The Porthole

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The newsletter of
the South Australian Branch of the Company of Master Mariners of Australia,
PO Box 1, PORT ADELAIDE, SA 5015
Branch Patron: His Excellency the Honorable Hieu Van Le AC

Branch Master's Comments

There are no comments from our intrepid Branch Master as he has ventured into the remote and exotic section of the Great Silk Road in Uzbekistan. We have been promised a detailed report when he returns. In the meantime, we trust that he has taken command of his new ship and joined the convoy of well-equipped modern transports which will take him across trackless wastes and through dangerous valleys. We understand that he will be staying in luxurious accommodation, with all modern conveniences.

However, we must wait to hear what exotic wonders he has seen

Speaker:

David Holmes will tell us about his experiences while trading in East Africa with the Southern Line.

The next Branch meeting will be held at the Largs Pier Hotel, 198 The Esplanade, Largs Bay, on Wednesday, 26th April 2017 at 1145 for 1200.

Please confirm your attendance at the lunch or register your apology before 1200 on Monday, 24th April 2017 with

David Holmes (0417 444 742) or Ian Dickson (0418 807 788)

The Company of Master Mariners of Australia Ltd. is a Company established to promote and further the efficiency of the Sea Service generally, and uphold the Status, Dignity, and Prestige of Master Mariners in particular.

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The Phil Hoffmann Story

Summary of a talk by Phil Hoffmann, Director of Phil Hoffmann Travel, on his career in the travel industry, given on 29 March, 2017, to the meeting of The Company of Master Mariners of Australia, South Australian Branch, at the Largs Pier Hotel.

Introducing Phil Hoffmann to the meeting, Paul Phillips, Branch Master, first congratulated him on recently bringing to Port Adelaide the *Ovation of the Seas (right),* the largest cruise ship ever to visit South Australia.

Phil Hoffmann began his talk by revealing that his academic background was far removed from travel and tourism. At university, he had completed an Honours Degree in Chemistry and was set to continue further studies towards a doctorate. However, the professor challenged each candidate for further studies with the question: "Are you passionate about chemistry? If not, now is the time to find another niche". Phil decided his future did indeed lie elsewhere and he took up teaching, rising to become a senior lecturer and administrator in the South Australian TAFE system.

In this latter role, Phil was approached by the travel industry to establish a TAFE training course in tourism. This proved successful and Phil was then approached by the industry to take on a consultancy to find an organisation suitable to expand the travel industry in South Australia. Phil decided this was the niche he was destined for and asked for the opportunity to take on the task himself. This he did successfully, working within the Coles-Myer-Ansett travel group. However, after a few years with the group, Phil decided to go it alone and establish his own travel agency.

Phil Hoffmann Travel began in 1990 with Phil and two staff operating from a small first floor office in Glenelg. At the time, his ambition was to build up the business to employ five staff and hopefully have time to take Wednesday afternoons off for a round of golf. (Now he employs 200 staff but has yet to fit in the time for golf.)

His timing in 1990 was not the best, for, within a few weeks of opening his new business, Phil was confronted by two major challenges. Firstly, the impact on international air travel of the Gulf War, and secondly, the deregulation of the Australian domestic airline industry. Overcoming these set-backs, Phil set about promoting the business with travel seminars and a regular evening travel talk on local radio. The business went from strength to strength, and, within a few years, Phil was able to open a second office in Norwood.

Phil Hoffmann explained how the cruise market had grown until 1980 then faded with the oil shock and consequent fuel surcharges. However, by the mid-1990s, the cruise market was starting to pick up and Phil saw the potential opportunities to promote cruising, particularly to senior citizens. He recognised the key elements in promoting cruising were the provision of high standards of customer service and the personal touch before, during and after the cruise

Among the initiatives adopted by Phil Hoffmann to meet for the needs of clients cruising were:

- hosted cruises, with a Phil Hoffmann Travel representative as tour leader on board;
- themed escorted cruises with well-known experts lecturing on the places to be visited etc;
- the establishment of a solo travel club of interest to those travelling alone presently having a thousand members and growing rapidly);
- and cruises with musical themes, targeted, for example, to lovers of country music or rock and roll.

