

131

秋季
Autumn
2020



Institute of Seatransport

海運學會

SEAVIEW

海運季刊

JOURNAL OF THE INSTITUTE OF SEATRANSPORT

An unfair game ? – Philippines crew claims

淺析中國香港旗船舶的品質保證制度



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, China
Telephone: (852) 2877-9189
Facsimile: (852) 2868-4014
E-Mail: hongkong@vallesfleet.com

VANCOUVER

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

MUMBAI

Valles Steamship India LLP
304/305 Oberoi Chamber II,
645/646, New Link Road,
Andheri West, Mumbai 400053, India
Telephone: (91-22) 6640 9050
Facsimile: (91-22) 2674 3300
E-Mail: mumbai@vallesfleet.com

SHANGHAI

Valles Steamship Co., Ltd.
Shanghai Representative Office
Room 1603, 16th Floor,
Shanghai Times Square Office Building,
93 Huai Hai Zhong Road, Shanghai 200021, China
Telephone: (86-21) 6445-9993 / 6472-1849
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 1.27 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 127 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 38 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>

目錄

3	Law Column -	Nicola Tune
	Smart Contracts: the smart way forward in logistics?	
10	Developing operational Digital Twins for safe and efficient Seatransport in the light of Covid modeling	Henry Chen
16	淺析中國香港旗船舶的品質保證制度	胡榮華
24	An unfair game ? – Philippines crew claims	Johnson Chiu
30	我使用雷達的一次經驗	林傑
31	Rejection of Cargo by Receivers – A Case Study on Cargo Contamination	Shirley Wu

SEAVIEW

海運季刊

海運學會名譽會長如下：

蘇海文先生 董建成先生 崔崇堯先生 杜寶明先生
程義先生 曹慰德先生 顧建綱先生 潘裕國先生
顧建舟先生 蘇新剛先生 鄭承忠先生 高彥明先生
吳昌正先生 李樺先生 趙式明女士 劉海先生
顧之灝先生

海運學會2018/2020 年度理事如下：

主席：王德超 秘書：馮佳培
副主席（內務）：張嘉尹 司庫：袁頌雅
副主席（外務）：鄭端霖
副主席（總務）：張迅文
其他理事：陳嘉豪、陳銘遜、陳燕婷、林港稀、
劉銳業、李耀光、呂金樑、蘇平治、
戴才彬、曾煒賢、溫再儒、胡明、
嚴文龍、葉子良

法律顧問：劉瑞儀

編輯委員會：

劉銳業、林傑、李耀光、馮佳培、王德超、伍占美、
黃治、戴錫崑、Jon W. Zinke、Paul Apostolis、
胡明、翟玉英、秦俊浩、葉殷碧、張嘉尹、費曉明、
溫再儒、黃祖河

本刊為海運學會季刊，免費寄與各會員及有關團體。未經
出版人書面同意不可以任何形式複製本刊物。本刊物是領導
學術期刊以英文和中文述及大中華的海事和航運事宜，所有
文章已經評核。本刊物所有文章只代表作者個人觀點或意見。
編輯委員會並不負責文章內容所引起的一切法律責任。本刊
所有文章，文責自負。 — 編輯委員會啟

非賣品

© 版權所有，不得翻載

通訊地址：香港上環德輔道中 259-265 號

海外銀行大廈 14 樓 1407 室

香港郵政總局信箱 6081 號

電話：(852) 2581 0003 傳真：(852) 2581 0004

網址：www.seatransport.org

電郵：info@seatransport.org

Honorary Presidents of the Institute :

Dr. H.Sohmen, 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, Mr. Wellington Koo

2018/2020 Executive Committee Members are as follows :

Chairman : Wong Tak Chiu, Raymond
Vice Chairman (Internal Affairs) : Cheung Ka Wan, Karen
Vice Chairman (External Affairs) : Cheng Duen Lam, Simon
Vice Chairman (General Affairs) : Cheung Shun Man, Manson
Other Executive Committee Members : Chan Ka Ho, Davin, Chan Ming Shun, Rocky, Chan Yin Ting, Amy
Lam Kong Hei, Yale David, Lau Yui Yip, Joseph, Li Yiu Kwong, Stephen, Lui Kam Leung, Stanley,
So Ping Chi, Tai Choi Pan, Anthony, Tsang Cheuk Yin, Joe, Wan Yim Yu, Brian, Wu Ming, Eric,
Yim Man Lung, Yip Tsz Leung.
Legal Adviser : Rosita S.Y. Lau

Editorial Board :

Joseph Lau, 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, Vicky Yip, Cheung Ka Wan,
Eric Wu, Peter Fei, Brian Wan Yim Yu, Wong Cho Hor.

"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 necessarily 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: Rm.1407, 14/F., OTB Building, 259-265, Des Voeux Road, C. Sheung Wan, 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

Printed By : Hung Yuen Printing Press

地址：香港九龍旺角西海庭道 8 號

Address : 7K, Block 12, Charming Garden, 8 Hoi Ting Road,
Mongkok West, Kowloon, Hong Kong.

電話：(852) 2552 7008

Telephone : (852) 2552 7008

傳真：(852) 2552 6384

Fax : (852) 2552 6384

電郵：hungyuenprinting@gmail.com

E-mail : hungyuenprinting@gmail.com

This article aims to provide an overview of what smart contracts are, their possible uses in the logistics industry and the legal implications of adopting them.

What are smart contracts?

A “smart contract”, just one of the many technologies which are spurring on the Industry 4.0 movement, lacks a set definition. The original definition given by Nick Szabo in 1996 was *“a set of promises, specified in digital form, including protocols within which the parties perform on the other promises”* which was based on an individual’s interactions with a vending machine. This definition has been modified over the years to reflect the current understanding of the capabilities of smart contracts. The Smart Contracts Alliance (a Chamber of Commerce initiative) recently defined smart contracts as: *“Computer code, upon the occurrence of a specified condition or conditions, is capable of running automatically according to prespecified functions. The code can be stored and processed on a distributed ledger and would write any resulting change into the distributed ledger.”*

As can be inferred from the above, smart contracts are essentially computer code which have the ability to auto execute specific functions and work by using a simple *“if x then y”* operating logic. For example, smart contract code can be written so that when it receives data confirming the consignment of cargo has been received by the buyer, this data is verified and the smart contract automatically releases payment which had been held in escrow to the seller.

The smart contract code can be stored and processed on a distributed ledger (for example on a blockchain) which means that identical copies of the code are kept on multiple computers in multiple locations. When one of the copies is updated, the information is verified before it is filtered through to the rest of the copies and if so coded, the smart contract carries out its function, such as registering a new owner of property.

Possible uses in the logistics industry?

Smart contracts and blockchain are being trialled in many different industries, from banking to property transactions. The nature of how smart contracts operate and their compatibility with the Internet of Things, lend themselves to being highly functional in the logistics industry. For example smart contracts could be used for:

- Letters of credit. Routinely used in the trade industry, smart contracts can provide an efficient solution for all parties involved. The transparency of blockchain allows all stakeholders (exporters, importers and financial institutions) access to view, track and digitally transfer Letters of Credit as required;
- Electronic bills of lading;
- Payment triggers. Sensors automatically notify the smart contract when a container has reached a predefined geographical location which has been agreed by the parties as the trigger for payment. The smart contract receives the information from the container, verifies it and releases payment from an escrow account to the seller;
- Inventory / distribution management. Again using smart contracts and GPS location sensors, each party in the supply chain can see what goods they have where. Whether this is a manufacturer seeing what stocks he has and where they are located, or a haulage company seeing how many client collections they have to complete, or a buyer knowing what is in his warehouse and when he needs to order more;
- Product tracing for consumers. With each consignment having its own tracking number and the ability to trace it through the supply chain from manufacturer to consignee, consumers can check to see if the products they are buying have been ethically sourced or are counterfeit (a particularly big problem in the pharmaceutical industry in developing countries);
- Real time cargo tracking through the supply chain. As part of the transparency achieved by smart contracts, this information would be available to all stakeholders. It is thought that this level of transparency would assist with cutting down port calls (and therefore demurrage) as these would be better timed. Customer expectations could be managed with early warnings of unforeseen events which could cause a delay; and
- Monitoring temperature sensitive cargo. Sensors attached to food products or the inside of reefer containers can constantly monitor the conditions in real time to ensure that they are kept as per the agreed contractual parameters.

All these practical applications of smart contracts seek to improve efficiency, reduce costs and provide a greater customer service through the whole supply chain.

Legal considerations

Smart contracts, however, should not be thought of in the traditional sense of the term “contract”, i.e. a set of legally binding obligations and rights of the parties to the contract. That said, if the requirements for a valid contract are contained in a smart contract, then there is nothing preventing it from being legally enforceable.

Under Hong Kong law, there are 5 elements which are required in order for a contract to be considered legally binding between parties. Namely; intent to be legally bound, offer, acceptance, consideration, and capacity to enter into a contract. The smart contract would need to capture all of these elements in order to be legally enforceable.

Consideration should also be given as to the law and jurisdiction which governs the terms of the smart contract. Smart contracts on a distributed ledger could have multiple copies in multiple jurisdictions. Unless agreed between the parties, the international nature of the smart contract could result in a conflict of laws dispute in the event an issue arose.

A legal contract between two parties often contains clauses which would not fit into the “*if x then y*” logic of a smart contract. Furthermore, some clauses in contracts are often drafted with deliberate vagueness so that they have a wide interpretation. These contractual nuances would not transfer into a smart contract, which very much relies on absolutes in order to function.

In light of these potential issues, there has been much discussion over the use of “hybrid contracts” where, for example, the obligations which are able to be coded are contained in the smart contract and those that require “human” interpretation in a natural language contract. Take for instance, an overarching master services agreement which contains clauses such as price increases to be discussed in good faith, with the operative parts (i.e. recording deliveries and executing payments) being contained in a smart contract. How the two will interact when it comes to a legal dispute is yet to be seen.

Are smart contracts the smart way forward?

