



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## Insurers Face Growing Risks in Maritime Sector

Insurers will be faced with ongoing challenges to manage risk in the maritime sector, with the experience of the Ever Given's grounding in the Suez Canal a case in point.

That was the message given to delegates by Matthew Flynn, consultant for McElroys, at the New Zealand Branch Conference held in Parliament's Legislative Council Chamber.

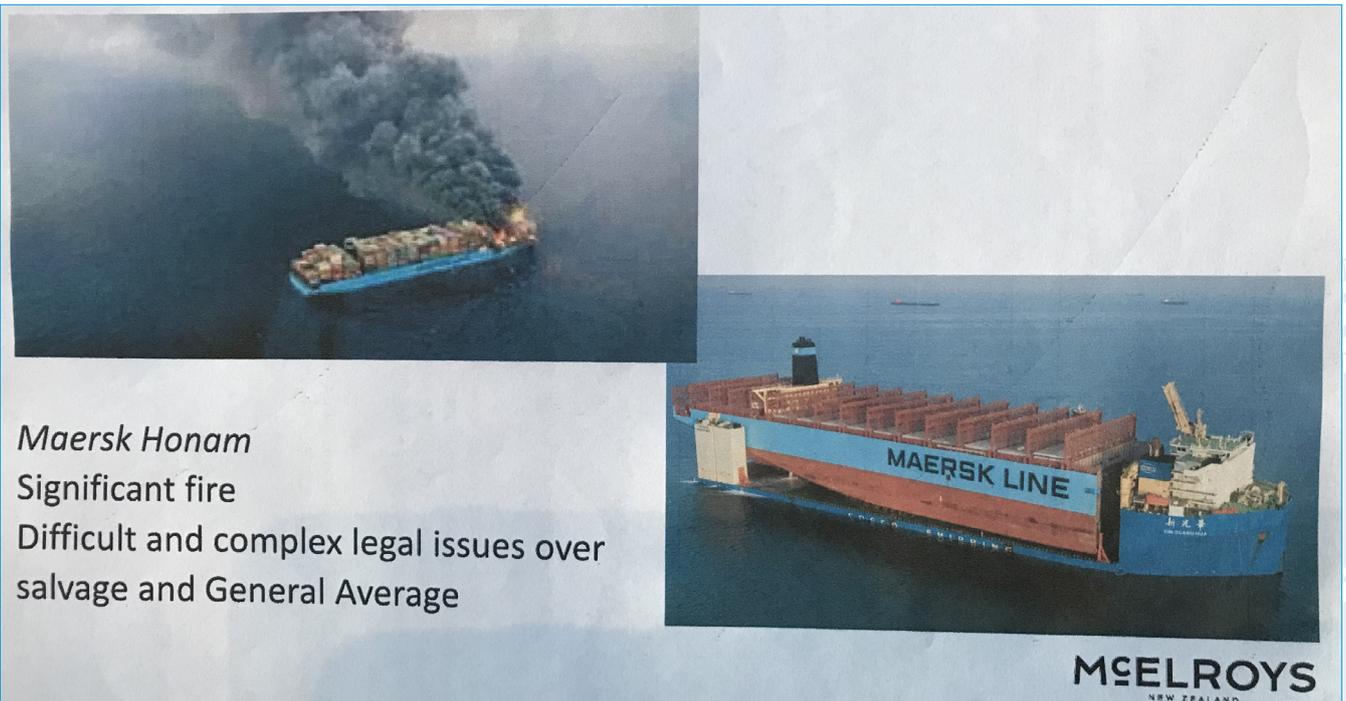
In his address entitled "Meeting the Insurance Challenges", Mr Flynn detailed the financial enormity of the Suez incident. While the vessel is worth perhaps US\$100 million, the cargo onboard was worth around US\$500 million, making a total of US\$600 million at risk on the one vessel alone, before other claims were considered.

"What lies in store for potential claims?," asked Mr Flynn.

"Does the owner of the vessel, for example, owe compensation to other ships that were delayed?"

In terms of insurers limiting and managing risks, Mr Flynn said statutory exclusions are contained in Section 55 of the Marine Insurance Act 1908. These cover wilful misconduct, delay, wear and tear, ordinary leakage and breakage, inherent vice, rats or vermin, and injury to machinery not caused by maritime perils.

