RR&CO

AREAS OF EXPERTISE

RR&CO are a specialist firm of maritime solicitors

Operating out of the Lloyd's Building in the City of London

Catering for Shipping, Commodity, Energy & Insurance clients worldwide.

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AREAS OF EXPERTISE

Admiralty Law

- Collisions
- Salvage
- Towage
- General Average

Charterparties

- Liability for Cargo Damage
- Breach of Safe Port Warranty
- Damage to Ship by Cargo
- Supply of Bad Bunkers
- Various Minor Liabilities

Cargo

- General and Dry Cargo
- Bulk Liquid Cargos
- Shortage Claims
- Contamination Claims

Marine Insurance

- Hull Insurance & Builders' Risk
- Policy Interpretation
- Freight, Defence & Dermurrage
- Marine Professional Negligence
- Shipping & Insurance Fraud

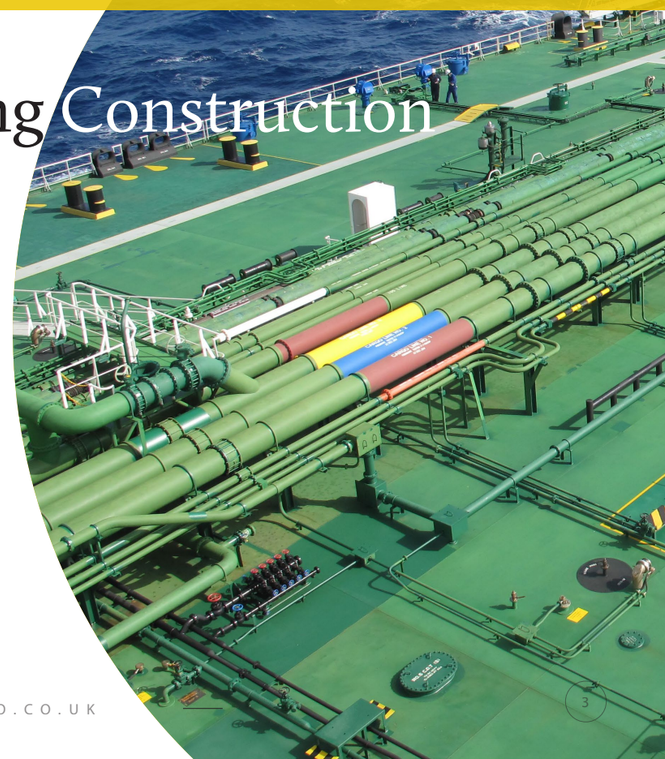
SPECIALIST ASSISTANCE FOR YOU

Offshore & Energy Insurance

- Offshore Developments
- Contracts
- Carriage of Products by Sea
- Tanker Voyage Charters
- Shortage Claims
- Various Minor Exposures to Liability

S&P and Newbuilding Construction

- Drafting standard form contracts
- Attending shipyard negotiations
- Advising on delay in delivery
- Shipyard's warranty insurance



Admiralty Law

Our Key Assistance

OBTAINING JURISDICTION

For contract cases, such as Salvage, Towage and General Average, we recommend the incorporation of comprehensive choice of law and jurisdiction clauses, these can be tailored to your preferences. Collisions and fixed and floating claims require a negotiation to achieve a mutual dispute resolution procedure.

In our opinion an English choice of law and jurisdiction clause is preferable for the following reasons:

- English courts are independent and impartial
- English court decisions are transparent and predictable
- English court judgments are respected internationally
- An English judgment can be enforced in many key international jurisdictions.

In fact, the English High Court announced in October 2015 the *Shorter Trials Pilot Scheme* designed to offer dispute resolution *'on a commercial time scale'* with cases managed by docketed judges with the aim of reaching trial within 10 months of the issue of proceedings and judgment within 6 weeks thereafter. All cases participating in the pilot scheme have achieved conclusion within the 10 months with judgment following within 4 weeks.

English Courts deter weak or speculative claims through the rules of *'loser pays'* and *'pay as you go'* and an absence of jury trials and punitive damages.

Access to the court and the judiciary is subject to a nominal fee for court administration and the English Court maintains a strict case management system, thus cases commonly complete within 12 months.

CLAIM AT HIGH COURT / ARBITRATION

The following issues need to be taken into consideration when choosing between High Court and Arbitration:

- Arbitrations are personal contracts, thus third parties who may indeed be responsible for the problem cannot be brought into the arbitration.
- The High Court has powers to bring in third parties by service of legal proceedings upon *'fit and proper parties'* allowing Joinder of parties domestically and Joinder of overseas parties by virtue of long arm jurisdiction.
- High Court actions have the additional benefits of Part 36 Offers which are a very powerful negotiating tool and provide a great incentive to settle. Failure to accept a winning Part 36 Offer produces interest on the claim at up to 10% above UK bank rates, indemnity costs and interest on costs from the expiry of the offer at up to 10% above UK bank rates.
- The Part 36 Offer regime has no applicability to Arbitrations. Indemnity costs will not be ordered even where the winning party beats his own sealed offer.
- The English High Court has the power to enforce its judgments, whether interlocutory or final and whether concerned with procedural issues or matters involving principal, interest or costs. Similarly, the English High Court has the power to indirectly sanction a party for failure to comply with the Court's Order.

Arbitrators do not have the power to enforce Awards, whether interlocutory or final and whether concerned with procedural issues or matters involving principal, interest or costs.

Similarly, arbitrators do not have the power to directly or indirectly sanction a party for failure to comply with the Tribunal's Orders, which, in our view, makes an arbitration action somewhat ineffective.

PROTECTION THROUGH ARREST

Arrest is a right and an entitlement, so long as the claim falls within the High Court's jurisdiction (which is contained in S.20(2) of the Senior Courts Act 1981). The applicant does not have to seek the Court's leave or apply for permission, but simply complete the following forms: first issue a Claim Form and then file the following two documents at Court:

- An application and undertaking for arrest, and
- A declaration in support.

Following their completion, the Admiralty Marshall affects the arrest. The arrest continues until security is in place. Breach of arrest is a contempt of Court.

The Court has the power to Order the amount and form of security to be provided and will ensure that the following issues are covered:

- The Surety must be of an English or EU registered company (note, post Brexit, EU companies may not be acceptable) of good standing, subject to such good standing being questioned by claimants.
- Security is granted for an open-ended period of time (i.e. unlimited).
- The sum secured is an amount covering assessment of the claim, interest and costs up to judgment on basis of our *'best reasonably arguable case'*.
- Failure to post adequate security will result in the Admiralty Marshal selling the vessel pending litigation and the payment of the proceeds into Court.

OBTAINING SECURITY TO ENSURE RECOVERY FOLLOWING SUCCESS

Once Jurisdiction is founded, the second step is to obtain Security. There is no point in proceeding in an unsecured claim, only the minimum of costs should be expended until the claim is secured. Acceptable security is limited to a Lloyd's Bond posted through Lloyd's of London, or placement of the security into an escrow account on standard terms with a London bank, or a LOU on standard form from a P&I club that is a member of the International Group.

