

The purpose of the TP&I News is to provide the latest news for the shipowners, charterers, as well as any other maritime interests around the globe. Each issue of TP&I News will include a focused review section of several articles on a topic of current interest.<sup>1</sup>

## 1. R12 Yacht Wording: Time for Something New?

As we reach the end of the year, many yacht owners and managers will be starting to think about insurance renewals.

For many years, the majority of large yachts have been insured either on the basis of the American Yacht Form R12 or the London Institute Time Clauses Hulls. The latter is aimed at commercial shipping and has to be heavily adapted for the yacht market, but it does have the advantage of being well used and understood in the marine insurance market.

The R12 wording is popular due to it being an all risks policy and because it seeks to address some of the unique characteristics of running and managing large yachts, as opposed to commercial ships. However, it has a number of features which, at best, are hard to understand and, at worst, are seriously problematic for both insurers and assureds. Throughout it is drafted in the tenor and from the perspective of US law and practice, with concepts and approaches often not found in English Law. For example:

- There are references to the need to file a “sworn proof of loss” as a requirement for any claim being brought against the insurer.
- The same clause goes on to require all evidence in support of that loss to be provided within 90 days; something that will often be impossible to achieve.
- The wording refers to “examination under oath”, a concept that is not readily understood under English law.
- In section F there is a long clause entitled “service of suit” which makes express reference to the service of legal proceeds in the USA.
- The proceeding section E deals directly with US federal longshoremen’s cover, which is unlikely to be of relevance to the majority of larger yachts.

There are other places where the wording does not readily integrate with other London market standard wordings, for example around the war exclusion, the treatment of deductibles, the return of premium and cancellations.

It also contains a very short time limit of 1 year for bringing claims (though this is often amended to 2 years by agreement). Even where amended, this remains a very short time period and outside of standard market practice in the marine sector.



**Source: Alex Kemp (Partner) and Jenny Salmon (Legal Director) from Holman Fenwick Willan (HFW)**

<sup>1</sup> Disclaimer

All the information provided in this newsletter is provided on an “as is” and “as available” basis and you agree that you use such information entirely at your own risk. The TP&I and corresponding author(s) (hereinafter Parties) gives no warranty and accepts no responsibility or liability for the accuracy, or the completeness of the information and materials contained. Under no circumstances will the Parties be held responsible or liable in any way for any claims, damages, losses, expenses, costs or liabilities whatsoever including, without limitation, any direct or indirect damages for loss of profits, business interruption or loss of information) resulting from or arising directly or indirectly from your use of or inability to use this newsletter or any news linked to it, or from your reliance on the information and material on this newsletter, even if the Parties has been advised of the possibility of such damages in advance. This newsletter also may contain links to other internet sites. Such links are provided as a piece of information for the readers. As the Parties has no control over third-party sites, the reader hereby acknowledges and agrees that the Parties are not held responsible or liable for any content or material on such sites. In providing such links, the Parties do not in any way, expressly or implicitly, endorse the linked sites or resources or the respective contents thereof. The reader further acknowledges and agrees that the Parties shall not be responsible or liable, whether directly or indirectly, for any damages or loss caused or sustained by the reader, in connection with any use or reliance on information or material obtained from third-party sites.

There are positive elements to the wording. From an assured's point of view, the "no waiver" in the sue & labour clause is useful and would likely preclude an insurer from arguing that the assured had taken steps which were contrary to a notice of abandonment in the event of a potential constructive total loss.

It also seeks to deal with launches and tenders head on and actively include them within the scope of the insurance. However, in the round we consider that the market would welcome a bespoke yacht wording for property insurance.

The yacht market has moved on considerably since the R12 entered common use, with ever increasing values, complexities and liabilities. A modern wording which reflects current market practice and the requirements of sophisticated yacht owners would only be a positive development.

## 2. IMO Adopts Shadow Fleet Resolution

The International Maritime Organization has adopted a resolution that calls upon flag states to "adhere to measures which lawfully prohibit or regulate" ship-to-ship operations.

The aim is to target illicit shipping practices among the "dark fleet", which has grown considerably in size since Russia's invasion of Ukraine in February 2022.

There has been considerable international concern at the safety of a significant (500-plus vessels), elderly fleet that have been taking up a growing proportion of tanker trades.

Because of technical issues and occasionally in order to blur the actual source of the oil/refined product, ship-to-ship (STS) trades have become a growing feature of global oil and refined product movements.

The IMO regulation also calls for ships to update their operation plans for STS transfers, especially if engaged in a mid-ocean transfer with another vessel.

The resolution also recommended that port states, when they become aware of any ships intentionally taking measures to avoid detection, such as switching off their tracking responders or concealing their actual identity, "should subject such ships to enhanced inspections."

It is one year since the EU instituted a tanker import ban. Analysis from Vortexa found that tankers operating in the dark or shadow markets reached a record high in Q2, but had since declined. Russian involvement accounted for 75% of the opaque fleet. Handymax and Aframax sizes together made up more than half the Russian contingent. The two main other shadow fleet countries were, perhaps predictably, Iran and Venezuela.



**Source: Insurance Marine News**

Please also check our website for circulars of each month.

For Turkish version please visit our website.

Should you need any further information, please do not hesitate to contact us at [info@turkpandi.com](mailto:info@turkpandi.com)

Tel: +90 850 420 8136 // Fax: +90 216 545 0301

[www.turkpandi.com](http://www.turkpandi.com)

### 3. Shortage Claims In Egypt: Lop And Clean Bill Of Lading

Lately, we have come across several cases of shortage claims for grain cargoes in Egyptian ports, when the vessel arrives in Egypt, the receivers, holding a Clean Bill of Lading, claim for the shortage based on a draft survey carried out at the discharge port and/or the shore weighbridge figures results.



**Source: Egyptian Marine Insurance Consultations & Services**

On the other hand, the Master had issued at the port of load a Letter of Protest, protesting about the discrepancies between the draft survey's readings and the quantity stated in the Bill of Lading.

The chances available for the owners to defend such claims based on the said LOPs are quite slim, as there are two contradictory documents issued by the Master (an LOP on one hand protesting against the shortage and a Clean Bill of Lading on the other hand).

Therefore, in such cases, the owners must be alert and take the necessary precautions to avoid such shortage claims, by ensuring that any amounts paid will be reimbursed by the charterers.

This could be done by obtaining some sort of a guarantee, for example a letter of indemnity from the charterers, to compensate owners for any claims that may be paid by them at the discharge port, or charterers to guarantee that owners will be released from any responsibility in respect of such shortages.