Cyber and unmanned shipping

Sophie Hudson
DLA Piper New Zealand
MLAANZ
13 September 2019
Human Error

- 75% - 96% of shipping accidents
- 75% of 15,000 marine liability claims costing $1.6 billion in 2017
- 90% of car accidents
Autonomous Technology – where are we?
Drones

- Civilian
- Military
- Commercial
Drones

Insurance

- UAV Operators Insurance
  - Hull cover
  - Third party liability
  - Statutory liability
  - Privacy breaches

- Exclusions
  - Hi-jacking
  - Political or terrorist purposes
  - Malicious act
  - Act of sabotage
Vehicles

• Systems limiting the role of the driver

• UK’s six-level designation of automation

• No universal regime for insuring automated vehicles
  • Is this relevant to NZ?

• Tesla
  • Insurance included with cost of car in Asia
United Kingdom

Automated and Electric Vehicles Act 2018

• Strict liability on insurers

• ‘any part of the *cause* for the accident was the vehicle itself’
  • Driver
  • Manufacturer
  • Software provider
  • Supplier of satellite services
  • Government

• Liability of owner if insurance cover limited
  • Software alterations
  • Installation of safety-critical software

• Cyber risks not excluded
United States

Uber decision

• No liability for death of pedestrian hit by an Uber self-driving vehicle in Arizona
• Consideration needed to be given to the person sitting in the driver's seat
  • Speed
  • Lighting conditions
  • Other relevant factors
• Always has to be a human element

Australia

National Transport Commission

• No specific laws for liability for injuries and no compulsory insurance coverage
• Roadmap to reform
  • Framework for liability is sufficient
  • Assigning fault requires further regulation
• Liability to be resolved on a case by case basis
What about vessels?
Where are we?

**Vessels**

- New technology
- YARA and Kongsberg Maritime
- Rolls Royce and Intel
- Rolls Royce and Finferries
- OCIUS
- Marine Autonomous Surface Ships
Carriage of goods

Carriage of goods
• Rights and obligations concern operations or matter involving the Master or crew
• Contractual rights and obligations between the parties in the carriage of goods
• Loss/damage
  • Stevedores
  • Loading/unloading
  • Collisions
  • Berthing
• Warranty of seaworthiness
  • Marine Insurance Act 1908 section 40
Carriage of Goods

Claims

• Removing human error?

• Quality of evidence available

• Shift in nature of the claims

• Domestic strict liability – could this be done internationally?

• Who is liable?
Cyber
What is the risk?

**Cyber risks**

- P&I Club UK:
  
  “the risk of loss or damage or disruption from failure of electronic systems and technological networks”

- P&I Club Japan:
  
  “cyber-risk is a potential risk … which will cause financial loss, disruption or damage to the reputation of an organisation”

- Aon:
  
  “loss of productivity, loss of revenue/profit and reputational harm”
What is the risk?

**Cyber risks**

- Reliance on new and increased technology
- Where does the risk come from?
  - CIA triad
- What is it?
  - Loss of life/personal injury
  - Pollution
  - Loss of property
  - Business interruption
  - Loss of production
  - Loss of data
  - Loss of reputation
  - Third parties
What is the risk?

Cyber insurance

- Rapid increase in cyber liability insurance
  - US$6.2 billion in written premiums by 2020
- Institute Cyber Attack Exclusion Clause 380:
  
  “in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm of any computer, computer system, computer software program, malicious code, computer virus or process or any other electronic system”

- P&I cover ‘silent’ on cyber
- Requirement for ‘malicious’ intent
  - Navigators Insurance Company & Ors v Atlasnavios-Navegacao LDA [2018] UKSC 26
  - Tektrol Ltd v International Insurance Company of Hanover Ltd & Another [2005] EWCA Civ 845
Cyber Risk Management System

International Maritime Organisation

“the process of identifying, analysing, assessing and communicating a cyber-related risk and accepting, avoiding, transferring, or mitigating it to an acceptable level, considering costs and benefits of actions taken to stakeholders”

“support safe and secure shipping, which is operationally resilient to cyber risks”

• IMO Resolution MSC.428(98)
Warranty of seaworthiness

Marine Insurance Act 1908 section 40

• (1) Implied warranty of seaworthiness at commencement of voyage

• (2) Reasonably fit to encounter the ordinary perils of the port

• (3) Seaworthy in respect of preparation or equipment for the purposes of each stage of voyage

• (4) Reasonably fit in all respects to encounter the ordinary perils of the sea

• (5) Insurer not liable for any loss attributable to unseaworthiness
Bringing it all together

• Increase in autonomous technology for shipping systems

• Shift in insurance claims from human error

• Reliance on software and system increases cyber vulnerabilities

• All vessels and systems at risk, not just unmanned vessels

• Insurance market following statutory framework – UK regime

• Strict liability for insurers?
Thank you