The many advantages to using smart contracts are highly persuasive for their integration in to the logistics industry. However, the disadvantages of using technology that is still in the early development stage should not be overlooked. The table below provides a brief summary of the advantages and disadvantages of smart contracts.

Advantages

- Reduced costs

By digitally automating many of the paper-based functions and removing middlemen (e.g. brokers, warehouse verification workers etc.) the cost of transporting a cargo is considerably decreased. CargoX (an electronic bill of lading provider) estimates that the average paper bill of lading courier costs are USD 100 per document.

- Reduced errors

The use of real time distribution ledgers are thought to reduce human errors in documentation as they are verified by all parties involved and once added into the smart contract, cannot be changed. In addition, through the constant monitoring of the consignment any variations to the agreed terms of carriage can be picked up sooner rather than later.

Disadvantages

- New technology

Companies will need to check to see whether the existing technology they have is compatible with the new technology required to fully execute a smart contract. For example, is the freight forwarders' current container tracking equipment able to digitally interact with the smart contract code without any human interference? Or would it require a certain level of human input? If new technology is required, this could be an expensive up front cost. Furthermore, companies will need to bear in mind what the ongoing subscription costs for smart contract software would be.

- Code language

Smart contracts are written in computer code. This is a niche skill and one which most businesses will not have in house. Parties go to lawyers to draft contracts who are experienced and will ensure that the parties' intentions are accurately reflected. The contract can then be read by both parties to verify its contents. Computer code is a different language, and unless both parties are fluent in the code, then it is unlikely that the parties will be able to review this for themselves and ensure that it has captured the intended inputs and outcomes.

- Certainty

Smart contracts cannot be stopped once they have been added to the distributed ledger. This gives the various stakeholders comfort that once the pre-set conditions have been agreed the automated obligation will be carried out once the correct inputs are given. For example, once the cargo has reached the agreed location, the smart contract will automatically release payment to the seller from escrow which the buyer had put in at an earlier date. This provides certainty to the seller that they will be paid once they have completed their obligations, the buyer cannot delay payment by alleging faults in the sellers' performance.

- Reduced legal disputes

"The code is law" is the view of some technologists. The idea being that the smart contract will only carry out functions that it has been programmed to do. There is no human initiative to suddenly breach the contract as they no longer feel like complying with the obligations. It is also likely the information contained in the consignment documents are more accurate leading to less disputes between the parties.

- Inflexibility and limitations

Smart contract are often called immutable. I.e. what has been coded cannot be changed once the smart contract has been entered into the distribution ledger. Therefore if the parties change their mind at a later date, it is not possible to update the smart contract with a change in the conditions.

There are limitations on what a smart contract can be coded to do. As discussed above, the code works on a "if y then x" basis. Therefore, if the agreement between the parties allows for an adjustment of price that is to be negotiated at a later date, this cannot be coded into the smart contract. The smart contract would not be able to execute an instruction that "if y then the parties are to mutually agree a price variation". In this situation, there would need to be a natural language contract as well.

- Increased legal issues

As discussed above, issues could arise from smart contracts as to their enforceability and jurisdiction and governing law status. Another consideration could be if the law changed which made the obligations coded unlawful, how would the parties be able to amend the smart contract to allow for this? Furthermore, smart contracts could essentially take away some of the legal remedies such as the ability to interrupt the performance of contractual obligations, or to rescind the contract.

- “Tamper-proof”

By coding smart contracts in to distributed ledgers, the technology provides a secure environment for the information contained in the smart contract, lending itself to the description “tamper-proof”. This decreases the risk of fraudulent information being inputted into say a bill of lading. Any changes that are made are captured in the smart contract’s history and is capable of being audited. In addition, all inputted information needs to be verified before it is implemented which can catch out any fraudulent amendments to the information.

- Increased efficiency and transparency

By cutting out the middlemen and paper based documents, time is saved. All stakeholders have access to the information in real time and can update it with the relevant inputs (such as accepting a delivery), this gives overall transparency to the progress of a shipment.

With the technology of smart contracts and distributed ledgers still in the relatively early stages of development, there are of course many drawbacks to consider along with the positives. The application of this technology in the logistics industry is being slowly trialled with companies appearing to favour a staged roll out to specific parts of the supply chain rather than tackling the whole journey in one go.

- Security

Whilst many believe that smart contracts provide a more secure way of carrying out a transaction, they are not impervious to hackers. There have been several high profile cases where cyber hackers have been able to write code that exploits weaknesses in a smart contracts code and have transferred a lot of the stored currency to the hackers.

- All conditions must be met.

A smart contract will not self-execute unless all the pre-programmed conditions have been met. Therefore parties need to think carefully about what is agreed to be locked into code and if it is achievable.

Nicola Tune: Registered Foreign Lawyer, (England & Wales)
Ince



TCC GROUP

Tai Chong Cheang Steamship Co. (H.K.) Ltd.

泰昌祥輪船(香港)有限公司

Suite 1308, Two Pacific Place,
88 Queensway, Hong Kong
Tel : (852) 2522 5171
Fax:(852) 2845 9307

香港金鐘道 88 號
太古廣場二座 1308 室
電話 : (852) 2522 5171
傳真 : (852) 2845 9307

萬邦集團 IMC Group



Founded in 1966, the IMC Group comprises companies with diverse interest worldwide.

The major strategic business interests which are core to the IMC Group include the industrial group - a leading integrated maritime and industrial solutions provider in dry bulk shipping, industrial logistics, chemical transportation, shipyards and marine offshore engineering, consumer logistics and palm oil plantations.

Other IMC businesses include investments, lifestyle and real estate development, and social enterprises.

The IMC Group is a global company with offices in China, Hong Kong, Indonesia, Singapore, Malaysia, Thailand, India, Japan, Korea, Myanmar, South Africa, UAE and USA.

Contact:

9 Temasek Boulevard

#11-01 Suntec Tower 2

Singapore 038989

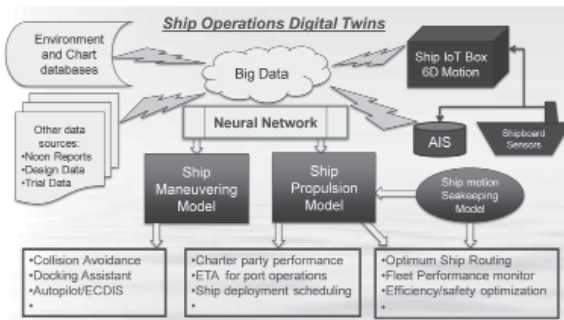
Tel : (65) 6336 2233

Email : groupcomm@imcindustrialgroup.com

Website : www.imcindustrialgroup.com

Developing operational Digital Twins for safe and efficient Seatransport in the light of Covid modeling

Henry Chen



Since the dawn of mankind civilization, Seatransport is the art and science of shipping waterborne cargo safely and efficiently from origin to destination. Recent technological advances provide better tools for charterers, ship owners and managers as well as operators the opportunity to further improve their operations by creating so-called “Digital Twins”. These mathematical models closely resemble the behavior of physical ships, thus allowing ship’s crew and shore-side managers to simulate ship performance in varying environmental conditions and operational scenarios. The new insight and situation awareness will prevent accidents and maintain high level of operation efficiency.

The Digital Twins have many parallels between the importance of modeling played in managing the public health crisis during the current Coronavirus pandemic and increasing safety/efficiency of our shipping industry. Key requirements for a successful outcome are similar in both scenarios: establishing the specifications of prediction models for optimization; obtaining a sufficient quantity of accurate and relevant data, developing

and testing models to help predict the results when different factors are varied/optimized to improve safety/efficiency and finally, providing full transparency to all stakeholders of the processes and their outcomes for policy making.

**You can’t manage if you don’t monitor;
You can’t optimize if you don’t model**

Policy makers and hospital administrators depend on prediction models for estimating infection rate, hospitalization rate and death rate to reduce the impact of the virus and optimize their limited resources by “flattening the curve”.

Only in the last decade has accurate modeling of ship performance been emphasized in attempts to improve safety and efficiencies. Case in point, ship motion prediction technology established over 30 years ago is only now starting to be implemented by major weather routing companies. Even now, some still rely on simplistic speed reduction curves to predict speed and power as a function of Beaufort numbers or Douglas sea states. Furthermore, the quality of weather routing is often a “hit or miss” due to weather forecast uncertainties. Tools are still lacking for how to account for uncertainties in global wind and wave predictions when weather routing ships on a long voyage. A promising approach is to utilize the ensemble forecasts created by national forecast centers to develop a risk-based routing algorithm using accurate ship response models.

Cargo ships are designed, built, and operated to carry cargo as efficiently as possible. Shipyards often optimize their designs for the best Energy Efficiency Design Index (EEDI) at trial speeds and drafts in calm weather under ideal conditions. However, this level of efficiency is often difficult to achieve in actual service due to changes in speed profiles on different trade routes, environmental effects, and deteriorating engine/propeller/hull conditions. For example, reduced sea margins built into the propulsion system could mean more frequent engine overload, forcing a vessel to reduce RPM and slow down. Optimizing trim by the bow may not reduce fuel consumption when ship motion causes propeller emergence or bow slamming. The effectiveness of bulbous bows and other energy saving devices designed for trial speed and drafts disappears when ships are slow-steaming or at different loading conditions. Unless the ship models include motion, added resistance due to wind, waves in all weather and environmental conditions, optimization should be considered no more than a marketing exercise as various service providers cannot definitively prove their solution is better than others.

Models are non-linear, dynamic with time-lag and very complex

The effectiveness of social distancing and mask wearing on hospitalization rate etc. usually exhibits weeks later, depending on percentage adoption by individual population clusters. Similarly, predicting ship speed, power, and future positions in all environmental conditions is very complex and nonlinear with time lags. For example, previous changes in rudder angle and propeller RPM will affect changes of ship positions minutes or sometimes hours later based on individual ship maneuvering characteristics.

