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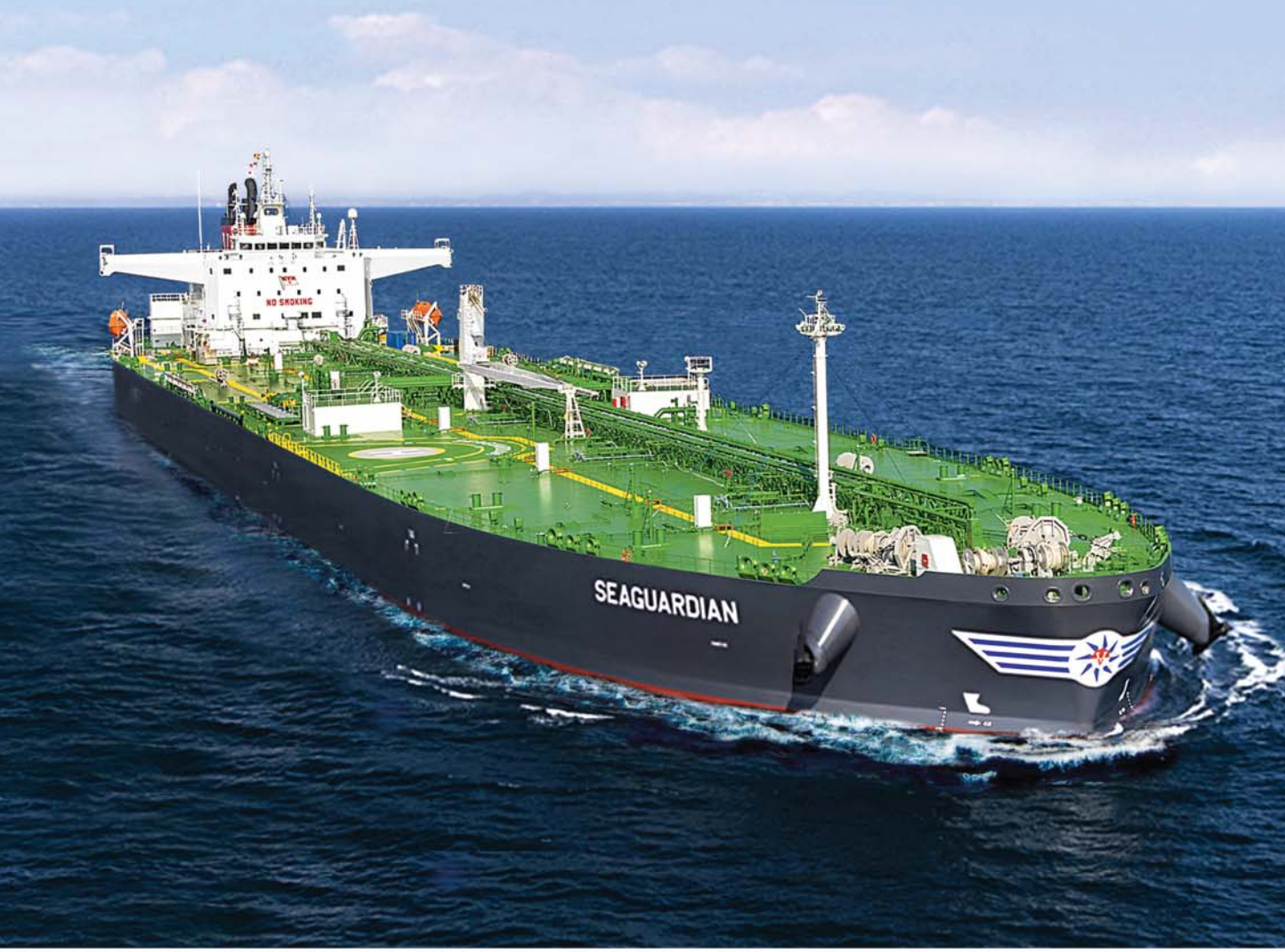
SEAVIEW
海運季刊

JOURNAL OF THE INSTITUTE OF SEATRANSPORT

A Discussion on Controlling Air Pollution from Marine Engines under MARPOL Annex VI and Section 213 of the US Clean Air Act

Can a Claimant Always Pick the Jurisdiction With the Highest Limitation of Liability?



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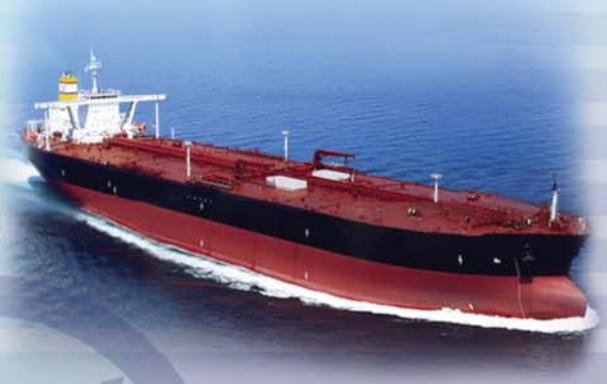

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Peer Learning in Higher Education: Evidence from Revision Centre for Maritime Logistics Sub-degree Students

Arison Woo /Kiki Oy Lar Chan / Helen Wong / Yui-yip Lau

The significant transition from secondary to tertiary education can cause unfolded challenges for maritime logistics sub-degree students, with changes to various aspects such as level of difficulty, degree of independence, extent of self-direction in learning, assessment methods, range of subjects and time management. Such 'transfer shock' creates unfolded challenges of maritime logistics sub-degree students in a new learning environment. Large class sizes in maritime logistics subjects and teaching staff involved in a variety of non-teaching tasks, and therefore, less available to students may exacerbate these challenges, potentially increasing student anonymity and cohort disconnection, and potentially negative consequences to their learning and psychological conditions in a tertiary environment (Cook and Leckey, 1999). Facing with these challenges, the use of peer learning as a strategy to enhance student academic achievement and psychological well-being is explored in this study.

