Institute and how each one of them could benefit from the membership . They were also advised of the proposed yearly plan on the members meetings at various zones and prospective working groups at each of these zones.

Captain T.Rajkumar presented a paper on 'The Changing Face of Marine Survey' which was well received by all those present. His summarizing notes of this well presented paper said it all : Shipping does not tolerate errors, omissions or blunders – It is too costly ; Efficiency and Reputation is directly linked to our stability and profitability ; and, on an encouraging note – Yes, we can do it, if we synergies in the ship-shore support.

An interactive session followed by Fellowship Dinner saw the members and invitees interacting well. The proposal of a India-wide seminar on Marine Surveying in Chennai was well received and applauded by all those attending. There is a Herculean task ahead now for the Managing Council and the Members at Chennai to make the next seminar scheduled in October 2011 a success on the lines of the October 2010 Mumbai IIMS Seminar.

The attending Managing Council members sincerely thanked all the attendees of this Chennai Meeting for their valuable support in making the Meeting a grand success and laying the foundation for the proposed full-fledged All-India Seminar in Chennai. Their continual support was sought not only for this Seminar but also in promoting ethics and professionalism into the entire work-related system for an improved Maritime Industry for US ALL.



SPEECH GIVEN BY MR. T. SHRINIVAASAN, CHENNAI



SPEECH GIVEN BY MR. MILIND TAMBE – SECRETARY OF IIMS INDIA , CHENNAI



SPEECH GIVEN BY CAPT. T. RAJKUMAR, CHENNAI



IIMS MEMBERS MEETING IN CHENNAI



SPEECH GIVEN BY DR. P. MISHRA , CHENNAI



PANELIST ANSWERING TO THE INVITEES QUERIES ON THE INSTITUTE

Professional marine surveyors –An endangered species?

What is being done to raise professional standards among marine surveyors and improve the quality of services offered to marine insurers? Read on to find out.

The reputable marine surveyor of today has turned into an “endangered species” as it was put forth that one of the regions leading marine insurance conferences. I tend to agree with the fact that there are few who can sign with conviction on the dotted line of a marine survey report, and can confidently present their reports in arbitration, or as expert witnesses.

It is very important that the person applying for the job has the right qualifications or is registered as a marine surveyor. I can say with conviction that at least in the Middle East region, a motor surveyor does not issue a load out towage approval, as mentioned at a recent conference. Having said that, it is a common for an ex-ship captain who has worked on oil tankers to undertake a steel loading shipment or inspect a load out of project cargo going to an offshore installation. It is thus of utmost importance to train and educate the claims departments of the marine insurance sector in the Middle East.

The importance of individual credentials

A question for marine insurance claim managers and loss prevention departments in charge of warranties is: Do you ask for the attending surveyor’s credentials before they go out to undertake a substantial and obvious claim notification? If not, who will be answerable if the company sends out an incompetent marine surveyor?

It is the view of the author that nominations be based on the individual’s credentials rather than that of the company alone. Indeed, the quality standards, reputation and credibility of a firm cannot be undermined, but there are times when assignments are sub-contracted, or new staff or trainees are on the job.

Some companies have a system of maintaining a dual representation. For instance, Constellation Marine has a system of “verifying a report prior dispatch”, requiring a second professional (generally a senior staff) to be well aware of the case and how a particular claim is progressing. It is well-known in the industry that some of these assessments drag on for months and re surface after a lapse of up to a year or more, and it helps to know and check the credits of the attending surveyors.

Separating the boys from the men

The International Institute of Marine Surveying (IIMS) – UK, which represents marine surveyors in the International Maritime Organization (IMO), has already taken some steps towards raising professional standards. Firstly, the formation of its Middle East branch in the UAE in 2010 has been a very encouraging move forward. Secondly, it has set up an online database of experienced surveyors, enabling the marine insurance sector to select those who are qualified to be in the business of professional marine surveying.

Given the abysmal quality of marine surveying professionals and with operators flooding this sector, there is a dire need for the men to stand out amongst the boys. IIMS and its professional assessment committee possess such tools, and there are places like New Zealand where the government has acknowledged that the only surveyors eligible to avail a port entry pass for the purpose of marine surveying are registered marine surveyors or full members of the IIMS local branch. This has clearly removed the ambiguous question of whether they qualified to do the job as independent consultants.

The fact that there is a professional institute running a successful training programme for marine surveyors is a positive trend towards preventing these professionals from becoming “endangered”.

By Capt Zarir Irani, Regional Director Middle East, International Institute of Marine Surveying–UK



CPR 35

What does it mean to You

From the President – This article is reproduced with acknowledgement to the JS Publication and highlights the need to ensure that your PI is in order

Expert Witness Immunity - Supreme Court Experts?

The consequences of the decidedly disturbing decision-making in *Jones -v- Kaney* should put a number of issues right at the top of an expert witness's to-do list

The decision of the Supreme Court in *Jones -v- Kaney* [2011] UKSC 13 was split, with a majority of five judges favouring the removal of expert witness immunity to civil suit from those who instruct them and two judges dissenting^[1].