Over the years, Phil Hoffmann Travel has expanded its cruise operations to the extent that 40 cruises have been on a whole ship charter basis, including the recent cruise visit of the *Ovation of the Seas* (above).

One of the requirements of the tour leader is to organise a reunion of the tour group within eight weeks of the cruise. It is then up to the group members to organise further reunions if they wish. Phil noted he was getting invitations to group reunions being held some 12 years after a cruise. Furthermore, the friendships established through the cruise and on-going reunions often led to further travel together.

Phil emphasised the importance of his staff having a real passion for travel and tourism. An important element of the company's staff induction courses is the identification of applicants demonstrating this passion.

The cruise industry was currently growing at 20% per annum with significant expansions in longer cruises, back to back cruises, world cruises and expedition cruises, e.g. the Antarctic. However, the greatest growth was in the river cruise market, in particular, Amsterdam to Budapest, as well as the French rivers, and Russia, the Mekong and the Amazon.

To meet this demand, the ocean cruise companies were building bigger and better ships with facilities catering to all tastes. Long gone are the days when there was a single restaurant and two sittings; the *Ovation of the Seas*, for example, has 18 restaurants

ranging from formal to casual style

Turning to the local scene, Phil noted the expansion of cruising into Port Adelaide, with currently some fifty calls per year. However, this compares with 350 cruise calls to Sydney. Aside from Port Adelaide, Port Lincoln and Kangaroo Island were also becoming occasional cruise stops.

However, while international surveys had shown Kangaroo Island to be one of the top places in Australia that overseas visitors would like to visit, its facilities in terms of hotel accommodation and air and sea access were totally inadequate. Furthermore, there was very strong resistance on the island to any expansion of its tourist facilities.

Regarding Port Adelaide, Phil noted that while some were critical of the passenger terminal, it was in a good location, with great views, good facilities and transport links. Sydney's cruise berthing facilities, however, aside from the main Circular Quay terminal, were inadequate and needed expanding. If, as sometimes happened, no berth was available and a cruise ship had go to an anchorage, the additional costs faced by the operator were prohibitive.

On the aviation side of the industry there had been a rapid expansion of international flights, with Qatar and China Southern recently joining the well established airlines, Singapore, Malaysian, Cathay, Air New Zealand and Emirates. When built, Adelaide Airport catered for 4 million passengers a year; now it has 8.6 million. Adelaide has a good airport except that its international arrival and baggage handling areas are now too small when up to four international flights can arrive together.

In general, where infrastructure was concerned, successive governments, federal and state, had been slow to embrace the potential contribution of tourism to the economy. While Asia countries had built first class modern air and sea terminals and facilities, Australia was lagging. As Phil put it, Australia is strong on talk about infrastructure but doesn't get on with building it. He cited, as an example, the talk that had been going on for the past 20 years about a high-speed east coast passenger rail line.

In concluding his talk, Phil Hoffmann,once again emphasised how much quality customer service and the personal touch were the key elements of operating a successful travel and tourism business.

The Branch Master then thanked Phil for a most interesting talk, and also thanked honorary member Sir Eric Neil for facilitating the presentation.

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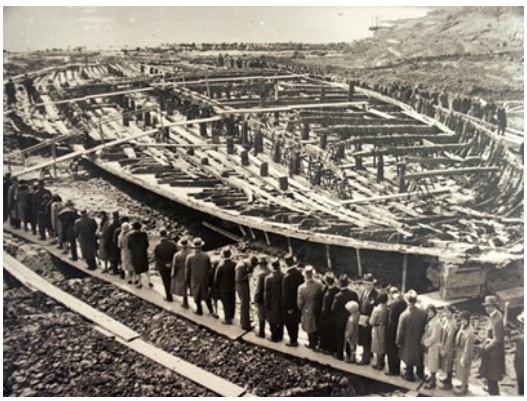
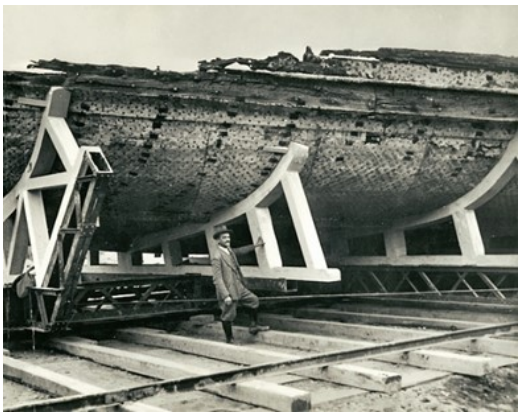
The Massive Pleasure Barges of Emperor Caligula