Peer learning can be defined as the use of teaching and learning strategies in which students learn with and from each other without the immediate intervention of a teacher to acquire knowledge and skills (Boud et al., 1999). There are benefits for learners involved in peer learning including exhibiting higher levels of academic achievement, improving study skills, understanding of the subjects, positive attitudes toward the subjects being studied, increasing the use of critical thinking and creative thinking skills, better social and communication skills, increasing propensity for lifelong learning, greater satisfaction with learning, better psychological well-being and cultivating time management skills (Capstick, 2004; Hanson et al., 2016; Johnson et al., 1998; Springer et al., 1999). According to Bulte et al. (2007), peer learning can be conducted by near-peers who are the students one or more years senior to another student (Bulte et al., 2007) and they play the important role as peer mentors to aid learners ("peer mentees" and "learners" are used interchangeably in this study) in their successful transition

to college by providing academic support (Gershenfeld, 2014). Similar concept of peer learning is cooperative or collaborative learning which is used more in higher education. Through the collaborative learning, students work together to solve problems and stimulate interdependent learning with setting up structured activities to them (Bruffee, 1999). Prior study, such as, Terenzini et al. (2001) indicated that collaborative learning methods produce both statistically significant and substantially greater gains in student learning than those traditional instructional methods.

In terms of peer learning, the Revision Centre for Buddies (hereafter called "Revision Centre") is a new, innovative, and interactive approach in providing students learning support. At Hong Kong Community College (HKCC), The Hong Kong Polytechnic University (PolyU), the Revision Centre has been set up since 2016/17 academic year. The Centre is aimed at providing a meeting place to facilitate face-to-face peer learning sessions during semesters. Due to COVID-19 pandemic, the Revision Centre has been fundamentally shifted from face-to-face to online mode. The network speed and the advanced online communication tools facilitate the social presence in the context of COVID-19 pandemic (Lau et al., 2021). The target of peer mentees is the students of taking maritime logistics subjects (e.g., Fundamentals of Logistics and Supply Chain Management, Introduction to Inventory and Warehousing Management, Introduction to Procurement Management, Global Transport and Trade Operations, Fundamentals of Operations Management, Information Technology in Global Supply Chain Management). Fresh HKCC graduates who had good academic performance and participated in extra-curricular activities are recruited as peer mentors in order to ensure quality learning support to peer mentees.

In our research study, we aim, to investigate: (1) How does the educators design Revision Centre to align with the student's expectations, perceptions and learning effectiveness? To what extent their academic achievement and psychological well-being in a peer learning environment is enhanced? To answer the research questions, we conduct a qualitative research study through semi-structured, face-to-face, in-depth interview with 10 graduates in 2021. The interview questions are listed as below:

- What are your expectations of this peer learning? Can this peer learning meet your expectations?
- Why do you join this peer learning?
- What are the key elements of creating effective peer learning in revision centre like physical environment, supporting elements and soft skills?
- What are your expectations of being an appropriate mentees?
- From your perspective, what kinds of evaluation approach are effective in measuring peer learning in revision centre?
- What are personal characters / attitude / behavior of being an appropriate peer mentor?
- What are the advantages of peer learning for your current study / career / further study?
- What are the drawbacks of peer learning?
- What are your suggestions to improve peer learning?
- Will you join peer learning in future? Why or why not?
- Will you recommend your friends to join peer learning? Why or why not?
- Do you think peer learning should be held in a physical room?
- Do you think peer learning should be conducted through internet?
- Do you think peer learning should also be conducted through other means? If yes, please provide suggestion.

Based on the interview findings, we identify that interactive learning, physical environment, the motivation and expectation of students, and peer mentors' quality are the critical success factors for Revision Centre. Such four key factors foster to develop a large-scale study in the future. We expect that this study provides a useful guidance for higher education institutions to design and implement new, innovative learning pedagogy to foster maritime logistics sub-degree students overcome desirable difficulty. Indeed, Revision Centre inspires the idea of peer-to-peer learning that reinforce pedagogical models of teaching and learning in the future. In the long-term, it may motivate the students to pursue the maritime logistics programmes in the forthcoming years. This will be a strategy to optimize maritime logistics industry through sustainable human capital development (Lau et al., 2018).

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濫用航行自由，及其反制措施的風險

朱志統

之前不斷有美艦自由航行南海及台灣海峽的報導，最近也有中國軍艦駛近了阿留申（美）群島的報導，這消息在 DVIDS（Defence Visual Information Distribution Services）報導出來後，一度被撤銷，再重新報導。大意是，接受中國軍艦航行，強調只需按照（A）國際海洋法（簡稱：海洋法），及（B）國際海上避碰規則（簡稱：避碰規則）行駛即可。

海洋法所涉及的是船（飛機）可以航行的範圍。定義了領海（以退潮界限起算大陸架外延最多 12 海浬），專屬經濟區（離岸 200 海浬），無害通行，島國的國界等，及在專屬經濟區可以自由航行（Freedom of navigation）。

該規則並沒有給予在別國的領海內自由航行的權利。海洋法亦包括海洋資源的合作開發、污染的管理、以及爭議的處理。此法 1994 年 11 月 16 日生效，但美國並沒有簽定。

避碰規則涉及的是二船相遇時，如何避免碰撞的國際法規。

它和一般人的想法有很大差異，避船的規則，並非小船避讓大船，而是根據避碰規則執行。

第 18 條第 1 款規定，除特殊情況外，機動船在航行時，應給予下述船舶讓路：

（1）失去控制的船舶

（2）操縱能力受到限制的船舶

（3）從事捕魚的船舶

（4）帆船

特殊情況為第 9 條的「狹窄通道」，第 10 條的「分道通行制」，以及第 13 條的「追越船」。

由於軍艦也是機動船，所以，在有碰撞危機時，它要避讓上述（1）至（4）的船隻。其優先次序乃與船舶的操縱性有關，而與其噸位及性質無關。（4）的操縱性優於（3）（2）（1），所以，（4）要讓路給（3）（2）（1）。同樣，（3）的操縱性優於（2）（1），要讓路給（2）（1）。

所以，不管你是超級油輪也好，豪華客輪也好，航空母艦也好，你要避碰（4）-（1）類別的船。

當然，無論是海洋法或避碰規則，尤其是後者，都是為航行安全提供一個保障。筆者認為，它們並不會、也不應去考慮有些不是真正為航行而航行的船隻。正如我不停在你家門前來回地步行，其目的必定不是散步。自由航行在海洋法中有說明，基本上只限專屬經濟區及公海。「自由航行」的概念在避碰規則中不存在，而且在航行中有「自由航行」這個想法是危險的，你必須跟規則行事，否則會撞船。

