121
春季
Spring
2018

Institute of Seatransport
海 運 學 會

SEAVIEW
海運季刊

JOURNAL OF THE INSTITUTE OF SEATRANSPORT

ICSHK Column -
MARPOL Annex VI – Exhaust Gas Cleaning Systems – Are SOx Scrubbers for high Sulphur fuel effective solution for IMO 2020 fuel requirements.

New U.S. Ninth Circuit Decision Allows Punitive Damages for Unseaworthiness

VALLES STEAMSHIP CO., LTD.

www.vallesgroup.com

HONG KONG

Valles Steamship Co., Ltd.
Room 6810-11, 68th Floor, The Center,
99 Queen's Road Central, Hong Kong.
Telephone: (852) 2877-9189
Facsimile: (852) 2868-4014
E-Mail: hongkong@vallesfleet.com

CANADA

Valles Steamship (Canada) Ltd.
#1160 Guinness Tower,
1055 West Hastings Street,
Vancouver, B.C. V6E 2E9 Canada.
Telephone: (604) 687-3288
Facsimile: (604) 687-0833
E-Mail: vancouver@vallesfleet.com

JAPAN

Valles Steamship Co., Ltd.
4-16-7-101 Nakameguro,
Meguro-Ku,
Tokyo 153-0061 Japan.
Telephone: (81-3) 5721-8981
Facsimile: (81-3) 5721-8983
E-Mail: tokyo@vallesfleet.com

CHINA

Valles Steamship Co., Ltd.
Shanghai Representative Office
Room 1603,
Shanghai Times Square Office Building,
93 Huai Hai Zhong Road, Shanghai 200021 China.
Telephone: (88-21) 6445-9993
Facsimile: (86-21) 6472-0893
E-Mail: shanghai@vallesfleet.com

香港船舶註冊處
HONG KONG SHIPPING REGISTRY

- 以優質及良好服務著稱的世界級船舶註冊
  A world-class shipping register with a reputation for excellent quality and service
- 船舶註冊總噸位超越 1.15 億，位列世界五大排名之內
  One of the world's top 5 registers
  The registered gross tonnage has exceeded 115 million
- 簡易使用程序及全年無休服務
  User friendly and round the clock, 365 days service
- 建基香港，放眼世界
  Based in Hong Kong with world vision

Marine Department
Government of the Hong Kong Special Administrative Region

香港特別行政區政府
海事處

Enquiries:
Hong Kong Shipping Registry,
Marine Department, HKSARG
3/F, Harbour Building, 38 Pier Road, Central, Hong Kong
Tel: (852) 2852 4387 Fax: (852) 2541 8842
Email:hksr@mardep.gov.hk Website:http://www.mardep.gov.hk

查詢：
香港船舶註冊處
香港特別行政區政府海事處
香港中環統一碼頭道 3 8 號海港政府大樓 3 樓
電話：(852)2852 4387 傳真：(852)2541 8842
電郵：hksr@mardep.gov.hk 網址：http://www.mardep.gov.hk

With JLT, we sleep well and trade in safe waters.

Client first, always.

JLT is one of the world's largest providers of insurance, reinsurance and employee benefits related advice, brokerage and associated services. Our client proposition is built upon our deep specialist knowledge, client advocacy, tailored advice and service excellence. Together, we place our clients first, champion independent thinking and expect to be judged on the results we deliver.

JLT has offices in 39 territories with some 9,000 employees supported by the JLT International Network enabling us to offer risk management and employee benefits solutions in over 135 countries."

For more information, please contact:

HONG KONG	Helen Tang	+852 2864 2658
	Alex Poon	+852 2864 8928
GUANGZHOU	Fiona Song	+8620 6681 4869
SHANGHAI	Mary Ma	+8621 6058 2128
ASIA PACIFIC	Darren Rowland	+852 2864 2610
MIDDLE EAST	Mark Cracknell	+44 (0)20 7558 3816
LONDON	Nick Berry	+44 (0)20 7558 3516
NORTH AMERICA	David Leitch	+1 604 640 4260

✉ jltcmr_marine@jltasia.com

www.jltasia.com

Risk and Insurance – Broking | Consultancy | Claims Management | Specialist Products

We serve. We care. We deliver.

JLT

Contents

目錄

SEAVIEW 海運季刊

通訊地址：香港上環干諾道中 152-155 號 招商局大廈 16 樓 1605-7C 室
香港郵政總局信箱 6081 號
電話：(852) 2581 0003　*傳真*：(852) 2581 0004
網址：wwww.seatransport.org
電郵：info@seatransport.org

Honorary Presidents of the Institute :
Dr. H.Sohmen, Mr. Frank Tsao, Mr. C.C. Tung, Mr. Tsui Shung Yiu, Mr. Du Bao Ming, Mr. Andrew Chen, Mr. Frederick Tsao, Mr. Kenneth Koo, Mr. Stephen Pan, Mr. David Koo, Mr. Su Xin Gang, Mr. Edward Cheng, Mr. Gao Yan Ming, Mr. Wu Chang Zheng, Mr. Li Hua, Ms. Sabrina Chao, Mr. Lau Hoi

2016/2018 Executive Committee Members are as follows :

Chairman	: Wong Tak Chiu, Raymond	Secretary *(English)*	: Lee Hing Wai, Henry
Vice Chairman *(Internal Affairs)*	: Lam Ming Fung, Lothair	Secretary *(Chinese)*	: Feng Jia Pei, Gilbert
Vice Chairman *(External Affairs)*	: Wong Mo Yiu, Gary	Treasurer	: Chu Chi Tung, Peter
Vice Chairman *(General Affairs)*	: Li Yiu Kwong, Stephen		

Other Executive Committee Members : Chan Kam Wing, Chan Yin Ting Amy, Chan Ming Shun Rocky, Cheng Duen Lam Simon, Cheung Pui Ching Vivian, Lau Yui Yip Joseph, Leung Wing Shun Basil, Ng Che Kan Deforest, Shum Yee Hong, Tai Sik Kwan, Tsang Chiu Ming, Wu Ming Eric, Yip Tsz Leung.
Legal Adviser : Rosita S.Y. Lau

Editorial Board :
Lam Kit, Li Yiu Kwong, Gilbert Feng, Raymond Wong, Jimmy Ng, Wong Chi Chung, Tai Sik Kwan, Jon W. Zinke, Paul Apostolis, Brenda Chark, Barry Chen, Joseph Lau, Vicky Yip, Cheung Ka Wan, Eric Wu, Peter Fei.

"SEAVIEW" is the official quarterly journal of the Institute of Seatransport and is distributed free of charge to all members of the Institute and related organisations. No part of this publication may be reproduced in any form without the written permission of the publishers. The Journal of the Institute of Seatransport is a leading scholarly journal in the English and Chinese languages on maritime and shipping affairs in Greater China. All contributions are refereed. All opinions or views stated in "SEAVIEW" are those of the respective authors and do not necessary reflect the views and opinions of the editor or publishers. No responsibility can be accepted for any errors or omissions.

Not for sale *©copyright reserved*

Correspondence Address: Room 1605-7C, China Merchants Building, 152-155 Connaught Road C, H.K. G.P.O. Box 6081, Hong Kong
Telephone : (852) 2581 0003
Fax : (852) 2581 0004
Website : **www.seatransport.org**
E-mail : **info@seatransport.org**

承印：鴻潤印刷公司
地址：香港九龍旺角西海庭道 8 號 富榮花園 12 座 7 樓 K 室
電話：(852) 2552 7008
傳真：(852) 2552 6384
電郵：hungyuenprinting@gmail.com

Printed By : Hung Yuen Printing Press
Address : 7K, Block 12, Charming Garden, 8 Hoi Ting Road, Mongkok West, Kowloon, Hong Kong.
Telephone : (852) 2552 7008
Fax : (852) 2552 6384
E-mail : hungyuenprinting@gmail.com

Law Column - "Act" Does Not Require "Fault" Under Clause 8(d) Of ICA 1996

Rory Macfarlane

The recent English Court of Appeal case The MV "Yangtze Xing Hua" [2017] EWCA Civ 2107 reaffirms the view that the word "act" in the phrase "act or neglect" in Clause 8(d) of the Inter-Club Agreement ("ICA") does not need to be a culpable act which basically means act with fault.

• Facts

The Owners of the MV "Yangtze Xing Hua" ("Vessel") chartered the Vessel to the Charterers for a time charter trip carrying soya bean meal from South America to Iran. The charterparty, dated 03 August 2012, was on amended NYPE form and incorporated ICA 1996 version. The Vessel arrived off the discharge port in Iran in December 2012, but was ordered by the Charterers to wait off the discharge port for over 4 months due to Charterers' own commercial reasons. The cargo (or part of it) started to overheat. When the Vessel was eventually brought alongside and discharged her cargo in May 2013, damage was found and a claim was made against the Vessel for €5 million which was settled in the sum of €2,654,238. The Owners claimed that amount together with hire in the sum of US$1,012,740 from the Charterers.