Over the years, theoretical naval architecture has provided a basis for predicting speed and power in calm water. Modeling of these parameters is often empirical and simplified due to their complexities as well as lack of computing power. While the calm water results can be calibrated by scaled models in towing tanks tests and ship trials, the interactions between hull, propeller and engine in actual seaways can result significant uncertainties in performance prediction. These obstacles can now be overcome with the latest AI techniques and fast computers, as well as large amounts of data obtained by using cost-effective shipboard Internet of Things (IoT) sensors.

One modeling approach is to use a Multilayer Perceptron (MLP) Artificial Neural Network (ANN) as a (AI) technique trains ship models with vast amounts of ship data during actual operations. Once the models are trained, they can predict ship resistance, power, and paths for anti-collision, docking, and used in optimum ship routing to minimize risk of damage, and reduce fuel consumptions while maintaining on-time arrival.

Need unbiased data in standard format, lots of it. "BIG DATA"

Studies have shown that frequent errors and uncertainties in ships' daily noon reports render the data unusable for building meaningful, unbiased ship models. While the reports are suitable for recording operations data, they can hardly be used for building valid ship performance models due to the inherently large data uncertainties.

Fortunately, high frequency data can now be obtained with low cost IoT sensors. A low cost ship IoTs gateway that include 6-D ship motion monitoring and edge computing capabilities is available now to provide operator decision support

as well as to collect, process, and transmit shipboard data to a shore side cloud storage. A cloud based platform is being developed to store navigation, cargo/ballast, engine control, and other shipboard systems for every ship. The challenge is how to automate the data acquisition and access the platform for model building. The data should be secure but easily accessible in a standardized format for third-party vendors to build models and develop apps. These models also need to be updatable onboard in real-time as new information becomes available. Locally available edge computing will allow pre-processing of the data not only for efficient transmission of data to shore-side, but also to provide decision support such as warning for parametric/synchronous rolling and tank sloshing resonance, anti-collision/grounding etc. to shipboard crew.

Joint efforts by data scientists and experts who are familiar with ship design and operations

Similar to Doctors, Epidemiologists working together with modelers, joint efforts by data scientists and experts who are familiar with ship design/operation are necessary to create science based models for ship speed/power and maneuvering predictions. The Big Data and AI techniques create opportunities to improve the accuracies of empirical models traditionally used in ship design and simulation. However, modelers should be cautioned not to treat the problem as a “Black Box” of input and output without understanding the physics.

This is the difference between “Supervised” and “Unsupervised” learning of a Neural Network. In supervised deep learning, the model is based on the principle of naval architecture. AI is used to train the model coefficients of the motion equations, as well as forces and moments exerted on the ship by its controls and environment.

Whereas, unsupervised learning treats the model as a black box characterized by observed inputs and outputs. Training usually takes a lot longer, with higher residual mean square error. Even with a well-trained neural network model, out-of-kilter predictions are often encountered when input data were not in the training set and/or not constrained by physics.

Models are only as good as their assumptions; we need to understand how assumptions affect the predictions

The prediction of thousands of deaths due to Coronavirus assumed certain percentage of the people obeying social distance and wearing masks. If more people taking it seriously, the number will be lower.

The assumptions that go into the ship models need to be tested to see how they will significantly affect the predictions. Luckily, today’s easy availability of powerful computers allows us to try multiple model specifications and test different assumptions. One important byproduct of the sensitivity studies is that they also provide quantified upper and lower bounds of the prediction, which are important in our efforts for optimizing ship operations

A virtual operations center needs to translate data into actionable decision-making to improve safety and efficiency

Try to establish cause-and-effect of ship efficiency degradation is just as complicated as in predicting the effectiveness of social distancing and mask wearing when one cannot directly measure infection rate due to lack of testing. For example, here are some of the causes that potentially could result in increased fuel consumption observed onboard:

- Faulty sensors
- Bad fuel quality
- Engine out of tune
- Turbocharger fouling
- Increased propeller/hull roughness
- Increased draft/displacement
- Bad trim
- Adverse weather and currents
- Bad auto pilot/steering
- Bad passage planning

Some of the above factors can be easily identified by properly filtering the data. Others may require detailed studies and data-trending. Good ship performance models are necessary tools to identify the causes. Key Performance Indicators (KPI) need to be developed to compare current performance to a baseline generated by ship models as well as past data. Real-time monitoring in a Virtual Operations Center can provide a cost-effective way to warn shipping operators about the risk of heavy weather damage and the trade-offs between fuel consumption and on-time arrival.

Truth and transparency will increase safety and efficiency

In order to manage the Coronavirus crisis, politicians have learned that only truth, transparency and data driven policies can convince general public on social distancing and business lockdown/opening.

Similarly, truth and transparency of ship operations will result in improved safety and reduced cost for all stakeholders. “Creative” noon reports to avoid charter

party claims may have the unintended consequence of muddling the causes of performance degradation, thereby causing decisions for remedial actions to be ignored or delayed.

Outdated charter party does not encourage ship owners to install energy saving devices and maintaining high performance of their fleet. Readily available ship performance models will allow charterers select the most cost efficient ships for carrying the cargo on specific trade routes while minimizing its carbon foot-print. Shippers may select low carbon foot-print vessels in their supply chains.

Let's join our efforts together

In my three previous LinkedIn articles about future autonomous ship navigation, I outlined my vision and various steps in achieving those goals. These include:

1. Utilize existing shipboard equipment such as AIS and VDR to collect high frequency ship operation data;
2. Develop low cost ship IoTs that include 6-D ship motion monitoring and edge computing capabilities to provide operator decision support as well as collect, process, and transmit shipboard data to cloud storage;
3. Create an open-source platform that respects ship owners' privacy, used by third-party vendors to create solutions for improving safety and efficiencies;
4. Develop ship resistance models to predict speed, power and fuel consumptions under all environmental conditions;
5. Develop ship maneuvering models to predict future ship tracks for collision avoidance and docking;

6. Develop next generation risk-based optimum ship routing algorithms utilizing ensemble forecasts and response predictions for estimating trade-offs between probabilities of exceeding response thresholds, fuel consumptions, and on-time arrival;
7. Develop a Virtual Ship Operations Center to monitor shipping fleets and provide actionable dashboards for regulatory compliance, predictive maintenance, and navigation decision supports for ship operators.

We are living in a 4-D world. Decarbonization, Decoupling and Disruptions of supply chains have drastically changed the traditional shipping business environment. Increasing storm activities caused by global warming and shortage of experienced seagoing crew might have caused many recent accidents involving lost of life, cargo damages and pollutions at sea. The need to accelerate Digitization and building digital operation models becomes increasing urgent in order to assist ship owners/managers/operators to navigate and survive in these treacherous waters. We can no longer afford to muddle it through by just delivering cargo from A to B without demonstrating high standard of safety and fuel efficiencies are being achieved.

While the Coronavirus has, dramatically restricted our mobility in order to contain its spreading, we can still exchange fresh ideas over the internet. We should create an open source platform for the commercial shipping industry instead of developing proprietary apps or database to increase market share for individual companies. Classification societies, manufacturers of navigation and

engine control systems and other shipboard equipments have a great deal to contribute in terms of data, expertise, as well as access to shipping companies/shipyards. Let's put our efforts together to fundamentally change the shipping industry and protect our environment.

(Henry Chen, Ph.D. President and CXO of B2B7CS, LLC a California Marine Technology Company Contact: b2b7cs@gmail.com)



Asia Maritime Adjusting (Hong Kong)

Trading Division of TCWong Average Consulting Ltd.

Expert in law & practice of General Average & Marine Insurance providing claims consultancy & adjusting services to international market on:

- General Average and Salvage
- Hull and Machinery
 - ▶ Particular Average
 - ▶ Constructive Total Loss
 - ▶ Sue & Labour Charges
 - ▶ Collision Liability claims & recoveries
- Shipyards
- Loss of Hire
- Cargo
- Expert Witness work

Associates/ Correspondents:
 Asia Maritime Adjusting - Shanghai
 Asia Maritime Adjusting Pte Ltd. - Singapore
 Rogers Wilkin Ahern LLP - London
 PT. Global Internusa Adjusting - Jakarta
 Concord Marine - Taipei



香港筲箕灣道68號西灣河中心9樓B室
 Office B, 9/F., Sai Wan Ho Plaza, 68 Shau Kei Wan Road, Hong Kong
 T. 852 3996 9876; 3590 5653
 E. info@averageadj.com

www.averageadj.com



翟玉英律師事務所

BRENDA CHARK & CO

Maritime Law Firm

We have successfully represented substantial or state-owned shipowners, managers, charterers, P&I Clubs, hull underwriters and other related intermediaries in the shipping industry. The cases that we have handled include:

Contentious

- Insurance covers – H&M / P&I / FD&D
- Carriage of goods-damage / short or non or mis-delivery
- Charterparty- demurrage / wrongful delivery / unsafe berth
- Defence to personal injuries by crew / stevedores

Non-contentious

- Ship Building
- Ship Finance
- Sale of ship
- Ship Registration

Others

- Employment Issues
- Landlords & Tenants
- Tracing of Trust Funds
- Enforcement of Awards & Judgments
- Defending claims arising from cyber crime
- Defending import & export related offences

香港灣仔軒尼詩道 338 號北海中心 9 樓 E & F 室
9E & F, CNT Tower, 338 Hennessy Road, Wanchai, Hong Kong

Tel: (852) 3590 5620 Fax: (852) 3020 4875

E-mail: info@brendachark.com

Website: www.brendachark.com

中國香港的海運業歷史悠久，至今已超過 150 年。海運及港口業向來都是推動中國香港經濟發展的四大支柱產業之一，支撐著中國香港的物流貿易，航運金融，保險等多個領域的發展，是中國香港繁榮和經濟增長的動力和重要基石。時至今日，中國香港已成為享譽盛名的國際航運中心，以其船舶登記為例，截至 2020 年 2 月 29 日，中國香港註冊船隻共有 2,589 艘，合計 127,817,329 總噸，成為全球五大船旗國之一。這其中，離不開保障港口運作和水域安全、管理中國香港旗船舶註冊的香港海事處（Hong Kong Marine Department，以下簡稱“海事處”）的嚴格管理和辛勤付出，凸顯了海事處“同心協力，促進卓越海事服務”的使命。