活生生的例子是 2017 年 6 月 17 日，美國軍艦 USS FITZGERALD 就與一艘貨櫃船 ACX CRYSTAL 在東京之南約 80 海浬相撞，從網上搜查到的二船照片中可見，軍艦在駕駛台下層近右邊主甲板嚴重損毀，估計向內凹進不少於 3-4 米，損壞面積不少於垂直 9 米，橫向 9 米，造成艦上 7 死 10 傷。貨櫃船左方船頭外殼由前面 5-6 米，到吊錨機相對位置 1 米，外殼擦傷，最前端可能船殼破損，但應無人傷亡。

從損壞圖片判斷，軍艦之右舷船中部與貨箱船的左舷船頭相撞，碰撞之前，屬於兩艘機動船交叉 (CROSSING) 相遇，應按避碰規則第 15 條，本船應對右方之船避讓。換言之，軍艦應避讓貨櫃船。

海洋法規定，船舶（應包括軍艦）可在公海上自由航行，但避碰規則規定了各方應按規則避碰。理論上，某國可以在他國領海外自由上下不停航行，就像我在你家門口不停來回步行，實質上，這未必符合自由航行的真義。這個尺度，愈靠近他國領海，「自由航行」愈不成立。這方面，可以比較「無害通航」（innocent passage）的定義 。但如果某國鑽空子或用模糊地帶作為藉口去困擾他國，他國絕對可以用避碰規則去反制某國。

依據避碰規則第 15 條及第 18 條，用一、二艘機動船部署在軍艦的右方橫過，這就可以把軍艦逼到無路可行。如果用漁船拖網（可以長達 1 浬），或拖船拖帶駁船（也可達千米），自由航行的軍艦作為機動船按規則要主動避碰。除非軍艦開炮，把他船擊沉。如果大家相撞，軍艦的損壞程度往往是商船的幾倍（見上述例子），而在碰撞前的一、二分鐘，開炮是否有用？按規則你要避碰，你卻開炮？如果商船為油輪，或載有危險品的船舶，則將會兩敗俱傷。

這種「你做初一、我做十五」的行為，擦槍走火是必然會發生的。

如果 FITZGERA 可以與 ACX CRYSTAL 在雙方不想碰撞之情形下碰撞了，那些想碰的還有難處嗎？順便一提，上述美艦碰撞事件發生兩個月後，在 2017 年 8 月 21 日，又有另一美艦 JOHN C MACAIN 碰撞了一艘油輪 ALNIC MC，造成 10 人死亡。（資料來源 WIKI）

最後，強調一下，在視野不良時，主要是霧天，雙方避碰必須依照第 19 條，避碰之責任主要是按雙方的相對位置（方向及距離）而定。由於肉眼看不到，不知船的種類及所從事什麼操作，只能依賴雷達（判斷其航向、航速及位置，但軍艦或可能另有情報作判斷）。大部份的海上碰撞多在這種天氣情況下發生。

諷刺的是，在專業海員不斷用優化手段，包括在國際層面不定期去修正避碰規則去努力保證避碰，卻有些國家在這方面借「自由航行」玩火，可悲。

(A) 國際海洋法（海洋法）
United Nations Convention on the Law of the Sea

(B) 國際海上避碰規則（避碰規則）
Convention on the International Regulations for Preventing Collisions at Sea, 1972

(朱志統 : 2021.09.25)

A Discussion on Controlling Air Pollution from Marine Engines under MARPOL Annex VI and Section 213 of the US Clean Air Act

Owen Tang / Brian Sun

Introduction

Significant increases in international trade are likely to increase the air pollution from marine engines, and research findings have indicated that marine diesel engines are sources of atmospheric pollutants such as local ozone, carbon monoxide ("CO"), and particulate matter. As a result, the US Congress enacted a law to govern the emissions from large marine engines at or above 30 liters per cylinder.

Air pollution from marine engines has a disproportionate effect on port cities, where the pollutants are severely concentrated. For example, pollution from a single vessel at the port of Los Angeles may be equivalent to that from 12,000 cars per day. In Santa Barbara, large marine engines account for thirty-seven percent of mobile source nitrogen oxides for thirty-seven percent of total area.

Air emissions from maritime sources, such as particulate matter ("PM"), are linked to several serious respiratory ailments. The Air Resources Board from California Environmental Protection Agency published its findings that particulate matter and other airborne pollutants tied to the international shipment of goods has resulted in the estimated premature deaths of 750 people per year in California alone. Air pollution from large marine engines will continue to increase as the frequency of their trips of container vessels continue to accelerate.

Despite the significant threats posed by large marine engines, there were limited responses to create a comprehensive international regulatory regime from global shipping communities. One of the international regulatory regimes in controlling air pollution from marine vessels has been contained within the International Convention for the Prevention of Pollution from Ships ("MARPOL"). In 1997, the international community drafted Annex VI to MARPOL to regulate air pollution from marine diesel engines.

Scope & Purpose of MARPOL Annex VI

MARPOL Annex VI has several components designed to reduce ship emissions from diesel vessels including regulating ozone depleting substances, sulfur oxides, nitrogen oxides, and volatile organic compounds.

Annex VI aims to reduce to ship emissions in two ways. First, it requires the member nations to regulate their vessels through the certification system enacted

under the Annex. Second, Annex VI will be binding on all signatories to the MARPOL Convention itself, not just those signing Annex VI. Therefore, each MARPOL Convention member nations can enforce the provisions at the port on all vessels flying the flag of a MARPOL member nation.

The Annex establishes fuel controls for marine vessels by requiring that the sulfur content of fuel not exceed 4.5 percent of mass. The Annex also establishes the two Sulfur Oxides Emissions Control Areas: (a) the North East Atlantic (North Sea, Irish Sea, and English Channel) and (b) the Baltic Sea, where ships must either use fuel not exceeding 1.5 percent mass of sulfur oxides or employ an exhaust-gas cleaning system. Finally, Annex VI sets out procedures for designating an Emissions Control Area by specifying:

(a) a clear delineation of the area's boundaries;

(b) a description of the area and the unique risks that sulfur oxides poses;

(c) an environmental assessment of sulfur oxides on the aquatic ecosystems;

(d) the nature of ship traffic; and

(e) a description of the environmental protection measures currently applicable to the area.