It was common ground that liability was to be settled in accordance with clause 8(d) of the ICA, which provides that –

> "(8) Cargo claims shall be apportioned as follows:
>
> ...
>
> (d) All other cargo claims whatsoever (including claims for delay to cargo):
>
> 50% Charterers
>
> 50% Owners
>
> Unless there is clear and irrefutable evidence that the claim arose out of the act or neglect of the one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim." [Emphasized by author]

The tribunal rejected all the allegations made against the Owners and their crew and also held that the Charterers were not "in breach or at fault or 'neglect' in loading the cargo, albeit that what in fact they loaded, together with the instructions to wait outside the discharge port, was in all probability the cause of the damage..."

In considering the application of clause 8(d), the tribunal held that "act" was to be distinguished from something suggesting fault, breach or neglect. The tribunal concluded: "Either Owners or Charterer must bear the risk of something going wrong caused, on our analysis by Charterers' decision to not only protect their position but we sense actually profit from it. We can but conclude that this is a case where the ICA must regard Charterers' decisions as an 'act' falling within clause 8(d) and bear 100% of the consequences."

• Charterers' Appeal

Charterers appealed to the English Commercial Court against the arbitration award, on the grounds that the tribunal's construction of "act" was wrong. Charterers submitted that "act" means "culpable act" and that phrase "act or neglect" compendiously means "fault". Since Charterers were not at fault in instructing the Vessel to wait, they shall only bear 50% of the consequences, not 100%.

• The Commercial Court Decision

Mr Justice Teare of the English Commercial Court rejected Charterers' above argument and dismissed the appeal.

Mr Justice Teare agreed that there can be certain contexts where in the phrase "act or neglect", the meaning of "act" will take its colour from "neglect", meaning that concept of fault will be introduced to "act" since it is already in "neglect", but in the present case this does not happen[1]. The meaning of "act or neglect" in clause 8(d) of the ICA 1996 must depend on its context and it must be construed having regard to the language of the ICA as a whole[2]. Clause 8(a) to (d) are all factual enquiries[3]. Since clause 8(a) and (b) focus upon the factual cause of a cargo claim rather than upon the question whether a party has been at fault, one would not expect clause (c) and (d) to require proof of fault[4]. Although "neglect" can sensibly only mean a failure to do what the relevant party ought to do, by contrast "act" can sensibly mean any act whether culpable or not, which is its ordinary and natural meaning[5]. In this regard, the judge rejected Charterers' argument that "act" under clause 8(d) shall be coloured by the word "neglect" so that it can only refer to culpable act.

Interestingly and importantly, Mr Justice Teare also found that the "act" shall not be coloured by "neglect" nor by "pilferage" in clause 8(c). He writes –

"Nor do I regard the mention of "pilferage" in clause 8(c) as requiring "act" to be used only in the sense of act amounting to fault, notwithstanding that pilferage must involve fault in the form of theft. I accept that the words "neglect" and "pilferage" connote fault but they should,

in my judgement, be properly regarded as exceptions to the overall scheme of clause 8 which, as I have already said, envisages a "more or less mechanical apportionment of liability" without any need to investigate questions of fault. If, as I consider, they are exceptions to the overall scheme of clause 8 they would not reasonably be understood as requiring "act" to bear a meaning inconsistent with that overall scheme."[6]

Charterers further appealed to the Court of Appeal.

• The Court of Appeal Decision

Three judges in Court of Appeal, namely, Lord Justice Longmore, Lord Justice Hamblen, and Lord Justice Henderson, unanimously upheld the decisions of the tribunal and the Commercial Court, and dismissed Charterers' appeal.

The Court of Appeal held that construing "act" as not requiring fault is not inconsistent with sub-clauses (a) and (b) and does not cut across them[7]. LJ Hamblen helpfully summarized his view in Paragraph 27 of the judgment as follows –

"27. I agree that the appeal should be dismissed for the reasons given by Longmore LJ. In particular:

(1) The natural meaning of the word "act" is something which is done. It does not connote culpability.

(2) "Neglect" does connote culpability. Whether this colours the meaning of "act" is largely a matter of context, as is illustrated by the case law.

(3) The general context of the "archaeology" of the ICA does not assist. On any view, the 1996 ICA involved substantial redrafting of and changes to the ICA.

(4) The specific context of the other apportionment provisions of the ICA does not suggest that culpability is required since, in various circumstances, they apply regardless of culpability. For example, claims "in fact arising out of ":

(a) "unseaworthiness" under clause 8(a) are 100% for Owners' account regardless of whether there was a failure to exercise due diligence by Owners, their servants or agents or other culpable fault.

(b) "error" in navigation or management of the vessel under clause 8(a) are 100% for Owners account under clause 8(a) even if no negligence or culpable fault is involved.

(c) "loading, stowage, lashing, discharge, storage or other handling of the cargo" are 100% for Charterers' account under clause 8 (b). No mention of fault is made. Even if the reference to a failure to do so "properly" (in the proviso to the 50%/50% division where the words "and responsibility" are added) governs the meaning of the main part of the clause, it is referring to a state of affairs rather than culpable fault.

(5) The critical factual question under clause 8 is that of causation. Does the claim "in fact" arise out of the act, operation or state of affairs described? It does not depend upon legal or moral culpability, nor is there any stated or obvious criterion against which such culpability is to be judged.

(6) This does not result in uncertain and difficult issues of causation. Causation is always central to the operation of the ICA when proof "in fact" is required. The issue of causation is the same whether one is considering the consequence of an identified act or an act of neglect, although proof of effective causation may be more difficult.

(7) Nor does it lead to unacceptably wide liability. Causation is an important limiting factor, as is the need for "clear and irrefutable evidence". Further, clause 8(d) is a sweep up provision which only applies where there is no apportionment under clause 8(a), (b) or (c)."

• Comments

This case has helpfully clarified the meaning and scope of the word "act" under clause 8 of ICA 1996, which shall mean any act including culpable and non-culpable act, although the word "neglect" by its natural meaning requires fault and so does the word "pilferage".

Charterers who are bound by similar terms shall be aware that their decisions, orders, or instructions given to the owners or the vessel, even without fault, can also constitute a kind of act which under such similar terms may lead them to bear the entire loss, expenses or costs under the relevant cargo claims.

Further, as the mechanism of apportionment of cargo claims under the ICA is based on causation and proof of facts, it is of obvious importance for both owners and charterers to ensure that all relevant evidence are well preserved.

1. *[2017] 1 Ll. Rep. 213, at Para [15]*

2. *[2017] 1 Ll. Rep. 213, at Para [16]*

3. *[2017] 1 Ll. Rep. 213, at Para [18]-[21]*

4. *[2017] 1 Ll. Rep. 213, at Para [22]*

5. *[2017] 1 Ll. Rep. 213, at Para [23]*

6 . *[2017] 1 Ll. Rep. 213, at Para [23]*

7. *[2017] EWCA Civ 2107, at Para [19]*

(Rory Macfarlane: Partner, Hong Kong INCE & CO International Law Firm)

表見代理中“合理信賴” 審查分析[1]

戴一

【案號索引】

前案：
一審判決：（2014）廣海法初字第 161 號
二審判決：（2014）粵高級法民四終字第 211 號
再審裁定：（2015）民申字第 2380 號

本案：
一審判決：（2015）廣海法初字第 896 號
二審判決：（2016）粵民終 1651 號
再審裁定：（2017）最高法民申 2644 號

【案情簡介】

前案：2013 年 9 月 25 日，卡士公司委托德迅深圳分公司安排集裝箱運輸事宜。隨後，德迅深圳分公司將貨物運輸事宜轉托德聖深圳分公司負責。10 月 3 日，貨物裝船，德聖深圳分公司簽發了德翔公司為抬頭的海運單，並在簽章處注明德聖深圳分公司作為承運人德翔公司的代理人簽發。後因貨物一直未能實際交付收貨人，卡士公司於 2013 年 12 月 24 日向法院起訴德迅公司、德迅深圳分公司、德聖公司、德聖深圳公司，請求法院判令德迅深分公司和德聖深圳分公司連帶承擔賠償責任，德迅公司和德聖公司承擔補充清償責任。該案經廣州海事法院、廣東省高級人民法院及最高人民法院審理，三級法院均認定：德迅深圳分公司作為承運人應對卡士公司的索賠承擔責任，德迅公司承擔補充清償責任。

本案：德迅深圳分公司相應賠償款項被法院凍結劃撥後，向法院提起追償之訴，請求法院判令德聖深圳分公司，德翔公司賠償德迅深圳分公司相關損失及利息和案件訴訟費用。

【爭議焦點及審判結論】

本案主要爭議焦點在於德迅深圳分公司在轉委托運輸合同中的地位。

廣州海事法院根據一系列單據記載、德迅深圳分公司在在前案再審申請書中的主張以及德迅公司與藍錨船務公司之間代理協議的內容，認定藍錨船務公司和德翔公司之間成立本案海上運輸合同法律關系，德迅深圳分公司僅為托運人藍錨船務公司的代理人，沒有訴權。