In the 1st century AD, the Roman emperor Caligula caused two ships, one larger than the other, to be built at Lake Nemi, a small circular volcanic lake in Italy, 30 km (19 mi) south of Rome. The larger ship was essentially an elaborate floating palace, which contained quantities of marble, mosaic floors, heating, plumbing and amenities such as baths.



Italians viewing Emperor Caligula's Nemi ships, 1932



Cross section of the stern of the ship where the hand-operated bilge pumps (which were used to empty the bottom of the hull from the water that inevitably infiltrated inside) were probably located. The pump has been rebuilt according to the few clues found on the lake bottom. – Carlo CestraV

Both vessels were constructed using the Vitruvian method, a shell first building technique used by the Romans. They were steered using 11.3 meters (37 ft) long quarter oars, with the *seconda nave* equipped with four, two off each quarter and two from the shoulders while the *prima nave* was equipped with two.

Suetonius describes the two ships built by Caligula; "…ten banks of oars…the poops of which blazed with jewels…they were filled with ample baths, galleries, and saloons, and supplied with a great variety of vines and fruit trees."

Built to recall the pleasure barges of Egypt in Hellenistic times, the boats nearly covered the small lake. Of the two floating palaces, one had a temple, and both were around 250 feet long and 70 feet wide. Some archeologists appear to be of the view that neither vessel had any system for propulsion, and that they only

moved by being towed around the lake. The boats had running water (carried by pipes etched with Caligula's name), beautiful mosaics, inlaid ivory on the walls, and bronze sculptures.

Here on Lake Nemi, surrounded by the beautiful Alban Hills, Caligula could indulge his pleasures, which were said to have included incest, having peoples' tongues cut out, and slaughtering suspected enemies one by one. (Whatever crimes he committed, the Emperor was not sane; he also tried to appoint his favorite horse to the Senate).

A year after their launch, the Nemi ships sank to bottom of the lake. It is not clear what caused them to sink. It could have been a storm or an earthquake; one legend says that Caligula sank them himself amid a drunken orgy, and another, that they were stripped of precious objects, ballasted and then intentionally sunk following the assassination of Caligula.

All in all, Caligula squandered the money saved by the more frugal Tiberius, in fits that have yet to be surpassed by even the most decadent modern dictator.

Benito Mussolini attending the inauguration of Museum of Nemi (Il Museo delle Navi Romane) (The Museum of Navigation)

Fittingly, it was a 20th-century dictator, the fascist leader Benito Mussolini, who directed the recovery of the Nemi ships. People had been trying to pull them from the water since the 15th century, but with no success. In 1927, under orders from Mussolini, engineer Guido Ucelli drained the lake to permit the ships to be dug out from the mud, and placed in the Museo delle Navi Romane at Nemi. Both ships were destroyed by fire in World War II during fighting between German and US forces. There is disagreement over which side was responsible.

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Are Ship Weather Observations Still Valuable In The Era Of Satellites?

April 4, 2017 by Editorial

by: Horst von Bargen (Deutscher Wetterdienst)

Meteorological satellites (geostationary at an altitude of about 36.000 km and sun-synchronous at a height of about 850 km) provide images and data in many spectral ranges. Their advantage is the generation of region-wide measurements. They allow us to receive information also from areas where there are no weather stations.