The claimants are entitled under Admiralty Law to restrain assets to provide adequate security on the basis of the claimant's best arguable case. In essence security is obtained against threats of arrest actions in English and other convenient jurisdictions against a ship or sister ship, cargo or freight and, in certain jurisdictions, bunkers on a time-chartered vessel. Security in an acceptable form is not always available, forcing us to seek an order for appraisement and sale following arrest.

A consideration of the law in relation to the doctrine of Priorities is essential here.

Admiralty Law

Our Areas of Specialist Expertise

COLLISIONS

Collision in its common law sense is no more than the use of the tort of negligence to cover a situation where damage is caused to one vessel by another in circumstances where the law demands that reparation be made to the innocent party.

Although the very word *'collision'* (from the Latin) implies contact and/or impact between vessels, it need not necessarily be between their respective hulls; contact with an anchor chain or with the fishing net of a trawler has been held to be contact within the meaning of the expression. Indeed a vessel may cause damage by its negligence to another vessel without actual contact.

To avoid negligent navigation and to ensure that all users of the sea will abide by a basic set of principles a number of international conferences have been held, from which have come a series of Collision Regulations, the latest of which is the *International Regulations for Preventing Collisions at Sea 1972*, with their most recent amendments in force internationally on 29 November 2003.

In collision actions everything turns upon the initial steps of investigation:

- Agreeing Jurisdiction,
- Agreeing Security (there is absolutely no purpose proceeding without security being in place), and
- The collection of evidence.

Since 1911, English Law has adopted a cross-liability system of apportionment. Cross-liability means that the loss is to be divided in proportion to the degree of blame of each ship. This is now encapsulated in S.187 of the MSA 1995 which provides as follows:

> *"(1) Where by the fault of two or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was at fault."*

SALVAGE

The definition of salvage is:

> *"A service which saves or helps to save a recognised subject of salvage when in danger, if the rendering of such service is voluntary in the sense of being solely attributable neither to pre-existing contractual or official duty owed to the owner of salved property, nor the interest of self preservation."*

The recognised subjects of salvage are:

- Ship and its apparel,
- Cargo, and
- Freight.

LLOYD'S OPEN FORM (LOF) 2011

In the latest edition of the LOF, there have been two new changes. First, under LOF clause 3, the details of LOF awards are to be made available on the Lloyd's website, albeit only by subscription. This provision changes, in our view for the better, the traditional confidentiality that parties to a LOF Salvage Arbitration enjoyed. The Council of Lloyd's justifies this change as part of a general policy of transparency and it is accompanied by a new procedure for appointment to the LOF Panel of Arbitrators, also designed to enhance transparency. One further step in this admirable transparency is that Lloyd's is also making copies of the Appeals Awards publicly available. Second, under LOF clause 4, Lloyd's now requires that all agreements using the LOF shall be reported to Lloyd's.

The current Panel of Lloyd's Salvage Arbitrators are:

- Elizabeth Blackburn QC
- Simon Kverndal QC
- Lionel Persey QC
- Vasanti Selvaratnam QC
- Jeremy Russell QC (Appeals)

TOWAGE

In matters of towage our legal services will be able to assist in relation to Towage contracts including those incorporating the UK standard towage conditions (which we recommend shipowners seek to avoid), issues of the authority of the master, performance and payment, relationship between tug & tow, *'commencement of tow'*, specific performance of indemnities, General Average and towage, towage insurance considerations, indemnification of the tug owner and, finally, towage under the law of salvage.

GENERAL AVERAGE (GA)

In essence, GA will be governed by the GA provision appearing within the relevant contract of carriage, normally this will incorporate into the contract a version of the York Antwerp Rules (YAR). Rule A of YAR defines a General Average act as:

> *"...when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure."*

Our principle involvement in this field is recovering cargoes' contribution to General Average on behalf of the shipowner.

SEEKING GA CONTRIBUTIONS

The starting point is that a vessel suffers a General Average incident, the Master declares GA and thus the Owners suffer costs and expenses on behalf of the whole adventure. Thereafter, the Owners appoint Average Adjusters.

GA SECURITIES

Prior to the vessel's arrival at the various discharge ports, the Consignees and their Cargo Insurers would be contacted by the Owner's appointed Average Adjusters and, against a threat of the Owner exercising their GA lien and refusing to discharge the cargo, Lloyd's Average Bonds and Average Guarantees would be completed by Consignees and their Cargo Insurers respectively. The form of these bonds and guarantees are supplied by the Owner's Average Adjusters.

We at RR&CO consider it part of the Average Adjusters duty to ensure that the Lloyd's Average Bonds and the Average Guarantees contain an exclusive choice of law and jurisdiction clause (preferably English law and jurisdiction). Failure to include such a law and jurisdiction clause makes the bonds and guarantees virtually worthless.

RECOVERY OF THE CONTRIBUTIONS

The Average Adjusters complete the General Average Adjustment and send an email request to the Cargo Insurers for payment under the Average Guarantees. If they fail to pay then we are instructed to recover the sums outstanding. We always begin with a consideration of the appropriate jurisdiction in which to bring the claim. We email and phone the insurers to enforce the Average Guarantees and if we are unable to obtain a sensible response, given that the failure to pay amounts to a breach of the Lloyd's Bonds, breach of the Cargo Insurers' Average Guarantees and a breach of the contract of carriage, we next seek enforcement, preferably in the English High Court.

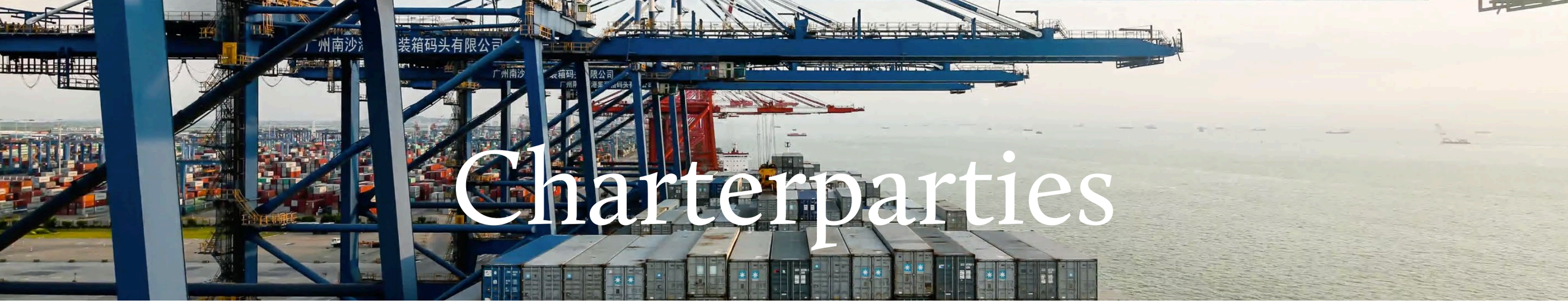
ENFORCEMENT OF SECURITIES

In such a case, we would intend to enforce the Average Guarantees against the Cargo Insurers without disturbing the Consignees. It is a simple and inexpensive matter to start an action in the English High Court to enforce such guarantees. If however the Average Adjusters have failed to specify the law and jurisdiction of the bonds/guarantees then we must commence action under the contract of carriage, which may be more expensive and problematic in foreign jurisdictions.