德迅深圳分公司不服一審判決，提起上訴。廣東省高級人民法院二審認為，在德聖深圳分公司、德翔公司無法提交可證明德迅深圳分公司與其交涉時曾持有藍錨公司委托德迅深圳分公司作為代理人的代理合同或其它披露代理關系的相關證據的情形下，僅憑海運中關於“德迅深圳分公司，作為藍錨公司的代理” 的記載，並不足以認定德聖深圳分公司系藍錨公司代理人的合理信賴，德迅深圳分公司不構成表見代理人。並且，德迅深圳分公司明確否認其在本案運輸合同中系藍錨公司的代理人，根據海運單及本案現有證據，尚不足以證明藍錨公司與德迅深圳分公司之間就本案貨物運輸事宜形成代理關系，故德迅深圳分公司系本案運輸合同情托運人。

最高人民法院經審查認為，雖然案件涉海運單樣稿和海運單托運人記載為“德

迅深圳分公司，作為藍錨船務公司的代理”，但就本案當事人之間的貨物運輸合同糾紛而言，德迅深圳分公司有權依據海運單記載的內容，**以自己的名義作為托運人**提起訴訟並主張相關權利。

【案件評論】

本案系筆者代理的案件。前案與本案各經三級法院審理，總耗時四年之久，最後實現全額追索，維護了當事人的合法權益。在取得令人滿意結果的同時，本案中牽涉的代理關系 (尤其是表見代理問題) 值得研究分析。

本案二審中，關於德迅深圳分公司在轉委托運輸合同中的地位，廣東省高級人民法院作出與廣州海事法院不同判決的主要理由在於德迅深圳分公司在案運輸事宜轉委托過程中不構成表見代理，因而認定德迅深圳分公司為案涉運輸合同的托運人而非托運人的代理人。表見代理關系是否成立，是判斷德迅深圳分公司在案涉合同中地位的重要因素，而作為表現代理構成要件之一的“合理信賴” 的審查又成為本案判斷表見代理關系是否成立的關鍵。合理信賴即相對人有正當理由信賴該無權代理人有代理權。，關於“合理信賴” 的審查重點在於**舉證責任分配、與證程度及依據**。

第一， 就舉證責任分配而言，《關於當前形勢下審理民商事合同糾紛案件若干問題的指導意見》(2009 年) 第十三條作出了明確的規定，即合同相對人主張構成表見代理的應當承擔舉證責任。在本案中，二審法院將德迅深圳分公司構成表見代理的舉證責任分配於相對人德聖深圳分公司、德翔公司，于法有據。

第二， 相對人不僅應當就無權代理人有被授予代理權至外表或假象進行舉證，還應證明其有正當理由相信該外表或假象。本案中，法院認為相對人僅憑海運單中的記載並不足以證明其具有正當理由相信德迅深圳分公司具有代理權。而依據最高院《審理民商事合同案件指導意見》(2009) 第 14 條的規定，應當結合合同締結與履行過程中的各種因素綜合判斷合同相對人是否盡到合理注意義務，此外還要考慮合同的締結時間、以誰的名義簽字、是否蓋有相關印章真偽、標的物的交付方式與地點等各種因素，做出綜合分析判斷。具體到本案中，德聖深圳分公司、德翔公司作為謹慎的承運人應在接受訂艙時要求德迅深圳分公司提供代理合同以便對其代理人身份進行核實，故在德聖深圳分公司和德翔公司未證明其核實過代理信息的情況下二審判決是正確的。筆者對此深表贊同，因為本案訂艙確認書與海運單上記載的德迅深圳分公司的身份不同，承運人應在接受訂艙時對德迅深圳分公司的身份盡到謹慎審查的義務。

雖然最高院就本案表見代理中的合理信賴問題未作進一步分析略有遺撼，但其對於本案的最終審查認可了二審判決的結論。鑒於厘清代理關系對於航運業的健康有序發展至關重要，表見代理的特殊性在於其表象與真實法律關系的不一致，而“合理信賴” 又是判斷表見代理關系是否成立的重點，筆者希望通過分享本案，能對業界處理此類案件提供有益參考。

[1] 實習生陳健洪對本文亦有貢獻。

(戴一：高級律師)

ICSHK Column -
MARPOL Annex VI – Exhaust Gas Cleaning Systems – Are SOx Scrubbers for high sulphur fuel effective solution for IMO 2020 fuel requirements.

Munish Khatri

MARPOL Annex VI Regulation 14 - Sulphur Oxide (SOx) emissions from ships

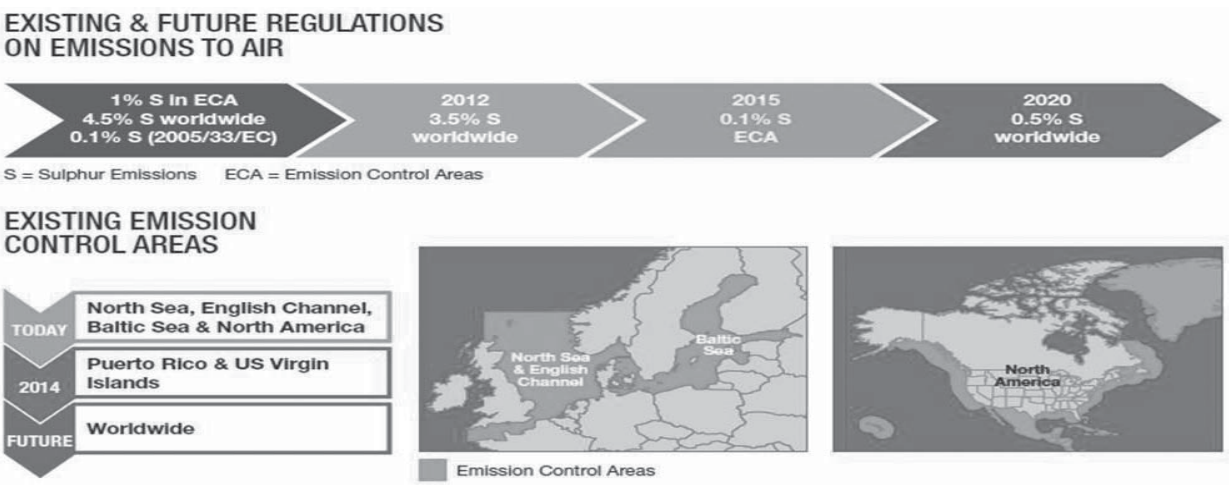
Sulphur content of any fuel used on board ships shall not exceed:

- 0.1% m/m in Emission Control Areas from 1 January 2015

Global limits

- 3.5% m/m on and after 1 January 2012;

- 0.5% m/m on and after 1 January 2020* unless fitted with Exhaust Gas Cleaning System (EGCS)



Options for compliance from 1 January 2020

1) Low Sulphur fuel oil (either distillate fuels LSMGO or residual fuel with UL Sulphur or blended fuels).

2) Exhaust Gas Cleaning Systems – SOx Scrubbers

3) LNG as fuel

Conclusion

1) Out of all available options, operating with **UL SFO or LSMGO are the best option available as of date**.

   a) Avoids the need of major conversion of fleet with retrofit of Scrubbers (uncertain investment with uncertain availability of 3.5% HSFO) with huge Capex of $2.8~3.5 million and Opex of $250,000 ~300,000 per annum.

b) The 2020 price differential of LSMGO is at US$244~266 with HSFO and 0.5% ULSFO is expected to be available from 2019.

c) Compliance with new Sulphur cap by switching to LSMGO in 2020 will require cleaning of all HSFO fuel tanks prior to use of new fuel, which will result in additional Environmental Expenses for ship owners.