For many expert witnesses, the decision will make little immediate difference. Most expert witnesses, being conscientious professionals, will feel themselves unlikely to be found negligent and will carry professional indemnity insurance just in case. Indeed, they will view existing professional disciplinary risks as a greater concern! But there are a number of potential consequences of this disturbing

decision that should be considered by all expert witnesses and some clear actions that may be necessary.

Consequences

The majority in the Supreme Court is dismissive of the risk that their decision will have a 'chilling effect' on the supply of willing experts. But opening expert witnesses to the potential distractions of vexatious suits from disgruntled litigants is never likely to *encourage* involvement in forensic work. It is the unquantifiable nature of this risk that so concerned Lord Hope and Lady Hale, as it should trouble anyone interested in the proper administration of justice.

A chill wind

For all the effort put into drawing an analogy between expert witnesses and advocates, the majority in the Supreme Court completely ignored the fundamental difference between these two players. Experts have busy professional lives away from the legal system and can readily choose *not* to take on forensic work, but advocates have no such easy choice.

Accepting the analogous position of advocates and expert witnesses led the majority to draw incorrect conclusions from the removal of immunity for advocates. For example, *'The danger of undesirable multiplicity of proceedings has been belied by the practical experience of the removal of immunity for barristers.'*⁸⁵ That's not a safe conclusion. The inhibition against a disgruntled litigant suing his lawyer (a man quite at home in the law) is entirely different in force and nature from when it is an expert who is the potential target.

Expert and advocate also have different duties. As Lord Hope says, *'The duties that the advocate owes to the court are not as far reaching as the overriding duty to the court that rests on the expert.'*¹⁶² The advocate is paid to be a partisan player who has to put as strong a case as he can for his client. The expert witness is most definitely not that!

In short, a legally trained advocate faced with the removal of immunity has always been much less likely to leave legal practice, or be put off by the threat of being sued, than will be, say, a surveyor or a paediatrician to abandon forensic work. We shall have to wait and see if this 'experimental' decision is as benign on the supply of expert witnesses as their lordships suppose. But the supply issue is not the only concern.

Professional class of expert witness

Another unfortunate consequence of this decision lies in the impetus it gives to the further development of a professional class of expert witness. With a few notable exceptions, such as forensic science and forensic accountancy, the vast majority of expert witnesses come to court from a busy professional practice. By restricting the scope for an expert to offer just

occasional assistance to the court, the decision will concentrate instructions upon those experts who have made a commercial choice to build a forensic practice. This is a double-edged sword. Whilst the greater understanding of their role and duties should ensure the 'professional' expert witness will create fewer procedural problems, by excluding the occasional expert witness the freshness and challenge to dogma that comes with diversity is lost.

Slippery slope

The majority set the issue before them in the context of what to do with a negligent expert witness. In my opinion, this is a myopic view of witness immunity. In putting a single expert witness centre stage, it strongly encourages the creation of a remedy for a wrong done. But witness immunity has never been about protecting the negligent but about protecting the public. In focusing so intently on what to do about the rare example of an expert witness who has been negligent, the Supreme Court has handed down a decision that threatens the very foundation of broader witness immunity. There have always been exceptions to the immunity rule: perjury and contempt have a long lineage; wasted costs orders and professional disciplinary actions are recent additions. As Lady Hale pointed out, these exceptions are there to oblige the witness to perform his duty to the court. But the Supreme Court decision is a radical departure from these existing exceptions – it has been made to protect the interests of the client. To do this on no 'secure principled basis' 173 is all the more disturbing.

Decidedly Disturbing Decision

The decision is disturbing for the lack of challenge from the majority of the views expressed by the minority, and for having the President and his Deputy split over the issue. But the way in which the majority arrived at its decision is the most troubling aspect of all.

As Lady Hale puts it, this is a decision that lacks 'a secure principled basis for removing the immunity from expert witnesses'.¹⁷³ So what has led the court to behave in this way? One element may be the rather anachronistic view of expert witness practice revealed by the President of the Supreme Court, and another may be the conflation of duties.

Anachronistic view of expert practice

Lord Phillips' judgment is notable for his pre-Woolf characterisation of the conduct of expert witnesses. For example, when he says '*...an expert's initial advice is likely to be for the benefit of his client alone*'⁵⁶, he is not describing an expert witness, but an expert advisor (who has never had the protection of witness immunity). No expert witness instructed under CPR 35 could ever write a report that was *for the benefit*

of his client alone. It feels as if Lord Phillips thinks the world of the hired gun is alive and well 10 years after Lord Woolf rode them out of town. Does a decade or more in the rarefied air at the very top of the judicial ladder put one out of touch with the reality on the ground?

Conflation of duties

Much is made in the Supreme Court judgment of the duty an expert witness owes the court, the duty he owes those who instruct him and how these are incapable of being in conflict. Surely the fact that the CPR places an 'overriding' duty on the expert witness implies that on occasion these duties will conflict, and the duty to the client is therefore subordinate.

Lord Phillips says '*It is paradoxical to postulate that in order to persuade an expert to perform the duty that he has undertaken to his client it is necessary to give him immunity from liability for breach of that duty.*' But it is the conflation of the expert's duty to the court with his duty to the solicitor's client that creates the paradox. By recognising that these duties can conflict, then the value of the immunity is clearer.

