RISK WATCH

SEPTEMBER 2022

BRITANNIA P&I
TRUSTED SINCE 1855

A MESSAGE FROM THE EDITOR

In this edition of Risk Watch, we are focusing on sustainability, including an article looking at decarbonisation in the maritime industry and an interview introducing readers to our new Sustainability Lead for Britannia, Jacob Damgaard, with his thoughts on how ESG challenges should be addressed.

Sustainability is of growing importance to governments, financial institutions, regulators and society as a whole and P&I Clubs are no exception with Members relying on us to be their long term trusted partner. Sustainability is embedded in Britannia's management processes and is a fundamental part of our culture. We are also collaborating with partners across the sector to ensure the sustainability of the wider maritime industry. As well as supporting our Members in their sustainability efforts, we encourage all our employees to understand our sustainability strategy and apply it in their day-to-day responsibilities.

Across its business, Britannia has embedded its alignment with a number of UN Sustainable Development Goals by creating, recording and reporting on some key performance indicators. These include measures relating to diversity and inclusion; health and safety; and training and development.

Since 2021 we have been monitoring our carbon footprint targets with regards to air travel, measuring the impact of our corporate giving programme and defining the ESG responsibility of key managers with the development of a multi-point action plan.

In his concluding comments in our latest Sustainability Report, CEO Andrew Cutler says: 'We are satisfied with the progress we have made since the publication of our inaugural report in 2021. We are committed to maintaining that progress in 2022 and beyond and continuing to work towards a more sustainable future.'

CLAIRE MYATT
Editor

We hope you enjoy this copy of Risk Watch. We will be looking for ways to maintain and increase the usefulness, relevance and general interest of the articles. If you have any ideas or comments please send them to: britanniacommunications@tindallriley.com

IT'S NOT JUST ABOUT CLIMATE CHANGE

IN RECENT YEARS, TERMS LIKE SUSTAINABILITY AND ESG (ENVIRONMENTAL, SOCIAL AND GOVERNANCE) HAVE BECOME VERY COMMON, NOT JUST WITHIN THE SHIPPING INDUSTRY BUT GLOBALLY. HOWEVER, WHAT DO THESE WORDS MEAN IN PRACTICAL TERMS? WITHIN THE SHIPPING INDUSTRY, SUSTAINABILITY HAS ALMOST BECOME SYNONYMOUS WITH DECARBONISATION. HOWEVER, THERE IS MORE TO SUSTAINABILITY THAN DECARBONISATION AND IT IS IMPORTANT THAT THIS IS NOT FORGOTTEN WHILE ALSO ADDRESSING CLIMATE CHANGE.

Firstly, it is important to understand the difference between sustainability and ESG. Sustainability in its broadest sense is quite a fluid, umbrella term but can be defined as: 'A societal goal that broadly aims for humans to safely co-exist over a long time', which can then be translated into various ethical and responsible business practices. ESG, on the other hand, sets specific criteria used to define environmental, social, and governance systems as sustainable and to protect a Member from operational and reputational risks. This is where sustainability goes beyond the focus of decarbonisation. A good starting point for any Member who wants to start its ESG journey is to study the United Nations' Sustainable Development Goals (SDGs) along with the ten Principles of the UN Global Compact and incorporate these into its strategies, policies and procedures.

To understand ESG, it can be helpful to start from the end with the G – Governance. Sometimes Governance is overlooked compared to the S and E – Social and Environmental. However, like building a house, Governance is the foundation which needs to be solidly in place before ESG work progresses further, and defines the boundaries within which a Member manages its business. As well as the statutory requirements (which of course must be complied with), these boundaries should also include industry best practices, together with the development and implementation of procedures and policies to ensure that the Member is not just being compliant with the regulations, but is also acting ethically. These will all encourage Members to incorporate ESG into their business systems – moving away from ESG driven by the heart to ESG driven by the head where it becomes a natural and integrated part of how a Member conducts their business.

With a solid foundation in place, we can move on to the S – Social. This includes among other things creating a safe working environment. This is, of course, nothing new within the shipping industry. One of the main objectives of the International Safety Management (ISM) code which became mandatory in the nineties, was to achieve this. Furthermore, in 2013 the International Labour Organisation's Maritime Labour Convention (MLC) became mandatory in order to ensure worldwide protection for the rights of seafarers, including the right to a safe and secure workplace. However, ESG goes beyond this. While MLC and ISM apply to seafarers and to the operation of their ships,

IT'S NOT JUST ABOUT CLIMATE CHANGE

ESG applies, in contrast, to a Member's entire organisation, whether onshore or at sea. For a Member, this will include ensuring workers' rights along with workforce equality, inclusion and development. There should also be an ethical business model with no use of modern slavery or child labour and a real effort to prevent bribery and corruption.

Then there is the E – Environmental, which is probably the most discussed part of ESG, driven by the global ambition to reduce climate change. As touched on above, this has become almost synonymous with decarbonisation, which is not surprising as this is a very important and urgent objective, without doubt one of the key challenges for the shipping industry going forward. However, being environmentally responsible also includes many other factors such as reducing the use of plastic, increased recycling, developments for improved waste disposal and general care for both the marine and land environment.

Once Members have identified the current and future ESG-related risks and controls, the next step is to establish Key Performance Indicators (KPIs) to measure performance and then disclose this information to stakeholders by publishing an annual sustainability report.

The Sustainability Accounting Standards Board (SASB) has produced standards that identify the ESG issues most relevant to financial performance in 77 industries including marine transportation.