We would add that whilst we have been forced to commence action in the appropriate court on a large number of occasions such commencement has prompted Cargo Insurers to swiftly pay their outstanding contributions without the need to incur wasted costs.

Recent Cases

- Collision between tanker and dredger and her dumb barge: unfounded *'catastrophic damage'* claim for USD 2.2M from dredger's London insurers. Their claim dismissed and our costs awarded. Sister vessel arrest to establish English Jurisdiction.
- Recovery of substantial GA contributions from 19 consignees in Middle East, in excess of USD 1.7M. Allison between container vessel and north European terminal, reducing owner's exposure by USD 500K.
- Fire on RO-RO vessel, salvage op. and LOF award advice.



Charterparties

The principle areas of dispute we assist with are *Charter Hire*, and *Freight & Demurrage*.

We have assisted many ship operators not only with the drafting of their charterparty forms but also with the formulation and construction of out-house technical management and commercial / operations agreements.

Our services include assisting with purchase options and effecting transfer of ownership, advising upon the required H&M, P&I and FD&D insurances and acting on behalf of bareboat charterers in disputes both up and down the contractual chain.

CRADLE-TO-GRAVE SERVICE

We have a high volume of chartering clients and provide a cradle-to-grave service, looking after all legal aspects from pre-fixture acceptance of terms to post-fixture disputes. This involves everything in the nature of FD&D as well as cargo claims brought either by receivers or occasionally by sub-charterers or disponent owners.

We have a particular aptitude for resolving disputes involving:

- Liability for Cargo Damage,
- Breach of the Safe Port Warranty,
- Damage to Ship Caused by Cargo,
- Supply of Bad Bunkers, and
- Other Various Minor Exposures Liability.

LIABILITY FOR CARGO DAMAGE

To assess third party cargo risk, we look at the Bills of Lading to identify whether we are concerned with owners' or charterers' bills, i.e. which party is issuing or signing and under what capacity (as *"Charterer"* or *"for and on behalf of the Master"* etc.). In such cases, there is often an interaction with the NYPE Interclub Agreement.

BREACH OF SAFE PORT WARRANTY

Safe port warranties are common in all forms of charterparties.

These may extend to encompass ports, berths, wharves, docks, anchorages etc. Although some charters (such as SHELLTIME 4) contain very restricted warranties, these may be overridden by unqualified language as to *"safety"* in the covering COA or recap, so that an absolute undertaking is imposed after all.

Therefore, the risk of liability for damage or delay to the vessel is ever present where Charterers are fixing for trading within *"safe ports"* (or some equivalent shorthand such as SP/B).

The Classic Definition of Safety is from the EASTERN CITY (1958):

> *"A port will not be safe unless, in the relevant period, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship."*

See further detail in the note below.

NOTE ON SAFE PORT WARRANTIES

- Most if not all navigable rivers, channels, ports, harbours and berths have some dangers from tides, currents, swells, banks or bars. Such dangers are frequently minimised by lights, buoys, signals, warnings and other aids to navigation and can normally be overcome by good navigation and seamanship, but if more than ordinary skill is required to avoid the dangers the port will be unsafe and the Charterer will be liable for damage or delay caused to the vessel.
- A safe *port* warranty extends to cover docks, wharves, berths and other places within the port to which the vessel is directed.
- Whereas, a safe *berth* warranty only extends to cover access and egress to the berth.
- A safe *anchorage* warranty extends to the approach and departure from the anchorage and the only means of access and egress, which in river anchorages or ice channels may be several hundred miles.
- Where Charterers have incurred a liability to Owners for breach of a safe port obligation, they are not entitled to limit that liability under the Convention on Limitation of Liability for Maritime Claims.
- Where there is no express term as to safety, the Court may imply one (in certain circumstances).

Charterparties

DAMAGE TO SHIP CAUSED BY CARGO

The liability of charterers for damage to ship's tank's steel or coatings caused by cargo has recently undergone clarification in four important cases, with two in the Court of Appeal and one in the Supreme Court.

- GIANNIS NK (1994) 2 Lloyd's Rep 171
- ORJULA (1995) 1 Lloyd's Rep 654
- BERGE SISAR (2001) 1 Lloyd's Rep 663 (Supreme Court)
- BALTIC FLAME (2002) 2 Lloyd's Rep 203 (Court of Appeal)

The latest two major English legal cases on this topic were handled the Head of Law now at RR&CO.

The effect of these decisions is to simplify the shipowner's rights to sue for both physical damage repair costs and loss of hire. The position can now be summarized as follows:

- Under English common law there is a term implied into contracts of carriage that the Shippers will not load *'dangerous goods'* without the shipowner's knowledge and agreement prior to shipment.
- The phrase *'dangerous goods'* has been given a broad meaning and is not confined to goods of an inflammable or explosive nature such as acids, explosives, arms and ammunition, but has been defined by the Supreme Court as simply a cargo that is *"likely to cause damage or delay"*.

By way of example, we have handled cases of damage to ship's tanks in all principal areas:

LPG	contaminated with free water (semi-pressure), H2S.
Naphtha	contaminated with free water, H2S.
MTBE	incompatibility (as it is an oxygenate and aggressive to some types of coatings).

We have also resolved cases in relation to damage to pumps where the above commodities are laden with foreign particulate matter such as rust or sand etc. and cases where free water has damaged pumps in LPG, especially if freezing occurs.

- It has further been decided by the Supreme Court that the obligation upon the Charterer not to ship dangerous goods creates a strict liability. The obligation does not depend upon the Charterer having knowledge of the dangerous nature of the goods and failing to communicate that danger to the shipowner.
- Therefore, where the Charterer had no knowledge or means of knowing the dangerous nature of the cargo he is nevertheless still liable.

Multi-million dollar claims arise from such damages and delays, RR&CO have in addition dealt with such cases in the following situations:

EDC	stainless steel
Acetic Acid	stainless steel
Petroleum wax	stainless steel
PFAD	epoxy phenolic coating
Phosphoric Acid	stainless steel
Naphtha	zinc coating
Dry Sulphur	limewashed mild steel

SUPPLY OF BAD BUNKERS

There is an absolute duty on Time Charterers to provide bunkers that are of reasonable general quality and suitable for the type of engines fitted to the particular ship.

If the bunkers supplied prove to be out of specification or of poor quality, then the Charterers will be liable for any main engine damage and delay resulting therefrom. In view of the declining quality in bunkers such claims are becoming more prevalent. If a problem with bunkers supplied by Charterers results in delay, the Charterers will not be entitled to put the vessel off-hire.

VARIOUS MINOR EXPOSURES TO LIABILITY

Aside from the four major areas of dispute within the scope of charterparties discussed above, the Charterer has little or no control over the day-to-day running of the vessel, thus the exposure of Charterers to a liability such as pollution or ecological damage certainly in English law does not exist.

In essence, the offence under the Merchant Shipping Act 1995 arises where a discharge of oils into UK waters has taken place and Owners and/or Master of the ship may be found liable. However, we note the Charterer may still be liable to indemnify the owners, or be liable, for fines:

INDEMNIFICATION OF OWNERS

A Charterer will have an obligation to indemnify the owner for third party liability where this results from a breach of the charterparty by the Charterer, or arises out of activities which are the charterer's responsibility.