Lord Hope is firm in his opinion that there is '*an obvious conflict between the duties that the expert owes to his client and those that, in the public interest, he owes to the court.*'¹⁵⁶ This is because '*when it comes to the content of that evidence his overriding duty is to the court, not to the party for whom he appears. His duty is to give his own unbiased opinion on matters within his expertise.*'

Naturally enough, if you convince yourself that an expert witness is incapable of being presented with a situation in which his duty to the court can conflict with his duty to others, then you will see little benefit in an immunity that facilitates his dealing with that situation in a frank and fearless manner.

But, regardless of how the decision was made, what its consequences may be and whether it is a correct decision, a number of issues should now be written at the top of an expert witness's list of things to contemplate. These include the need to get comprehensive professional indemnity insurance in place, to recognise the need for caution in giving initial opinions and to think carefully about acting as an SJE.

What's an expert to do?

Professional indemnity insurance

First, and most importantly, expert witnesses should obtain appropriate professional indemnity insurance, or check with their existing professional indemnity insurer to see if it can provide cover that extends to forensic work. There are already some schemes being targeted specifically at expert witnesses,

and more will be coming along soon. However, one thing of which to be aware, is the fact that a court decision sets out what the relevant law is and was. So experts should check that their professional indemnity insurer will cover this retrospective risk.

Limiting liability by contract

Lord Collins said that uninsured expert witnesses could *'limit their liability by contract'*.⁸¹ The notion that an expert witness can successfully limit liability through contract is an odd one for a Supreme Court judge to suggest. Court reports are littered with examples of failed attempts to achieve such limitation. Experts can by all means try it, especially, perhaps, if there is a lack of willing experts in the field (the family court springs to mind), but it would be unwise to rely on it in the absence of professional indemnity insurance.

Circumspection

Immunity made it easier for an expert to resile from an earlier held position. Without the protection of immunity, expert witnesses may well become more circumspect in their opinions.

Expert witnesses should ensure that they give accurate opinions at all stages of proceedings, and that their earlier opinions are consistent with their later ones. So in this respect the impact of the removal of immunity should be for the good. But expert witnesses will need to be strong in their determination to give only those opinions that are based absolutely on the evidence they have been asked to consider. If a change of opinion is justified by a change in the evidence,

there will be precious little for anyone to complain about. But if there are any other reasons for changing one's mind, the expert will come under far greater scrutiny.

Whither the SJE

According to the decision, the removal of immunity applies only to claims from those who have instructed the expert witness. So, what of the Single Joint Expert (SJE)? The notion that this role opens an SJE to suit from all parties may cause a moment's reflection in future! And the position of the court-appointed expert witness is far from clear. However, because this type of appointment is rare, it is of little practical concern.

Conclusion

Having worked with the Law Commission on their careful deliberations on the admissibility of expert evidence in criminal proceedings, we are perhaps predisposed to see value in that body's approach to tackling difficult questions. If this unprincipled decision from the Supreme Court does, in practice, result in a serious chilling effect on the availability of expert witnesses, we may end up in another decade with the Law Commission looking at how to change the law to encourage a ready supply of expert witnesses back into court. How much better if we had instead asked the Law Commission today how best to provide a remedy for the rare wrong perpetrated by a negligent expert witness.

[1] See <http://www.jspubs.com/Experts/cr/detail.cfm?id=24> for our court report on this appeal

Guidance on Risk

The UK Engineering Council has published a guidance document 'Guidance on Risk for the Engineering Profession'. The document provides generic advice and is relevant to the challenges faced by all those in the profession. It establishes six principles to help engineers and technicians meet their professional obligations, and to ensure that the identification and management of risk is an important consideration in their everyday engineering activity. 'Guidance for Risk' may be downloaded at www.engc.org.uk/risk



Iron Ore Fines

continued from page 37 of previous issue

Removal of the Mould

The mould is tapped on its side until it becomes loose leaving the sample in the shape of a truncated cone on table.

Determination of Preliminary FMP

1. Immediately after removing the mould the flow table is raised and dropped 50 times through a height of 12.5 mm at a rate of 25 times per minute. If the material is below FMP, it crumples and bumps off in fragments.

2. At this stage, the flow table is stopped and the material is returned to mixing bowl. 5 – 10 ml of more water is sprinkled over the surface and mixed with rubber gloved finger or automatic mixer. This operation is repeated until a flow state is reached i.e., moisture content and compactness of sample procedure a level of saturation such that plastic deformation occurs.

Determination of Final Flow Moisture Point (FMP)

1. With the sub-sample D : The FMP is determined by adjusting moisture below the preliminary FMP.
2. With the sub-sample E : The FMP is determined by adjusting moisture above the preliminary FMP.
3. The difference between the values should be 0.5% or less.

Calculation

- m_1 = Exact mass of sample as received.
 m_2 = Exact mass of sample as received after drying.
 m_3 = Exact mass of sample just above the flow state.
 m_4 = Exact mass of sample just above the flow state after drying.
 m_5 = Exact mass of sample just below the flow state.
 m_6 = Exact mass of sample just below the flow state after drying.