The SASB Marine Transportation Sustainability Accounting Standard stipulates a number of ESG reporting categories relevant for shipping which do not focus solely on climate related factors, but also include: ecological impact and business ethics, employee health and safety management.

Britannia's annual sustainability report, which goes into more detail about the Club's sustainability strategy, can be read here. **https://bit.ly/3wlfGnx**

While some may still think that sustainability and ESG are merely buzzwords, the fact is they are unlikely to go away and, on the contrary, are likely to become increasingly important. The Poseidon Principles have been introduced by the banking sector and provide a framework for integrating climate considerations into lending decisions to promote decarbonisation in the shipping sector. However, the sustainability and ESG agendas are not only driven forward by financiers, but also by commercial demand and customer expectations that Members will act prudently and responsibly, not just when it comes to climate change, but also in terms of their social and governance obligations.

If you should have any questions regarding sustainability and ESG matters, please contact Britannia P&I's sustainability team at: **sustainability@tindallriley.com**

INTERVIEW WITH JACOB DAMGAARD – SUSTAINABILITY LEAD AT BRITANNIA P&I

WE ALL KNOW THAT SUSTAINABILITY IS A KEY PART OF THE FUTURE FOR US ALL AND SHIPPING IS NO EXCEPTION. IN THIS EDITION OF RISK WATCH WE FOCUS ON A NUMBER OF ISSUES SURROUNDING SUSTAINABILITY AND SO IT SEEMS THE PERFECT TIME TO INTRODUCE JACOB DAMGAARD. MANY OF YOU WILL KNOW JACOB FROM THE LOSS PREVENTION TEAM, BUT HE HAS ALSO JUST TAKEN OVER AS BRITANNIA'S SUSTAINABILITY LEAD. WE TAKE THIS OPPORTUNITY TO ASK JACOB A FEW QUESTIONS ABOUT HOW HE SEES THE ISSUES OF ESG AND SUSTAINABILITY.

Jacob Damgaard
Associate Director, Loss Prevention Singapore
jdamgaard@tindallriley.com

IN THE PREVIOUS ARTICLE WE LOOKED AT THE TERM ESG – HOW IS THIS DIFFERENT FROM SUSTAINABILITY?

Let's start with a general definition of sustainability. This is quite a fluid term, but can be summed up as follows: **'A societal goal that broadly aims for humans to safely co-exist over a long time'** or as set out by the United Nations' Brundtland Commission in 1987: **'Meeting the needs of the present without compromising the ability of future generations to meet their own needs.'** So, basically it is about acting in a prudent and ethical way to ensure the wellbeing of the earth for current and future generations.

With ESG you 'chop up' sustainability into three main areas – Environmental, Social and Governance and using these areas you implement systems and measures to achieve the overall target of sustainability. This will be done by introducing policies and processes along with key indicators to measure performance and set targets to improve same.

CAN YOU EXPLAIN WHY SUSTAINABILITY IS SO IMPORTANT?

It is widely recognised that there is an urgent need to combat climate change to reduce its long term impact on the world, hence United Nations' SDG 13 states – 'Take urgent action to combat climate change and its impacts.' However, as important as climate change is, there are many more aspects to sustainability and everyone has to play their part by introducing sustainable planning and targets.

Today's consumers have become more politically aware, and they have a natural expectation of companies operating ethically in all aspects of business. Only the slightest mis-step, whether intentional or not, can result in severe operational and reputational damage to a company – and this may be permanent. Furthermore, there is a political aspiration to set ambitious sustainability targets such as in relation to the transition to green energy.

The urgent need to reduce climate change, and thereby the need to decarbonise the maritime industry, has led to the introduction of the Poseidon Principles within the banking sector which is a framework for integrating climate considerations into lending decisions. This, together with measures such as the Sea Cargo Charter agreement, all add further pressure on Members to implement sustainable measures to secure the financing of their fleet. There is also the industry-wide incentive to move towards green energy, plus the requirements of the regulators, and last but not least there is the internal expectation from employees who expect their company to act ethically. So, there is a lot of pressure on Members to operate sustainably and promote sustainability, and this will certainly increase in the future.

SO WE KNOW WHAT THE TERMS MEAN, BUT HOW IS BRITANNIA MAKING ITSELF MORE SUSTAINABLE?

Sustainability is now embedded in the way that Britannia does business, and we are committed to a number of the United Nations' (UN) 17 Sustainable Development Goals (SDGs) as well as the ten principles of the UN Global Compact. This has resulted in a number of initiatives, from providing sustainable drinking bottles to employees through to looking at the office space we rent, supporting charities, anti-corruption initiatives and establishing key performance indicators to measure the carbon footprint of business travel, workforce equality and much more.

IT'S IMPORTANT FOR BRITANNIA TO BE ABLE TO ASSIST OUR MEMBERS AND THE WIDER INDUSTRY IN THE BEST WAY WE CAN IN TERMS OF THEIR SUSTAINABILITY EFFORTS.

Further details of all this can be found in Britannia's Sustainability Report which is aligned with the requirements of recognised reporting standards, published annually and available on our website at:
https://bit.ly/3KbfZXA

CAN YOU EXPLAIN WHAT BRITANNIA IS DOING TO SUPPORT OUR MEMBERS AS THEY MOVE TOWARDS GREATER SUSTAINABILITY?