For example, BIMCO's *"Fuel Sulphur Content Clause for Time Charter Parties"* provides for the Charterer to indemnify the Owner for loss or liability arising from a failure to:

> *"...permit the Vessel, at all times, to meet the maximum Sulphur content requirements of any emission control zone when the Vessel is trading within that zone".*

FINES

A Charterer, if falling into the definition of the *"carrier"*, can be subject to fines, e.g. if in non-compliance with the US *"Automated Manifest System"* Regulations. Guidance by the US Customs & Border Patrol advised that it views the carrier as the entity that *"controls"* the vessel which includes:

(a) determining ports of call; and
(b) controlling loading and discharging cargo.

Recent Cases

- High Court litigation relating to breaches of charterparty by charterers, with claim quantum totalling over USD 2.7M.
- Recovery of demurrage amounting to USD 2.1M over a matter of months.
- Successfully defeated USD 1.3M breach of safe port warranty claim, involving local investigation and statements.
- Positive resolution of USD 800K bunker contamination matter and gained result in USD 705K loss of hire dispute.
- Obtained payment to clients of outstanding freight and demurrage totalling near to USD 500K in just ten days by issuing hand-crafted solicitor's dunning letters.
- Fast recovery of long outstanding freight totalling USD 350K.
- Settlement totalling EUR 645K covering voyage CP breaches.

Cargo

We deal with all manner of wet and dry cargo disputes

GENERAL AND DRY CARGO

We act on behalf of ship owners defending all forms of cargo claims, whether it is general cargo, dry bulk (geared or ungeared), containers, heavy lift, livestock, or reefer produce. The preponderance of cargo claims we see results from bad stowage, contamination or seawater ingress. Claims involving bad stowage and contamination will turn upon the wording of the appropriate contract of carriage, whilst seawater ingress is only acceptable with a heavy weather defence that has to be proved.

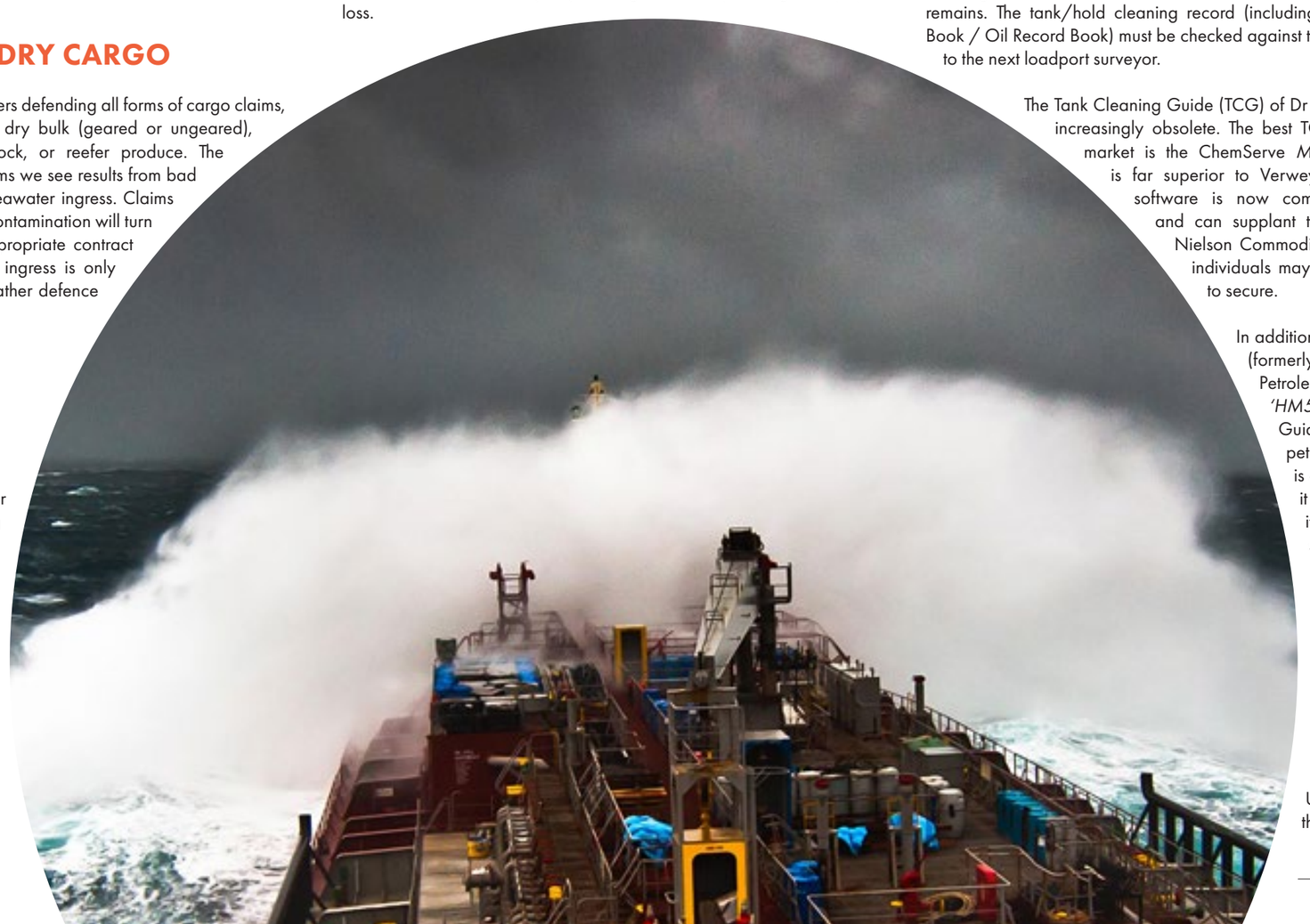
BULK LIQUID CARGO

This firm has a particular penchant for vessels carrying bulk liquid cargoes, from the rarefied air of the chemical gases through to ethylene LNG and LPG, chemical parcel tankers, acid carriers and other specialised trades resting with product and crude oil carriers.

SHORTAGE CLAIMS

Firstly, it is important to emphasise that there is no such thing as *'Trade Ullage'*. If there were it would amount to the Owner having a license to steal cargo. Secondly, whilst there will be a slight loss of hydrocarbon cargoes due to evaporation on the voyage (light ends only) this should be nominal. Thirdly, with the advent of crude oil washing (COW) there should not be any ROB.

In the absence of a fortuity any shortage in bulk liquid cargo is a paper loss.



The vast majority of shortages that we handle result from documentary errors, they are primarily overstated bills or based upon improperly calibrated shore tanks at load- and dis- ports. Given that a comparison of shore tanks at load and disport is a comparison of apples with pears, as opposed to a comparison of ships tanks after load and before discharge, which is far more likely to be accurate.

CONTAMINATION CLAIMS

The largest volume of claims that we see are caused by previous cargo remains. The tank/hold cleaning record (including the Cargo Record Book / Oil Record Book) must be checked against the declaration made to the next loadport surveyor.

The Tank Cleaning Guide (TCG) of Dr Verwey is becoming increasingly obsolete. The best TCG currently on the market is the ChemServe *Miracle* guide, which is far superior to Verwey. Also the *Milbros* software is now commercially available and can supplant the proprietary Stolt Nielson Commodity Handbook which individuals may have found difficult to secure.