2) With limited scrubbers installations in the marine industry (estimated 500 ships, 70% trading in ECA) so far, there is not much real time operating experience with scrubber systems on worldwide trading fleet and a big investment on untried and tested equipment is not wise.

a) **A wait-and-see approach** is most beneficial for ship owners, till a sizable merchant fleet installs the novel equipment.

b) Small order of EGCS at this time creates potential for greater price differential between HSFO & LSMGO due to increased demand of LSMGO in 2020, this may result in accelerated number of orders for EGCS as we approach 2020 when there will be greater clarity on the business case.

c) The problems with scrubbers today is that most of them have been lab tested, the data of actual results is yet to be gathered.

d) In early October 2017, major shipping lines such as Maersk and Clipper have made press release that scrubbers aren't an option and scrubber makers have announced their disappointment of the industry not embracing their solution and the poor sales of scrubbers at about 500 units till date.

e) However, this might change drastically if the bunker price differential is more than US$200 and scrubber unit prices come down with more demand in the marine industry in the coming years.

f) From 1 January 2020 onwards low Sulphur fuel can be used to comply with the 0.5% Sulphur cap for a year or two which will allow time to see if the installed scrubbers actually work and see how the prices move over time.

g) If scrubber retrofit is found to be beneficial later (subject to the availability and costs of 0.5% ULSFO and 3.5% HSFO), ship owners would be able to buy the latest, most efficient, tried and tested scrubber system from a financially solid manufacturer, at a reasonable price.

h) This price differential trend, availability of both 0.5% ULSFO and 3.5% HSFO in different trading area should be periodically reviewed for decision making on retrofitting Scrubbers.

i) There are several "known knowns" about the MARPOL Annex VI SOx compliance options, but there are few "known unknowns" and there are several "unknown unknowns" surfacing along the way.

j) Many think that industry will start adopting scrubbers from end of 2020, after the fuel prices and availability becomes clear.

3) Scrubber investment will be beneficial for vessels with remaining life of 15 years.

a) The 2020 forward fuel price differential is considered at $250 per mt for the life cycle cost analysis over 15 years and annual consumption of about 5800 mt per ship for Handysize & 7500 mt for Supramax bulk carrier is considered.

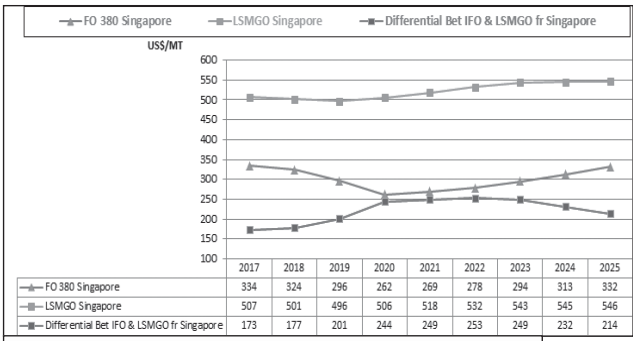
b) Vessel with fuel consumption of <5800 mt per annum has a negative Net Present Value (NPV) of the investment over 10 years, while the NPV is positive, when 15 year life cycle is considered on ships to fit EGCS technology.

c) Only Hybrid types of scrubber installations are beneficial with payback period of 2~3 years at forward fuel price differential of US$250 in the year 2020.

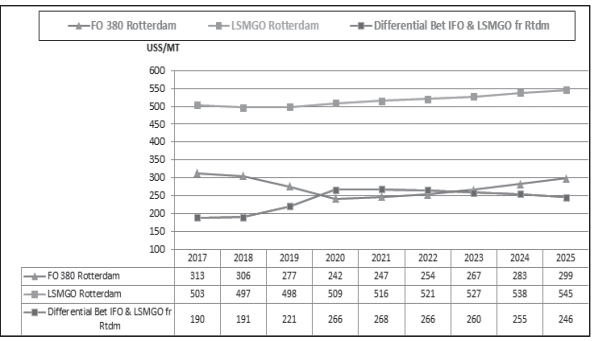
d) The threshold of fuel price differential is $140 pmt for different Hybrid scrubber investments to be beneficial for positive NPV during the life cycle.

4) The use of EGCS will not be a long term solution for shipping as the technology is unable to curb the release of carbon dioxide (CO2), a greenhouse gas emission that is also being closely watched by IMO and environmentalists.

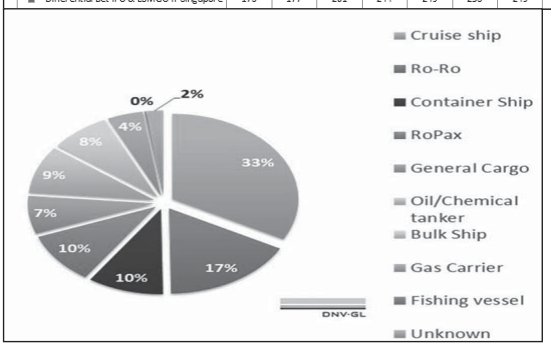
a) Industry experts believe that some of the ports might not sell bunker fuel above 0.5% as per IMO regulation from 2020 onwards and there is no mechanism at this stage to prevent cheating by vessels which have bunkered more than 0.5% Sulphur fuel on board that can be used at sea without scrubbing.



	2017	2018	2019	2020	2021	2022	2023	2024	2025
FO 380 Singapore	334	324	296	262	269	278	294	313	332
LSMGO Singapore	507	501	496	506	518	532	543	545	546
Differential Bet IFO & LSMGO fr Singapore	173	177	201	244	249	253	249	232	214



	2017	2018	2019	2020	2021	2022	2023	2024	2025
FO 380 Rotterdam	313	306	277	242	247	254	267	283	299
LSMGO Rotterdam	503	497	498	509	516	521	527	538	545
Differential Bet IFO & LSMGO fr Rtdm	190	191	221	266	268	266	260	255	246



500 Scrubbers fitted on various types of vessels in world fleet.

Evaluation of Options

1) Alternative fuels are yet to be developed by oil industry with commercially viable products.

2) Conversion to LNG as fuel on existing bulk carriers is not commercially viable, though it's feasible for New Buildings.

3) Retrofit of EGCS Scrubber units requires space and electric power on board besides huge capital investment and operating expenses on an on-going basis. Based on current assumptions on Capex, Opex and 2020 forward Bunker price differential (US$250) between 0.5~3.5% Sulphur bunkers, life cycle cost analysis over period of 15 years for Hybrid EGCS technology of different makers reveal a positive Net Present Value (NPV) of US$7 to 10 million and simple payback period is 3 years .

Benefits & challenges of scrubbers

Benefits	Challenges
Lower Fuel costs	Investment cost.
Greater fuel availability	- Novel equipment and system to be integrated into the ship's core operating procedures. - Wash water discharge controls to be met. - Additional space and power requirements. - Unclear interpretation of wash water criteria by various port states.

Operational issues

- Space and Weight.

- Waste generated in form of wash water and sludge.

- High power requirement to operate many components of scrubber system.

- Reliability - The various monitoring systems required will need to be reliable enough to operate continuously as required without undue maintenance demands. The same applies to the wash water treatment system components. Scrubber performance also needs to be guaranteed, operators need to have confidence that Annex VI requirements will be met 100% of the time.

- Handling of additional chemicals, additional maintenance and repair, additional manpower requirement.

- Additional waste stream management operations.

Costs consideration and Life Cycle Costs analysis

When choosing a scrubber system, the following factors should be taken into consideration.

- The initial cost of the scrubbing unit, including the raw material costs and the labour costs associated with installation (CAPEX)

- The price of fuel and the differential between low-Sulphur fuel (LSF) and heavy fuel oil (HFO).

- Availability of HFO once demand is substantially reduced. While fitting a scrubber and availing low HFO prices may be attractive for large ships with fixed trade routes, it may become challenging to source HFO for vessels with uncertain trading patterns.

- Operational profile of the ship.

- Maintenance and repair costs.

- Crew training and operating procedure, as the operation is complex there may be need to have additional manpower on the ship.

- Costs associated if the scrubber fails to function correctly due to a technical fault.

- Uncertainty and sensitivity factors – some factors cannot be predicted or controlled, such as future fuel prices, inflation and the influence this will have on the quantity of LSF or HFO consumed.

- The return on investment (ROI) which is directly related to the price differential between HFO and LSF.

- The downtime of the ship during installation.

- The disposal of the unit once its lifetime ends.

- Current ship design, including existing freshwater capacity, ship design layout, tank arrangement and available space.

Return on investment (ROI) and Life Cycle Cos Analysis (LCCA)

The ROI for scrubber systems is principally dependent on fuel price differential between LS fuel (distillate or blend) and HS fuel. While the price differential is expected to increase in the initial period after the regulation comes into force, it is likely to reduce in time as some vessels install scrubbers (particularly large consumers with fixed trading patterns) and refineries either upgrade to minimize residual output or are phased out.

When considering ROI, it is essential to consider the quantity of HFO burned when operating a scrubber versus the cost of fuel switching from HFO to LSF (distillates). Scrubber systems may not always be economically viable if the CAPEX and OPEX costs are larger than the cost of switching to LSF.

Therefore, investment on EGCS technology depends entirely on the fuel price differential and if in future the differential will remain at present level or drop below US$140 then the investment in this technology will be wasted and costs cannot be recovered.

Hence the best approach in the present market is to wait and see how this technology and related costs evolve in the future after 2020 and then take an informed decision later whether or not to fit scrubbers on ships.

(Munish Khatri: MICS-33166)

萬 邦 集 團
IMC Group

Founded in 1966, the IMC Group comprises companies with diverse interest worldwide. The major strategic business interests core to the IMC Group are in industrial supply chain and logistics solution services, which include shipping operations, ship management, crew management, newbuilding and consultancy services, marine and offshore engineering and infrastructure development, oil palm plantations besides investments, lifestyle and real estate development and a social enterprise.