It is important for Britannia to be able to assist our Members and the wider industry in the best way we can in terms of their future sustainability efforts. For example, each decarbonisation stage and the transition towards a net zero economy will involve new technologies and thereby also lead to new risks. Given our close contact with our diverse, high quality membership, Britannia is in a unique position to assist our Members in understanding these potential risks and how they can be mitigated to prevent loss. This is especially important as each Member's approach towards decarbonisation and other aspects of sustainability will be different. This is why Britannia has issued a sustainability report template which can be used as guidance and a starting point for Members to get their sustainability journey underway and is available on our website at:
https://bit.ly/3wpvJkb

Furthermore, as a P&I insurer it is important that we include rather than exclude, meaning that we provide a kind of safety net by not limiting P&I cover for Members who want to invest in and test new technologies such as alternative fuels. As long as Members carry out the required due diligence, we want to help encourage innovation across the industry which will be required if the target of zero emissions is to be achieved.

WHAT DO YOU SEE AS THE BIGGEST ESG CHALLENGES WE FACE IN THE SHIPPING INDUSTRY?

I think there is an industry-wide consensus that decarbonisation is the major challenge facing the shipping industry, as it will require new technologies and vast investment in research, development, and training – all while the environmental clock is ticking.

However, again it is important that in the longer term drive for decarbonisation other areas are not neglected. As a member of the Maritime Anti-Corruption Network (MACN), Britannia is working with Members to try and eliminate corruption within the shipping industry and, while significant progress has already been made, there is still work to be done. Another important area is equality and, in particular, working to encourage more women to choose the shipping industry as a career path, which goes hand in hand with making sure that there is a harassment-free working environment for everyone. And, as always, a top priority for all of us should be looking after the safety and wellbeing of all employees.

HOW DO YOU SEE THE IMPACT OF THE PREDICTED ENERGY CRISIS THIS WINTER AND WHAT THIS MIGHT MEAN FOR ESG?

The war in Ukraine has certainly triggered discussions within the EU of the current dependence on fossil fuels supplied by a limited number of sources. On one hand, it is likely that we will see an increase in investment in green technology, such as wind power, as countries aim to become increasingly self-sufficient when it comes to energy resources, and this will, in turn, support the environmental part of the ESG agenda. On the other hand, the race to ensure sufficient energy resources may lead to both a short and long term revival in the demand and supply of fossil fuels, as well as reigniting the debate on the role of nuclear power in the energy mix if the climate targets under the Paris agreement are to be met. Either option will inevitably raise a list of ethical, environmental and safety questions, and will require serious consideration in terms of the related risks and opportunities as well as alignment with the overall ESG agenda.

HOW CAN EVERYONE IN THE ORGANISATION DO THEIR BIT?

It is important that sustainability and ESG do not become 'silo activities or functions', isolated from the rest of the company. They will only become truly effective when everyone is fully involved. All employees should of course act prudently and follow the policies and processes of their company including those related to ESG and should be able to raise any concerns they may have with their manager and/or relevant sustainability representative. Employees should also feel free to come up with suggestions that may improve a company's ESG performance. Employers and employees should remember that sustainability is not just about how a company is perceived externally but also how it is viewed internally by its own employees.

IN RECENT YEARS DECARBONISATION HAS PROBABLY BECOME ONE OF THE MOST COMMON WORDS IN THE SHIPPING NEWS MEDIA. THE UNITED NATIONS' PARIS AGREEMENT ON CLIMATE CHANGE IN 2015 MADE A COMMITMENT TO KEEP THE GLOBAL MEAN TEMPERATURE INCREASE AT BELOW 2°C OF PRE-INDUSTRIAL LEVELS BY 2100, WHILE MAKING EFFORTS TO LIMIT WARMING TO 1.5°C.

DECARBONISATION

PROGRESS SO FAR AND FUTURE DEVELOPMENTS

IN APRIL 2018, THE INTERNATIONAL MARITIME ORGANISATION (IMO) ADOPTED ITS INITIAL STRATEGY ON THE REDUCTION OF GREENHOUSE GAS (GHG) EMISSIONS FROM SHIPS, WHICH SETS OUT THE AMBITION TO REDUCE CARBON INTENSITY BY AT LEAST 40% BY 2030, MOVING TOWARDS 70% BY 2050, AND TO REDUCE GHG EMISSIONS BY AT LEAST 50% BY 2050. THERE IS ALSO A STRONG DESIRE FROM MANY COUNTRIES AND WITHIN THE SHIPPING INDUSTRY TO REDUCE EMISSIONS BY 100% BY 2050.

It has become clear to the industry that the goal is to end the use of fossil fuels, requiring commercially-viable zero-emission vessels to enter into service in the near future. With the majority of the world's merchant fleet burning fossil fuels, consideration will need to be given to how ships, which are currently being financed, designed and built, would be able to operate or switch to an alternative non-fossil fuel later in their operational life.

ALTERNATIVE FUELS

As a result of these changes, the market for alternative non-fossil fuels has seen a rapid increase in recent years, and a number of alternative fuels are now being tested as possible solutions to to help decarbonise the shipping industry. At the moment it is hard to identify which fuels will be the most realistic alternatives to fossil fuel as this will depend on the results of the large scale testing currently taking place, as well as other factors such as being able to secure a global supply of any new fuels.