Deficiencies of Annex VI

The first deficiency of Annex VI is that it currently does not reach particulate matter. Second, it fails to regulate a variety of greenhouse gases. In recognizing such deficiencies, the International Maritime Organization (IMO) passed Resolution A.963 "IMO Policies and Practices Related to the Reduction of Greenhouse Gas Emissions from Ships."

In addition, Annex VI only regulates a limited scope of vessels (engines must meet certain speed requirements and must be above 130kW in power), which leaving many categories of engines wholly unregulated under Annex VI.

Other than that, Annex VI only apply to diesel engines manufactured or installed after January 1, 2000. As older vessels tend to concentrate in the fleets of developing countries, which means that older vessels are likely to stay in service longer and continue polluting the ports they call. As the U.N. Conference on Trade and Development [UNCTAD] estimated that the current Annex VI regulations will only reduce pollution less than one percent per year based on the current ship replacement rate.

US Approach to Annex VI – EPA's Two-tiered approach to Section 213 of the Clean Air Act.

However, the US took a very slow approach of twelve years to ratify and become a party of the Annex VI Protocol

until January 2009. During the in-between years, the control of air pollution from marine diesel engines was depended upon the US Environmental Protection Agency ("EPA")'s non-discretionary obligation under Section 213 of the US Clean Air Act to regulate significant pollution from "nonroad engines."

Section 213(a)(3) of the US Clean Air Act directs the EPA to establish emissions standards for new nonroad engines, including marine engines, that contribute to certain types of pollution. When drafting the emissions standards, the EPA must consider the current available technology and the cost of adopting such technology. Besides, the standards must achieve the greatest degree of emission reduction through the application of that technology.

Standards for the largest type of marine engines are known as "Category 3" engines, which include marine diesel engines which are "very large marine engines used primarily for propulsion power on ocean-going vessels such as container ships, tankers, bulk carriers, and cruise ships."

In 2003 the EPA adopted a two-stage approach to regulate such engines. The Tier 1 Rule established interim standards based upon technology available in 2003, which also set April 27, 2007 as the deadline for promulgating Tier 2 standards, which would be based upon the more advanced technologies the EPA expected to become available. The 2003 EPA drafted standard was challenged in court, and the decision from the US Court of Appeals in *Bluewater Network v. EPA* (2004) held that the "two-tiered approach to emissions standards satisfies the requirements of section 213(a)(3) of the Clean Air Act."

In *Bluewater Network v. EPA* (2004) the involved marine diesel engines were of the largest engines in the world, with greater than 30 liters displacement per cylinder. The engines burned residual fuel oil – a byproduct of refining crude oil – which tended to generate higher ash, sulfur and nitrogen content than other fuels. Such residual fuel oil also has a higher variability than other fuels, which makes engine emissions more difficult to control. The engines thus contribute to national ozone, carbon monoxide, nitrous oxide and particulate matter levels, especially near commercial ports like New Orleans, Los Angeles and along coastal areas like Santa Barbara, California. Therefore, the EPA decided that the involved marine diesel engines were belonged to "Category 3" engines subject to their drafted standards.

When EPA drafted its standard, it considered the facts that the IMO formally adopted Annex VI to the MARPOL Convention, and the EPA intended to set the Clean Air Act emissions standards for Category 3 engines at the same level set by Annex VI. The EPA refused to set a higher standard because it reasoned that Category 3 engines "have only a minimal impact on U.S. air quality" because they operate in U.S. waters for "only a limited amount of time" and if it draft a stricter standard for U.S. ships only, it would potentially

compromising their competitiveness in the world shipping market.

Several months later, the EPA decided to postpone adopting emissions standards for these engines. Because the EPA concluded that adopting those standards "would be unnecessary and redundant" because it expected U.S. vessels to comply with the Annex VI standards.

Therefore, the EPA finally decided that it would not set emissions standards for Category 3 engines, and it proposed to formally adopt the Annex VI emissions standards as the Clean Air Act standards for Category 3 engines. The EPA intended to apply such standards only to U.S.-flagged ships with an aim to "achieve a 20-percent reduction in the national Category 3 nitrogen oxides inventory by 2030." Besides, the EPA committed to complete the "Tier 2 standards no later than April 27, 2007."

Earth Island Institute, an environmental group, made a petition for review of that rule, and Bluewater Network became the petitioner and raised the following claims to the US Court of Appeals for reviewing the EPA's Category 3 engine rule:

First, it asserts that the EPA acted arbitrarily and capriciously in failing to adopt standards that reduce emissions from Category 3 engines to the greatest degree achievable through available control technologies. Second, Bluewater contends that the EPA violated section 213(a)(3) of the Clean Air Act by failing to regulate emissions from engines on foreign-flagged vessels.

In *Bluewater Network v. EPA* (2004), the US Court of Appeals decided that it was not an arbitrary and capricious act for the EPA not to adopt emissions standards for Category 3 engines. For the second issue, the Court held that Bluewater's claim regarding the EPA's deferment to regulate Category 3 engines on foreign-flagged vessels is premature. Accordingly, the Court denied Bluewater's petition for review.

Recent Update: 2019 Amendments Related to Global Marine Fuel

The US ratified MARPOL Annex VI and became a Party to this Protocol effective January 2009. To address ship sulfur oxides and particulate matter emissions, the Annex contains limits on the sulfur content of fuel used in global shipping. The sulfur content limit is currently 35,000 ppm, decreasing to 5,000 ppm beginning January 1, 2020. The limit applies in designated Emission Control Areas (ECAs), currently set at 1,000 ppm.

There are two broad categories of marine fuel: Distillate fuel and residual fuel.

The International Organization for Standardization (ISO) distinguishes these fuel types based on their kinematic viscosity: Residual fuel ranges from 10 to 700 mm[FN2]/s at 50 °C while distillate fuel ranges from 1,400 to 11,000 mm[FN2]/s at 40 °C, meaning that residual fuel is much less viscous than distillate fuel.