The IMC Group owns and operates a fleet of bulk carriers, chemical/product tankers, offshore supply vessels, FPSO, Floating Loading Facilities, tugs and barges, logistic distribution center, warehousing, container terminal, ship repair and offshore yards.

The IMC Group has a major presence in Asia such as China, Hong Kong, Indonesia, Malaysia, Singapore and Thailand. In China, IMC has office branches in Beijing, Qingdao, Dalian, Lian Yungang, Nanjing, Suzhou and with controlling office in Shanghai. It also has offices in Australia, India, Japan, Korea, Myanmar, Philippines, South Africa, UAE, USA and Vietnam.

Contacts:
Suite 2802, Lippo Centre Tower 2, 89 Queensway Admiralty, Hong Kong.
Tel : (852) 2295-2607
Fax : (852) 2918-9808
Email : imcdm@imcgroup.com.hk
Website : www.imcgroup.info

THE INSTITUTE OF CHARTERED SHIPBROKERS

(REPRESENTING SHIPBROKERS, AGENTS AND MANAGERS)

FOUNDED 1911 : INCORPORATED BY ROYAL CHARTER 21 JANUARY 1920/SUPPLEMENTAL CHARTER 1984

"Setting the highest standards of professional service to the shipping industry worldwide through education and example".

Membership Qualifying Examinations are held in Hong Kong every April.
Exemptions from some exams are available.
Distance learning support via text book and
online tutoring is available to students.
Contact the Branch to register as a student.

Contact :
Honorary Secretary, Hong Kong Branch
Telephone : (852) 2866 1488
E-mail : examination@ics.org.hk
Website : www.ics.org.hk also www.ics.org.uk
FAQ : http://www.ics.org.hk/Examination_9.htm

有趣的航海問題二

林傑

1. 什麼是 Seaman like manner ？

做事要有頭有尾 – 在那 取用工具，用完後放回原處。

見到繩索隨處放，窩 (Coil) 好它，放好它。

Seamanship 船藝有很多種：

1. 車船 Navigation seamanship;

2. 做貨 Cargo Work seamanship;

3. 甲板工作 Deck Work seamanship;

4. 機艙工作 Engine Room Work seamanship.

2. 由天文台得知：

天氣慨況▼

本港地區今晚及明日天氣預測

大致多雲。早晚潮濕有霧及有一兩陣微雨。日間部分時間有陽光，天氣和暖。氣溫介乎 19 至 24 度。吹和緩偏東風，明日轉吹輕微至和緩東南風。

展望：

隨後兩三日天氣清涼及有幾陣雨。

什麼是輕微、什麼是和緩？

世界氣象組織訂下：

風速輕微即 2-3 級，和緩即 4 級。風的級數又如何？請看下表第一欄。

蒲福氏風級表

蒲福氏風級及名稱		平均風速		風速約等如熱帶氣旋警告信號	風速標準說明 (海面情形)	海上約略波高 (米)*
		節	公里 / 小時			
0	無風	< 1	< 2	—	海面如鏡	—
1	軟風	1~3	2~6	—	海面有鱗狀波紋，波峰無泡沫	0,1(0.1)
2	輕風	4~6	7~12	—	微波 — 明顯，波峰光滑未破裂	0.2(0.3)
3	微風	7~10	13~19	—	小波，波峰開始破裂，偶然出現零散白沫	0.6(1)
4	和風	11~16	20~31	—	小波漸高，波峰白沫見多	1(1.5)
5	清風	17~21	32~40	—	中浪漸高，波峰泛白沫，偶起浪花	2(2.5)
6	強風	22~27	41~52	3	大浪形成，白沫範圍增大，漸起浪花	3(4)
7	疾風	28~33	53~62	3	海面湧突，浪花白沫沿風成條狀吹起	4(5.5)
8	大風	34~40	63~77	8	巨浪漸升，波峰破裂，浪花明顯成條狀沿風吹起	5.5(7.5)
9	烈風	41~47	78~87	8	猛浪驚濤，海面漸呈洶湧，浪花白沫增濃，減低能見度	7(10)
10	暴風	48~55	88~107	9	猛浪翻騰浪峰高聳，浪花白沫堆集，海面一片白浪，能見度減低	9(12.5)
11	狂風	56~63	108~117	9	狂濤高可掩蔽中小海輪，海面全為白浪掩蓋，能見度大減	11.5(16)
12	颶風	64 或以上	>118	10	空中充滿浪花白沫，海面完全呈白色浪濤，能見度惡劣	14(—)

* 括弧內為約略最大波高

註：輪船的速度用節為單位，一節為每小時一浬。

3. GMT 和 UTC 有什麼分別？

太陽的格林威治時角迅速變化，天文航海需要準確觀測時間至秒數。如果沒有 GMT (又稱 UT)，可以使用 UTC (Coordinated Universal Time)，它是用原子鐘的。因為 GMT (UT) 是與地球旋轉速度有關，它逐漸慢下並不可預測。為了實用的理由，GMT (UT) 和 UTC 有意分開，需要保持 GMT (UT) 和 UTC 的差別不超過 ±0.9 秒，UTC 和 UT 會加入或不理會潤秒，它們自會相同。

4. 海圖基準面？

天文台是經過長期觀測，潮汐的水位不那麼容易低過的水平水位，水文局 (香港叫海道測量部) 便定此為海圖基準面，所有海圖上記載的水深是這基準面以下至海床的深度。因此潮高是零時便是海圖基準面。潮水高度為海圖基準面以上高度，以米為單位，海圖基準面在香港主水平基準面下 0.146 米，香港主水平基準面約在黃海基準面下 0.88 米。

(林傑船長，Master Mariner, F.I.S., M.H.)

Belt & Road Initiative and Hong Kong Logistics Opportunities

WONG Cho Hor

What is Belt & Road Initiative (BRI), formerly called One Belt One Road Initiative (OBOR), when it was first mentioned by President Xi Jinping in 2013?

OBOR was conceived as a "Strategy" rather than a "Policy". The concept was originally based on the ancient trading routes, the Silk Road (Belt) of the Tang Dynasty and the Maritime Silk Road (Road) of the Ming Dynasty (Zheng He) and the countries they passed through, as shown in Figure 1 in land and sea respectively. The Belt stretched from Southern China west across Central Asia, Asia Minor and ends at Levant, while the Road originated from Southern China and went to South East Asia, the Sub-Continent, Persian Gulf, Red Sea and East Africa, and continued on to the Mediterranean.

Figure 1. Belt & Road Map

The objective of OBOR as of its proclamation in 2013 was to enhance and improve the existing trade relationship and cooperation between countries of our globalized economy in an integrated political, economic, and cultural synthesis.

However, the extent of OBOR and the countries involved by 2013 had expanded on land from its 7th Century beginning of the Tang camel caravan routes to the rail links which stretches from Xian, through Central Asia, Iran, Turkey, Hamburg and Rotterdam (see Figure 2). By 2017 the rail link had extended to London.

The Road at that point in time was notionally still that of the Ming voyages, which starts from Fuzhou in China, through South East Asia, India, Sri Lanka, East Africa, Red Sea, and ends at Venice in the Mediterranean (see Figure 3).

Figure 2. The Silk Road (Belt-rail link)

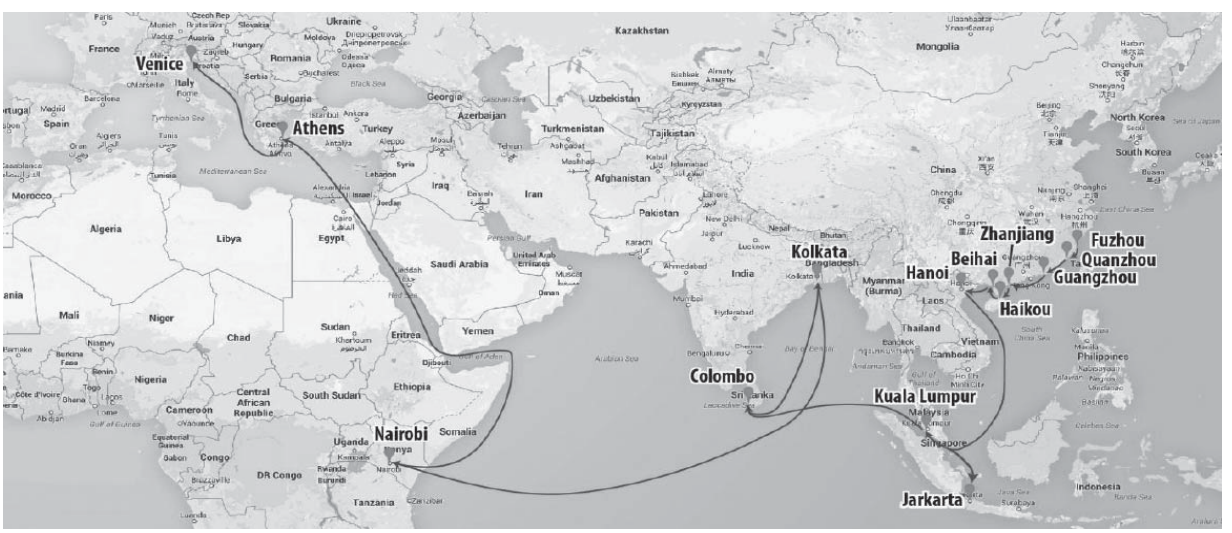


Figure 3. Maritime Silk Road (Road)

Up until 2016 the focus of attention on BRI was on the business opportunities it will offer, especially with the establishment of the Asian Infrastructure Investment Bank (AIIB) to assist in the impetus provided by the BRI. Nonetheless, the general wisdom was that the BRI was confined to the countries or region within the updated BRI (rail links), i.e. the area for the opportunities. This was the perception despite the fact the Road had extended far beyond the confines of the Mediterranean since maritime traffic from China has in fact most of the major ports on all continents, and getting further all the time.