然而，根據《國際海事組織履約規則（III Code）》（Resolution A.1070(28)）的要求，即各船旗國應建立一個適當和有效的制度，對懸掛該國國旗的船舶實施監督，並確保其符合有關海上安全、保安和海洋環境保護的相關國際規則和條例負有首要責任的要求。值得一提的是：針對中國香港而言，本文標題及本文中所有有關船旗國的概念並不是一個主權國家的概念，而是中華人民共和國香港特別行政區海事處所履行的對其特定的船旗國履約責任和義務。

那麼，在這大量的登記船舶面前，其又是如何保證所登記註冊船舶的品質，切實履行主管機關的安全、防污染和勞工公約的責任呢？筆者認為，除了良好的營商環境、成熟的法制體系、方便的融資平臺、深厚的海運文化積澱多因素整合以外，還離不開其特有的船舶監督機制 -- 船旗國品質管制系統（Flag State Quality Control，以下使用其英文首字母簡稱為“FSQC”）和船舶登記註冊前品質管制系統（Pre-Registration Quality Control，以下使用其英文首字母簡稱為“PRQC”）相結合的中國香港船舶登記註冊品質保證系統。為便於讀者熟悉瞭解，本文就此予以淺析簡述如下：

一、中國香港旗船舶登記註冊品質保證系統概述

如上所述，以 FSQC 和 PRQC 這兩大制度構成了中國香港旗船舶登記註冊品質保證系統，海事處以此為基礎實施主管機關監督，履行公約規定的相關責任和義務，具體說明如下：

（一）FSQC 制度

FSQC 於 1999 年推出，目的在於找出船舶安全管理品質水準下降的根本原因，

是一套系統化的管理制度。與定期對船舶實施監督檢查的管理模式（例如其原先的船旗國監督年檢）不同的是：船舶是否需要接受 FSQC 檢查和檢查頻率，取決於船公司、船舶本身、船員和船級社這四個方面：

一是船公司方面：該公司的安全管理表現及其所管理船舶的意外傷亡記錄，以及該公司所屬其他船舶最近一次接受 FSQC 檢查的時間；

二是船舶方面：該船的港口國監督檢查記錄情況、船齡、船型。老舊船舶、有港口國監督滯留記錄的船舶，以及船型為散貨船、雜貨船等某些類型的船舶將會受到重點關注；

三是船員方面：主要表現在船員素養這一塊；

四是認可機構（Recognized Organizations，以下使用其英文首字母簡稱為“RO”）方面：海事處對負責該船核對總和審核的 RO 的評估情況。

此外，FSQC 側重于確保相關方切實履行其應有的主體責任，通過仔細審閱 RO 和認可保安組織（通常是授權的船級社）對中國香港旗船舶的所有核對總和審核報告，以及通過參與公司符合證明（DOC）審核和船舶安全管理證書（SMC）及或國際船舶和港口設施保安（ISPS）

的審核，並結合該船的港口國監督檢查記錄不斷跟蹤相關方對其主體責任的落實情況。由此，不難發現 FSQC 的實質是通過監督相關方主體責任的落實來確保主管機關責任的履約的。為此，這就需要一套軟體系統支撐，尤其表現在輔助計算和評估方面。

船舶 FSQC 檢查實施後，相關船公司、RO 和認可保安組織將被要求就該次檢查所發現的問題予以跟蹤和糾正。如在檢查過程中發現屬於船舶管理方面的缺陷，會對該船所屬的管理公司或船舶實施符合證明（DOC）審核或船舶安全管理證書（SMC）的附加審核，以便於對根本問題（Root Cause）及預防措施得到有效處置。

（二）PRQC 制度

如果說 FSQC 屬於主管機關的事後日常監督機制的話，那麼在 2004 年推出的 PRQC 制度就不難被理解為事前的品質保證，即海事處在收到船舶擬加入香港船舶登記冊的申請後，將根據船齡、船型、該船接受港口國監督檢查後遭滯留的次數和所發現的缺陷數目、申請時所懸掛的船旗、其時所屬的船級社、該船的意外記錄等來評估該船品質水準和風險等級，以決定是否須對該船進行 PRQC 檢查以避免低品質船舶轉入中國香港旗。

同時，為了進一步防止低標準船舶在中國香港的登記註冊，隨 PRQC 一同推出

的還有一份“注意事項總覽”，以供認可機構為船舶實施換旗檢驗時作為參考。為船舶進行換旗檢驗的 RO 驗船師，須於完成檢驗後 14 日內向海事處遞交聲明書，證明該船並無“注意事項總覽”所載的任何缺陷。船舶如有總覽所載的任何缺陷，將不會獲發相關的營運證書。

值得一提的是：如 PRQC 檢查過程中發現的任何嚴重缺陷均須先予糾正，海事處才會向船舶發出註冊證明書，否則海事處處長可拒絕為未通過 PRQC 檢查的船舶登記註冊以及至少 6 個月內不得再次申請 PRQC 檢查。

二、船旗國監管品質保證安排的優化

FSQC 和 PRQC 這兩套制度的有機結合，針對中國香港旗船舶而言，形成了其獨特的船旗國監督機制，並處於不斷優化完善的過程，其最近的三次修訂則表現在：

- 發佈於 2009 年 11 月 11 日的《香港商船資訊》，編號 No.35/2009;
- 發佈於 2013 年 11 月 28 日的《香港商船資訊》，編號 No.59/2013;
- 發佈於 2020 年 3 月 9 日的《香港商船資訊》，編號 No.7/2020^[1]。

由於其最新發佈的將對後期管理產生重要影響，為幫助進一步理解，本處以海事處在其官網最新發佈的 No.7/2020《香港商船資訊》為基礎，與原先的制度予以比較，並進一步對其船旗國監督機制創新優化的情況闡述如下：

（一）FSQC 和 PRQC 的費用減免

除了應當向 RO 結算的相關檢查檢驗費用外，海事處派員所實施的 FSQC 和 PRQC 檢查及複查行為不再收費。這一點與原先的制度有很大不同，切實體現了為船東減負的做法。這是因為：在原先的制度框架下，當出現下列情況，船東面臨被收費的可能：

- 1、在跟蹤管理公司或船舶過程中，海事處會對管理公司符合證明（DOC）或船舶安全管理證書（SMC）進行附加審核，並對該次附加審核之後的複審（Follow-up）收取費用；
- 2、船舶在港口國監督檢查後滯留或船舶發生嚴重意外後的 FSQC 檢查收費；
- 3、若上述船舶滯留或意外是由於船舶管理制度不當所致，則海事處在審核該管理公司的安全管理制度以核實制度是否符合《國際安

全管理規則》的規定時，首次審核免費，之後會收取相應費用；

4、由海事處派員實施的 PRQC 登船檢驗需收取費用。

就優化後的制度實施後，上述費用全部得到了減免。

（二）加大了對低標準船舶及其所屬公司的監管力度

由圖 1 的新 FSQC 工作流程^[2]可見：新的制度將在港口國監督過程中被滯留的船舶直接納入了 FSQC 管理的範圍，即逢滯留必檢的思路，體現了其對低標準船舶管理力度的加強。而且，港口國監督過程中被滯留的船舶在 FSQC 過程方面相較于普通 FSQC 管理還要多出一步，在完成時限方面也更加嚴格。

這一點，在最新發佈的編號為 No.7/2020 的《香港商船資訊》中的第 8 項予以單列強調並明確為：當船舶在港口國監督中被滯留後，船東須申請 RO 在發生滯留的港口確認所有已糾正的檢查缺陷並協助解決船舶滯留解除的相關事宜，RO 負責具體的技術支援，而海事處更加注重審核，複查及督導職能。同時，根據海事處的要求，RO 須在船舶開航前進行指定延伸（深度）檢查。如果該船沒有足夠停泊時間，船舶管理公司應在 RO 書面證明的前提下，向海事處申請推遲延伸（深度）檢查至其他方便港口，但無論如何不得遲於滯留之日起一個月內完成。

此外，根據需要，海事處將在 3 個月內（本文以所發佈的實施流程圖中所標明的時間為準）派出其驗船師（檢查官）實施 FSQC 登輪審核，這個時限的要求也明顯要比海事處選定的需實施 FSQC 監督船舶 6 個月的要求要高出很多。

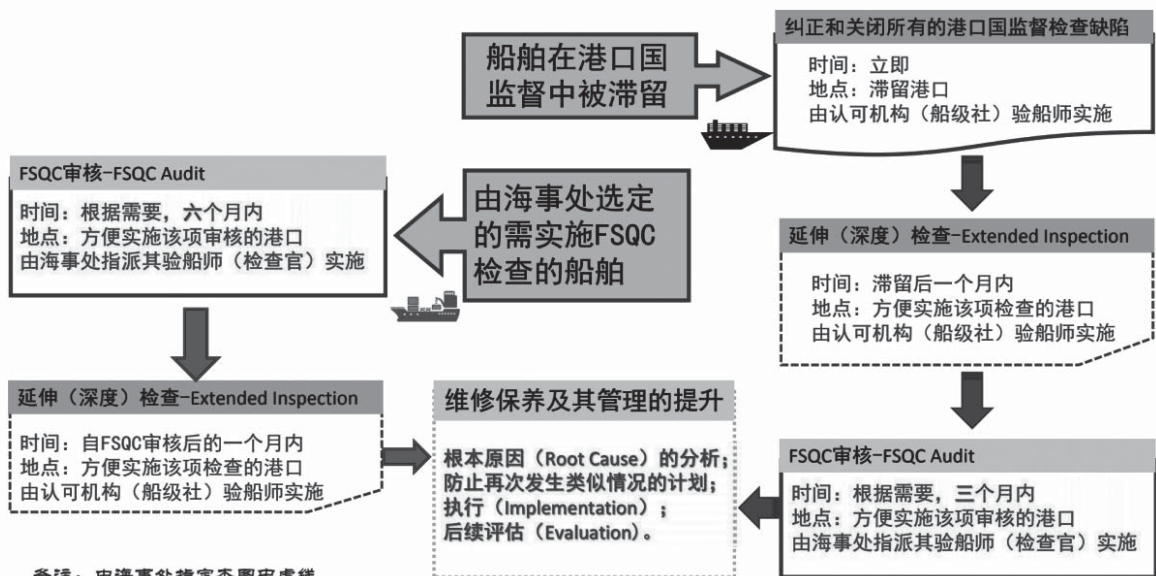


圖1 新FSQC實施流程圖

(三)在FSQC審核中引入了延伸(深度)檢查的概念

相較于原來的制度，不難發現本次新增了延伸檢查(英文為Extended Inspection，其官網按Drill Down的理念翻譯為深度檢查)的概念，鑒於這項檢查並不是FSQC實施流程的第一步，為便於概念的進一步理解，在本文中譯為：“延伸檢查”。