Thus,

1. Moisture Content of sample as received = $\{(m_1 - m_2) / m_1\} \times 100 P_c$

2. Flow Moisture Point = $\{(m_3 - m_4) / m_3 + (m_5 - m_6) / m_5\} / 2 \times 100 P_c$
3. Total Moisture Limit = $0.85 \times \text{FMP (Bulk Density} > 90 \text{ Kg / m}^3)$
 $0.90 \times \text{FMP (Bulk Density} \leq 90 \text{ Kg / m}^3)$

Uncertainty as to the Accuracy of Test Result Of Shippers' Sample

Test results thus obtained may not be all that accurate for the following reasons:

1. In accurate representation of stock pile sample.
2. The persons carrying out the test may lack required skills for such tests.
3. Instrument calibration may not be upto date.
4. Test results may be manipulated to the benefit of the shippers as no third party inspector / surveyor's presence is allowed by the laboratory.

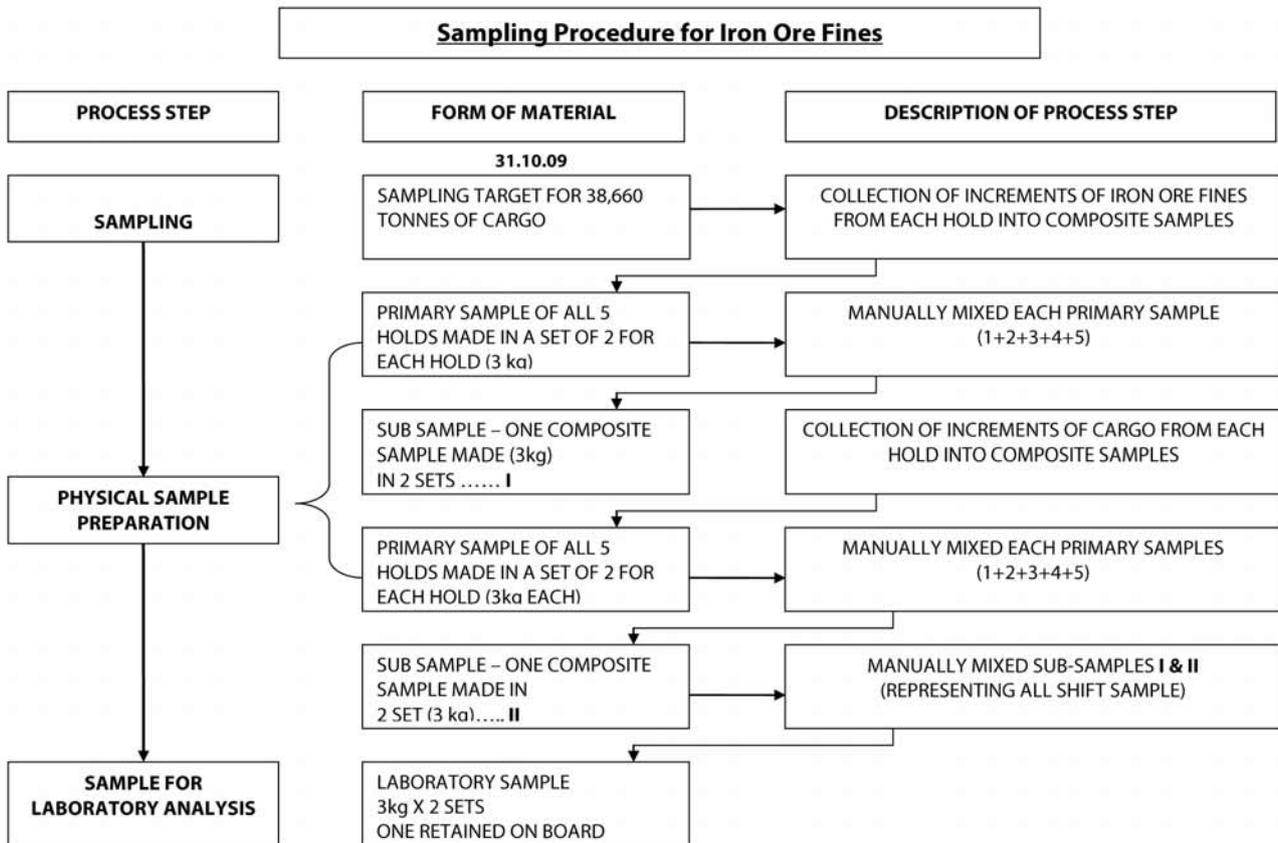
Loading of Wet Iron Ore Fine

During the entire loading period of the cargo the only moisture content is normally monitored, which remains the only criterion of acceptability since the TML remains constant. It is stated in IMSBC code that moisture content should always remain less than TML, but SOLAS 2009, Chapter VI, Regulation 6.2 states "concentrates or other cargo which may liquefy shall only be accepted for loading when the actual moisture content of the cargo is less than Transportable Moisture Limit. However, such concentrates and other cargoes may be accepted for loading even when their moisture content exceeds the above limit, provided that safety arrangements to the satisfaction of the Administration are made to ensure adequate stability in the case of cargo shifting and further provided that the ship has adequate structural integrities."