The parameters are not measured directly, but are derived from electromagnetic radiation of the Earth's surface, the atmosphere as well as from reflected signals emitted from radar and sonar instruments by applying advanced computations.

By combining several spectral ranges, meteorological properties are derived. This enables the National Oceanic and Atmospheric Administration (NOAA) to get information about the atmospheric conditions and phenomena such as clouds and precipitation, but also data like sea surface temperature and wind speed. But it is not always possible to derive all the data necessary for accurate forecasts.

Heavy rain, for example, impedes the view of the sea surface and therefore prevents us from collecting information about wind speed from wave characteristics.

And, most importantly, the direct measurement of air pressure from space is not feasible. Ship observations are used as a ground-based reference to calibrate measurements from satellites and the applied algorithms and to test their correctness.

Surface-based measurements (e.g. data collected onboard ships) are indispensable for weather analysis and prediction as well as for long-term climate analysis. Therefore, ship observations provide an essential contribution to safety at sea.

This article was written by Horst von Bargen of Deutscher Wetterdienst and originally appeared in NOAA's Mariners Weather Log magazine.

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US CURBS: US maritime unions have welcomed proposals to strengthen the country's Jones Act requirements to cover vessels carrying oil and gas equipment in US waters. They claim the extension of the rules to require the use of US-flagged and US-crewed construction vessels to transport equipment could 'rightfully restore over 3,200 American jobs'.

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SCRAPPING SOARS: containership scrapping could hit a record 750,000TEU of capacity in 2017, according to the market analyst Alphaliner. It said that 42,000TEU had been removed in the first three weeks of the year and 113,000TEU of ships were due to be sent for scrap in the coming weeks, putting the sector on schedule to beat the record 655,000TEU of capacity scrapped in 2016.

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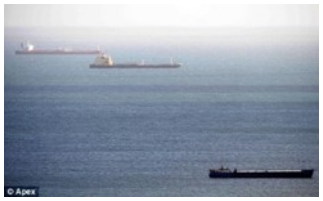
How 16 ships create as much pollution as all the cars in the world.

By **Fred Pearce** 22 November 2009 (but just reprinted in The Marine Advocate).
Eco expert: Fred Pearce is an environmental consultant to New Scientist magazine

Last week it was revealed that 54 oil tankers are anchored off the coast of Britain, refusing to unload their fuel until prices have risen.



Waiting game: Tankers moored off Devon waiting for oil prices to rise even further

But that is not the only scandal in the shipping world. Today award-winning science writer Fred Pearce – environmental consultant to New Scientist and author of *Confessions of an Eco Sinner* – reveals that the super-ships that keep the West in everything from Christmas gifts to computers pump out killer chemicals linked to thousands of deaths because of the filthy fuel they use.

We've all noticed it. The filthy black smoke kicked out by funnels on cross-Channel ferries, cruise liners, container ships, oil tankers and even tugboats.

It looks foul, and leaves a brown haze across ports and shipping lanes. But what hasn't been clear until now is that it is also a major killer, probably causing thousands of deaths in Britain alone.

As ships get bigger, the pollution is getting worse. The most staggering statistic of all is that just 16 of the world's largest ships can produce as much lung-clogging sulphur pollution as all the world's cars.

Because of their colossal engines, each as heavy as a small ship, these super-vessels use as much fuel as small power stations.

But, unlike power stations or cars, they can burn the cheapest, filthiest, high-sulphur fuel: the thick residues left behind in refineries after the lighter liquids have been taken. The stuff nobody on land is allowed to use.

Thanks to decisions taken in London by the body that polices world shipping, this pollution could kill as many as a million more people in the coming decade – even though a simple change in the rules could stop it.

There are now an estimated 100,000 ships on the seas, and the fleet is growing fast as goods are ferried in vast quantities from Asian industrial powerhouses to consumers in Europe and North America.

The recession has barely dented the trade. This Christmas, most of our presents will have come by super-ship from the Far East; ships such as the *Emma Maersk* and her seven sisters *Evelyn, Eugen, Estelle, Ebba, Eleonora, Elly* and *Edith Maersk*.