In addition, the Energy Institute (formerly the Institute of Petroleum) has published *'HM50'* a Tank Cleaning Guide for clean petroleum products. This is a good document as it deals, amongst other items, with ultra-low sulphur products, (e.g. regular diesel oil can now be a contamination source for ULS diesel and require cleaning. Hitherto none was necessary between middle distillates until the advent of ULS grades) and the thorny issues of biofuels, which nowadays add complexity to tank cleaning requirements.

Bio-diesel, for example, cannot be the cargo prior to loading of jet fuel, in contrast, regular diesel is an acceptable previous cargo and with only minimal drain/strip change-over. The advent of FAME (Fatty Acid Methyl Esters) addition to diesel fuel has given rise to a new type of contamination claim, i.e. FAME in jet fuel.

DEFENDING THESE CLAIMS

The starting point for defeating contamination claims is to ensure that the vessel has good sample storage facilities and sample management regimes. Thereafter, record the samples. Cross-contaminations / inter-tank leakage will require good maintenance records of tank / pump / line inspections and regular tank pressure test records, a consideration of the heating medium of the heating coils is also necessary.

Trace contamination claims (ppb) may simply be based upon bad science. We can assist in the drafting of the appropriate contractual protection, such as commingling clauses.

Aside from the stainless steel and the standard zinc and epoxy coatings MarineLine coatings are proving to be reliable and durable, always providing that they have been applied correctly in the first instance.

Some coatings, particularly some brands of epoxy have high absorption properties and slow de-absorption times. Consequently, it may be impossible to clean to water-white standard in the time allowed by Charterers and may amount to Charterer's misuse of the vessel.

Recent Cases

- Dismissed of USD 3M Glacial Acetic Acid cargo contamination claim and recovering USD 200K demurrage counterclaim.
- USD 2.25M claim relating to damage to ten stainless steel tanks by EDC due to alleged off-spec cargo.
- Obtained bank guarantee security from non-IG P&I insurers.
- Successfully brought cargo claim due to contamination by previous cargos (saponification with rapeseed oil) - ulitmately found that Owner's failed to undertake alkaline washing.
- Defeated substantial cargo claim on grounds of *inherent vice* Sunflower seed oil loaded in winter resulted in wax fall-out.

Marine Insurance

Applying our serious expertise in this field

Marine Insurance covers the loss of or damage to ships, cargo, terminals, and any transport or cargo by which property is transferred, acquired, or held between the points of origin and final destination.

HULL INSURANCE & BUILDERS' RISK

We have a depth of experience dealing with all major policy forms, including:

- Institute Hull Clauses 01.11.2003 and 01.11.2002
- The Insurance Act 2015
- Institute Time Clauses - Hulls CL 280 (01.11.95)
- Institute Additional Perils Clause - Hulls (01.10.83)
- International Hull Clauses (01.11.02)
- Institute Warranties CL 26 (01.07.76)
- Institute Port Risk Clauses CL 312 (20.07.87)
- Institute Time Clauses - Port Risks CL 311 (20.07.87)
- Broker Cancellation Clause
- Several Liability Clause (direct or reinsurance as applicable) ISW 1001
- Notice of cancellation, automatic termination of cover and war and nuclear exclusions clause - Hulls, etc. CL 359 (01.01.95)
- Service of Suit Clause (Marine) LPO 17d

COVERAGE ISSUES

We reguarly assist with matters relating to:

- Included and excluded losses
- Wilful misconduct of assured
- Delay
- Ordinary wear and tear
- Disclosure and representations
- Utmost good faith
- Non-disclosure of a material fact
- Disclosure by agent
- Untrue representations
- Double insurance
- Warranties
- Express warranties
- Warranty of seaworthiness
- Interpretation of slips & policies

POLICY INTERPRETATION

Our experience with coverage issues relates to the interpretation of (unique) slip or policy wordings, plus the warranty of seaworthiness as well as express warranties. Recent cases have involved the interaction of undisclosed principals with the non-disclosure of material facts relating to the undisclosed principal.

The Institute Clauses are tried and tested and rarely promote disputes or litigation. However the Joint Hull Committee have recently issued the International Hull Clauses (01.11.03). This new policy form incorporates detailed changes to the International Hull Clauses of the previous year, although the basic structure remains the same. The new clauses are aimed at accelerating the claims process and set out the rights and obligations of both the assured and the underwriters in relation to the submission, review and settlement of hull claims. An important obligation placed upon the underwriters is to make a decision on a claim within 28 days.

However, unlike the Norwegian Hull Plan there is no sanction applied to underwriters if they fail to pay within a set period. The new policy form broadens the latent defect coverage, adopts the BIMCO General Average absorption wording and removes the effect of under insurance for claims of salvage, sue and labour, and General Average.

On the flip side, the new policy form no longer provides cover for a final scrapping voyage, and places an obligation on the owners/managers to provide notice of the claim as soon as they become aware of a loss or damage.

Overall, the latest version of the International Hull Clauses (01.11.03) are to be applauded, they reflect a sophisticated move forward in marine wordings to be expected from a London market that over the last ten years has come of age.

RECOVERIES

- Allocation of recoveries as between underwriter and assured
- Doctrine of abandonment & doctrine of subrogation
- Excess of deductible: Entitled to receive proceeds up to extent of own loss
- ITC hulls 01.10.83 / 01.11.95 Clause 12.3
- Assured must not prejudice underwriter's rights of subrogation

Marine Insurance

FREIGHT, DEFENCE & DEMURRAGE

FD&D insurance is essentially:

> *"Legal expenses insurance covering shipowners or charterers for their contractual disputes arising out of the operation of ships."*

FD&D insurance may be likened to the fourth leg of the table after H&M, P&I and Charterers' Liability. Although the assured bears the result of such a dispute, nevertheless the concerned underwriters pay for all the legal costs of a dispute including general advice, the issue of dunning letters and/or arbitrating or litigating the dispute through to an award or judgment. Indeed were the action to fail and opponents costs awarded against the assured, then these also would be paid by underwriters.

FD&D also covers matters which have not (yet) escalated into a dispute. We run the provision of such FD&D legal services for a various Lloyd's and Company underwriters usually led by Travelers Syndicate 5000, also featured on the slip may be Navigators Insurance Company, AIG and Federal Insurance Company. Under this facility we are available on a 24/7 basis to provide legal advice on the assured's shipping contracts. This legal advice service, although reality-based, can be an extremely useful tool in the shipowner's or charterer's toolbox. Charterers engaged in international trade contracting with overseas entities can have legal support and assistance direct from senior London solicitors ready to step in and fight their case as and when needed.

We are also engaged by the FD&D departments of various international P&I clubs to provide legal case handling assistance.

MARINE PROFESSIONAL NEGLIGENCE

Marine professional negligence is a common law tort which, in essence, is a breach of the duty of care of professionals such as agents or brokers (chartering / insurance / bunker / sale & purchase / ship's agents etc.), or other marine professionals such as Average Adjusters. Marine professional negligence claims have become more common in recent years particularly in times of economic downturn, where losses suffered are often more apparent.