A Recent Case Study

In a recent case of loading Iron Ore Fines at Haldia during monsoon, the declared TML was 10.26%. During the monitoring of incoming cargo, the Moisture Content was found by the attending surveyor as 11.46%. The loading of cargo was stopped. The shipper then produced two laboratory certificates of Moisture Content as 10.15% and 10.22%. These readings being less than 10.26%, the vessel was

advised by the Owner to accept the cargo and continue her loading. Realistically, therefore, there was hardly any change in cargo quality as to the Moisture Content, which was virtually same as her TML value. Obviously both the results 10.15% and 10.21% were manipulated by both the Laboratories only to the benefit of the shippers. This doubt was confirmed as the test results of 10 samples drawn by attending surveyor indicated the average value of Moisture Content was 10.45%. Sampling procedure which was adopted for on board sampling is given in the following flow-chart:



Ideally, if the Moisture Content of the present cargo was 10.45%, it should not have been loaded since it was much higher value of the TML. But since the cargo was accepted by the vessel based on TML 10.26%, the safety against liquefaction / shifting of cargo was examined.

To start with the wet cargo was classified in three categories based on the factor of safety of the wet cargo in hold. These are :

- Stable cargo
- Moderately stable cargo
- Quasi stable cargo

As the cargo was wet and little water was seen collected in the hold at the rate of 150 L/24 hrs we categorize the cargo as "moderately stable". (The stability index of the wet bulk cargo is defined as the factor of safety.) The mathematical model which defines the factor of safety of wet granular bulk material as given below :

$$FS = \frac{C + \cos \theta [1 - Wr] \tan \Phi}{\sin \theta}$$

where,

- θ = Slope angle of cargo
- Φ = Internal friction angle of the wet cargo

- W = It is the relative wetness and given by a ration D_w/D , where D_w = Depth of wet cargo and D = Depth of dry cargo
- C = Total cohesive forces which keep cargo in place without sliding or shifting which is 4 times the grain weight
- r = ρ_w / ρ_{wc} where, ρ_w = Density of water and ρ_{wc} = Density of wet cargo

F_s ranges between 0 and 1 where,
 '0' = Indicates most unstable condition.
 '1' = Indicates least unstable condition.

As the condition of cargo in this particular case was not free-flowing the factor of safety could not be assigned as 1. Neither the cargo was all mud and contain excessive water to justify assignment of '0' factor of safety. Therefore, we have to consider the F_s for present cargo to be somewhere in-between 0 & 1.

Present cargo will thus fall into the category of moderately stable cargo which is considered to be safe for transportation if the cargo was not subjected to any external pressure. In the case of sea transportation such ideal condition does not exist

and the wet cargo is subjected to all the forces which the carrier encounters at sea. The effect of such forces may produce extra pressure which may convert on otherwise moderately stable cargo into "quasi stable" condition, resulting in increase liquefaction and longitudinal and transverse sliding of the cargo endangering the safety of the vessel. In order to prevent such a possibility, we had to take preventive measures prior to vessel's sailing out against liquefaction and cargo sliding / shifting and ensure its safe carriage at sea.

Preventive Measures Against Sliding

In order to stop liquefaction and subsequent flow of material, it is generally believed that the flow stops when the shear stress becomes equal or less than the material yield stress. Thus in order to make the shear stress less than yield stress of the material, it becomes necessary to reduce the moisture content of the material. This reduction was carried out by making channels through the cargo heap and allowing the moisture in the cargo to trickle into a well dug out near the base area of the cargo heap where all the channels were connected. Condensed moisture was collected in the well which was pumped out subsequently. This procedure took a considerable amount of time resulting in vessel's detention by nearly 10 days. However, by this procedure moisture content of the cargo was reduced to some extent and the vessel was allowed to sail out of Haldia for the next Indian Port for topping up and ultimately to a discharge port in China.