延伸檢查的實施主體是RO指派的驗船師，特點是根據海事處的要求，而且海事處還可指定額外範圍，如東京備忘錄和巴黎備忘錄適用的集中大會戰活動(Concentrated Inspection Campaign，英文縮寫為：“CIC”)項目。

與海事處選定的需實施FSQC監督船舶不同的是：在港口國監督中滯留船舶的延伸檢查是在海事處指派人員實施FSQC登船審核、複查及督導之前。由此可見，當選定船舶實施FSQC監督時，在船況較好的情況下，不一定會被要求實施延伸檢查。但對港口國監督中滯留船舶而言，倘若滯留只是表面的，如拖欠工資的船舶滯留，延伸檢查就局限在勞工公約的執行這一塊；但如果是甲板透氣帽、艙蓋導致的滯留，與船舶載重線相關的延伸檢查就難以避免了。換而言之，此時的延伸檢查系圍繞導致船舶滯留的缺陷展開，不再其他方面擴展。但對極個別的孤立事件，如偶然因素導致的船舶滯留，延伸檢查就不一定實施了。

(四)RO協同參與管理的地位得到進一步凸顯

在新的品質保證安排下，海事處將採取預防性措施，鼓勵船舶管理公司落實安全管理主體責任，切實找出其船舶品質

下降的根本原因，以便制定和實施適當的解決方案來提高其船隊品質。同時，新FSQC登船審核主要目的不在於徹底識別船舶缺陷，所需的時間預計不超過8小時，較詳細檢查為短。所以，海事處的工作重點將落在對船舶管理公司、船舶和RO的審核、複查及督導方面，而船舶的詳細檢查將交由RO進行，RO協同參與管理的地位得到進一步凸顯。

RO除了實施上述的詳細檢查、延伸檢查和船舶滯留後檢查外，PRQC的現場評估也由原來的海事處實施改為由RO或船級社實施。不過這裡需要明確地是：實施PRQC現場評估的RO或船級社都必須是國際船級社協會成員並且是海事處授權有合約的RO！因為有國際船級社協會的信譽保障，海事處藉此來確保相關檢查的品質。

圖2清晰展示了新品質保證安排下對船舶的准入關予以把控的流程^[3]。針對RO監造的新造船隻，如在第一階段檔評估通過，可以直接接受登記註冊。但對於後續由其他船籍轉入的船舶，則必須完成該圖所展示的整個流程。從該圖中也不難發現：PRQC的現場評估工作交由船級社的驗船師實施了。並且，為體現高效的原則，海事處還規定了換旗檢驗可以合併採用PRQC的評估結果，但前提是必須確保以下兩項條件同時得到滿足，即：

一是換旗核對總和PRQC評估由同一家船級社實施，也就是說由該船的RO實施的PRQC評估，後續的換旗檢驗可以直接採用前述報告及其結論；

二是換旗核對總和PRQC評估之間的時間間隔少於三個月，這樣可以避免時間長了之後，船舶的維修保養狀況發生變化較大而引起的結果失真現象。

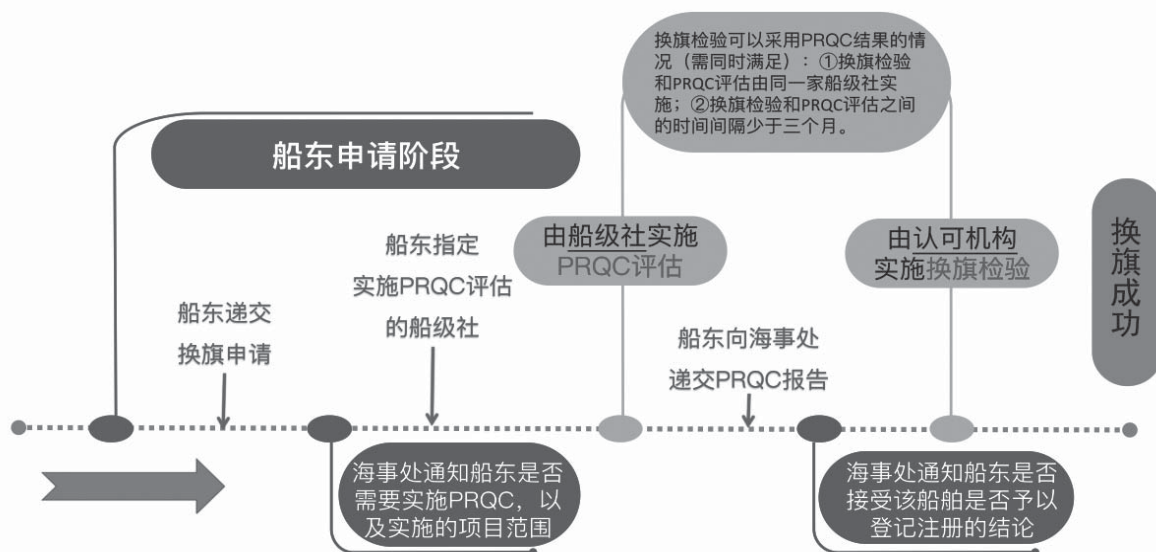


图2 船舶换旗的PRQC流程

（五）船舶系統性維護保養的問題得到進一步重視

通過檢索各港口國監督諒解備忘錄的歷年年報可見：中國香港籍船舶整體上一直保持著顯著高於全球平均水準的優異表現。在最新發佈的美國海岸警衛隊 2019 年港口國監督年報^[4]中還顯示了有 405 艘中國香港籍船舶被評級為“QUALSHIP 21”船舶，位列第二，占其 2936 艘船舶的 13.8%。這些成果的取得，對登記註冊規模龐大的船隊而言，是難能可貴的！

但是，也不難發現仍有少量船舶的品質相對低下，還有小部分船舶滯留或重複在港口國監督檢查中被發現有嚴重缺陷的現象時有發生。經統計，發現大部份缺陷還主要源於船舶系統性維護保養的缺失，這些缺失的原因又因不同的管理公司而有所不同。並且，2020 年 5 月 8 日發佈的亞太地區港口國監督備忘錄組織（T-MOU）

發佈《2019 年亞太地區港口國監督報告》^[5]中指出：近 3 年來最常見的 10 大滯留缺陷，其中包含體系方面的缺陷最多的就是是維護保養方面的體系缺陷。所以，新的品質保證安排將重點集中在這些船舶系統性維護保養方面，尤其是不按照《國際船舶安全營運和防止污染管理規則》（The International Management Code for the Safe Operation of Ships and for Pollution Prevention，簡稱為 ISM Code）對已經發現的缺陷予以糾正的系統性維護管理體系失效現象做法是符合 T-MOU 資料統計邏輯的，也有利於其進一步降低船舶滯留率。

為此，新制度框架下 FSQC 登船審核的重點是評估系統性維護管理體系的實施情況，改變了原有以標示識別船舶缺陷為主的做法。FSQC 審核過程中還會審查船舶管理公司對缺陷的根本原因的分析情況及其過程，以評估相應的預防性措施是否

妥當和有效。如果所得到結論為否的話，海事處將要求 RO 實施延伸檢查，如圖 1 所示。一旦有跡象顯示船舶及公司的系統性維護管理體系需要改進，海事處會投入更多的時間和精力與船舶管理公司溝通，並進一步跟蹤後續的落實整改情況。

三、展望

應該看到：這一新安排將可提高品質管理效率，降低驗船成本，在不影響船舶的安全和品質的前提下，為海事處和船舶管理公司提供更大的靈活性，也從另外一個側面解決了海事處當前人手短缺的問題。

在新的制度中，還可以看到這樣一個舉措：對於某些頻繁停靠嚴格執行港口國監督檢查港口（如澳大利亞境內各港口）的船舶，經船舶管理公司同意，海事處還將安排實施模擬港口國監督檢查，以便協助船舶和船員為即將到來的港口國監督檢查做好準備。所以，這為後續中國香港籍船舶的滯留率的進一步降低也夯實了基礎。

並且，還應看到海事處已開始著手在全球佈局區域支援團隊以支援中國香港旗船舶的登記註冊處並開展跨時區應急反應（包括簽發豁免證書）、船舶登記註冊、登船檢查及公司審核等事務，目前已正在運轉或試運轉的有中國上海、英國倫敦和新加坡這三個區域聯絡處，後續一些全球主要航運港口也在其布點考慮之列。在這些布點完成之後，前述的 FSQC 登輪審核將會比當前有所增加，模擬港口國監督檢查的措施也將得到有效貫徹，因此，有理

由相信其對旗下船隊的支援、服務及監管將在繼續秉承便利的基礎上，更加嚴格和高效。

最後需要強調的是：本文所有內容基於作者本人的理解，在對中國香港籍船舶相關法律和政策方面的解讀和處置以海事處的最終解釋和決定為準。

參考文獻

- [1] 香港商船資訊. No.7/2020[EB/OL]. 9 March 2020. <http://www.mar-dep.gov.hk/en/msnote/msin.html>.
- [2] 香港商船資訊（附件1）. No.7/2020[EB/OL], ANNEX 1. 9 March 2020. <https://www.mardep.gov.hk/en/msnote/pdf/msin2007anx1.pdf>.
- [3] 香港商船資訊（附件2）. No.7/2020[EB/OL], ANNEX 2. 9 March 2020. <https://www.mardep.gov.hk/en/msnote/pdf/msin2007anx2.pdf>.
- [4] 美國海岸警衛隊 2019 年港口國監督年報 [EB/OL]. 2020. <https://www.dco.uscg.mil>.
- [5] 2019 年亞太地區港口國監督報告 [EB/OL]. 8 May 2020. <http://www.tokyo-mou.org/doc/ANN19-f.pdf>.