RR&CO act on behalf of leading underwriters at Lloyd's advising on coverage and recoveries in relation to marine professional negligence insurance policies.

IMPORTANT LEGAL UPDATE

UNLAWFUL MEANS CONSPIRACY

The Tort of Unlawful Means Conspiracy is a radical change in English law, opening the floodgates for litigation. The newly defined tort arises where:

> *"Two or more parties agree to use unlawful means to injure the claimant [and, as a result of which, the claimant suffers damage]"*

It follows that now (post 2008) any form of illegality, whether criminal or civil, will suffice for *'unlawful means'*. The effect of this is that such a conspiracy might be relatively easy to establish in highly interlinked transactions, and the unlawful means could be satisfied by a relatively minor breach of regulations, provided that this was the means of inflicting the harm. The required intention to injure need not be a predominant intention, but instead could be subordinate to the conspirators' own self-interest.

Of course, criminal prosecutions for fraud are subject to the criminal burden of proof of *'beyond a reasonable doubt'*. However, the standard of proof for the tort of Unlawful Means Conspiracy is the ordinary civil standard of *'on the balance of probabilities'*.

SHIPPING & INSURANCE FRAUD

Often it is the seemingly innocuous email that passes through which results in large transfers to third party fraudsters. Complex shipping and insurance frauds are a particular specialty of this firm.

THE RIGHT TEAM FOR THE JOB

Such cases require forensic examination of documents, identification of the source of emails, interrogation of clients' IT systems and invariably asset tracing of the fraud proceeds. Part of our team is Blackhawk Investigations, who act as our Corporate Investigators. Dominika Jaskiewicz is their Head of Operations, her bio is available on our website at rrco.co.uk.

REAL EXPERTISE

Although the vast majority of fraud matters we deal with for both the London and Scandinavian insurance market remain confidential, some are reported in the law reports with the most recent published matter handled by this firm being *Ariela v. Kamal*.

ASSISTANCE FROM THE EXPERTS

Our Corporate Investigators can be dealing with your case within minutes, ensuring vital evidence is preserved and recovery avenues remain open.

Recent Cases

- Limited claim from USD 35M to under USD 7.8M for underwriters.
- Settled USD 1.3M hull policy claim at under USD 232K.
- Bulk liquid shortage claims arising from same port involving various owners. In total saving over USD 1.1M.
- Recovery under construction all risks policy totalling USD 880K.
- Coverage advice relating to misdirection of USD 600K bunkering funds fraud.
- Complex multi-voyage ship's tanks' damage claim, with successful recovery up and down the contractual chains totalling USD 510K.

Offshore & Energy Insurance

We pursue negligent parties and make them pay for their negligence.

Our offshore Oil & Gas and Energy Insurance practice covers offshore developments, construction contracts, AHTS, carriage of products by sea, shuttle tank, bow loaders, tanker voyage charters and shortage disputes.

OFFSHORE DEVELOPMENTS

Whether within a package policy or separately, we also have particular experience in relation to:

- Liability Insurance
- Property Insurance
- Control of Well Insurance
- Coverage Disputes

CONTRACTS

Our Onshore and Offshore Construction Contract draft, review and update services covers the full suite of operators' standard contract terms and often includes consideration of:

- Front end engineering and design
- Services (feed)
- Supply / procurement (purchase orders)
- Engineering / construction, installation and commissioning (EPIC)

In addition, we have particular experience in these specialist contracts:

- Seismic surveys and drilling contracts
- Pipeline construction, trenching and laying
- Anchor handling, supply and standby vessels

TYPICAL SITUATIONS

The typical situations we are looking at are contracts for the design / construction / installation of a component, to be delivered onshore where, following installation, the component is found to be damaged, with such damage commonly resulting from:

- Error in design
- Faulty workmanship
- Unsound materials
- Defects discovered outside the warranty period (where action can usually be based upon the contractor's failure to comply with the above undertakings).

The guarantee provision provides a guarantee against certain defects. An offshore recovery costs provision normally appears within the guarantee clause and is expressed as being applicable to all defects discovered in the guarantee period.

This provision specifies that the oil company will bear the full costs of retrieving the defective component from the offshore installation and returning it to the onshore point of delivery for the purpose of the contractor *"making good"*. Likewise the cost of returning the repaired component offshore and reinstallation is to be borne by the oil company.

The consequential loss provision was intended to exclude recovery of those losses that fall within the second limb of *Hadley v Baxendale*, however over the years this has become bastardised.

WE HAVE EXPERIENCE WITH ALL MAJOR OFFSHORE CONTRACTS

As lawyers we have been involved in the offshore oil and gas industry for over 25 years. Much of the standard wording now in use originated from our pen. We have developed (together with oil companies) a series of tried and tested wordings, which we continually update.

Our philosophy accords with the tenets of ISO 9000 in that the negligent party pays for their own negligence.

Offshore & Energy Insurance

CONTRACT INTERPRETATION

All contracts contain general provisions describing the quality of the work to be performed. In law these will be considered to amount to general warranties. These general warranties can be useful as they are generally unlimited both in extent and duration. For instance, the contractor will ensure that the work:

- shall meet the specifications and the company's requirements,
- be in every respect be fit for the purpose, and
- uses only materials of sound and good quality.
- Further, the contractor warrants it is an expert and:
- that the work shall be of good quality completed diligently and expeditiously,
- the company places full reliance on contractor, and
- that the contractor has a full understanding and knowledge of the design criteria.

The guarantee is limited in extent to the cost of *"making good"* and restricted in duration to 12 or 24 months. The effectiveness of this provision will depend upon whether the guarantee differentiates between pre and post (on-shore) delivery and how defects are defined (which affects the survivability of the general warranties).

There is always a financial cap on liability. This is the contractor's catch-all safety net, usually expressed in terms that, notwithstanding any other provision in the contract, the contractor's liability in aggregate under this contract shall not exceed [so many multiples of the] total contract price.

The consequential loss exclusion acts as a mutual undertaking that neither party shall be liable to the other for any consequential losses. These vary enormously from the strict - where they exclude all remedies other than the cost of *"making good"*, to even more restricted - where they exclude big-ticket losses such as loss of production, business, business opportunity, trading revenue and loss of profit.

CARRIAGE OF PRODUCTS BY SEA

We are regularly instructed in relation to disputes involving:

- Shuttle Tanker / Bow Loaders
- Drafting and advising on special provisions
- Post fixture disputes
- Standard form agreements
- Condition on delivery / maintenance clause
- Responsibility for stowage
- Charterer's bunkers
- Off-hire provisions
- Safe ports, berths and anchorage
- Trading limits / war risks
- Duration of hire / redelivery
- Payment (or non-payment) of hire
- Owner's / Charterer's bills of lading
- LMAA arbitration

TANKER VOYAGE CHARTERPARTIES

A paricular focus of the firm is:

- Drafting and advising on special provisions
- Post fixture disputes
- Standard form agreements
- The approach voyage
- Laycan and cancellation
- Responsibility for towage
- Safe ports, berths and anchorage
- Demurrage and trading limits
- Payment and recovery of freight
- Damage to ship caused by cargo
- Arbitrations, such as LMAA

SHORTAGE CLAIMS

In relation to shortage claims it is important to emphasise that there is no such thing as a *'Trade Ullage'*. If there were, it would amount to the owner having a licence to steal cargo. Whilst there will be a slight loss of hydrocarbon cargoes due to evaporation on the voyage (light ends only) this should be nominal. With the advent of crude oil washing (cow) there should not be any rob.

