



Handling Claims from Emerging Risks

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The Importance of the Claims Function



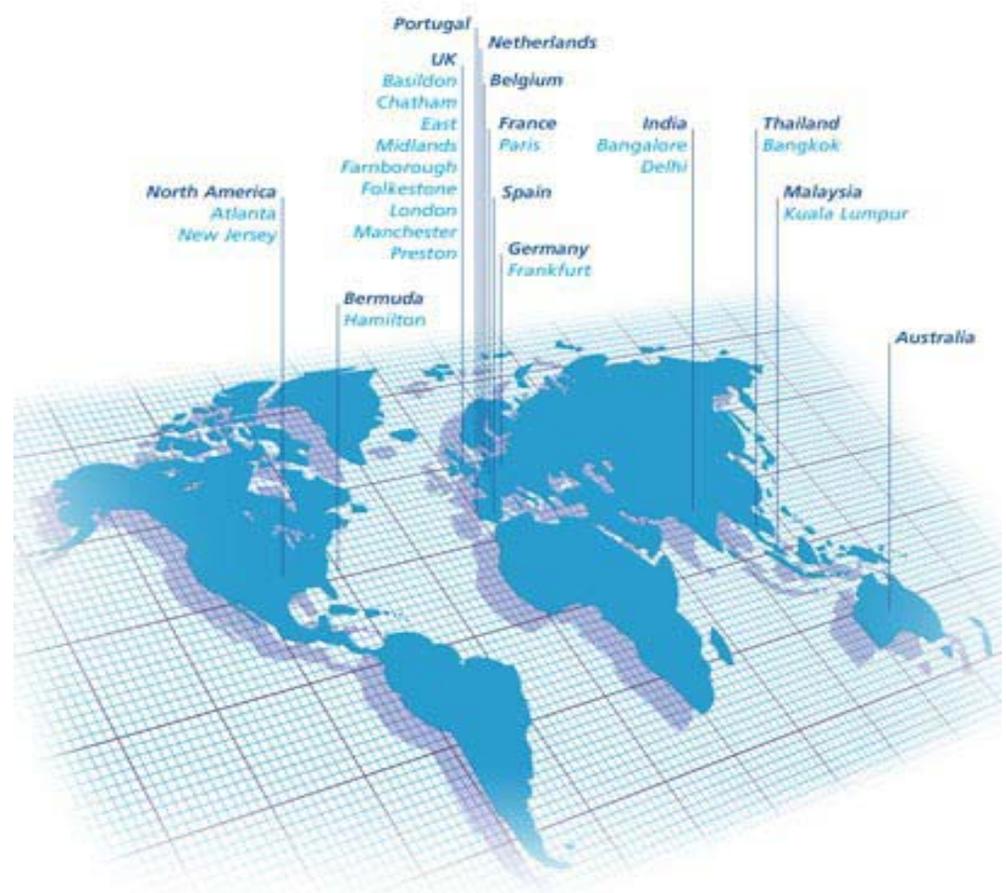
- **Claims are no longer a back room function**
- **Claims are a pivotal driver in an insurer's profit and loss account**

So who are Xchanging?



Xchanging Today

- Over £5 billion in Secured Contracts
- Group Revenue £254 million
- Equity investment of \$200m from General Atlantic Partners
- 4,000 people in 14 countries





Worldwide Reach...



Xchanging worldwide - Windows Picture and Fax Viewer

Worldwide Reach – we already serve thousands...

...in our customer organisations globally

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... We already serve thousands

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The Risks for Underwriters – Good news and Bad news