Residual fuel also has a higher sulfur content, as it is the residue of the refining process. There is no maximum sulfur limit that applies when selling residual fuel, and the sulfur content can be 35,000 ppm or more.

MARPOL Annex VI requires any fuel used onboard a ship to not exceed 35,000 ppm when the ship is operating outside of designated ECAs, and this global marine fuel has consistently been residual fuel, not distillate fuel.

Beginning in 2020, however, the lower sulfur content of global marine fuel means that compliant fuel can be distillate, residual, or blends of both. As a result, the U.S. refining industry has expressed a concern that existing provisions in the US Clean Air Act diesel fuel regulations may prevent them from distributing compliant fuel in the US.

The 2019 Amendments aim to reduce the potential for higher sulfur global marine fuel to be improperly diverted to the ultra low-sulfur diesel (ULSD) fuel and Emission Control Area (ECA) marine fuel markets. The amendments include several regulatory changes to accommodate the supply and distribution of distillate diesel fuel as global marine fuel. Under the 2019 Amendments, the US conditionally exempting distillate diesel fuel from the prohibition against distributing distillate diesel fuel that exceeds the ULSD fuel and ECA marine fuel sulfur standards.

This exemption includes several conditions.

(1) The fuel must not exceed 0.50 weight percent (0.50% m/m, which is 5,000 ppm) sulfur;

(2) fuel manufacturers must designate the fuel as global marine fuel;

(3) product transer documents accompanying the fuel must identify it as global marine fuel;

(4) global marine fuel must be segregated from other fuel that is subject to the diesel fuel standards in 40 CFR part 80, subpart I;

(5) the fuel may not be used in any vehicles, engines, or equipment operating in the US (including vessels operating in an ECA or ECA-associated area); and

(6) manufacturers and distributors must meet conventional recordkeeping requirements.

Another purpose of the amendments is to legally allow U.S. refiners to distribute distillate marine fuel up to the 5,000 ppm sulfur limit, which will facilitate smooth implementation of the 2020 global marine fuel standard. The amendments may help to reduce the costs of compliant fuel for ships. However, the 2019 amendments to the Clean Air Act fuel regulations may not be helpful to enhance further reduction

of the emissions from large marine diesel engines and their fuel by itself. In fact, it is the global fuel sulfur program based upon MARPOL Annex VI that could provide additional air quality benefits in those areas of the US not covered by the Emission Control Area, such as Guam and western and northern Alaska.

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Can a Claimant Always Pick the Jurisdiction With the Highest Limitation of Liability?

Ruaridh Guy / Richard Oakley / Alex Ngai

Pusan Newport Co Ltd v. The Owners and/or Demise Charterers of the ships or vessels "Milano Bridge" and "CMA CGM Musca" and "CMA CGM Hydra" [2021] HKCFI 1283

The Hong Kong Court has stayed proceedings before it that arose out of an allision in South Korea on the ground that South Korea was the more appropriate forum. As a result, the vessel's Owners could rely on the lower limitation amount applied in South Korea.

The background facts

On 6 April 2020, the containership *Milano Bridge allided* with a berth and multiple gantry cranes at Busan, South Korea. The terminal at which the incident occurred was operated by Pusan Newport Co Ltd (the "Terminal").

Shortly after the incident, the Owners of the *Milano Bridge* constituted a limitation fund in South Korea. As a matter of Korean law, the limitation amount was to be determined by reference to the law of the flag of the vessel which, in this case, meant Panamanian law. Under Panamanian law, the limit was as prescribed by the LLMC 1976 in its original form, without any subsequent increase or amendment. The relevant limitation figure was thus approximately US$ 24m. There were also a number of other actions commenced before the Korean courts arising out of the same incident.

A short time later, on 24 June 2020, the Terminal arrested a sister ship of the *Milano Bridge*, the *CMA CGM Musca*, in Hong Kong. In order to obtain the release of the CMA CGM Musca, security in a sum of approximately US$ 83m was provided. That figure was calculated by reference to the limitation amount under Hong Kong law, Hong Kong having enacted both the 1996 Protocol to the LLMC 1976 and the 2015 revisions thereto.

In July 2020, the Terminal also commenced proceedings in Japan, where the Owners of the *Milano Bridge* are incorporated. The limitation amount under Japanese law would be essentially the same as that under Hong Kong law.

The Terminal served its Statement of Claim in the Hong Kong proceedings commenced by the arrest of the *CMA CGM Musca*. The Owners then sought a stay of the Hong Kong proceedings, on grounds of forum non conveniens. The application for a stay was heard by the Admiralty Judge.

The test to be applied

In deciding matters of this kind, the Hong Kong courts apply the test as set out by the House of Lords in The Spiliada, as endorsed by the Hong Kong Court of Final Appeal in SPH v. SA. In order to obtain a stay, the applicant will have to establish: first, that Hong Kong is not the natural or appropriate forum; and second, that there is another available forum which is clearly or distinctly more appropriate than Hong Kong. If the applicant can establish both of those things, then the plaintiff must show that he will be deprived of a legitimate personal or juridical advantage if the action is tried in a forum other than Hong Kong. If that is established, the Court will balance the advantages of the alternative forum with the disadvantages which the plaintiff may suffer.

In this case, it was common ground that Hong Kong was not the natural or appropriate forum. That was evidently South Korea, given that all the relevant events happened there. However, the Terminal contended both that South Korea was not clearly or distinctly the more appropriate forum and that it would be deprived of a legitimate juridical advantage if compelled to proceed in South Korea, owing to the lower limitation amount that would apply. Indeed, the Terminal sought to argue that this latter point was decisive and that the Court was in fact obliged to dismiss the application for a stay.

The Court decision

The Owners were successful on all issues in dispute, and a stay of the Hong Kong action was accordingly granted. The Court found that most connecting factors pointed to South Korea. The most that could be said for Hong Kong was that the Court was available and that jurisdiction had been established by the arrest of the *CMA CGM Musca*. However, several important witnesses were based in South Korea and much of the relevant documentation would inevitably be in Korean. It was also not disputed that the law applicable to the incident was Korean law. It followed that South Korea was clearly and distinctly the more appropriate forum.