OBOR was renamed the Belt and Road Initiative (BRI), which has the objective of promoting the ancient Silk Road Spirit which is defined by the National Development & Reform Commission on 28 March 2017 as **"peace and cooperation, openness and inclusiveness, mutual learning and mutual benefit"**, and it was officially used for the BRI Summit held in Beijing in May 2017.

In his visit to Scandinavia in April 2017, President Xi Jinping had stated that China would form strategic partnership with these countries through trade cooperation and cultural exchanges under the BRI umbrella. This effectively redefined the countries or regions covered by the BRI, that it has gone beyond the geographical confines of the Belt and Road as previously known or stated. BRI is now dependent upon the relationship between countries based on the BRI Triangle of Politics, Economics and Culture, principally trade. Through this the Road is now notionally global, where Chinese maritime activities exist.

At the 19th Plenum of the National People's Congress in October 2017, the status of the BRI was changed from "Initiative" to "Policy", which means that instead of being efforts to increase the trade and cooperation, China is committed to concrete actions or measures to achieve strategic partnership through this policy.

With the first two of the BRI Trilogy of Concept, Objective & Realization, examined, it is the turn of the hitherto little discussed "Realization". How can entrepreneurs and businesses, in Hong Kong, especially the logistics industry, access the opportunities presented by BRI as repeatedly proclaimed by the HK Government?

There had been numerous seminars, conferences and forums on BRI in Hong Kong, but apart from those on topical projects like the rail link to London or Kazakhstan, the ports in Gwadar, Piraeus, Venice and ASEAN, and the establishment of AIIB in support of the BRI, and the readiness of the Government to assist, no concrete methodology, system or channel for realizing the opportunities of BRI has been publicized or suggested. For example, what can a freight forwarding company in these days of integrated and intermodal logistics, involving air, sea and land, do to access any market under the BRI? It is clear to access any market or project you need to do some research, and small and medium sized firms may not have the expertise, and possibly the money, to do that. So does that mean that the BRI is only for the big firms or conglomerates?

Much has been said of the Great Bay Development Project with Hong Kong being included of that project. This is of course early days for this project, so we might hear more later how will this benefit Hong Kong.

On the question of how Hong Kong logistics industry can avail itself of the business opportunities offered by BRI, it is perhaps necessary to divide the industry into its constituent parts of air, sea (maritime) and land (road and rail). While the ex-Chief Executive Mr. C.Y. Leung was expounding his commitment to further develop Hong Kong as a maritime centre at the OBOR Conference during the visit of Mr. Zhang Dejiang to Hong Kong, he was in effect quoting the case of the development of the Hong Kong as an airfreight hub. So perhaps the priority is to find out what BRI means in terms of opportunities for Hong Kong logistics industry, and which sector.

Thus far the questions on BRI has been what it means and whether it will benefit the Hong Kong logistics industry, without addressing the fundamental issue of the human resources required to realize it.

For maritime logistics in Hong Kong, there is no lack of highly qualified specialists and experts who provide the various services, like lawyers and surveyors, or the academics or consultants who specialize in marketing research or econometric models for projects. However, there appears to be a dearth of executives who can assess the opportunities accorded by the BRI, because such evaluation process requires a macro view understanding of the political economy and cultural perspective required to access the opportunities of BRI.

In conclusion, if the BRI is to be realized for the benefit of Hong Kong logistics industry, it will be to find out from the Hong Kong Government what exactly the BRI will offer in terms of business opportunities, pursuant to what state regulations or policies, and how, if any, governmental assistance could be forthcoming, and through what channel, as the coordinating platform. The maritime industry, for example, will then hopefully be able to see more clearly the direction and prospects of development in the face of the current depressed circumstances it is in. Hong Kong has all expertise required to benefit from the BRI, but it will require the proper leadership from all sectors, governmental, academic and commercial, to do so.

Editor's Note: This article contains the essence of the BRI which will be the theme of the planned BRI Workshop Mini Series (BRIMS) in late June 2018, i.e. Concept, Objective & Realization. The Concept is the definition of the BRI, from its original OBOR to the present state policy decided at the 19th Plenum, the Objective the "Ancient Silk Road Spirit" (highlighted in bold in the article), and finally the Realization which is a programme of implementation involving the coordination between the authorities, the industry players including the professional services, as well as the long term education and training of personnel required, e.g. IMP workshops. Notice of the Workshop will probably be published in the next of the "Seaview".

(Wong Cho Hor: Director of Five Oceans Maritime)

New U.S. Ninth Circuit Decision Allows Punitive Damages for Unseaworthiness

Natalie Lagunas / Philip Lempriere / Al Peacock / Glen Piper

New Ninth Circuit Court of Appeals Decision Allows Punitive Damages for Seamen's Unseaworthiness Claims in Personal Injury Actions

In *Batterton v. Dutra Group*, the United States Court of Appeals for the Ninth Circuit held that punitive damages are available to injured seaman in general maritime unseaworthiness actions. The Ninth Circuit relied on both the U.S. Supreme Court decision in *Atlantic Sounding v. Townsend*, and on its own previous decision in *Evich v. Morris* where the court held punitive damages were available under general maritime law for claims of unseaworthiness, and for failure to pay maintenance and cure. In rejecting the reasoning of the Fifth Circuit's *McBride v. Estis Well Service* ruling, the Ninth Circuit emphasized that the U.S. Supreme Court in *Miles v. Apex Marine Corp.* did not specifically address punitive damages. The Ninth Circuit in Batterton affirmed the district court's decision and denied the defendant's motion to strike the prayer for punitive damages.

Batterton was decided shortly after the U.S. Supreme Court refused to hear a pair of cases that had split on this same issue. In *Tabingo v. American Triumph LLC*, the Washington State Supreme Court recently held that punitive damages are available in a seamen's general maritime law claim for unseaworthiness. (While Washington State is located within the geographic range of the Ninth Circuit, state courts deciding maritime law issues are bound only by U.S. Supreme Court precedent and not by decisions of the federal circuit courts of appeals or federal district courts.) The U.S. Supreme Court also refused to hear *McBride v. Estis Well Service*, the Fifth Circuit decision that found punitive damages are not available in an unseaworthiness claim. The Ninth Circuit's ruling in *Batterton* further splinters courts on this issue. The split will last for the foreseeable future because the U.S. Supreme Court's term has already been set for 2018. The conflict among the courts not only creates uncertainty for vessel owners and their underwriters in dealing with crew claims, but will also spur plaintiffs to increase their settlement demands in cases within the Ninth Circuit, which includes California, Oregon, Washington, Alaska and Hawaii.

Batterton Case Facts:

Plaintiff, Christopher Batterton, was a deckhand on a vessel owned and operated by defendant, Dutra Group. While he was working aboard the vessel, a hatch cover blew open and crushed his left hand. The hatch cover blew open because pressurized

air was being pumped into a compartment below the cover and the vessel had no exhaust mechanism to relieve the pressure that accumulated. Batterton claims the vessel was unseaworthy because it lacked any mechanism to safely exhaust the pressurized air.

The district court denied defendant's motion to strike Batterton's prayer seeking punitive damages for unseaworthiness, and defendant sought interlocutory appeal. The Ninth Circuit ruled solely on whether punitive damages can be an available remedy for unseaworthiness claims, and not on whether punitive damages *should be* awarded in Batterton's case.

The Ninth Circuit's Analysis:

The Ninth Circuit noted that in its 1987 decision in *Evich v. Morris*, the court had previously ruled that punitive damages are recoverable under general maritime law claims for unseaworthiness and for failure to pay maintenance and cure. That was a wrongful death case, but the court did not limit its finding to death claims.