"All Risks" cover provides wide cover but also introduces express exclusions involving, for example, insolvency, nuclear weapons, unseaworthiness, piracy, terrorism, strikes, war and torpedoes.



*The Maersk Honam on fire and later with half the ship salvaged – what insurance claim complications arise when not all of a vessel is lost?*

Owners have also turned to the Limitation of Liability Convention and the Hague-Visby Rules, which cap their exposure and that of their insurers.

In terms of hull insurance, Mr Flynn said the global premiums collected in 2019 amounted to US\$6.9 billion.

“One has to query whether that is enough, given the totals involved with one vessel in such a big event as the Ever Given.”

He said there was a long-term downward trend in total losses but large vessel fires remain an issue, with a worryingly-high number of major onboard fires.

According to the International Union of Marine Insurance (IUMI): “A major loss incurring unprecedented cost (resulting from increased vessel sizes, accumulations and new trading patterns such as Arctic routes) remain a significant risk and one that could impact catastrophically on the hull sector.”

The Maersk Honam case typifies the complexities involved in such cases. The ship was damaged by a significant fire and difficult and complex legal issues arose over salvage and General Average. Half of the ship was saved and Maersk used that half to build a new vessel, which brings into play the question of whether General Average should apply to the whole vessel.

Turning to cargo insurance, Mr Flynn said the global premium collection in 2019 was US\$156 billion. Since then, the COVID-19 pandemic has caused unprecedented disruption to the global economy and world trade, affecting manufacturing, the supply chain and demand. There has been a direct impact on insurance exposure, including volume, and accumulations in port and onboard vessels.

According to IUMI statistics for 2020, P&I Clubs’ combined ratios increased 119% in the 2019-2020 policy year compared to 112% in the previous year. The clubs are now facing large claims.

New emerging risks faced by the insurance sector include cyber threats, climate change and above all, COVID-19. Its impact is being felt on:

- accumulation risk on cruise ships
- disruption in supply chains
- border restrictions
- delays to vessel repairs and maintenance
- the ability of surveyors and salvors to respond
- fears of exposure to cyber hacking during the rapid adoption of technology and with people working from home

Other exposures arise through the virus affecting crew and port operations, ships staying in service longer, liability to cargo and deviation costs.

As premiums remain level but risks potentially increase, insurers are looking to limit exposure on cover by bringing in clauses to exclude causes of loss directly related to COVID-19.

For example, a generic communicable disease clause does not insure for any loss, damage, claim, cost, expense or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a communicable disease or the fear or threat (whether actual or perceived) of a communicable disease.

The insurance market was seeking to agree on a standard clause to be put into policies, with work being done by several parties. BIMCO has drafted an Infectious or Contagious Disease Clause for the benefit of shipowners under charterparties. The International Group has a sub-committee to consider

issues arising and P&I Club rules may trigger certain COVID-19 claims, including diversion expenses, quarantine expenses, fines and cargo-related claims.

Mr Flynn said cyber risk was now a major issue for the insurance community, particularly in the extent to which a technology asset could be threatened by a potential circumstance or event, and result in shipping-related operational, safety or security failure as a consequence of information or a system being corrupted, lost or compromised.

For example, hackers got into the Port of Antwerp's systems over a two-year period, AIS has had its vulnerability proven and the Maersk logistics system was compromised.

Although there has been an Institute Cyber Attack Exclusion Clause 380 since 2003 which specifies: "If loss, damage or liability was caused either directly or indirectly by the use of a computer and its associated systems and software 'as a means of inflicting harm' such loss, damage or liability would be excluded from coverage", there is a need for this to be reconsidered in light of the increasing areas of risk and changes to the clauses are being worked on.

Looking to the future, Mr Flynn listed other "existential risks" of which the industry needs to be aware, as detailed in the World Economic Forum Global Risk Perception Survey 2020.

These include weapons of mass destruction, the collapse of a state, biodiversity loss, adverse technology advances, natural resource crises, a social security collapse, a multilateralism collapse, an industry collapse, and failure to take climate action and lastly, a potential backlash against science.

June 2021