Each is a quarter of a mile long and can carry up to 14,000 full-size containers on their regular routes from China to Europe.

Emma – dubbed *SS Santa* by the media – brought Christmas presents to Europe in October and is now en route from Algeciras in Spain to Yantian in southern China, carrying containers full of our waste paper, plastic and electronics for recycling.

But it burns marine heavy fuel, or 'bunker fuel', which leaves behind a trail of potentially lethal chemicals: sulphur and smoke that have been linked to breathing problems, inflammation, cancer and heart disease.

James Corbett, of the University of Delaware, is an authority on ship emissions. He calculates a worldwide death toll of about 64,000 a year, of which 27,000 are in Europe. Britain is one of the worst-hit countries, with about 2,000 deaths from funnel fumes. Corbett predicts the global figure will rise to 87,000 deaths a year by 2012.

Part of the blame for this international scandal lies close to home.

In London, on the south bank of the Thames looking across at the Houses of Parliament, is the International Maritime Organisation, the UN body that polices the world's shipping.

For decades, the IMO has rebuffed calls to clean up ship pollution. As a result, while it has long since been illegal to belch black, sulphur-laden smoke from power-station chimneys or lorry exhausts, shipping has kept its licence to pollute.

For 31 years, the IMO has operated a policy agreed by the 169 governments that make up the organisation which allows most ships to burn bunker fuel.

Christian Eyde Moller, boss of the DK shipping company in Rotterdam, recently described this as 'just waste oil, basically what is left over after all the cleaner fuels have been extracted from crude oil. It's tar, the same as asphalt. It's the cheapest and dirtiest fuel in the world'.

Bunker fuel is also thick with sulphur. IMO rules allow ships to burn fuel containing up to 4.5 per cent sulphur. That is 4,500 times more than is allowed in car fuel in the European Union. The sulphur comes out of ship funnels as tiny particles, and it is these that get deep into lungs.

Thanks to the IMO's rules, the largest ships can each emit as much as 5,000 tons of sulphur in a year – the same as 50 million typical cars, each emitting an average of 100 grams of sulphur a year.

With an estimated 800 million cars driving around the planet, that means 16 super-ships can emit as much sulphur as the world fleet of cars.

A year ago, the IMO belatedly decided to clean up its act. It said shipping fuel should not contain more than 3.5 per cent sulphur by 2012 and eventually must come down to 0.5 per cent. This lower figure could halve the deaths, says Corbett.

It should not be hard to do. There is no reason ship engines cannot run on clean fuel, like cars. But, away from a handful of low-sulphur zones, including the English Channel and North Sea, the IMO gave shipping lines a staggering 12 years to make the switch. And, even then, it will depend on a final 'feasibility review' in 2018.

In the meantime, according to Corbett's figures, nearly one million more people will die.

Smoke and sulphur are not the only threats from ships' funnels. Every year they are also belching out almost one billion tons of carbon dioxide. Ships are as big a contributor to global warming as aircraft – but have had much less attention from environmentalists.

Both international shipping and aviation are exempt from the Kyoto Protocol rules on cutting carbon emissions. But green pressure is having its effect on airlines. Ahead of next month's Copenhagen climate talks, airlines have promised to cut emissions by 50 per cent by 2050.

But shipping companies are keeping their heads down. A meeting of the IMO in July threw out proposals from the British Chamber of Shipping, among others, to set up a carbon-trading scheme to encourage emissions reductions.

Amazingly, they pleaded poverty. Two-thirds of the world's ships are registered in developing countries such as Panama. These are just flags of convenience, to evade tougher rules on safety and pay for sailors.

But at the IMO, governments successfully argued that ships from developing countries should not have to cut carbon emissions. IMO secretary-general Efthimios Mitropoulos insisted: 'We are heavily and consistently engaged in the fight to protect and preserve our environment.' Yet without limits, carbon emissions from shipping could triple by 2050.

The failure brought calls for the IMO to be stripped of its powers to control the world's ships. Colin Whybrow, of Greenwave, a British charity set up to campaign for cleaner shipping, says: 'The IMO is drinking in the last-chance saloon.'