The U.S. Supreme Court subsequently rendered its decision in *Miles v. Apex Marine Corp.* in 1990. In Miles, the Supreme Court ruled that non-pecuniary damages such as loss of society are not available in a general maritime law wrongful death action because the statutory remedy under the Jones Act for the death of a seaman is limited to pecuniary losses. Notably, the U.S. Supreme Court did not address punitive damages in *Miles*. Several courts, including the Fifth Circuit in the *McBride* case, have relied upon Miles to deny recovery of punitive damages in general maritime law actions on the basis that punitive damages are considered non-pecuniary. So the question for the Ninth Circuit in *Batterton* was whether *Miles* effectively overruled Evich to disallow punitive damages in injured seaman's unseaworthiness claims.

The Ninth Circuit noted that the U.S. Supreme Court held in *Atlantic Sounding v. Townsend* that punitive damages are generally available in general maritime law actions. Since Townsend was decided in 2009, nineteen years after Miles, the Ninth Circuit reasoned that the Supreme Court had implied in *Townsend* that punitive damages would be available in injured seamen's unseaworthiness actions, regardless of whatever restrictions Miles imposed in wrongful death actions on non-pecuniary damages.

The Ninth Circuit disagreed with the Fifth Circuit's reasoning in *McBride*, in which the *en banc* Fifth Circuit court held that punitive damages are non-pecuniary losses, and thus not recoverable under the Jones Act or under general maritime law. The Ninth Circuit acknowledged that *Miles* could arguably be read to limit the damages in an injured seaman's unseaworthiness claim to the same damages that would be recoverable under a Jones Act negligence claim, which would not include punitive damages. But the Ninth Circuit was not persuaded by the *McBride* majority. Instead they agreed with the McBride dissenters, who found that punitive damages are pecuniary, in that like all damages they are for money. But they are not for loss or to compensate the

claimant. Punitive damages are awarded to punish and deter. Thus, the Ninth Circuit concluded that punitive damages are not affected by *Miles'* bar on recovery of non-pecuniary losses.

For these reasons, the Ninth Circuit held that *Miles* and *Evich* are not in conflict. *Miles* did not disturb seamen's general maritime claims for injuries resulting from unseaworthiness, including a claim for punitive damages. Therefore, the Ninth Circuit affirmed the district court's denial of defendant's motion to strike the prayer for punitive damages. Thus punitive damages are available to seaman for their own injuries in general maritime unseaworthiness actions.

Conclusion:

With the clear split between the circuits and the Washington State Supreme Court, the issue of the availability of punitive damages in an injured seaman's unseaworthiness claim under general maritime law is ripe for the U.S. Supreme Court to decide. In the meantime, vessel owners and their underwriters will have less to worry about with their crew member litigation in the Fifth Circuit than they do in the Ninth Circuit. Only time will tell how it ultimately turns out.

(Natalie Lagunas, Philip Lempriere, Al Peacock and Glen Piper of Keesal, Young & Logan)

香港海事保險業簡介

李國霖

為什麼要海事保險

海事保險推動經濟貿易，保障財物財產和責任風險。

香港海事保險業靈活多變，經過多個世紀的發展，今天的服務範圍已經十分廣泛 , 國際經驗豐富，其中包括貨物 , 船體積責任保險。 香港有 86 家本地和國際海事保險公司，另外，國際保賠協會 (IG P& I Clubs) 13 個成員協會當中，有 12 個在香港設有辦事處，是倫敦以外最大的服務群組。

全球約有百分之四十的遠洋船隊在亞洲管理，而香港註冊的船舶佔全球遠洋船隻總量約一成，是全球第四大船旗國，雖然香港註冊船舶數量如此之多，於香港市場交易的海事保險費則不足全球總額三百億美元的百分之一，這個數字已經包括貨物，船體積責任保險，但並不包括保賠協會。 這說明，香港的海事保險仍有很大增長空間。

國際保賠協會保障超過九成的全球貨船總載重噸位，在 2016 年產生約 40 億美元保險費。但實際情況是，大部份保賠協會於香港的辦事處本質上只是服務處或代表辦事處。如果能為這些協會提供多些鼓勵和優惠措施，是可以令它們轉型為承保商業和進行更多保費交易的業務。

香港作為世界領先的國際航運中心之一，海運服務業群提供予船東和航運業務多元化的服務包括船舶租賃、 船舶管理、船務經紀、海事法律服務、船舶融資和海事保險等。

過去數十年已有不同的國際海事保險專才和專家在香港設立辦事處，香港的海事保險業發展比其他地區包括新加坡和上海，還要悠久，國際經驗非常豐富。

香港是亞洲國際都會，藉著貨櫃碼頭、遊輪碼頭、機場和物流網絡等世界級運輸基建，香港發展成一個充滿活力的國際貿易中心，香港已準備好迎接未來更多的海事保險業務的發展。

國際海上保險聯盟 (IUMI) 於 2016 年 10 月宣佈在香港設立 140 年來德國總部以外的首個海外分支組織，開拓香港、 內地和亞太區海事保險市場，可見香港在國際海事保險業擔當重要的角色。

另外，為培育更多年青人才，香港保險業聯會與香港大學專業進修學院合辦「行政人員証書 (水險及運輸險)」課程，為有意入行的年輕人打好專業基礎。此課程為國際海上保險聯盟首個於亞洲認可課程。 香港海事保險業，加上一帶一路倡議的商機，前景無限！希望可以跟國內的航運與海事保險業有更多的合作和發展，共同進步。

(李國霖 (Timothy Lee) : Senior Underwriter, MS Amlin Asia Pacific Pte Ltd.)

AA TALK

Substituted Expenses in Particular Average on Ship?

Raymond Wong

The Institute organized an evening seminar on the subject "Substituted Expenses in General Average per York-Antwerp Rules" on 20th March 2018, a workshop in Hong Kong following the English Supreme Court's decision on "The Longchamp" case, which was reported in the last issue of "Seaview".

The Editor was not surprised to receive a question: "What about the substituted expenses in Particular Average ?".

It is worth recalling that the principle of substituted expenses is not generally recognized under English law, which position is, however, varied by the York-Antwerp Rules in the case of general average.

In the case of Wilson v. Bank of Victoria [1867] (which case pre-dates the York-Antwerp Rules), an auxiliary sailing ship, on a laden voyage from Australia to Britain, struck an iceberg and sustained damage, being dismasted. The ship put into Rio de Janeiro where, on account of the prohibitive cost of repairs, only temporary repairs were carried out allowing the ship to proceed to destination under steam with coal being purchased at Rio and at Fayal for such purpose. A claim was made by the Shipowners for contribution towards the cost of the coal purchased on the grounds that they were substituted expenses for the expenses that would have been incurred at Rio if permanent repairs had been effected there. The claim was disallowed by the court holding that the use of the auxiliary engine to bring the vessel home, and the consequent expenditure on coal, was merely the performance of a service by the Shipowners to the owners of the cargo carried and was therefore not a subject for contribution.

The Editor has some notes on the subject of "Substituted Expenses in Particular Average" made by his former partners and colleagues who are highly respected average adjusters and would like to share these with readers of "Seaview".

Particular Average, as defined by section 64(1) of the Marine Insurance Act 1906, is a partial loss of the subject matter insured caused by a peril insured against, and the measure of indemnity for the partial loss of ship is the reasonable cost of repairs, as provided by section 69 of the Act.

It is perhaps a fallacy to think that alternative means of repair are open to the Shipowners in circumstances where they are obliged (vis-à-vis their Underwriters) to effect repairs at the most reasonable cost. There may in theory be several ways in which a Shipowner can go about effecting a particular repair, but only one of those

ways can be the most reasonable. Once the most reasonable course of repairs is determined, the other alternatives cease to exist and it therefore follows that the course adopted cannot have been a substitution for another alternative.

This was the gist of Wilson v. Bank of Victoria, i.e. that for there to be a substitution an alternative must exist. It was held in that case that, in as much as the Master could, by the expenditure of a small sum on temporary repairs and coal, bring the ship safely to destination, it was his duty under the contract of carriage to do so. Consequently, the perceived alternative of landing the cargo and repairing at the port of refuge was not an alternative open to the Shipowner at all and it was therefore a fallacy to say that the cost of the coal (which the Shipowners were seeking to recover in General Average) was incurred in substitution for those measures. The principle can therefore be applied to Particular Average claims that, as the Shipowners are obliged to effect the most reasonable repair, the claim must be based on the actual cost thereof and not on the cost of some alternative prohibited from taking.