（胡榮華：上海海事局船舶監督處副處長、東京備忘錄技術工作小組主席）

HOSTMOST Hostmost Engineering Ltd



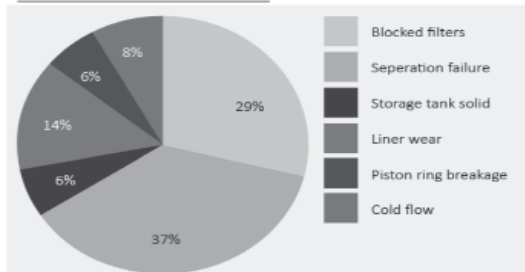
Innospec Marine Fuel Specialties

- The leading dedicated manufacturer and supplier of fuel additives and solutions that help improve fuel efficiency, boost engine performance and reduce harmful emissions

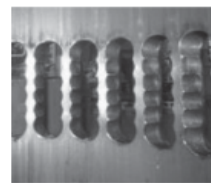
YOKOGAWA ◆

innospec

VLSFO FAULT DISTRIBUTION



Wax formation in fuel tanks



Scavenge ports after switch to VLSFO



Burr on liner surface



Deposits behind piston rings

Innospec IMO 2020 VLSFO Additives

- ✓ Octamar™ HF-10 PLUS
 - ✓ maximise fleet performance
 - ✓ stabilise VLSFO blends
 - ✓ reduce sludge formation
- ✓ Octamar™ Ultra HF
 - ✓ provides a complete solution for VLSFO
 - ✓ keeps your engine running by improving fuel blend stability and combustion while reducing soot formation

Add: 12/F., Yan's Tower,
27 Wong Chuk Hang Road, HK

Email: globalservice@hostmostgroup.com
Tel: (852) 2554 9207 Fax: (852) 2554 5152



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

1. Preface

The Philippines is the largest supplier of ship ratings and the second largest supplier of ship officers in the shipping industry. Data from the Philippine Overseas Employment Administration (POEA) shows that the seafarer deployment reached 200,000 in 2001 and increased to 400,000 in 2014.² However, a high number of crew claims continues to annoy shipowners.³ There is still, in reality, a great deal of difficulty that shipowners face in these labor dispute resolutions.

As years go by, the unfair circumstances in crew claims remain frustrating for shipowners and their P & I Clubs. This is one of the important factors that discourage international shipowners from choosing Filipino seafarers to crew their vessels.

2. Various unfair circumstances

2.1 Ambulance chasing

There is a continuous problem called “ambulance-chasing” (the solicitation of almost any kind of legal business by a lawyer, personally or through paid agents / brokers in order to gain employment), in which unscrupulous lawyers exploit legal disputes between seafarers and their employers, usually involving illness, accidents, or death claims. The lawyers will

actively target seafarers and their families as a business opportunity in order to pursue disability or death claims against their employers; who in turn charge substantial fees for their services.

As always, the lawyers will persuade and push seafarers to accept the engagement based on a “no cure no pay” basis. In theory, working on a “no cure no pay” basis, lawyers will not charge anything unless seafarers get an award. The seafarers do not assume any economic risk, bearing no arbitration/court fees, when filing a claim against shipowners. It seems that seafarers have nothing to lose in this no costs game. If the seafarers win the cases, the Labour Arbiter will typically add 10 per cent to the value of the award as lawyer’s fees. But the reality is the lawyers often charge as much as half of the award as fees.

Even more, if the lawyer lends money to the seafarer in connection with the seafarer’s case, the lawyer in effect acquires an interest in the subject matter of the case or an additional stake in its outcome. Either of these circumstances may lead the lawyer to consider his own recovery rather than that of the seafarer, or to accept a settlement which may take care of his interest in the verdict to the prejudice of the seafarer in violation of his duty of undivided fidelity to the seafarer’s cause.

2.2 Laborer-friendly system

The dispute resolution institutions in the Philippines are very much pro-seafarer. Cases for relatively minor, non-career ending injuries with little merit, are often brought by seafarers and their lawyers, and employers always come out as the losing party for total disability compensation. This applies to both the National Labor Relations Commission (NLRC) and the National Conciliation and Mediation Board (NCMB) system. Data from the NLRC and the NCMB shows that there were 13,388 cases decided and 10,974 cases (82%) were in favor of seafarers during 2013-2017. The total amount of money awarded to seafarers was US\$338,684,718.81⁴ which confirms the legal system is lopsided.

According to the International Group of P & I Clubs, data from 2009 to 2013 show that the number of cases reversed or modified by the Court of Appeal and/or the Superior Court had increased to 98, which translates into the amount of US\$6,283,485 due to be returned by seafarers to the shipowners. Of these cases, 63 involving a total value of US\$3,892,769 have already been decided with finality. Out of the said amount of US\$6,253,485, only US\$19,701.50 (in respect of three cases where the amount to be returned to the shipowners was supposed to be US\$177,791.50) were recorded to have been recovered or restituted in favor of the shipowners who prevailed in their appeals.⁵ The latest statistics are even getting worse. The number of cases where the NLRC or NCMB's enforced decisions have been overturned or favourably modified by the

Court of Appeal and/or Supreme Court have increased by 333 cases, from 98 to 431. As a consequence, US\$30,538,676 is now due back in favour of shipowners, an increase of US\$ 24.3 million in 5 years. Furthermore, 294 cases have reached finality before the higher courts and of the US\$ 20,189,857 due back to employers as a consequence, only US\$ 252,167.12 has been recovered. That equates to a recovery of just 1.25%.⁶

Shipowners are having difficulty in recovering the money. One of the main reasons is because of the Data Privacy Act of 2012 wherein personal information controllers are prohibited from disclosing sensitive personal information unless the data subject or the crews give their consent. Hence, the unreturned money is simply an unjust enrichment. The victory in the Court of Appeal or the Superior Court is reduced to a paper victory.

2.3 Premature garnishment

Normally a losing party will not have to pay an award until the court decision is final. However, Article 276 (formerly Article 262-A) of the Labor Code, provides that a decision of the Commission shall be final and executory after 10 calendar days from receipt thereof by the parties. The Philippines appears to be the only jurisdiction or legal system that allows for the enforcement of decision of labor court in full, despite the availability of further recourse to the appellate courts.

Section 12, Rule 43 of the Rules of Court provides that the pendency of a

petition for review with the Court of Appeal does not stay the execution of the Panel's decision unless the Court of Appeal directs otherwise. Furthermore, Supreme Court Administrative Circular No. 07-7-12-SC amending Section 7, Rule 65 of the Rules of Court also provides "The petition shall not interrupt the course of the principal case, unless a temporary restraining order or writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case." For this reason, the claimant can move to execute the Panel's decision even if it is pending appeal.

Admittedly, the remedy of an injunction is available upon elevation of the case to the Court of Appeal. However, there were only a few occasions wherein the Court of Appeal timely ruled on the applications for an injunction, resolving the same unfavorably for failure to prove the irreparable damage that will be brought about in the enforcement of the NLRC or NCMB Decision.

The issue of garnishment in the Philippines is an issue that shipowners firmly believes is of detriment to the employment of Filipino seafarers, and is a problem that has grown consistently over many years.⁷

2.4 The 120/240 days rule

How do the Courts in the Philippines measure the extent of liability? This question is the one that has over recent years caused the greatest frustration for shipowners.

There are now a series of Supreme Court decisions which have applied what appears in the Philippine Labor Code in this regard; that an individual who has been unable to work in his chosen profession for more than 120/240 days is assessed as being "totally and permanently disabled". In disability, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.

The 120/240 days rule⁸⁹ has been used to justify an award of full disability benefits to a seaman based merely on the number of days he is incapacitated, without taking into consideration whether or not he loses the use of any part of his body or the actual medical condition.

Unless and until the Supreme Court reverses itself, shipowner-employers must expect such rulings and, as far as practicable, do what they can before the 120/240 day deadline expires to achieve recovery of the seafarer to the extent where medical testimony can demonstrate his ability to return to duty.

3. The challenges to the legal system

3.1 Seafarer's Protection Act (Anti-Ambulance Chasing Act)

To protect the shipping industry from the dishonest practices of lawyers who have been taking advantage of labor claims and disputes filed by the seafarers, the Philippines has passed an Anti-Ambulance Chasing Act. The act intends to protect seafarers against the ambulance chasing

lawyers who charge excessive fees to represent seafarers and their families in cases concerning claims for disability or death.

According to Section 3, it is prohibited for any person *"to engage in soliciting, personally or through an agent, from seafarers or other workers, or their heirs, the pursuit of any claim against an employer for the recovery of monetary claim or benefit including legal interest arising from accidents, illness or death, in exchange for a certain amount which shall be retained or deducted from the monetary claim or benefit granted to or awarded to the seafarer or their heirs."*

Furthermore, Section 4 provides that lawyer fees shall not exceed 10% of the compensation or benefit awarded to the seafarer or his heirs.

There is also a provision under Section 5, that any person who violates Section 3 of the Act (Prohibition on Ambulance Chasing) shall be punished by a fine of not less than PHP50,000.00 but not more than PHP100,000.00) or by imprisonment of not less than 1 year but not more than 2 years, or both fine and imprisonment. The same penalties shall be imposed upon any person who shall be in collusion in the commission of the prohibited act, as described in Section 3.

The seafarer will not be legally required to pay more than 10% of the total compensation amount received, either by way of amicable settlement or by

labour courts' award. But in reality, it has been proved difficult to regulate private agreements between seafarers and the lawyers. Some ambulance chasing lawyers still have their own ways to obtain such "legal business" and receive more money from seafarers.¹⁰ In a recent Supreme Court case, two ambulance chasing lawyers were ordered 2-year suspension from the practice of law.¹¹ Hopefully, this Supreme Court case may also help to eliminate part of the legal abuse in certain way.