Burning low-sulphur fuel won't cut carbon emissions from ships. But there are other ways. More efficient engines could reduce emissions by 30 per cent, according to British marine consultant Robin Meech.

Cutting speed could reduce emissions by as much again. And there are even wackier ways, such as putting up giant kites to harness the wind as in the days of sailing ships.

However you look at it, the super-ships are rogues on the high seas, operating under pollution standards long since banished on land; warming the planet and killing its inhabitants. Santa's sleigh, they are not.

Robert Pedersen, of Maersk, said: 'The sulphur content varies according to where you get your fuel. Our average sulphur content is, I believe, 2.5 per cent. It's rather rare you get anything close to 4.5 per cent.' He added that 'the sulphur issue is one for the whole industry' and that there would be a 'huge cost implication' to switch to cleaner fuel.

Source: The Marine Advocate 684/Daily Mail, 22/11/09

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First Ever UK-China Freight Train Departs.

April 11, 2017

The first-ever freight train from Britain to China, laden with whisky, soft drinks and baby products, started its mammoth journey on Monday along a modern-day "Silk Road" trade route.

The 32-container train, around 600 metres (yards) long, left from the vast London Gateway container port on the River Thames estuary, bound for Yiwu on the Chinese east coast. It was seen off on its 18-day, 12,000-kilometre (7,500-mile) journey with a string quartet, British and Chinese flags, and speeches voicing hope that it will cement a new golden age of trade between the two countries as the UK leaves the European Union.

The first train from China to Britain arrived on January 18, filled with clothes and other retail goods, and Monday's departure was the first journey in the other direction.

The rail route is cheaper than air freight and faster than sea freight, offering logistics companies a new middle option.

The driver gave a thumbs-up and tooted his horn as he got the wagons rolling at the port in Stanford-le-Hope, east of London.

The train will go through the Channel Tunnel before travelling across France, Belgium, Germany, Poland, Belarus, Russia and Kazakhstan before heading into China. The containers will be taken off and put on different wagons at the Belarus border, as the former Soviet Union countries use a wider rail gauge.

The containers switch back to standard gauge rails at the Chinese border, an operation that typically takes around two hours.

"We are proud to be able to offer the first ever UK to China export train," said Xubin Feng, the chairman of Yiwu Timex Industrial Investment. "Restoring the ancient Silk Road as a means by which China, north Europe and now the UK can exchange goods is an important and exciting initiative. "This is the first export train and just the start of a regular direct service between the UK and China. We have great faith in the UK as an export nation and rail provides an excellent alternative for moving large volumes of goods over long distances faster."

Source: The Kathmandu Post

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Bribery law 'no help to masters'

A warning was given at an industry conference in London last month that no amount of 'well meaning' legislation will end the daily reality of bribery demands for ship masters.

Speaking at the IHS Market Maritime & Trade Risk Forum, Captain Nick Cooper said most maritime professionals he worked with had fallen about laughing when the UK Bribery Act came into effect. 'It was obvious to us that whoever drafted it had never been further afield than the gilded corridors of Whitehall,' he added.

Capt Cooper said that in his many years at sea he had 'been on the receiving end of every kind of harassment, bullying, abuse and blackmail imaginable, with outright threats into making facilitation payments, ranging from a few cartons of cigarettes to thousands of dollars in hard cash'.

At best, such encounters are a nuisance, he said, but at worst they can result in the ship being seriously delayed or even detained if payments and demands are not met.

'This ill-treatment of seafarers is always one way, and it all adds up to increased worry and stress and lots of wasted hours for the master,' he added.

Capt Cooper told the meeting of a number of cases where he faced demands for cash from port health officers, port state control inspectors, customs officers and immigration officials, as well as the well-known 'facilitation gifts' in the Suez Canal.

'What is the solution? Stop paying or giving anything at all to any official in every port in the world? Great idea, but wake up and smell the coffee, because it isn't going to happen,' he added. 'It would be a very brave, and, in my opinion, foolish, owner who gave written instructions to their masters to this effect.