For Particular Average on ship, the test continues to be "the reasonable cost of repairs" and hence any cost which is not a repair cost cannot be allowed as part of the claim without the specific agreement of Underwriters. An example of a non-repair cost which Underwriters do agree to bear or contribute to, depending on the circumstances, is the cost of removal from one place of repair to another because the latter is cheaper. On the face of it, this appears to be no different to the situation where the Shipowners incur extra fuel costs, say by burning diesel instead of fuel oil, to get from a port of refuge, where repairs are expensive, to destination, where repairs are cheaper. However, in the first example, Owners have derived no operational benefit from the removal cost. That is not the case with the second example, where the voyage on which the extra operating costs have been incurred is a freight-earning voyage.

Mr. John Crump, in his address on "Reasonable Cost of Repairs" at the annual general meeting of the British Association of Average Adjusters in May 1992, highlighted a few interesting cases on which he commented as follows:

QUOTE

(A) A vessel has damage to her steering gear in an area where repairs are expensive. Class agrees that the vessel may continue to trade for a limited period until she reaches a cheaper repair area provided extra tugs are employed when entering and leaving ports.

(B) A vessel has a main engine damage and Class agrees a temporary repair until she reaches a more appropriate and cheaper repairing port. The repair adopted, however, involves burning diesel oil instead of the customary fuel oil during the interim period.

(C) Damage to a winch, or winches, is

sustained during discharge. Rather than effect repairs at the discharge port, which is an expensive one, equipment is hired to enable the affected hold(s) to be discharged, thus enabling the vessel to repair later at reduced cost.

In case (A) the assured claims for the cost of extra tugs, in case (B) he claims for the extra cost of diesel oil over fuel oil consumption and in (C) the claim is for hire of equipment for discharge. In each case the claim is based on the fact that the extra costs incurred saved greater repair costs for which Underwriters would otherwise have been liable. At the same time, I would submit that it is difficult, if not impossible, to argue that any of them in themselves form part of the cost of repairing the ship.

The only law case of which I am aware which is sometimes quoted as authority for applying the "substituted expenses" idea to insurance claims is Lee v. Southern Insurance (1870) LR5, CP397.

That case in fact involved not an insurance on ship but an insurance on freight and the facts were as follows:

A vessel was bound for Liverpool with a cargo of palm oil and stranded off the Welsh coast. Cargo had to be discharged and the Shipowner arranged to forward it by rail to destination at a cost in excess of £200, thereby earning his freight which was at risk. The vessel was then towed to Caernarfon, where she was made seaworthy for the rest of the voyage.

The forwarding costs were claimed under the freight policy, but the Court held that such claim must be limited to £70, which would have been the cost involved in reshipping the cargo onto the original vessel after repair.

The case thus involved a claim for particular or special charges, not a claim for particular average loss. I cannot see it as referring in any way to the "substituted expenses" concept, for the hypothetical reshipping costs of £70 were introduced solely as a test of the reasonableness or otherwise of the forwarding costs of £200. The older editions of Arnould report the facts of the case under the sub heading "Only reasonable expenses recoverable."

Reverting to the three practical examples already mentioned, I submit that as a matter of principle the unfortunate assureds have no remedy for recovery of any of their extra costs under the hull policies.

At first sight this stance seems a harsh one, even 'uncommercial'. In each instance a peril covered by the policy has operated and the assured has, as a direct consequence, incurred costs. As a result of his doing so Underwriters on the ship

have been saved money. Should they not respond on that basis?

It should perhaps first be pointed out that the assured too would almost certainly have saved substantial sums as a result of the actions taken. That, however, is not, in my view, the real point which is that the losses suffered by the assured as a result of incurring those extra costs relate to freight or earnings rather than hull insurance. If the freight was at risk and insured for the voyage on which these various expenses were incurred, I would suggest they would form a particular or special charge on the freight policy. That is their essential character and the fact that nowadays freight is frequently at the risk of the cargo owner rather than the Shipowner so that the latter will then seldom have appropriate insurance cannot alter that character.

Could I add one final point about this type of case. It will doubtless be argued that if the assured cannot recover this type of expense from his Underwriters he may on occasion seek to avoid incurring it and allow the latter to take the rap for the increased repair costs that result. I do not believe that argument to be realistic. Even in those cases, probably rare ones, in which the assured himself does not gain from adopting the practical and commercially sensible course, it must be remembered that the test of 'reasonableness' of the ultimate repair cost must still be applied and if the assured increases the latter cost solely to save additional costs of keeping his ship operational in order to protect his freight or earnings, that increase will not, strictly, be for account of Hull Underwriters.

I submit that the concept of substituted expenses, which under English law is of doubtful validity in any context, can certainly have no application to a claim for particular average on a hull policy.

UNQUOTE

The following are few common examples where the damages are caused by perils insured against, the insurances being subject to English law and practice:

Example 1.

Vessel sustains damage to stern-tube seals. There are 2 alternatives open to the Shipowner – an emergency drydocking which will be claimed in full from Underwriters, or deferment of repairs for 3 months which will involve additional consumption of lubricating oil but save 50% of drydock dues. Can the cost of lubricating oil be claimed from Hull Underwriters?

It is tempting to take the view that if it can be shown that Underwriters benefited from the extra consumption of the lube oil they should pay for it or contribute towards it. It is submitted that since the Shipowners

are obliged to effect repairs at the most reasonable cost, they do not, in reality, have the option of drydocking immediately. The extra consumption of lube oil is thus of no benefit to Underwriters – they were only ever liable for the cost of repairs as deferred and carried out in drydock. The excess lube oil consumption is not a repair cost – it is an extra or enhanced operational cost. There are no grounds for allowing it to Particular Average.

Example 2.

Vessel under Time Charter. Turbo charger breaks down in the South Atlantic. The vessel can continue to Santos but additional diesel oil will be consumed and will be charged by Time Charterers to Shipowners. The alternative is that the vessel could be towed to Santos. The vessel uses the extra diesel oil. At Santos repairs are deferred again but more additional diesel oil is claimed on the basis that repair costs would be cheaper if repaired later. Can the extra cost of diesel oil be claimed from Hull Underwriters?

Applying the same logic as in Example 1 above, there does not appear to be any ground that either the tugs or extra fuel getting to port could be charged to Underwriters. The second set of alternatives, once at the port, are effectively the same as in Example 1 and cannot be allowed to Particular Average.

Example 3.

Vessel's crankshaft condemned but the new crankshaft will take 6 months to supply. Instead the Owners grind down existing crankshaft as temporary repair. Temporary repairs result in following –

(i) additional manning required in engine room;

(ii) turbo charger requires more frequent cleaning;

(iii) additional consumption of diesel oil;

(iv) as a result of running out of balance, some fretting results in main engine.

Can these additional costs (i) to (iv) be claimed from Hull Underwriters?

Firstly, Underwriters should recognize that the sole purpose of the ship is to be a freight or revenue earning instrument. It is patently unreasonable to leave her out of commission for 6 months awaiting parts if, by way of a temporary repair, she can be quickly returned to employment with the permanent repair effected on delivery of the necessary parts. It follows therefore that the temporary repairs is in itself reasonable and forms a direct claim on Underwriters.

There is suggestion that where a temporary repair is reasonable, any extra

operating costs which is known will result direct from the temporary repair would be treated as part of the cost of that repair. However, it is submitted that whilst (ii) and (iv) can comfortably be allowed as Particular Average as they involve damage or quasi damage to the vessel, (i) and (iii) should be disallowed as they are merely the enhanced cost of running the vessel in semi-damaged condition.

Editor's Note: It is advisable that if claims are put forward at the request of the Assured, which are not in accordance with the law (and practice as it should be) then the Adjusters should seek prior agreement of the Underwriters before issuing the adjustment, making it clear to both parties what the position is.

(Raymond T C Wong: Average Adjuster)

招商局

CHINA MERCHANTS GROUP

Since 1872

招商局創立於一八七二年晚清洋務運動時期，是中國近代民族工商企業的先驅，在中國近現代化進程中起到過重要推動作用。

賴於幾代人的努力，現已成長為一個實力雄厚的綜合性大型企業集團。其交通運輸及相關基礎設施建設、經營與服務，金融資產投資與管理，房地產開發與經營等三大核心產業，在業內居領先地位。

集團總部位於香港，業務分佈於香港、中國內地、東南亞等極具活力和潛力的新興市場，被列為香港『四大中資企業』之一，在國際工商界有著廣泛影響。

www.cmhk.com

Aon Risk Solutions

Let DATA help GUIDE you THROUGH the risks

The marine industry is complex, occasionally volatile, constantly evolving and presents considerable risk. Aon's marine expertise is unique in the industry, providing comprehensive and flexible solutions for our clients' global operations. Aon's marine team in Asia consists of over 50 experts focused on providing risk solutions to the marine industry. With key hubs in Singapore, Beijing, Shanghai, Hong Kong, Taipei and Seoul, we deliver tailored marine solutions to some of the region's largest ship owners, shipyards, ports & terminals, manufacturers & traders and major construction projects.

Visit aon.com to learn more about Aon's marine team.

Risk. Reinsurance. Human Resources.

AON
Empower Results®