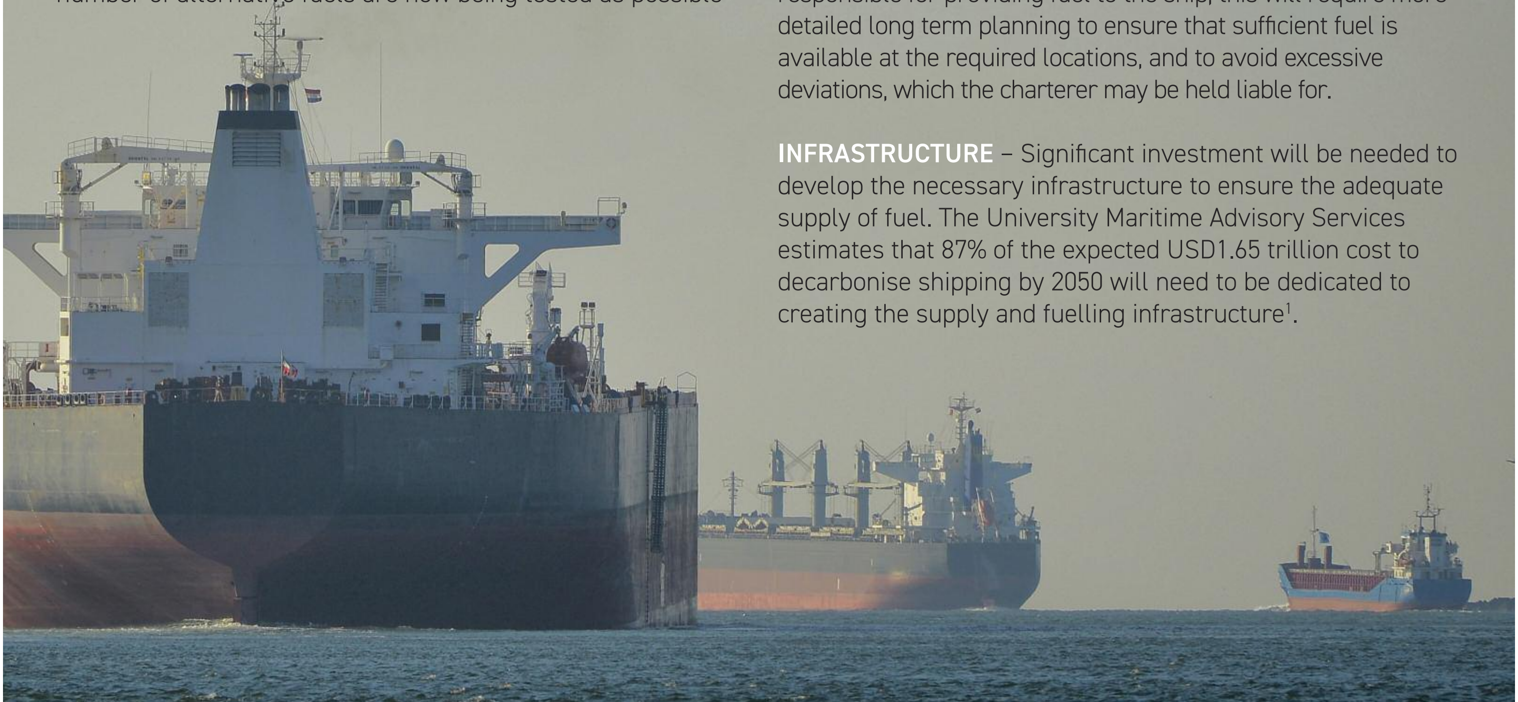
POSSIBLE P&I RISKS RELATING TO THE USE OF ALTERNATIVE FUELS

The introduction of alternative fuels does introduce new or increased risks compared to those associated with using fossil fuels. From a P&I perspective, the following factors are likely to impose potential liabilities on Members, always bearing in mind that these risks are likely to evolve and change as the technology develops:

AVAILABILITY – Lack of availability could result in operational disruption, and in the worst cases, lead to a ship becoming inoperative if it is unable to use other available fuel types. For ships on charter, this could result in disputes as a ship may be unable to fulfil its charter party obligations.

For chartered tonnage, where a Member as charterer is responsible for providing fuel to the ship, this will require more detailed long term planning to ensure that sufficient fuel is available at the required locations, and to avoid excessive deviations, which the charterer may be held liable for.

INFRASTRUCTURE – Significant investment will be needed to develop the necessary infrastructure to ensure the adequate supply of fuel. The University Maritime Advisory Services estimates that 87% of the expected USD1.65 trillion cost to decarbonise shipping by 2050 will need to be dedicated to creating the supply and fuelling infrastructure[1].



[1]UMAS (2020). Aggregate investment for the decarbonisation of the shipping industry.

DECARBONISATION

PROGRESS SO FAR AND FUTURE DEVELOPMENTS

The biggest challenge will be in the tramp trade, where ships do not operate according to a predetermined schedule. Obviously the most popular alternative fuels will become more readily available around the world but, if the infrastructure is not in place, Members will need to plan ahead carefully to ensure that sufficient fuel can be provided to their ships. Failure to do this may result in off hire disputes as the ship would need to deviate to a suitable fuelling location or lie idle while waiting for fuel to become available.

QUALITY – There is a lack of international standardisation for most alternative fuels, for example, regulations such as the ISO 8217 standard which covers fossil fuels. This could lead to an increased risk of fuel disputes, as it may become difficult for Members to claim that the alternative fuel was not within the required specifications.

Members will need to provide a clear and detailed fuel specification to their fuel providers to ensure that only fuel suitable for use on board is delivered. Members should also establish suitable test parameters to determine the quality of the alternative fuel delivered to them, and the specifications must also be agreed with the charterer.

FUEL MANAGEMENT – The use of alternative fuels will require Members to identify any operational risks associated with the use of such fuels properly. They should provide the crew with the proper practical training and understanding to sufficiently mitigate these risks sufficiently to prevent off hire charter party disputes due to engine failure.