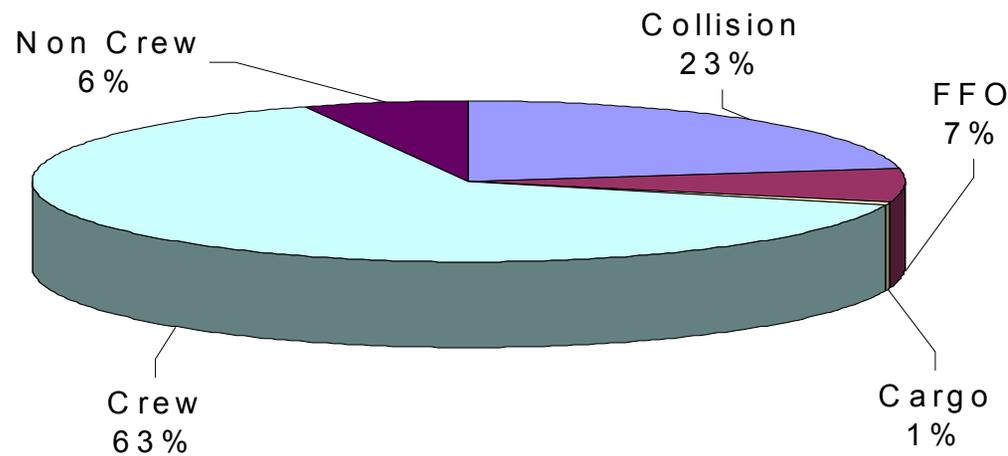


- **Physical risk of carriage of this cargo is good**
- **Skilled crew**
- **Loss record to date**
- **Fleet relatively new therefore less requirement for ship repairs**



Third party personal injury claims predominate the significant claims* of the LNG sector . . . followed by liability to other ships and infrastructure.

* Claims in excess of \$100,000





- **Shortage of skilled crew**
- **Age of vessels, repair options and increased demand**
- **Charter party provisions**



- **Unseaworthiness/Crew Competence**
- **What effect will the needs of the LNG fleet have on the rest of the world's fleet?**



Section 39(4) of the MIA 1906

A ship is seaworthy if she is “*..reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.*”

A ship can be unseaworthy by:

- a “disabling lack of seamanship”
- “massive ignorance” in relation to relevant systems



Section 39(1) of the Marine Insurance Act 1906 :

*“In a **voyage** policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.”*



Section 39(5) of the Marine Insurance Act 1906

*“In a **time policy** there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.”*



Lack of certification of relevant crew will not, by itself, establish unseaworthiness

Underwriters would need to show :-

- **The crewmember was uncertified, and**
- **The Master and/or Owners should have recognised that he was not competent to perform the role, and**
- **His act/omission was causative.**



Underwriters will be faced with having to show “blind eye” knowledge rather than actual knowledge.

“If a man, suspicious of the truth, turns a blind eye to it, and refrains from enquiry- so that he should not know it for certain- then he is to be regarded as knowing the truth. This ‘turning a blind eye’ is far more blameworthy than negligence. Negligence in not knowing the truth is not equivalent to not knowing it.” The Eurysthenes [1977] QB 68



- **It is not sufficient to say that the shipowner should have known about something and/or that he was negligent. There has to be a suspicion of facts that make the ship unseaworthy and a deliberate failing to investigate.**

- **Will the market, collectively, start to insist on more specific warranties as to crew recruitment, training, monitoring etc?**

Insurance Contract Law - Materiality





- The current test is whether the fact is one that would influence the mind of the **prudent insurer**.
- Under the proposed test, the underwriter will have to show
 - (a) that it was induced to enter the contract on those terms, and
 - (b) the insured did know or a **reasonable insured** would have known that the misrepresentation / non disclosure would have that effect.

Proposed change to the test for “materiality”



- **The Law Commissioner’s advice is that the problems can be overcome by Underwriters providing guidance on the type of information it expects to see.**
- **Do underwriters have personnel who will be sufficiently technical to compose the questions and consider the responses?**
- **If not, where will those staff come from, how many will be needed and how long will it take for the market to sign them up?**



NOTICE OF CLAIMS AND TENDER

- Entitles Underwriters “to decide the port to which the Vessel shall proceed for docking or repair”.
- Potential conflict between ITC Hulls Clause and LNG Charterparties.
- Charterers’ rights to nominate repair yard under charterparty.
- Potential claims against underwriters in tort for unlawful interference with a third party’s contract.



- **LNG ships are commissioned for and employed on specific routes so there may not be any realistic alternative yards nearby.**
- **Lack of compensation for all the additional time taken in going to another yard and repairing there will create a motive for Owners to deliberately breach this clause.**



- **Valuable ships = large salvage awards.**
- **The “value” is the ship’s market value.**
- **It is likely that salvors will argue that the market value of the ship is higher with the charterparty attached.**



LNG Vessels and Terrorism – How Safe are They?

Handling Emerging Risks - Nigeria





- **Kidnap and Ransom**
- **Theft of oil**















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Questions?