In the absence of a fortuity any shortage in bulk liquid cargo is a paper loss. The vast majority of shortages that we handle result from documentary errors, they are primarily overstated bills or based upon improperly calibrated shore tanks at load and disport.

In this limited specialist market of high value vessels frequency of off take is essential. Consideration of the provisions relating to responsibility for damage to offshore loading and discharging facilities is required. These contacts are normally long-term and may be likened to COAs.

We have a high volume of time chartered clients and provide a cradle-to-grave service, looking after all legal aspects of pre-fixture acceptance of terms and post-fixture disputes.

This involves everything in the nature of FD&D as well as cargo claims brought either by receivers or occasionally by sub-charterers or disponent owners.

In recent years there has been a growth of damage to ship claims caused by aggressive cargoes, this noticeable increase is in addition to the more usual ship damage caused by breach of a safe port warranty.

THE ASBATANKVOY CHARTERPARTY

The Asbatankvoy Charterparty form is the work-horse of the tanker market. We have a wealth of experience in relation to this and other standard forms. We have noted that there has been an influx of claims for delay including the loss of market value, these may arise from the vessel missing the cancelling date producing claims for delay, which can be sustained if the vessel failed to commence the approach voyage in good time. Demurrage claims are themselves liquidated damage claims for delay. In addition, breach of the safe port warranty can cause damage and delay.

COMMON SHORTAGE CLAIMS

The usual shortage matters we are instructed on relate to:

- Bills of Lading
- Obligations of the carrier
- Identity of claimant
- Shortages - *prima facie* burden of proof
- ROB and *'trade ullages'*
- Hague / Hague-Visby / Hamburg Rules defences
- Ships tanks vs shore tanks
- Calibration of tanks

We note that a comparison of shore tank vs shore tank is a comparison of apples with pears, whereas a comparison of ships' tanks after load and before discharge is a bullseye and likely to provide more accuracy.

Recent Cases

- Reduced an exaggerated LOF claim for salvage of an AHTS within the 500m safety zone.
- Successfully recovered USD 4.5M plus costs from offshore contractors for breach of the Purchase Contract in the supply and installation of a subsea module.
- Awarded substantial damages in the High Court for vibration damages caused by faulty workmanship / design in the manufacture of offshore components.

Sale & Purchase Newbuilding Construction

Our legal negotiation expertise enhances our handling of these disputes.

Ship newbuilding construction contracts are a very specialist area. We have been involved in this area for over 25 years drafting many standard form contracts for clients as diverse as Jo Tankers and Ishikawajima-Harima Heavy Industries Co., Ltd (IHI Corporation).

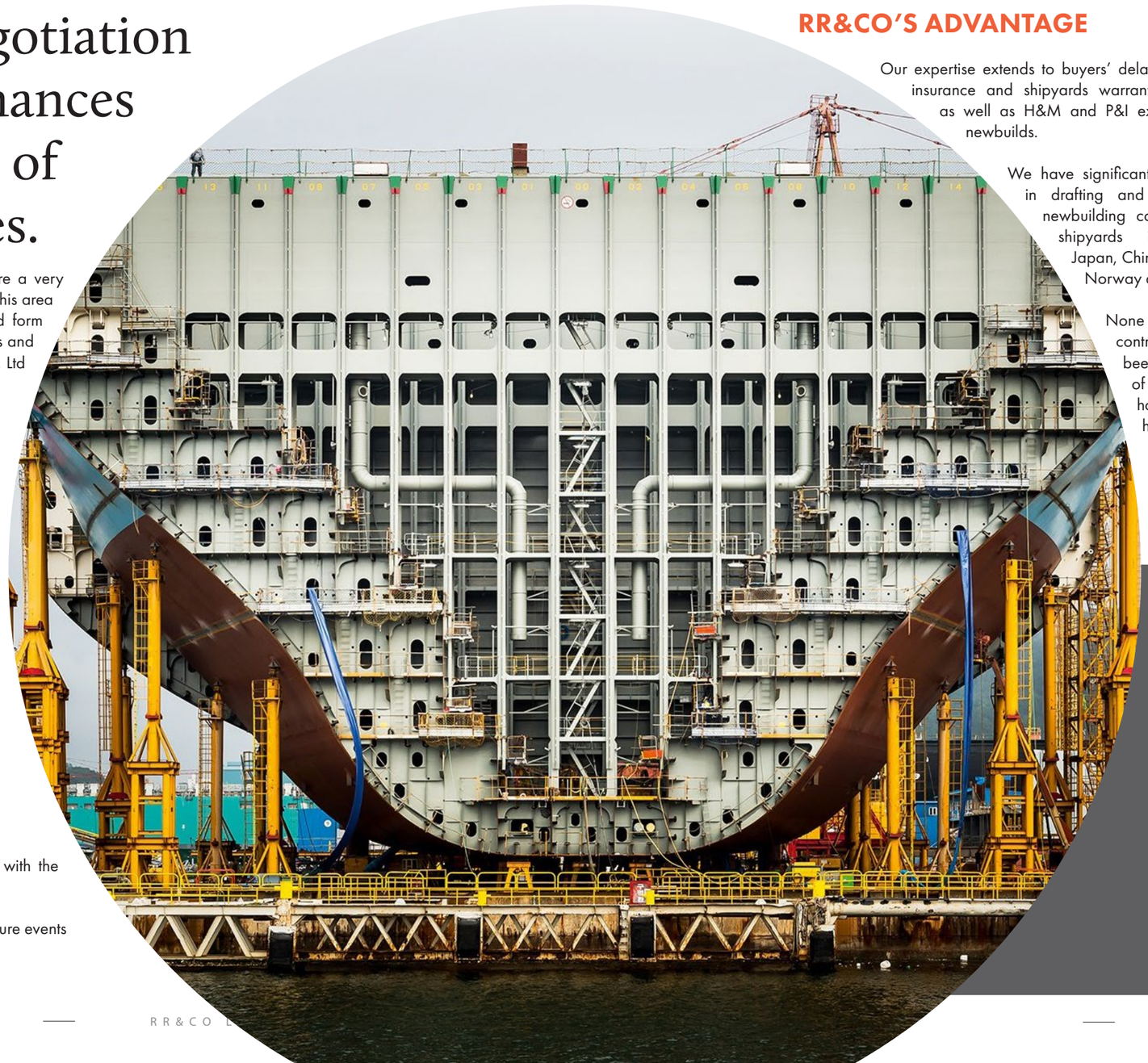
PROFESSIONAL LEGAL NEGOTIATORS

We are often asked to attend commercial, and sometimes technical negotiations at shipyards to finalise contracts.

TYPICAL CASES

We have particular expertise in:

- Liquidated damage provisions such as
    1. Delay in delivery,
    2. Deadweight,
    3. Trial speed, and
    4. Fuel consumption.
- The interface of the insurance clause with the delay in delivery clause
- Accurately defining the Maker's List
- Clarifying the description of force majeure events
- The terms of the refund guarantee.