HEALTH, SAFETY AND ENVIRONMENT – Potential health concerns relating to the use of alternative fuels vary considerably depending on the fuel type. All fuel supplied should be accompanied by a Material Safety Data Sheet (MSDS), which should form the basis of a thorough risk assessment to ensure that appropriate safety barriers are in place to mitigate against any identified risks to the crew. For example, Ammonia is known to be very toxic and therefore any leakage could be lethal for an exposed crew member.

Another notable safety concern relates to the flash point temperature of certain fuels, which may be below the current SOLAS requirement of 60°C. The use of such fuels will require a rigorous approval process, including Flag State consultation, as well as increased robust safety means to ensure that the fuel is handled safely on board.

FUEL PRICING – Another factor which may become a commercial risk for Members is the pricing of alternative fuels compared to fossil fuels. Currently, alternative fuels tend to be more expensive than fossil fuels, and there are also local and regional variations in price and availability. However, as the market for alternative fuels grows, there is potential for cost reduction, as technology improves and more fuel is produced.

CONCLUSION

It is still too early to say which will be the preferred alternatives to fossil fuels as this will depend on a number of factors. One is the obvious environmental benefits of each alternative fuel, but the greatest challenges will relate to the availability, supporting infrastructure and price of the alternative fuels. All these elements need to be in place before these fuels are likely to become realistic industry-wide alternatives.

Also, there needs to be an increase in large-scale testing in order to determine and confirm the operational suitability and reliability of alternative fuels. In choosing the right fuel, Members will need to conduct a thorough operational assessment, including consulting various stakeholders to determine which alternative fuel best suits the requirements of their operation.

From an insurance liability perspective, the greatest concerns are about the possible lack of availability and infrastructure which could lead to supply issues. Members would need to make detailed plans to make sure that their ships could be sufficiently and efficiently supplied. In addition, the variation between the different types of alternative fuel together with the lack of standardisation may lead to an increased likelihood of fuel disputes.

Members will need to review their safety management system (SMS) thoroughly and implement robust procedures, as well as provide training to key personnel, to ensure that these risks are properly managed.

This table looks at a number of the most common alternative fuels and points out the various advantages and disadvantages of each fuel.

ALTERNATIVE FUEL	DETAILS	PROS	CONS
LIQUEFIED NATURAL GAS (LNG)	Requires an LNG capable engine with different fuel handling system and increased fuel storage space	Safe to use / proven technology / bunkering network evolving / very low in Nitrous Oxide (NOx), Sulphur Oxide (SOx) and Particulate Matter (PM) / >20% less CO_2 / LNG carriers can use waste boil-off gas	Methane slip / LNG is still a fossil fuel / regional variation in bunkering availability / future LNG pricing uncertain / high capital expenditure – especially retrofit / potential loss of cargo capacity
LIQUIFIED PETROLEUM GAS (LPG)	Requires LPG capable engine with different fuel handling system	Low NOx, SOx and PM / c.10-20% lower CO_2 / LPG carriers can use cargo as fuel / extensive terminal infrastructure	Limited uptake as marine fuel to date outside of LPG carriers / still a fossil fuel / economic incentive depends on pricing.
METHANOL	Primarily produced from natural gas / can be used in dual-fuel oil/methanol engines	Fuel handling and risk management simpler than LNG / zero CO_2 emissions for 'green methanol' / reduced NOx and SOx / existing terminal infrastructure	Retrofit can be complex / low energy density / likely to be costly in the short-term / toxic and flammable / global production still limited
BIOFUELS	While many engines are compatible, some ships require modification to the fuel system and engine	Some types of biodiesel already widely available at competitive prices and can use existing waste products / requires limited changes to engines and fuel handling systems	Typically no CO_2 reduction from vessel itself / emissions vary according to supply chain / sustainability issues (e.g. land usage for palm oil production)
HYDROGEN	Development focussed on zero-emissions fuel cells / can also be used in specialist combustion engines	Potentially both clean and abundant attracting significant investment in technology / fuel cells more efficient than combustion engines	Fuel production is still energy-intensive / large-scale production expensive / undeveloped bunkering infrastructure / expensive to store at -253°C
AMMONIA	Can be produced from catalytic reaction of nitrogen from air and hydrogen from water and used in combustion engines or fuel cells	Already produced and traded at scale / zero emissions from vessel itself / 'green ammonia' could be fully GHG emissions free	Current production process (Haber-Bosch) is highly energy intensive / much less energy dense than oil-based fuels / extremely toxic and corrosive / significant NOx emissions / possible difficulty maintaining combustion / additional safety systems will need to be fitted to manage the toxicity risk
BATTERIES	Batteries can store electrical energy for propulsion by charging the ship using a High Voltage Shore Connection (HVSC)	Ship itself does not generate emissions / could be carbon-free if on-land power source is also green / already in use for small ferries / expanding network of HVSC facilities at ports	Impractical for larger vessels or those on long voyages due to size of batteries needed / upstream emissions still possible / potential loss of cargo space / unsuitable for many locations / safety concerns with some types of battery
SYNTHETIC METHANE	Fuel produced by combining hydrogen produced using excess energy from renewables and waste CO_2	Fuel could use LNG capable engines / potential to extend LNG beyond 'bridging fuel' / good method of carbon capture and re-use	Production process is still energy inefficient and costly / limited availability at present

Original source: Clarksons Research

BRITANNIA IN HONG KONG

TR(B)HK/BRITANNIA HONG KONG BRANCH

THE BRITANNIA HONG KONG OFFICE PROVIDES HIGH QUALITY UNDERWRITING AND CLAIMS HANDLING SERVICES TO BRITANNIA MEMBERS BASED IN MAINLAND CHINA, TAIWAN AND HONG KONG, AS WELL AS CLAIMS HANDLING SERVICES TO MEMBERS IN SOUTH KOREA. IT ALSO PROVIDES LOCAL CORRESPONDENCY SERVICES TO ALL BRITANNIA'S MEMBERS REQUIRING ASSISTANCE IN HONG KONG WATERS. BRITANNIA HAS BEEN AUTHORISED BY THE HONG KONG INSURANCE AUTHORITY SINCE DECEMBER 2018 TO CONDUCT INSURANCE BUSINESSES IN HONG KONG FOR ITS HONG KONG MEMBERS.