'No master in his right mind is going to refuse to pay up in either goods or cash, as cargo operations may be delayed, the paperwork found to be faulty, and the vessel detained,' he argued. 'This could escalate into the arrest of the ship, or indeed the master when some minor discrepancy is found and a huge bribe demanded.

'And that's the reality, and all the well-meaning legislation in the world in not going to change it,' Capt Cooper said. 'Live with it and allow for it, without condoning it. Protest as often and as loudly as you can, but not at the risk of bringing the whole house down on your head, because the master will be blamed for any repercussions.

'Only when whole governments, right up to head of state, are free of corruption, will this bribe-free culture filter down to the numerous officials of all grades running their ports,' he concluded.

Source: Flashlight 173

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CHANGE IN THE LAW FOR THE MARINE INSURANCE MARKET

03 April 2017

In July 2016, the Supreme Court ruled in favour of the owners of the DC Merwestone, ending a six-year battle with their underwriters and changing the law on 'fraudulent devices'.

At first, it seemed as if the owners of the DC Merwestone had been extremely lucky. In January 2010, when water from the emergency fire pump system flooded the engine room, the crew could have found themselves on board a sinking vessel in the middle of the Baltic Sea. But fortunately for everyone involved, the DC Merwestone didn't sink; a tug was able to tow the vessel to safety.

All that remained was for the owners, a Dutch family with a fleet of ten ships, to claim for the ensuing damage. Unfortunately, what should have been a cut-and-dried case turned into a six-year battle with the underwriters that put a huge financial and personal burden on the family – and resulted in a change in English law.

A sign of things to come

Following the incident, the underwriters instructed a law firm to carry out an investigation. No one could work out how the vessel had flooded, so they needed to establish the root cause of the damage.

It was several months before the underwriters stated their position, and, much to the owners' surprise and concern, they had a real issue with the case. In the meantime, the owner had to reschedule loans with the banks and carry out repairs to the ship, without knowing if the underwriters were going to cover the EUR 3.2 million claim. Soon it became apparent that, in addition to these expenses, the owner was going to have to fund litigation, and, at the insistence of underwriters, provide security for their legal fees, too.

Fortunately, in addition to the family interests, the ship owning company's main stakeholder for this vessel was an industrial company who were able to fund the action, and an 'after the event' insurance policy, brokered by JLT, covered the initial security for costs. Still, being one ship down in a fleet of ten was bound to have a big impact and the ongoing stress and uncertainty was taking its toll.

A key decision

Unfortunately, before instructing their own lawyers, and under the financial stress of not knowing if the claim would be covered, a fateful decision was made to tell a lie.

In response to a long list of questions by the underwriters, the owner claimed a low-level alarm had gone off, which should have happened when water flooded initially into the forward part of the vessel. In fact, there was no evidence that the alarm had sounded, and the crew said they hadn't heard anything.

Shortly after, the family appointed Jim Cashman, Partner and Shipping Specialist at the law firm, Holman Fenwick Willan (HFW).

To Jim, it was clear that this was a legitimate claim from an honest family, and there was no reason why it shouldn't be paid. But even though the owner retracted the lie before the case went to court, English law was against him.

Off to good start

At the first hearing, in the High Court, HFW said that the owner's claim was valid because the cause was water ingress – one of the so-called 'perils of the sea'. At first, things went in the family's favour. Not only did the judge uphold HFW's view, but he also rejected three of the underwriters' other defences, including that the DC Merwestone wasn't seaworthy. Then, close to the end of the hearing, the underwriters cited the defence of 'fraudulent device'.

A disproportionately harsh sanction

"Anyone making a claim under a policy can tell a lie in three ways," explains Jim. "They can exaggerate what their losses actually were. They can create an event that never actually happened, or they can have a perfectly legitimate claim, and tell a small lie in the presentation of that claim, in the hope of getting it through quicker."