3.2 House Bill No.5430

In 2015, ANGKLA Party-list filed the proposed bill in order to strike a balance of the interests/rights of the seafarers and shipowners. It is submitted that money judgements be deposited into an Escrow Account with an escrow agent designated by the NLRC or NCMB, as sufficient to meet the requirements of execution. In this manner, the laborers are assured of the availability of the funds and monies due to them, and at the same time, restitution, if proper, is also guaranteed.

The proceeds shall remain in Escrow until such time the finality of the decision issued by the appropriate appellate court is obtained. The above proceeds shall only be released after issuance of and entry of judgement by the appropriate appellate court and upon issuance by the NLRC or NCMB, after motion of the proper party, of an order authorizing the release of proceeds of execution. The order authorizing the release of the amount deposited in Escrow shall be deemed final.

Some say, the proposed bill aims to delay in execution and will become a tool of oppression and inequity to the prejudice of labor, and the seafarer to be specific. Due to the longer years that they have to wait, without any leverage in prosecuting his monetary claims, chances are, the employee/seafarer bows to the demand of his employer to either drop his claim or accept a small settlement. These are simply misconceptions and prejudices.

4. Conclusion

Every labor dispute involves two opposing parties: the worker on the one side and the employer on the other. Some say it is a David and Goliath battle and the employer is always the bad guy. This is not always true.

We do believe the vast majority of Filipino seafarers are honest and hardworking. Seafarers and their families are being exploited by ambulance chasing lawyers. However, Filipino seafarers are facing a tough global market and may lose their edge, if the legal system still remains unfair to shipowners. As a result, international shipowners are hiring more seafarers from other countries.¹² It cascades down to the Filipino people and the Philippine economy, which has the potential to impact adversely on the local manning industry and the money remittances seafarers bring to the country's economy. Given all that, the shipping industry needs a healthy and disciplined legal system that can solve any dispute in a fair and reasonable manner.

1. *Ph. D. in Merchant Marine, National Taiwan Ocean University.*
2. *The numbers have dropped, and to a certain extent have been buoyed by cruise ship jobs such as hotel staff and entertainers.*
3. *More than 2,000 cases per year. In 2017, the number of deployment is 387,072 and the number of claims is 2,503. Percentage of claims is 0.65%. ILB Crew Connect Presentation, <http://agilecrew.com/wp-content/uploads/2018/11/CrewConnect-Presentation-5th-Revision-Final.pdf>.*
4. *ILB Crew Connect Presentation, <http://agilecrew.com/wp-content/uploads/2018/11/CrewConnect-Presentation-5th-Revision-Final.pdf>.*
5. *International Group of P & I Clubs, Recognising Escrow as a mode of executing the judgment award of the NLRC, 2013.*
6. *International Group of P & I Clubs, Recognising Escrow as a mode of executing the judgment award of the NLRC & NCMB-Accredited Voluntary Arbitrators (Update March 2019), 2019.*
7. *International Maritime Employers' Council, IG Position Paper on the subject of "garnishment" in the Philippines, 2013.*

8. *The 120-day Rule cases. Crystal Shipping, Inc., et al., v. Natividad, G.R. No. 154798.*
Carmelito Valenzona v. Fair Shipping Corporation and/or Sejin Lines Company Limited, G.R. No. 176884.
Fil-Star Maritime Corp., et.al. v. Hanziel Rosete, G.R. No. 192686.

9. *The 240-day Rule cases. Jesus Vergara v. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd., G.R. No. 172933.*
Magsaysay Maritime Corporation and/or Westfal-Larsen Management A/S v. Oberto Lobusta, G.R. No. 177578.
PhilAsia Shipping Agency Corporation, et al. v. Andres Tomacruz, G.R. No. 181180.

10. *Rule 1.03 of the Code of Professional Responsibility. A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.*
Rule 2.03 of the Code of Professional Responsibility. A lawyer shall not do or permit to be done any act designed to solicit legal business.

11. *Jerry M. Palencia v. Atty. Pedro L. Linsangan, Atty. Gerard M. Linsangan, and Atty. Glenda M. Linsangan-Binoya, A.C. No. 10557.*

12. *The Manila Times, A ship we cannot afford to sink, 2019.*

(Johnson Chiu: Ph. D. in Merchant Marine, National Taiwan Ocean University.)

何 恩 洪 律 師 行
JAMES HO & CO.
Solicitor

Rm. 1403 14/F., Blissful Bldg.,
 243-7 Des Voeux Rd Central,
 Hong Kong

地址：

香港上環德輔道中243-7號
 德佑大廈1403室

Tel: (852) 3421 1330

Fax: (852) 3421 1339

Mobile Phone: 9034 3360

E-Mail: james.ho@yanhung.com

Contact:

James Ho, Chartered Shipbroker

LL.M.(Lond), LL.B., F.I.C.S.,

M.C.I.Arb., ANZIFF (Fellow).

Practice Area:	業務範圍:
• Arbitration	仲裁
• Civil litigation	民事訴訟
• Personal Injury	工傷賠償
• Criminal litigation	刑事訴訟

一九八六年三月一日，我在早上八時接載了 600 名乘客由香港航往澳門，該日的天氣陰暗、濃霧。在航程中，尤其是離開維多利亞港後，我駕駛的客輪一直沿著大嶼山南前進，此時我望向大嶼山和鳳凰山，有一層層的霧圍繞著，簡直就是人間仙境似的，令人陶醉。

當客輪接近澳門外港一涯時，霧下得很重，視野不足一米，我心想著如何將這艘快達客輪安全地駛入澳門，靠上碼頭，好讓乘客登岸暢遊澳門。在霎那間，十多年的遠洋航海經驗驅使我當機立斷 --- 雷達導航。

我隨即命令大副、二副和輪機長小心聆聽我發出的命令，動作要敏捷，反應要快，每個動作的時間均極之重要。我自己親身操作及觀測雷達，然後將這艘客輪隨駛入外港航道，隨時命令調校船速。一路上，外港航道旁的竹枝回波，都被雷達探測到，內心萬分興奮。防波堤因水漲已被淹沒，終於外港口的防波堤回波出現在雷達螢光屏上。繼而是大碼頭，謝天謝地，當時「盧山輪」並沒有靠泊在大碼頭上。

當我向水手長命令，送出第一條繩纜上岸時，只是隱約見到一個碼頭水手，其他什麼都看不見。我最後命令不再用車，內心真的很興奮，因為我知道已成功地將客輪靠泊上碼頭。當我命令船艙服務員放下舷梯時，全體乘客立刻嘩然起來，他們

心裡在想：為什麼看不見碼頭？船已泊好了碼頭嗎？乘客在半信半疑下，收拾行裝上岸去。當時視野一直都不足一米，上帝存心要考考我林傑船長的功夫 --- 哈！哈！我合格了。

從這次經驗，我深深體會到，適當地使用雷達是可肯定船舶能安全地航行。

(林傑：退休船長
Master Mariner, FIS, MH.)

LAW OFFICES
KEESAL, YOUNG & LOGAN
A PROFESSIONAL CORPORATION

U.S. COUNSEL TO
THE MARINE TRANSPORTATION INDUSTRY

LONG BEACH OFFICE
400 OCEANGATE
P.O. BOX 1730
LONG BEACH, CALIFORNIA 90801-1730
TELEPHONE: (562) 436-2000
FAX: (562) 436-7416

SAN FRANCISCO OFFICE
450 PACIFIC STREET
SAN FRANCISCO, CALIFORNIA 94133
TELEPHONE: (415) 398-6000
FAX: (415) 981-0136

ANCHORAGE OFFICE
101 EAST
9TH AVENUE, SUITE 7A
ANCHORAGE, ALASKA 99501-3651
TELEPHONE: (907) 258-4110
FAX: (907) 277-1894

SEATTLE OFFICE
SUITE 3100
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101
TELEPHONE: (206) 622-3790
FAX: (206) 343-9529

HONG KONG OFFICE
SUITE 1603
299 QUEEN'S ROAD CENTRAL
HONG KONG
TELEPHONE: (852) 2854-1718
FAX: (852) 2541-6189

www.kyl.com

Celebrating over forty five years of providing comprehensive legal service to marine industry.

Rejection of Cargo by Receivers – A Case Study on Cargo Contamination

Shirley Wu

Introduction

It is not uncommon that, upon arrival at the discharge port, the cargo receivers may delay taking delivery or reject the cargo for various reasons, for example, damage to the cargo, delay in arrival of the original bill of lading, disputes under the sale contract, or difficulties in the market. Carriers are often caught in a very difficult position of trying to mitigate loss and finding a way to dispose of the cargo, oftentimes without any cooperation from the receivers. The urgency of the next voyage, extra cost and expenses in keeping the cargo, additional risks to the safety of the cargo and other reasons may put great pressure on the carriers. Do the carriers have to keep the cargo until the receivers finally take delivery or formally abandon the cargo, or are they free to take steps to dispose of the cargo and/or leave the discharge port?

This article, by analysing a recent cargo contamination case, tries to illustrate the difficulties faced by the carrier in a situation where receivers rejected a (partially) contaminated cargo and refused to cooperate with the carrier in finding ways to dispose of and/or salvage the cargo, leaving the carrier on its own to try to mitigate loss. We wish to highlight the importance of exploring all possible

legal and commercial options to resolve a situation which could potentially expose the carrier to substantial loss/damage and consequential loss claims.

Position under English law

Delivery is an action completed by both sides – proffering delivery and taking delivery – which together accomplish the final stage of a contract of carriage. However, this does not mean that receivers are obliged to take delivery in all circumstances. As a general rule, the receivers may refuse improper delivery: they have no obligation to receive the cargo in any unreasonable way or in any form or manner other than what they have contracted for. For example, without legal excuse, the carrier must not deliver the cargo at a place other than the agreed destination.