The office block reduces the urban heat island effect in this high-density neighborhood.

SUSTAINABLE OFFICE SPACE

In 2019, Britannia moved to a new office, K11 ATELIER King's Road, which is acknowledged as one of the most sustainable buildings in the world. TR(B)HK has signed up to a 'Creating Shared Value' (CSV) Lease initiative with the K11 Group. The initiative commits both organisations to work collaboratively to improve waste management and energy efficiency. Under the initiative, TR(B)HK agreed to appoint a sustainability ambassador and pledged to adopt sustainable operational practices including participating in K11's waste management and recycling programmes.

The CSV Lease initiative aims to drive sustainability forward by adopting shared values, raising awareness through sustainability news, workshops and networking opportunities designed to support energy saving (carbon reduction) and waste management efforts. The K11 ATELIER office block offers more than 70 sustainability features and extensive greenery, equivalent to 26 tennis courts. It also has the largest hybrid solar photovoltaic and thermal installation system in Asia, co-generating electricity and hot water. The rooftop garden is open for tenants' use.

RENEWING OUR LEASE AT K11 AND ENTERING INTO THIS NEW INITIATIVE MAKES ABSOLUTE SENSE, COMBINING A CLEAR DEMONSTRATION OF BRITANNIA'S AND THE MANAGERS' COMMITMENT TO USING SUSTAINABLE OFFICE SPACE AND PRACTICES WITH A DETERMINATION TO PROVIDE A WORKING ENVIRONMENT FOR OUR EMPLOYEES WITH THEIR WELLNESS AT THE CORE OF OUR THINKING' **TIM FULLER,** Director of TR(B)HK and Chief Executive of Britannia's Hong Kong branch.

BRITANNIA HONG KONG

TIM FULLER is the TRB Director responsible for Hong Kong, a Director of TR(B)HK and the Chief Executive of Britannia's Hong Kong branch. He has been resident in Hong Kong since 1 January 2018. Previously Tim was the Chief Operating Officer of Tindall Riley (Britannia) Limited in London, originally joining Tindall Riley in 1987 as a claims handler and prior to that sailing to the rank of 2nd Officer, serving on general cargo ships and geared handy size bulkers.

WING WAI is a Divisional Director of TR(B)HK and Head of Claims of Britannia's Hong Kong branch. She heads up the claims team for Members based in Mainland China, Taiwan and Hong Kong. She is a dual-qualified Hong Kong and English solicitor. She spent seven years in an international maritime law firm in Hong Kong before joining Tindall Riley in 2014. She is highly experienced in handling claims and disputes and advising Members on a wide range of P&I, FD&D and CLH issues.

GWEN VETUZ is a Divisional Director of TR(B)HK and Head of the Korea Claims team based in Hong Kong. She is an English, Singapore and Hong Kong qualified lawyer who spent 17 years in Singapore and Hong Kong with international maritime law firms before joining Tindall Riley in 2020. She now leads a team that works with Britannia's Korean membership, assisting with P&I, FD&D and CLH matters.

SISSI ZHANG is an Associate Director and Head of Underwriting of Britannia's Hong Kong Branch. She provides day-to-day underwriting services to our Members in Mainland China, Taiwan and Hong Kong. Prior to joining Tindall Riley in 2021, Sissi worked in one of the largest international broking firms for 7 years finishing as Vice President and Marine Business Development Leader with responsibilities for the Greater China Marine Practice.

SONIA CHENG is a Director of TR(B)HK and the Head of Finance of Britannia's Hong Kong branch since July 2020. She is responsible for compliance and regulatory reporting, financial reporting and other finance-related matters. Sonia is a Certified Public Accountant respectively in Hong Kong and America. She has been in the insurance industry for over 18 years taking up finance roles in different companies including direct insurers and a reinsurer and acquiring a wide spectrum of exposures in financial analysis and management.

Other members of the two claims teams include AMANDA CHEUNG, JI YOUNG KIM, NICOLE TSUI, EDWARD ALLSOP, JASON HO, MONICA LUO, EVA TANG and **BIANCA ZHENG**, bringing a wide range of legal, seafaring and adjusting experience to the claims handling process. **CONNIE CHAN** is the primary point of contact for correspondency work and is fully supported by Tim, Wing and other members of the claims team as necessary. Their contact details can be found on Britannia's website **(https://bit.ly/3AW27ME)**. **EMILY CHUNG, REBECCA WONG** and **JENNY KWONG** provide office administrative support while **TONY TANG** offers IT support to the team and other TR offices in Asia.

BRITANNIA HONG KONG EVENTS

Once the pandemic restrictions were relaxed, the office organised a number of events for Members and brokers and has also hosted a charity event in the office as part of its CSR programme. Pictured here are Hong Kong staff members ready to welcome guests to the Members' Lunch on 25 May 2022.