Whilst it was accepted that the availability of a higher limitation amount in Hong Kong was a juridical advantage for the Terminal, the Court rejected the submission that this was decisive. The loss of this advantage would not, by itself, justify the refusal of a stay in circumstances where the connection with Hong Kong was otherwise weak. This was particularly the case where, as here, the plaintiff came from the alternative forum.

Comment

The decision will be welcomed by shipowners seeking to limit their liability under the various limitation regimes. Had a stay not been granted in this case, in which the only connection to Hong Kong was the arrest of a sister ship, then it would have become difficult to think of any case in which a stay would be granted in the face of a lower limitation amount elsewhere. The practical effect would have been that arresting in Hong Kong would entitle the arresting party to proceed there in any case where the limitation amount in Hong Kong was higher than that available elsewhere. In other words, the availability of a higher limitation amount would have been decisive, to the exclusion of all else. That would have been a surprising and unwelcome conclusion.

Nevertheless, on the facts in this case, South Korea was clearly the natural forum and the various connecting factors largely pointed to that forum as well. In other less clear-cut cases (for example, collisions occurring on the high seas), the Hong Kong Court is less likely to grant a stay. This was demonstrated in the series of decisions arising from the collision between the vessels CF Crystal and Sanchi, which were referred to extensively in this case.

The Terminal has sought leave to appeal.

The authors of this article acted for the successful Owners in this matter.

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Employability of Maritime Logistics Business Graduates of CPCE Employability Services Office (CESO)

Macy Wong / Yui-yip Lau

College of Professional and Continuing Education (hereafter called CPCE) was founded in 2002 as a self-financed college of The Hong Kong Polytechnic University (hereafter called PolyU). CPCE's vision is to be a leading self-financing tertiary education institution in Hong Kong. With a mission to offer high quality tertiary education to learners at different stages of their studies and careers. With the great emphasis to support students' employability, CPCE has established a new office, CPCE Employability Services Office (hereafter called CESO) in September 2021 to equip students with the essential employability related skills and knowledge required to excel in different industry sectors. CESO also actively connects students with potential employers in providing students a glimpse of their desired jobs, as well as job opportunities prior to their graduation.

Indeed, the maritime industry underpins international business and world trade. Maritime transport is the backbone of the global economy and international trade. More than 80% of the volume of international trade in goods is carried by sea. It is expected that business management is critical for the maritime industry, requiring highly trained talents to join the industry and lead the development, implementation, and control of sound contemporary management practices. Hong Kong is renowned of being one of the world's largest trading hub, and the maritime industry is one of the key contributors to the economy. According to The Chief Executive's 2021 Policy Address, the development of a "Smart Port" and the enhancement of high value-added related maritime business services (e.g., ship finance and management, ship registration, maritime legal and arbitration service, marine insurance) are crucial to sustain Hong Kong as a leading international maritime centre. Apart from the up-to-date programme curriculum offered by CPCE, CESO will actively understand the current and future industry employability skills for maritime business graduates through interviews and surveys with industrial practitioners and logistics associations in order to better groom graduating students with the skills and knowledge to be work ready when they enter the maritime and related industries.

It is noted the high demand for digital literacy and technology knowledge and skills in the maritime industry due to the move towards digitalization, climate adaptation and resilience, the energy transition and decarbonization, and automation. Thus, CESO will offer regular employability workshops to update students with the latest new technology, as well as to enhance the communication

and adaptability skills of students to fit in to the dynamic nature of the shipping market. Guests and professionals from different industries are invited occasionally to conduct a series of seminars and sharing sessions to shed lights on the industry's latest trends and give students an understanding of the challenges and outlook of the job market.

CESO also makes great efforts to liaise with employers to provide meaningful experiential learning opportunities to graduating students in order to prepare them for future careers. The meaningful relationships with industry employers before graduation provides student a head start in their career. It is always believed that internships can provide precious working experiences for students which they cannot be obtained through classes alone. Besides, CPCE has emphasized the importance of work-based learning. Since 2005, the college has implemented the mandatory Work-Integrated Education (hereafter called WIE) graduation requirement. Work exposure during the studies serves the purpose of nurturing students with the essential employability skills that are valuable to their related professions.

All in all, CESO aims to support logistics students in seeking gainful employment through the provision of industry related learning experiences, such as, internships, career fair, and other activities conductive to students' employability. Apart from offering experiential learning opportunities to students, in the future, CESO also places strong emphasis on entrepreneurial development of the College, students, graduates and academics.

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AA TALK

Hull Insurance Clauses - General Average and Salvage

Raymond Wong

(As noted in Issue 122 the Editor of this column advised he would visit ITC-Hulls 1/10/83 with the assistance of the book "ITC HULLS 1.10.83" which was written by Mr. D. John Wilson who kindly allowed the Editor copyright on his book for any future editions.)

11 General Average and Salvage

11.1 This insurance covers the Vessel's proportion of salvage, salvage charges and/or general average, reduced in respect of any under-insurance, but in case of general average sacrifice of the Vessel the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.

11.2 Adjustment to be according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to the York-Antwerp Rules.

11.3 When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1974 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.

11.4 No claim under this Clause 11 shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against.

11.1 *"This insurance covers the Vessel's proportion of ....."*

It is interesting to record that the 1983 Clause was the first to make specific and positive mention of the cover provided for general average, etc. in the marine policy! The cover had always existed, but by implication rather than by express wording.

"..... salvage, salvage charges and/or general average, ..."

For all practical purposes, each of the above three headings of claim is likely to be called and treated in any average adjustment as plain "General Average", but for those who wish to be provided with some very imprecise but basic distinctions between the terms:

Salvage is a term used in everyday practice to describe the Award payable under a Contract of Salvage entered into by the Master of a stricken vessel, either with professional salvage tug operators or a passing merchant vessel, who come to the assistance of his ship and cargo, etc. in an emergency.

Salvage Charges is a term defined by §65(2) of the Marine Insurance Act 1906 to mean:

> "..... the charges recoverable under maritime law by a salvor independently of contract."

Thus, the term would apply to the Award payable on those rare occasions when a ship abandoned by her crew was towed into a port or place of safety, no contract obviously being signed.

General Average is a much wider term and, per §66(2) of the Marine Insurance Act 1906, occurs when:

> "..... any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure."