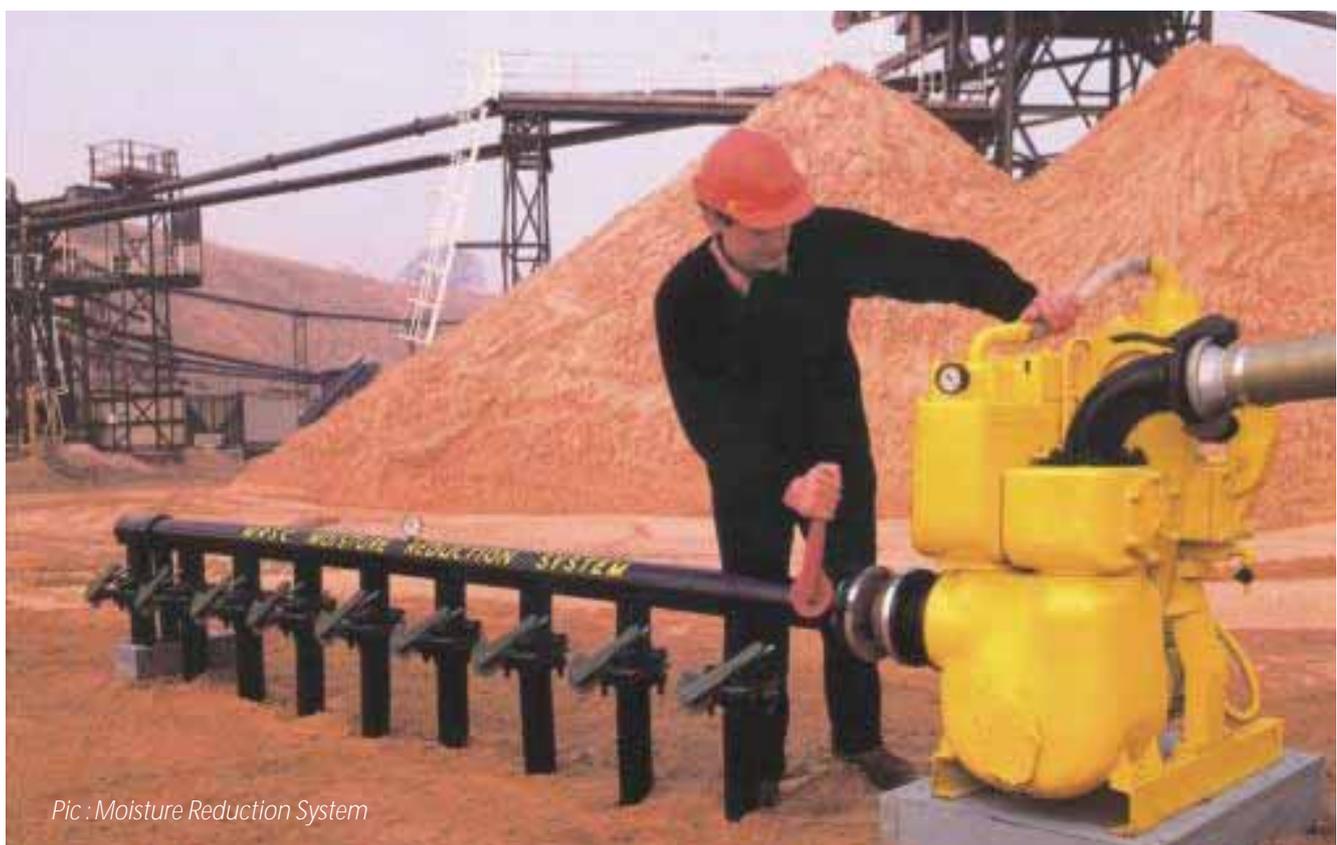
It had been verified that inspite of the Moisture Content of the cargo being more than TML 10.26% there was no liquefaction and sliding / shifting of the cargo and the entire cargo was discharged without any problem.

Dewatering of Wet Stockpile

In order to mitigate the risk of loading wet Iron Ore Fines, the problem of excessive moisture of the cargo can be tackled before the cargo comes on board at the stockpile level and save both, time and money. The technique involved is removing moisture from the stockpile by employing vacuum pumps. The system is effectively used for dewatering of wet sand pile in shore based industries. The picture below indicates the system.

Conclusion

The general guidelines which are followed during loading of Iron Ore Fines are stipulated in IMSBC Code 2009 edition. The code, however, refers to "Iron Ore" and "concentrates" and does not refer to Iron Ore Fines. Thus, in the event of decision making process as to the acceptability of wet Iron Ore Fines individual judgement based on personal experience and knowledge of handling of wet bulk cargo should be of consideration. The author is of the opinion that the most important aspect of Iron Ore Fines loading is sampling and testing of samples for Moisture Content or Flow Moisture Point. The procedure for sampling as stated in various codes and standards sometimes become impracticable and thus



Pic : Moisture Reduction System

the representative samples may not indicate exact condition. In view of these uncertainties application of Monte Carlo sampling or Latin hypercube sampling may be examined in case of both stockpile and cargo hold sampling.

The author is grateful to Dr. Pradipto Bhattacharyya of Massachusetts Institute of Technology, USA and Dr. Pratik Bhattacharyya, Sr. Consultant, Lloyd's Register of Shipping, Denmark for various inputs and guidance received in preparation of this article.

Special acknowledgement for Capt. Satish Anand, M.D., Henderson Int'l (India) Pvt. Ltd., for his absolute guidance and expertise in the handling of the vessel referred to in 'A Recent Case Study'.

References :

- SOLAS - 2009
- IMSBC Code, 2009
- IS – 1450 – 1982
- SINMAP, Approach to Terrain Stability Mapping – R.T.PACK, D.G.TARBOTON, C.N.GOODWIN.
- Shear Strength Properties Of Wet Granular Material – Vincent Richefeu, Moulay Said, El Youssoufi, Farhang Radjai.
- Solid – Fluid Transmission in Wet Granular Material – S.H. Ebrahimnazard Rahbari.
- Bulk Solid Handling Equipment Selection and Operation – Edited by Don Mc Glinchey, Reader of Centre for Industrial Bulk Solid Handling Glasgow Caledonian, University of UK.
- Stability Analysis Of Parametric Roll Resonance – B.J.H. Van Laarhoven.