CLAIMS AND LEGAL

SANCTIONS, FORCE MAJEURE AND THE SCOPE OF 'REASONABLE ENDEAVOURS'

Georgiana Steiger,
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THE ENGLISH HIGH COURT HAS PROVIDED GUIDANCE ON THE SCOPE OF THE TERM 'REASONABLE ENDEAVOURS' AND HAS CONFIRMED THAT A PARTY IS NOT REQUIRED TO ACCEPT NON-CONTRACTUAL PERFORMANCE TO CIRCUMVENT THE EFFECT OF A FORCE MAJEURE CLAUSE.

(MUR Shipping BV v RTI Ltd [2022] EWHC 467 (Comm))

In June 2016 Owners entered into a contract of affreightment (COA) with Charterers, under which Owners agreed to carry several consignments of bauxite from Guinea to Ukraine. The COA contained a force majeure clause, with force majeure defined to include a 'state of affairs which... [is] outside the immediate control of the Party giving the Force Majeure Notice... [and that cannot] be overcome by reasonable endeavours from the Party affected...'

On 6 April 2018, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) sanctioned Charterers' parent company, listing them on both their Specially Designated Nationals and Blocked Persons Lists. On 10 April 2018, Owners sent a force majeure notice to Charterers, stating that it would be a breach of sanctions to continue with the performance of the COA, and noting that payments under the COA, which by its terms were expressly required to be made in US dollars, would no longer be permitted.

Charterers rejected the notice, stating that the sanctioning of their parent company would not interfere with cargo operations, that payments could alternatively be made in euros and that, as a Dutch company, Owners were not a 'US person' caught by the sanctions.

Owners disagreed and refused to nominate further vessels under the COA. Charterers therefore sought alternative tonnage and brought a claim against Owners for their losses in arbitration in London.

The arbitration tribunal found in favour of Charterers on the grounds that acceptance by Owners of their proposal to pay in euros fell within the scope of 'reasonable endeavours' and determining that making payment in euros was a 'completely realistic alternative' to payments in US dollars. The tribunal held that Owners could have accepted payment in euros without suffering any loss, as Charterers could have reimbursed Owners for the costs of the conversion (which Charterers had said they would do).

Owners appealed to the English High Court on the issue of whether 'reasonable endeavours' extended to accepting payment in euros, given that the COA required that payments should be made in US dollars.

The High Court agreed with Owners and overturned the Tribunal's decision. The scope of an obligation to make 'reasonable endeavours' to perform a contract is restricted to performing what the parties have contractually agreed. The Court ruled that the acceptance of euros would have amounted to 'non-contractual performance' and that such action was, therefore, beyond the scope of what were 'reasonable endeavours'.

The Court said that where an agreement specifies that payment must be made in a stated currency this is 'an important contractual obligation'. Owners would, therefore, be entitled to reject payment in another currency and require payment in the contractually agreed currency.

This case illustrates the importance of ensuring that force majeure clauses are carefully drafted. It is of particular importance in the current sanctions climate that such clauses accurately reflect the parties' intentions, especially where there are requirements for payments to be made in US dollars.

The decision is also of interest as it is arguable that the tribunal's decision reflected a more commercial approach to the dispute, whereas the Court was asked to consider a specific point of law.

DELIVERING CARGO WITHOUT PRODUCTION OF BILL OF LADING THAT HAD BEEN ISSUED TO CHARTERERS: ENGLISH HIGH COURT DISMISSES MISDELIVERY CLAIM

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THE ENGLISH HIGH COURT HAS RECENTLY CONSIDERED THE CONTRACTUAL STATUS OF A BILL OF LADING ISSUED ON BEHALF OF A SHIP'S OWNERS TO SHIPPERS WHERE THERE IS A CHARTERPARTY BETWEEN THE OWNERS AND SHIPPERS, AND THE EFFECT OF A NOVATION OF THAT CHARTERPARTY FOLLOWED BY ENDORSEMENT OF THE BILL OF LADING TO A THIRD PARTY (UNICREDIT BANK AG V EURONAV NV [2022] EWHC 957 (COMM) (THE *SIENNA*)).

BACKGROUND

The dispute arose out of the delivery of a cargo of low sulphur fuel oil which had been carried by the *SIENNA* from Rotterdam to Fujairah. The shippers of the cargo were also the original charterers of the ship. On 19 February 2020 a bill of lading was issued under which the Master, on behalf of the owners, acknowledged shipment of the cargo on board the ship. The bill of lading was consigned to the order of the shippers or their assigns.

Following shipment the shippers/original charterers sold the cargo. A bank financed the buyers' purchase of the cargo by way of a letter of credit issued on 1 April 2020 under a financing agreement between the bank and the buyers. The agreement provided that all rights under bills of lading that were issued for goods financed under the agreement were pledged and assigned to the bank.