Under Rule VI of the York-Antwerp Rules 1974, 1994 and 2016 which govern the adjustment of vast majority of all general averages, both salvage and salvage charges are treated as plain general average, and it will be appreciated, therefore, that any precise legal distinction between the three terms is largely unnecessary.

> *"..... reduced in respect of any under-insurance ....."*

Some simple practical examples are given below to explain how these words operate, but it will first be useful to mention that, insofar as the Shipowner is concerned under his policy:

A General Average Sacrifice consists of a sacrifice of the physical property in the ship, i.e. any loss or damage caused to the hull or machinery of the vessel by, for example, efforts to re-float a stranded vessel or in extinguishing a fire on board.

The ship's proportion of such damage is not subject to under-insurance but is recoverable in full on the policy.

A General Average Expenditure is simply an expenditure of money to purchase services necessary to extricate a vessel and her cargo from some perilous situation, e.g. a salvage award, the cost of discharging cargo to re-float a stranded vessel, port of refuge expenses, wages of crew etc., etc.

The ship's proportion of such expenditure is recoverable in full under the policy only if the vessel is insured for a sum equal to or greater than her sound market value; otherwise her recovery is reduced in proportion to the under-insurance as per examples below.

A General Average Contribution is the amount payable by the Shipowner to the Cargo (or other) Interests in respect of some general average sacrifice of their property – e.g. a jettison of cargo – or a general average expenditure incurred by them.

Any contribution payable by the Shipowner to other interests is recoverable from Hull Underwriters in precisely the same manner as a general average expenditure, i.e. it is recoverable in full only if the vessel is insured for a sum equal to or greater than her sound value.

(Reference may also be made to §66(4) and (5) and §73 of the Marine Insurance Act 1906.)

Example 1. The General Average consists solely of:
a) G.A. Expenditure by the Shipowner of 2,000 or
b) G.A. Sacrifice of Cargo of 2,000

		Apportioned:		
SHIP	on Sound Value of	100,000	pays	10,000
CARGO	on Total Value of	100,000	pays	10,000
		200,000	pays	20,000

Proportion of General Average attaching to Ship, as above, 10,000

If the Ship is insured for:

(i)	120,000,	The policy pays in full	10,000
(ii)	100,000,	The policy pays in full	10,000
(iii)	80,000,	The policy pays in proportion	8,000

Example 2. The General Average consists of:

a) G.A Sacrifice of Ship	15,000
b) G.A Expenditure by the Shipowner of	25,000
	40,000

There is also Particular Average damage to the Ship of 30,000.

	General Average Apportioned:				
SHIP	on Sound Value of	100,000			
	Deduct: P. A. and G. A. repairs	45,000			
		55,000			
	Add: Made Good (G. A. repairs)	15,000			
		70,000	pays	20,000	
CARGO	on Total Value of	70,000	pays	20,000	
		140,000	pays	40,000	

Proportion of General Average attaching to Ship, as above, 20,000.

If the Ship is insured for:

(i)	120,000,	The policy pays in full	20,000
(ii)	100,000,	The policy pays in full	20,000
(iii)	80,000,	The policy pays as follows (in principle):	

Ship's proportion General Average, as above,		20,000	
Whereof: Ship Sacrifice (50% x 15,000)	7,500		7,500
Expenditure (50% x 25,000) –	12,500		
	20,000		

Ship's proportion G. A. Expenditure, as above,		12,500	
If Contributory Value	70,000	pays 12,500	
Then Insured Value	80,000		
Less: Particular Average	30,000		
	50,000	Pays in ppn **(5/7)**	8,929
			16,429

(Note: The above figures have been prepared On the simplest basis of an old Lloyd's form of policy paying Particular Average in full. Where there is a deductible in the policy – as in the I.T.C. Hulls – the figures are much more complicated, but the above shows the basic principle involved.)

"..... but in case of general average sacrifice of the Vessel the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties."

This wording is a mere re-statement of the position in English law, as codified in §66(4) of the Marine Insurance Act 1906:

"..... and in case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute."

It has already been mentioned that the ship's proportion of any general average sacrifice of the ship is recoverable in full from Hull Underwriters regardless of any under-insurance, but this particular provision entitles the Assured to claim the whole 100% of his sacrifice direct from Underwriters, leaving them to recover at a later stage by way of subrogation the contribution to that ship sacrifice payable by Cargo or other interests.

This particular provision will tend to be used, not when a final general average adjustment has been prepared and issued, but in the early stages of the case. For example, assume that the time has come for a Shipowner to settle substantial repair accounts in respect of damage to his vessel by stranding (P.A.) and in efforts to re-float (G.A.). He may well request his underwriters to make him a substantial "payment on account" to assist with the settlement, and it is open to him to ask that the advance be in respect of the whole cost of the general average repairs, rather than just the ship's proportion of those repairs.

It must be noted, however, that if the Shipowner owns other interests which will also contribute to the general average (e.g. Freight at risk of Shipowner), in seeking a "payment on account" from his Hull Underwriters, he must give them immediate credit for the proportion of the ship's general average sacrifice attaching to those other interests. In similar fashion, if he has collected a general average deposits from the Cargo Interests, or can readily apply to Cargo Underwriters who have given a general average guarantee in respect of a bulk cargo, it would be inappropriate to ask Hull Underwriters to pay the whole of the ship's general average sacrifice.

11.2 *"Adjustment to be according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to the York-Antwerp Rules."*

It was mentioned under 11.1 above that the cover for general average in a policy of insurance used to be implied rather than expressed, and a similar state of affairs is possible to contract of affreightment. General average will be applied even though there is no mention of the subject in the contract, and this for the reason that general average is a universally accepted "law of the sea" dating back at least 2,500 years.

However, if no specific provision regarding general average is made in the contract of affreightment, the adjustment will be drawn up in accordance with the law and practice on the subject prevailing at the port where the voyage ends. The laws of the various nations on general average can differ widely and it was to avoid these differences and to achieve some international uniformity that the move towards the York-Antwerp Rules was instigated over one and half century ago. These Rules are now incorporated into probably 95% or more of all contracts of affreightment.