RR&CO'S ADVANTAGE

Our expertise extends to buyers' delay-in-delivery insurance and shipyards warranty insurance as well as H&M and P&I extensions for newbuilds.

We have significant experience in drafting and negotiating newbuilding contracts with shipyards in Poland, Japan, China, Scotland, Norway and Spain.

None of our contracts have been the subject of litigation, however we have handled legal actions on many contracts drafted by others.

HULL & NEWBUILDING CLAIMS

We commonly deal with the following disputes:

- Proximate cause
- Burden of proof
- Claims usually covered
- Actual total loss
- Vessel actually destroyed
- Owner irretrievably deprived of vessel
- Constructive total loss
- Repair costs would exceed value when repaired
- Substitution of insured value for repaired value
- Notice of abandonment (NOA)

We have particular expertise in:

- Tender of NOA regularly and often
- Suing and labouring charges
- Risks usually not covered
- Increased value and disbursements
- Loss of use / loss of passage money
- P&I risks
- FD&D risks
- Delay in Delivery Insurance

Recent Cases

- Successfully recovered USD 6M plus costs from offshore contractors for breach of the Purchase Contract in the supply of a compressor train to a FPSO under construction.
- Drafted a buyer's Newbuilding Contract, attending shipyard for commercial negotiation to complete purchase of three duplex steel chemical tankers in Turkey.
- Avoided threats of cancellation at point of delivery when in the anchorage off Alang beach.
- Drafted buyer's Newbuilding Contracts, attending shipyard for commercial negotiations to complete purchase of two duplex steel chemical tankers in Spain.

Legal Fees that work for you

We become your extra team member when needed.

We understand that cases can benefit from their own bespoke fee arrangements, enabling the maximum impact for money spent.

Often deadlocked matters and demurrage recoveries need a short sharp kick through threatening solicitor's letters, larger cargo damage disputes commonly require pressure to be increased through the first few stages of arbitration, whereas heavyweight salvage and collision cases need comprehensive and immediate consideration. We want to obtain settlement or, if defending, dismissal for you as efficiently as possible.

We have developed with clients the following three broad categories of fee arrangements:

Standard Fee Rates / Fixed Partner Rates / Fixed Fee Stages

These can be adapted for your cases.

OUR STANDARD FEE ARRANGEMENTS

In the majority of matters, we are instructed at our standard fee rates set out below. We will always charge at the lowest appropriate grade irrespective of the actual seniority of the solicitor doing the work, providing you with consistent value-for-money legal assistance.

RR&CO charge in six minute units and provide a detailed billing narrative covering time engaged. The four grades of assistant reflect increased seniority in terms of legal experience and training. We list usual tasks undertaken at each level.

FEE RATES

	Per hour
Partner High level, technical and complex legal analysis	£ 300
Senior Solicitor Detailed research. Drafting submissions	£ 250
Junior Solicitor Review of non-technical documents. Research	£ 150
Paralegal Assisting solicitors. Bundling of documents	£ 100

Our Flexible Fee Arrangements are market-leading.

FIXED PARTNER RATES

In the initial stages, when a complex dispute is potentially fluid and it is vital for the facts and legal position to be established, clients have found it advantageous to instruct an experienced Partner from RR&CO, such as Head of Law Russell Ridley, at a low fixed hourly rate of:

£ 225 / HOUR

Once the case merits have been established, the matter can continue on the standard rate and/or on a staged fixed fee arrangement.

FIXED FEE STAGES

Often it is important for claim documents to be considered and an initial opinion on the merits produced to facilitate immediate action, such as securing the client's claim, protecting time-bars and/or establishing the validity of the opponent's claim.

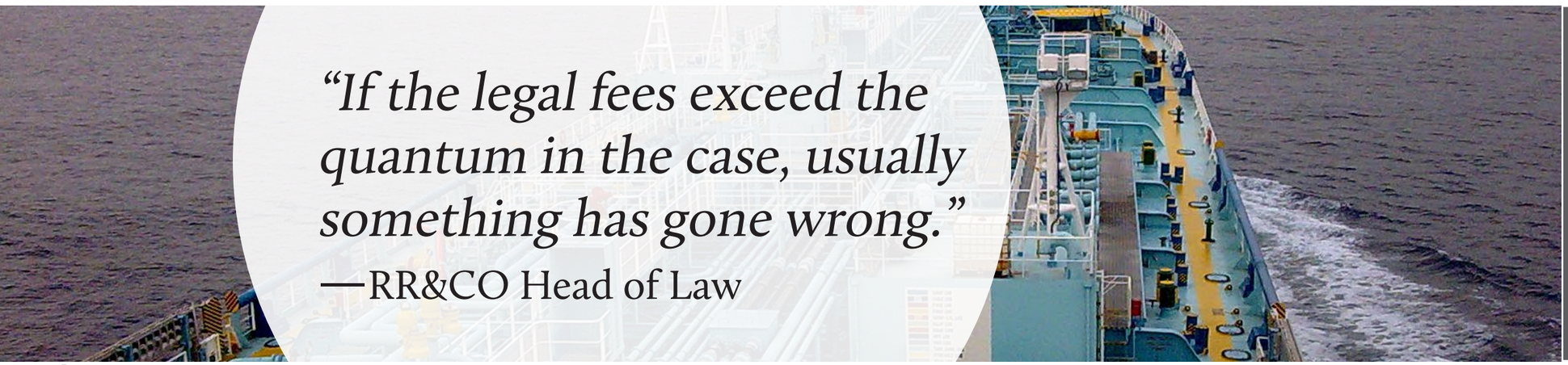
Our usual fixed rate for such analysis is in the low £000's. In matters with limited available documents, such a fee can be accordingly reduced.

As a common example, the following fixed fee stages are available in a standard arbitration:

STAGES

Review & First Advice Consideration of documents, providing initial opinion on merits.	£ 2,000
Commencing Arbitration, Serving Claim Subs Selection of arbitrator. Draft and service of client's initial pleadings.	£ 2,000
Discovery, Reply to Their Document Requests Collection and review of pertinent documents, reports and witness evidences.	£ 1,000

Next steps if matter not yet resolved
Fixed fees for further steps, such as Expert Evidence and Witness of Fact Evidence can be discussed if and when the matter is so developed.



"If the legal fees exceed the quantum in the case, usually something has gone wrong."
—RR&CO Head of Law

It's your choice

When emailing instructions kindly ensure that you have chosen the fee arrangement, either:

(1) Standard Fee Rates
OR
(2) Fixed Partner Rates (for initial stages)
OR
(3) Fixed Fee Stages (for initial stages)

We look forward to assisting you. Contact us at law@rrco.co.uk.

RR&CO

RR&CO are a specialist firm of maritime solicitors

For new matters and instructions, please contact

Head of Law
Russell Ridley
russell@rrco.co.uk

ADDRESS

RR&CO Solicitors
The Shard
24th Floor
London
SE1 9SG

EMAIL / PHONE

law@rrco.co.uk
+44 (0) 203 457 0791 Direct
+44 (0) 7885 386 575 Out of Hours Mobile

EMERGENCY RESPONSE

+44 (0) 149 141 1653 24/7

RRCO.CO.UK