Member's Forum

Dear Sir,

In a recent spate of correspondence on the Forum section of our web page one of the correspondents asked a question about the minimum allowable thickness of shell plating as established by means of an ultrasonic thickness machine. I was able to answer him and have sent him a considerable amount of useable guff on the subject.



This, however, raised a question that has bothered me for some time. It is generally understood, at least it is in my part of the world, that underwriters require a minimum thickness of 4 mm on shell plating. This figure appears to be quite arbitrary and is taken across the board i.e. regardless of the physical size of the vessel or her original plating thickness. That appears to me to be utterly ludicrous. The average narrow boat, for example, is anywhere between 45 and 72 feet in length and usually has side shell plating of 6 mm and a reduction to 4 mm is a very severe 33% but may for their type of service be considered reasonable even so.

For comparison, most class societies require steel to be renewed at a thickness loss of about 15%. For such a vessel a corrosion allowance of 1 mm would, in my opinion, be adequate. If, however, the vessel is, say, a London River or River Lea barge, the original thickness is more likely to be 10 or even 12 mm and a reduction to 4 mm is then 60 or more percent and would, in my opinion, be at least bordering on the dangerous. Further, numerous, particularly Dutch built, boats in this part of the world have an original thickness of only 3 mm yet no comment is ever made upon such vessels by the insurance industry. They are accepted without question.

Clearly such a situation is clearly wrong and for some time now I have used a formula that I devised myself based on the longitudinal strength of the vessel which takes into account her principal dimensions with the constants involved based on a statistical analysis of thicknesses known to have been accepted in the past.

I have no idea where the figure of 4 mm came from or who dreamed it up. Have any of your readers any comment on the matter especially if they can enlighten me as to who started the 4 mm idea. I would particularly like to hear from any underwriters and would like to see their justification for the figure of 4 mm. Comments on corrosion allowances would

also be interesting.

The above also raises the questions of the minimum number of readings that should be taken on the shell, whether or not the readings should be taken on an ad hoc basis or follow a standard pattern and why underwriters do not also require thickness readings to be taken on the decks, superstructures and the primary and secondary supporting structures as these items corrode at similar rates to the shell. Comments on these questions would also be appreciated.

One final question: Should the IIMS set a standard for these things?

Yours faithfully,
Eur. Ing. Jeffrey N. Casciani-Wood. C.Eng.

Dear Members,

Being a Marine Surveyor one visits places that are not even on the map, Homemade boats, Old Boats, New builds, passenger vessels I have seen them all.

Sometimes if you are very lucky there is the odd vessel that stands out from the crowd.

On this occasion whilst visiting a boat yard during mid-Winter, the brambles had fallen back and I noticed the lines of a stepped hull which I recognised as an old C.MB upon further investigation it became apparent that it was indeed a 40ft Thornycroft Costal Motor Boat circa 1916 , single torpedo type.

I inquired about the vessel and learnt that it had been laid up there for at least forty years.

The hull was in remarkably good condition considering the age of the vessel, the topsides had been turned into a cabin cruiser type, all of plywood of around 1950.

I decided there and then to make this my next project, a price was agreed and a few weeks later the C.MB was lifted on straps onto a 45 ft lorry, everyone in the yard looked on in amazement waiting for the vessel to break its back but after forty years or more there wasn't even the slightest creak.

The C.MB is now at a yard in Bristol where the restoration has commenced my intention is to restore the C.MB to sea going condition,, making this unique as the only sea going C.MB in existence from world war one.

To date there are only two forty foot's in existence "C.MB 4 & C.MB 103 both of which are in museums. One 55ft C.MB 331 also in a museum.

We have been in contact with Tornycroft and we wish to extenuate our thanks for their help thus far, as for this one C.MB 6 as yet we don't know we would like to hear from anyone with any information or points of interest regarding this exciting challenge we can be reached via email - morley.marine@hotmail.co.uk

Well a bit more of our Naval history saved ! Yours Sincerely

R.Morley Member International Institute of Marine Surveying



IIMS Forum

The forum on the IIMS Members section of the website is grossly underutilised. It was set up at the request of members for members. It is a source of good practical and technical advice when needed, it is a simple way of communicating your views to the management and more importantly it is only accessible by members.



Can I urge you to log in and make use of this facility? If no substantial increase in usage is noted within the next 6 months we may delete this section.

Your views or actions will be welcomed.