What happens if the cargo is damaged? In general, the receivers must still accept delivery of damaged cargo and mitigate the loss. Under English law, if the receivers fail to take delivery of the cargo within a reasonable time they will be liable for damages, and a wrongful rejection may result in a liability for damages arising from that rejection, unless the cargo had been so badly damaged as to amount to a “change in specie”. Accordingly, receivers have a

duty to accept damaged goods unless the cargo is practically or totally worthless.

Case study

In a recent cargo contamination case handled by the Club, Korean Receivers refused to accept a cargo of phosphoric acid into their refinery storage due to the cargo being contaminated by oily residue from a previous cargo. Expert advice suggested that sound cargo could be separated from the contaminated cargo by a decanting process. It would have been possible to discharge the good cargo leaving just a minimal amount of contaminated cargo in each tank to be disposed of by the vessel. Owners would therefore have been able to re-tender sound cargo to the Receivers.

Despite this, the Receivers rejected the entire shipment and claimed they could not accept even sound cargo following the proposed decanting process, on the basis of a likely risk of catastrophic damage to their and/or their end-user clients' machinery. The Receivers even refused to participate in further sampling or testing or to provide any alternative solutions.

Notwithstanding the Receivers' unreasonable and uncommercial refusal to participate in any form of loss mitigation, Owners were advised that they would need to act unilaterally to avoid considerable loss of time and earnings: they had no choice but to consider a more practical and commercial approach to move forward to resolve the dispute. Any arguments raised at a later stage that such an approach was

incorrect could be countered by Owners because no other realistic alternative had been proposed by the Receivers.

Owners were careful at every stage to document the actions undertaken, inform Receivers and Charterers of those actions and always invite them to participate where appropriate. Receivers were informed of the cargo analysis results so that at a later stage Owners could prove that Receivers were fully informed yet still chose to reject the cargo. This would help Owners avoid arguments later on and assist with resolving the matter faster and more cost-effectively. The aim was to compile evidence to demonstrate that Owners had to take all reasonable actions unilaterally to reduce losses.

Owners also issued a formal notice to the Receivers which put them on notice that the cargo below the oily film was uncontaminated and set out the legal obligation of Receivers to receive the on-spec cargo once re-tendered, and stating that Owners were taking reasonable and justified actions to rectify the situation and reduce losses. If the Receivers still rejected the good cargo, this notice would help protect Owners' rights.

Upon receipt of the notice, the Receiver issued a written rejection. This was considered to be a formal rejection of the cargo meaning that Owners were clearly within their rights to take any steps they considered necessary to reduce losses. In considering the steps to be taken, Owners had to take into account their potential exposure and the options

they had, i.e. whether they should fight the case with the Receivers and force them to take delivery of the cargo, or alternatively proceed to explore other alternative legal or commercial options to try to reduce losses in light of the Receivers' rejection of the cargo.

Owners' potential exposure in this case

On the basis of contemporaneous evidence, the expert report and a scientific analysis of the source of the contaminant by an independent laboratory indicating that the only likely source of the contaminant was the previous cargo, it was considered very likely that a tribunal would come to the conclusion that Owners would be liable for the resulting direct losses, i.e. diminished value of the cargo. In addition, Owners would also be exposed to potential claims for any additional freight costs paid by Receivers for a replacement cargo as well as their consequential loss of profit, loss of end-user clients and business opportunities and reputation. In defence, Owners would argue that such losses were too remote to be recoverable as damages.

Even in light of the expert advice that the cargo could safely be discharged, the risk to the Receivers' high-value machinery (or that of their end-users) was likely to be found by a tribunal to be the overriding factor as to why it was reasonable for the Receivers to reject the cargo. As such, the Receivers' actions to look for a replacement cargo and continue their business dealings would likely be considered prudent in

mitigating their losses and those in relation to end-users.

Another complicating factor was that, whilst it was expected that claims would be brought in arbitration against Owners under English law as per the Bills of Lading terms, the claims might potentially be brought locally (in contravention of the law and jurisdiction clauses in the Bills of Lading) and the Vessel might have been arrested for security.

Mitigation actions taken by Owners

Faced with the reality that the Receivers were not going to take delivery of the cargo, Owners proceeded to investigate possible mitigation options. These included reselling the cargo back to the shippers, or a salvage sale to local buyers at the port of discharge or to buyers at another port. The returns and costs of each option had to be considered and compared. Owners were under time pressure as the longer the delay, the more loss and damage they would suffer.

As the Receivers were owners of the cargo, in order to sell or dispose of it, Owners need to get approval from the Receiver or confirmation that they had abandoned the cargo. A formal notice of abandonment, or endorsement on or return of the original bills of lading, was needed in order to re-sell the cargo. Owners were not free to deal with the cargo without abandonment or endorsement since they were not owners of the cargo and had no

right to deal with it. If they had proceeded to dispose of or sell the cargo without the owner's consent, they would have been at risk of being held liable for conversion.

There were two obvious options:

- (1) Commencing Arbitration and seeking an Order that the Receivers accept or abandon the cargo; or
- (2) Filing an application in the Korean Courts requesting an Order that the Receivers accept delivery of the cargo or abandon the cargo.

But neither turned out to be viable.

An Order from an Arbitration Tribunal or from the Korean Courts would require the Receivers to take some physical action: accept or abandon. However, arbitrators have little power to enforce their Orders, especially in foreign jurisdictions, and Korean lawyers advised that a Korean Court Order along those lines could simply be ignored by the Receivers without any real negative legal/commercial consequences.

Furthermore, even if the Receivers did comply with a Korean Court Order to accept delivery of the cargo, they likely would have sold the cargo in a salvage sale locally which would have obtained a substantially lower value than a re-sale to a salvage buyer at another port. The Korean Legal approach therefore did not appear to be the best mitigation of loss strategy.

In light of the foregoing, the course of action decided upon was for Owners to engage in an amicable discussion with Receivers to persuade them voluntarily to abandon the Cargo, and endorse or return the original Bills of Lading to Owners, in exchange for an immediate settlement of the cargo's total loss, or at least the receipt of acceptable security to cover the loss.

With the above considerations in mind, Owners, in consultation with the Club, agreed with the Receivers to reimburse them in full for the value of the cargo and that all other claims, including those for consequential losses, would be dropped. Owners were then to gain title to the cargo (through an Abandonment Letter) and could sell it to a salvage buyer, thereby reducing the overall losses.

The best price for the salvaged cargo, also taking into account freight costs, was offered by a buyer in Malaysia. The sale proceeds from the salvage buyer, plus a payment by Owners which represented the diminution in value of the cargo (i.e. in total, the original invoice value of the cargo), were remitted to Korean lawyers, who then paid the entire sum to the Receivers in exchange for a letter of abandonment. As the shipowner now had title to the cargo it could be delivered to the salvage buyers. The amount paid by Owners (representing the net loss of value of the cargo), plus the freight factor of transporting the cargo from Korea to Malaysia, were covered by the Club.

Summary

As can be seen from the above case study, whilst the general legal position is that receivers are obliged to take delivery of cargo even if it has been damaged, there are limited situations where receivers would be justified in rejecting the cargo. In some circumstances, despite legal remedies available in some jurisdictions for the carrier to try to force receivers to take delivery or formally abandon the cargo, such action may not be feasible in practice and might even expose the carrier to more delay, loss and damage. Carriers may in these circumstances have no option but to take active steps to try to reduce the loss and find alternative ways of resolving the deadlock, in the absence of normal

cooperation from the receivers. This is especially so when the carrier is clearly at fault for the cargo damage and also does not have a viable claim for damages against receivers for non-acceptance of cargo or delay in taking delivery.

In such cases, an owner should act quickly to obtain legal advices in all relevant jurisdictions and try to explore all possible alternatives, both legal and commercial, to resolve the dispute.

(Shirley Wu: Syndicate Manager of Steamship Mutual Management (Hong Kong) Limited The article was published in Issue 30 of Seaventure on page 28)



www.crump-co.com.hk

35+ years Hong Kong and Regional Experience

- Insurance Claims
- Personal Injury & Life
- Ship & Aircraft Transactions
- Risk Management & Casualty
- Dispute Resolution

Chris POTTS: chris.potts@crumpslaw.com M: (852) 9461 4377

Peter LAU: peter.lau@crumpslaw.com M: (852) 9683 7439

1103 Jubilee Centre, 18 Fenwick St., Wan Chai, Hong Kong

Tel: +852 2537 7000 Fax: +852 2804 6615

Admiralty Firm with broad and deep knowledge and experience in Transport Law and Civil Dispute Resolution and strong network of Correspondents Worldwide.



隆 星 航 業 有 限 公 司
Grand Seatrade Shipping Company Limited

3107 Alexandra House,
16-20 Chater Road, Central, Hong Kong
Tel : (852) 2526 4294-7
Fax : (852) 2810 6780
Telex : 85146 SETRA HX
E-mail address : gstrade@netvigator.com

香港中環遮打道 16-20 號
亞歷山大廈 3107 室
電話 : (852) 2526 4294-7
傳真 : (852) 2810 6780
電傳 : 85146 SETRA HX
電郵 : gstrade@netvigator.com



鴻 潤 印 刷 公 司
HUNG YUEN PRINTING PRESS

WE DO ALL KINDS OF PRINTING MATTERS AT LOW PRICE & GOOD QUALITY:

- **Catalogues**
- **Poster, Label**
- **Design Services**
- **Computer Forms**
- **Calendar, Paper Bags**
- **Brochure, Pamphlet**
- **Shipping Documents**
- **Offset & Digital Printing**
- **Corporate Newsletter, Magazine**
- **Name Cards, Letter Head & Envelopes**

香港黃竹坑業勤街 33-35 號金來工業大廈第 2 座 16 樓 O-P 室

16-O-P, Block 2, Kingley Industrial Building, 33-35, Yip Kan Street, Wong Chuk Hang, H.K.

Tel: (852) 2552 7008

Fax: (852) 2552 6384

E-mail: hungyuenprinting@gmail.com



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。





Institute of Seatrtransport

海 運 學 會

SEAVIEW

海 運 季 刊

JOURNAL OF THE INSTITUTE OF SEATRANSPORT