By this Clause 11.2, Hull Underwriters are prepared to accept general average adjustments drawn up in accordance with either:

a) The law and practice of the place where the adventure ends, or

b) York-Antwerp Rules, if the contract of affreightment so provides,

but they are not necessarily prepared to pay general average in accordance with any other special provisions introduced in the contract of affreightment. To take an absurd example, a Shipowner might contract with Cargo that "interest shall be allowed on all general average expenditure at 25% per annum", but an adjustment drawn up in accordance with this provision would not be binding on Underwriters.

11.3 *"When the Vessel sails in ballast not under charter....."*

It must be noted that under English law, general average cannot apply in such a case because only ONE interest (the Ship) is at risk. English law requires more than one interest to be involved, i.e. a common adventure, to constitute a general average.

If, for example, a ship in ballast not under charter were to run aground, the cost of re-floating her would be claimable from Underwriters as Salvage, Salvage Charges, or Sue & Labour Expenses; damage to the ship caused in efforts to re-float would be treated as Particular Average; the expenses of proceeding to and at any port of refuge would be treated as Sue & Labour Expenses or Particular Average. In other words, the major expenses arising from the casualty would still be recoverable under the policy, but the Shipowner would not be able to claim, for instance, in respect of wages and maintenance of crew and bunkers consumed on ship's ordinary purposes during any extra detention at the port of refuge.

This Clause 11.3 remedies this situation, and provides that even if the ship sails in ballast not under charter, a "general average" shall be assumed to arise in the appropriate circumstances and allowances made in accordance with all the York-Antwerp Rules other than:

Rule XX - which grants an additional 2% Commission on most general average disbursements.

Rule XXI - which grants interest at 7% per annum on all general average disbursements, sacrifices and allowances.

11.4 *"No claim under this Clause 11 shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against."*

This Clause 11.4 is a re-statement of the English law on the subject as detailed in §66(6) of the Marine Insurance Act 1906:

"In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against."

The simplest way to explain the operation of this Clause will be by way of examples:

1) A vessel is torpedoed during war-time and requires salvage assistance, etc. to prevent her sinking. Any loss by sinking would be excluded by the War Exclusion Clause 23 and it follows that any general average to prevent that sinking must be similarly excluded from a policy subject to the I.T.C. Hulls 1/10/83.

2) A vessel suffers a main engine breakdown due to wear and tear and requires salvage assistance into a port of refuge where repairs can be effected. This is a common enough occurrence and although there may be no claim for the cost of repairs because no insured peril has operated, the general average expenses incurred will generally be recoverable from underwriters on the grounds that the perils insured against which were sought to be avoided were ordinary perils of the sea such as drifting ashore or being lost in a storm etc.

3) (The third example presents much greater difficulties in practice and is mentioned only for the sake of completeness. If such a case is encountered, it will be very necessary to determine the precise facts of the case and to make reference to a more detailed work of reference than this short analysis.)

A vessel springs a leak in calm weather and requires salvage assistance etc. to prevent her sinking. If it can be proved that the ship was a thoroughly rotten state and that no fortuitous circumstances had caused or contributed to the leakage, and that the crew were in no way negligent in failing to stop the leakage, there would be no claim on the policy for the sinking of the ship. It follows that any general average to prevent that sinking would similarly not by covered by the policy.

In brief...

HK Maritime Week 2021 (30th October/6th November 2021)

- On 4th November, a seminar cum webinar on "Decarbonisation and Digitalisation for the Future Decade" 「航運業在減碳及數碼化上的展望」

was jointly held by the Institute of Seatransport and Hong Kong Shipping Circles Association at the China Merchants Group conference hall.

* On the closing day of the HKMW, Saturday 6th November, the Institute of Seatransport, in conjunction with Asia Maritime Adjusting (HK) and supported by Ince & Co, ran a 1-day Course on Collision Liability. A group of maritime practitioners from Ship-owners, Ship Managers, Ship Operators, Property and Liability Insurers, Insurance Brokers, Surveyors, Solicitors, Average Adjusters, Pilots as well as a Barrister attended the seminar cum webinar at the China Merchants Group conference hall, together with online attendees from Hong Kong, Shenzhen, Shanghai, Taipei, Jakarta and Vancouver, in a presentation and forum on legal and insurance aspects of Collisions at Sea. It is a MATF-funded course on the "pre-approved" list (maritime-related) under ProTERS and the course was accredited 6-CPD points by The Law Society of Hong Kong.

The IMP Workshop [C.H. Wong]

The Interdisciplinary Maritime Practice (IMP) Workshop Series was conceived in 2013 by Mr. Raymond Wong to share the knowledge and experience on maritime studies covering the lifespan of a ship, from the decision to purchase, commissioning, trading, to its final loss or being sent for scrap.

The IMP Series I (2014) & II (2016) adopted an open forum case study format between the presenters and participants.

The work from Series I & II was instrumental in the development of the Interdisciplinary Learning & Interlink (IDL/ILI) Methodology, which have since been applied to the Belt & Road Initiative General Theory (BRIGT) & Greater Bay Area, and IMP.

IMP is now in Series III, in the form of a webinar, with an introductory presentation of the topic of an hour, followed with open forum discussions between the participants and a panel of experts and professionals on the topic of the session. The topics for Series III are:

1) IMP-Application of IDL/ILI Methodology in Study of Ship Management & "Ever Given" as IMP case study

2) Financing of Shipping & Logistics Projects & Project Management

3) Marine Insurance (Hull & Machinery, Protection & Indemnity)

4) Shipbuilding, Machinery & Equipment

5) Ship Chartering, Sale & Purchase & Operation

6) Ship Management, Repair & Maintenance

7) Value of Maritime Professional Services

8) Administration, Litigation & Casualty Management

Topics 1 & 2 have been held on 24th September 2021 and 26th November 2021 respectively, with the 3rd webinar expected to be held in the first week of March 2022.

(Raymond T C Wong: Average Adjuster)

歡 迎 來 稿
Articles Welcome

為了將本季刊辦得更好，內容更豐富，歡迎各位會員來稿，談談你們對海運業的所見所聞，親身經歷和感受，讓大家能分享你們的經驗和心得。

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我們感謝大家的熱忱支持。

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The number of words in an article should be around 1000, with soft copy in .doc format. Please mail to:
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Article(s) submitted for Seaview should be:
1. Related to sea transportation;
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