Peter Morgan
President

New Members since the last Report

Chhotalal Kantharia	Associate	India	Artiom Mokin	Full	Lithuania
Ranjan Bandyopadhyay	Full	India	Peter Holding	Full	UK
Christopher Tindall	Supporting (Upgrade)	UK	Efe Olaide Asagba	Full	Nigeria
Gandhi Kumaraswamy	Full	India	Troupe7 Consultants Pvt	Corporate Supporting	India
John Gary Ryan	Full	Malta	Shaheen Iqbal	Full	Bangladesh
Digvijaysinh Zala	Full	India	Alan Broomfield	Full (Upgrade)	UK
Trevor Froude	Full	South Africa	Martin Patten	Affiliate	UK
John Evans	Full	South Africa	Carlos Z. Pizarro	Full	Chile
Bruce Lee	Full	Hong Kong	Ivo Milicic	Full	Croatia
Chris VanHeerden	Full	South Africa	Graham Phillips	Full	Australia
Adrian Quiros	Associate	Philippines	Peter Pope	Full (Upgrade)	Australia
Johan Tordhag	Supporting (Upgrade)	Sweden	Jarrod Tomblin	Associate (Upgrade)	UK
A.R. Brink & Associates	Corporate Supporting	South Africa	Yuhanna Yusuf	Technician	Trinidad & Tobago
Profeta Brandimarte	Full	Italy	Ward & McKenzie	Corporate Supporting	UK
Carlo Rolla	Associate	Brazil	Nazrul Islam	Full	Bangladesh
Delyan Todorov	Associate	Bulgaria	Muhammad T Iqbal	Full	Kuwait
Andrew Lin	Full	China	Aidan Bird	Technician	New Zealand
Colin Brown	Affiliate	UK	Michael Christensen	Full	South Africa
Richard Rodriguez	Full	Gibraltar			
Timothy Sutton	Full (Upgrade)	UK			
Howard St John	Full (Upgrade)	Malaysia			
Interport Marine Services	Corporate Supporting	India			
Harry Ross Naylor	Supporting	Australia			

Visitors to the IIMS Head office since the Last Report

Name	Company	Name	Company
Paul Homer	IIMS	Stephen Hunt	IIMS
Chris Spencer	IIMS	Derek Buchanan	IIMS
Peter Morgan	IIMS	Adam Judd	Apollo Internet Media
John Noble	IIMS	Graham Connor	IIMS
John Lillie	IIMS	Geoff Waddington	IIMS
Colin Vinall	IIMS	Chris Moody	IIMS
Geoff Waddington	IIMS	Oscar Ibanez	IIMS
Andrew Plaster	IIMS	Stephen Hunt	IIMS
Chris Williams	IIMS	Colin Skinner	IIMS
Steve Munro	IIMS	Brian Harte	IIMS
Markus Lankford	IIMS	Geoff Waddington	IIMS
D Plazuk	JG Marine	Stephen Munro	IIMS
Michal Kuryllowicz	JG Marine	Chris Williams	IIMS
V Cowley	Cowley IT	Simon Thorne	IIMS
V Cowley	Cowley IT	C Road	IIMS
Guy Smith	YSVP	Toks Taylor	IIMS
Michael Dodd	Michael Dodd Media	D Guillamet	IIMS
York Smith	YSVP	James Morland	IIMS
Peter Morgan	IIMS	Markus Lankford	IIMS
Chris Moody	IIMS	Graham Burt	IIMS
V Cowley	Cowley IT	Niamh Cullen	Hoot Marketing
John Lillie	IIMS	Alexandra Sard	Seafarers
Paul Compton	Alpha Graphics	Sarah Watson	Reed Recruitment
Adam Judd	Apollo Internet Media	Michelle Rice	Reed Recruitment
R.Prigett		Chris Moody	IIMS
Niamh Cullen	Hoot Marketing	Adam Judd	Apollo Internet Media
Keith Oulds	IIMS	S Gillwald	TRHITC
Geoff Waddington	IIMS	Chris Moody	IIMS
Ricky Tropman	IIMS	John Excell	IIMS
William Rosie	IIMS	Peter Brookes	IIMS
John Excell	IIMS	Paul March	IIMS
Colin South	IIMS	Richard Cray	IIMS
Kevin Ashworth	IIMS	Colin Vinall	IIMS
Chris Moody	IIMS	John Hutley	IIMS
John Heath	IIMS	David Pestrige	IIMS
Tony McGrail	IIMS	Alan Broomfield	IIMS
Chris Williams	IIMS	S Gillwald	TRHITC
Paul March	RNLI	Nick Vass	IIMS
Stephen Munro	IIMS	Adam Judd	Apollo Internet Media
Adam Judd	Apollo	Andrew Strachan	IIMS
Niamh Cullen	Hoot Marketing	Jim MacDonald	IIMS
Chris Makin	IIMS	Simon Thorne	IIMS
Jason Rudd	IIMS	Chris Moody	IIMS
Graham Burt	IIMS	Peter Lambert	IIMS Australia
Chris J Read	IIMS	Adam Judd	IIMS
Andrew Standen	IIMS	R Shankar	NSW Maritime Australia
Eric Benfield	IIMS	Chris Moody	IIMS
Bob Page	IIMS	J Grogan	
Tom Maguire	IIMS	A Deavall	Abtec Communications
James Godwin	IIMS	Mike Proudlove	IIMS
Rachel Dickinson	IIMS	Roger Pimm	IIMS
Stephen Hunt	IIMS	Mike Deacon	IIMS
Chris Williams	IIMS	Geoff Waddington	IIMS
Oliver Jones	IIMS	Keith Oulds	IIMS
James Morland	IIMS	P Smith	IIMS
David Green	DG Marine/IIMS	Niamh Cullen	Hoot Marketing
Linda Green	DG Marine/IIMS	G Carnegie	MCA
A Smith	HMRC	A Cherrett	MCA
S Gillwald	TRHITC	D Stevenson	CW Fellowes
Oscar Ibanez	IIMS	Graham Connor	IIMS

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