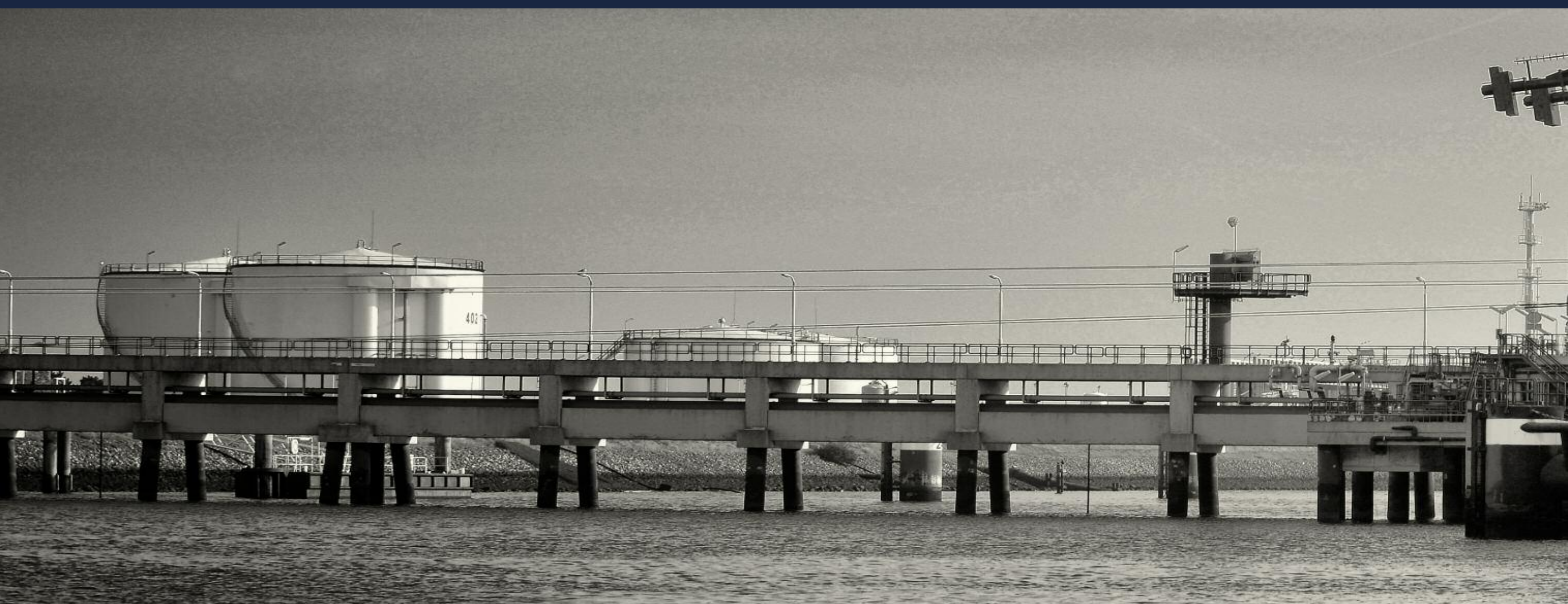
The bank and the buyers intended that the cargo would be re-sold to sub-buyers who had been approved by the bank on terms requiring the sub-buyers to pay the bank directly within 90 days of the date of invoice against, inter alia, presentation of these sub-buyers' invoices.

Following receipt of payment for the cargo by the shippers/original charterers, they novated their charterparty with Owners to the buyers under a novation agreement dated 6 April 2020.

The cargo was discharged between 26 April and 2 May 2020 by way of STS transfer to two other ships and without production of the original bill of lading. At the time of discharge, the bill of lading remained in the hands of the shippers/original charterers and had not been endorsed.

Payment of the sub-buyers' invoices was due between 26 July and 9 August 2020. As these dates approached, the bank became aware that the buyers were suffering financial difficulties. On 7 August 2020 the shippers/original charterers endorsed the bill of lading to the bank, who received it on 13 August 2020.

The bank did not receive the sums due under the sub-buyers' invoices and brought a claim in the English High Court against owners for damages resulting from an alleged breach of the bill of lading contract due to owners delivering the cargo to a third party without production of the original bill of lading.



LEGAL ISSUES

The main issue for the Court to determine was whether the bank was entitled to bring a mis-delivery claim under the bill of lading. In the situation where the shipper of the cargo is also the charterer, the bill of lading is only a receipt and is not the contract of carriage, which is contained in the charterparty. However, when a bill of lading that is issued to a charterer is endorsed by the charterer to a third party, the bill of lading does become a contract as between the carrier and the endorsee. In this case, though, the bill was not endorsed to the bank while the shippers/original charterers were still charterers (the charterparty having previously been novated). Therefore, at the time the bill was endorsed, the bill was not in the current charterers' possession.

The bank's case was that the novation agreement merely transferred rights and obligations under the charterparty from the shippers/original charterers to the buyers and that it had no effect on the bill of lading as a contract of carriage. Owners argued that this was wrong and that the novation agreement ended the contractual relationship between the owners and the shippers/original charterers and that it was not intended that the bill of lading would from that time create a new relationship between them.

The Judge ruled in owners' favour. Where a bill of lading is issued to a charterer, it is a receipt for the cargo but not a contract of carriage. The Judge held that there was no authority to support the view that where a charterparty is novated, a new contract of carriage contained in the bill of lading is then created between the owners and the shippers/original charterers – the bill remains a mere receipt.

The Judge agreed with owners that when the bill of lading was issued, the shippers/original charterers and owners did not intend for their contractual relationship to be contained in the bill, as the charterparty governed that relationship. While it was intended by owners and the shippers/original charterers that the bill of lading would govern the contractual relationship between owners and a third party if the shippers/original charterers ever assigned the bill to a third party, there was no reason to believe that they intended that relationship to be governed by the bill in the event that the contractual relationship between owners and shippers/original charterers was ended by novation of the charterparty.

The judge, therefore, concluded that the bill of lading did not contain the contract of carriage between owners and shippers/original charterers on or after 6 April 2020 and prior to the alleged mis-delivery. Accordingly, the endorsement of the bill to the bank did not give it title to sue and its claim failed.

The Court found that even if this was wrong, the bank's loss was not caused by any breach of contract of carriage by owners. The financing arrangements envisaged that the cargo would be discharged without production of the original bill of lading and the evidence indicated that the bank also knew that the bill would not be available prior to discharge and implicitly approved discharge without the original bill being produced.

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