It's the latter kind of lie – known as a fraudulent device, or 'collateral lie' – that derailed the family's case. The judge ruled that, although the claim was valid, this point of law obliged him to reject it. He did so with reluctance, noting that: "To be deprived of a valid claim of some EUR 3.2 million as a result of such reckless untruth is, in my view, a disproportionately harsh sanction."

Still determined to claim what was rightfully theirs, the family took the case to the Court of Appeal, which upheld the ruling on the same grounds. Finally, in March 2016, the case went in front of the Supreme Court.

It was there that the family's fortunes turned a corner. In July 2016, the Justices overturned the previous rulings to find in the owner's favour. As one of them put it in the judgment, "The position is different where the insured is trying to obtain no more than the law regards as his entitlement, and the lie is irrelevant to the existence or amount of that entitlement. In this case, the lie is dishonest but the claim is not."

The impact on the insurance market

This ruling brought the family's six-year struggle to an end. But, understandably, not everyone's happy about the corresponding change to the law.

"There was an awful lot of publicity when the judgment first came out, and a predictably knee-jerk reaction from the underwriting community," says Jim. "The reality is that they do face a problem with people exaggerating and fabricating claims, but this judgment has no impact on those claims whatsoever." The media has made a particular point about the impact this ruling could have on high-volume insurance, saying that people might be tempted to claim that their house or car alarm was on when it wasn't, for example. But Jim sees this as not really the point. "I don't think people are going to read this judgment and think, I'm going to tell lies next time I fill in the form to recover a claim" he says. "People will behave the way they've always behaved. If they're susceptible to telling lies they will do and we are certainly not condoning that behaviour in any way."

Rob Whaley, Head of Marine Claims at JLT Specialty, does think there's likely to be an impact on policy wordings over time. "This case is still reverberating around the markets, so we haven't seen anything happen yet," he says. "But at the end of the day, underwriters can always create a clause that specifically excludes cover where a fraudulent device was involved."

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The 'Middle Wife'

by an Anonymous 2nd grade teacher

I've been teaching now for about fifteen years. I have two kids myself, but the best birth story I know is the one I saw in my own second grade classroom a few years back.

When I was a kid, I loved 'show-and-tell'. So, I always have a few sessions with my students. It helps them get over shyness, and, usually, 'show-and-tell' is pretty tame. Kids bring in pet turtles, model airplanes, pictures of fish they catch, stuff like that. And I never, ever place any boundaries or limitations on them. If they want to lug it in to school and talk about it, they're welcome.

Well, one day this little girl, Erica, a very bright, very outgoing kid, takes her turn and waddles up to the front of the class with a pillow stuffed under her sweater.

She holds up a snapshot of an infant. 'This is Luke, my baby brother, and I'm going to tell you about his birthday.'

'First, Mom and Dad made him as a symbol of their love, and then Dad put a seed in my Mom's stomach, and Luke grew in there. He ate for nine months through an umbrella cord.'

She's standing there with her hands on the pillow, and I'm trying not to laugh and wishing I had my camcorder with me. The kids are watching her in amazement.

Then, about two Saturdays ago, my Mom starts going, 'Oh, Oh, Oh, Oh!' Erica puts a hand behind her back and groans. 'She walked around the house for, like an hour, 'Oh, oh, oh!' (Now this kid is doing a hysterical duck walk and groaning.)

'My Dad called the middle wife. She delivers babies, but she doesn't have a sign on the car like the Domino's man. They got my Mom to lie down in bed like this.' (Then Erica lies down with her back against the wall.) And then, pop! My Mom had this bag of water she kept in there in case he got thirsty, and it just blew up and spilled all over the bed, like psshhheew!'

(This kid has her legs spread with her little hands miming water flowing away. It was too much!)

Then the middle wife starts saying, 'push, push,' and 'breathe, breathe.'

They started counting, but never even got past ten. Then, all of a sudden, out comes my brother. He was covered in yucky stuff that they all said it was from Mom's play-center, so there must be a lot of toys inside there. When he got out, the middle wife spanked him for crawling up in there in the first place.'

Then Erica stood up, took a big theatrical bow and returned to her seat.

Source: Flashlight 174

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