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# AVERAGIUM

**Newsletter of Harvey Ashby Limited**  
Average Adjusters & Claims consultants

Issue Number 10 - November 2013

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## **Welcome to AVERAGIUM**

This is our first Newsletter for some time but we aim to issue them more regularly from now on. We trust that you will find the Newsletter informative and would welcome any comments or contributions.

The Newsletter is for the general interest of our clients and friends but it is essential to take proper professional advice on specific issues.



## **RELOCATION**

From 5 December 2013 Harvey Ashby Limited will take up residence at Park Lane Business Centre at Langham near Colchester in Essex. Our new contact details will be as follows:

**Address:** 1 Park Lane Business Centre, Park Lane, Langham, Colchester, Essex CO4 5WR  
**Telephone:** +44 1206 689500

Email and website addresses will remain as they are. However, please do check out our new look website at [www.harvey-ashby.co.uk](http://www.harvey-ashby.co.uk)

## **MICHAEL HARVEY elected AMD President**

We are delighted to announce that at the 27th General Meeting of Association Mondiale de Dispatcheurs (AMD) in Montreal, Michael Harvey was elected AMD's new President for a two year term.

AMD was originally founded as Association Internationale de Dispatcheurs Européens (AIDE) in Antwerp in April 1961. In 2007, it was decided to change the Association's name to Association Mondiale de Dispatcheurs to recognise the fact that it had attracted many members from outside Europe. As the international body of the Average Adjusting profession, the Association promotes the interests of the profession and encourages co-operation between Average Adjusters and with industry organisations.

AMD as the International Association of Average Adjusters is recognised by the CMI and has been asked to participate in the working group established to consider possible amendments to the York Antwerp Rules in 2016. Michael Harvey represents AMD on this working group.

## **IMCC: 10th Anniversary in Dublin**

Tristan Miller attended the 10th Anniversary assembly of the International Marine Claims Conference in Dublin in September.

The conference is a credible presence in the calendar of marine claims professionals around the globe and this year the topics discussed included: an update on the state of the market from the Secretary General of IUMI; a discussion of issues affecting cruise ship claims; the difference between defective design and inadequate maintenance cover under different clauses; the risk management efforts of the P&I clubs; a presentation of the Costa Concordia salvage operation from Titan Salvage; and a case study into the considerations of various interested parties such as Salvors, the SOSREP and Insurers in a hypothetical container ship casualty in which Tristan helped present.

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## Perils of the Sea and Fraudulent Devices

**Versloot Dredging BV v. HDI Gerling and others (The “DC Merwestone”) [2013] 2 Lloyd’s Rep 131**

The case of the “DC Merwestone” has been decided in the UK Commercial Court recently but has leave to appeal to the Court of Appeal on the issue of fraudulent devices. The case provides good insight into the issues of causation, the additional perils clause, the due diligence proviso and fraudulent devices.

The Facts: The DC Merwestone arrived in Lithuania to discharge a cargo of soya meal before loading a cargo



of scrap steel. The weather was exceptionally cold and the hatch covers were frozen shut and the crew chipped the ice off before using the fire hoses to clear the chipped ice. The emergency fire pump was housed in the bow thruster room and the crew neglected to drain the fire pump or close the sea-inlet valve. Ice formed in the fire pump and cracked it which, when the vessel departed for Bilbao, thawed and allowed the bow thruster room to flood. Water flowed via the duct keel into the engine room as bulkheads were not watertight. Efforts to pump the water out were unsuccessful due to deficiencies in the vessel’s pumping system and the engine was submerged. The vessel was towed to Gdynia for temporary repairs and then to Bremerhaven for permanent repairs. The main engine was damaged beyond repair.

The H&M insurance was subject to ITC-Hulls 1.10.83 including the Additional Perils Clause.

Underwriter’s raised 3 defences:

1. the damage was not caused by an Insured peril
2. the damage was due to the unseaworthiness of vessel on sailing with privity of Assured
3. the assured forfeited its claim due to the use of fraudulent devices in the presentation of claim.

1. Insurers argued that the loss was due to crew negligence which made the ingress inevitable and although crew negligence is covered under the additional perils clause, there had been a causative failure by the Assured to exercise due diligence. Mr Justice Popplewell found there were concurrent causes of loss (as per the Assured’s submission: crew negligence, peril of the seas and repairers negligence) and where one cause is covered the policy will react (Ed Note: as long as the other causes are not specifically excluded.) Although due diligence issues ceased to be relevant, the judge found there had not been a causative breach of due diligence on the part of Owners despite the fact that they had not issued any guidelines for operation of the vessel in cold weather.
2. The judge found that the defence of unseaworthiness of the vessel on sailing in a time policy is restricted to circumstances where the unseaworthiness is due to debility (wear and tear) and not unseaworthiness due to a fortuitous pre-sailing act or omission.
3. Although the claim was recoverable in full in principle, the Judge considered that the Assured had issued untruths in reckless support of the claim which were not immaterial to the claim. Therefore due to the use of a fraudulent device the claim was forfeited. (When asked why the vessel’s pumps could not control a minor ingress of water and had nearly led to a major casualty, the Assured’s General Manager stated that noon alarms had gone uninvestigated as the vessel was rolling heavily which was untrue.)

An obiter comment in the judgment supported the view that under the additional perils clause, the peril and subsequent damage do not have to occur in the same year for a claim to be made on the policy year in which the damage actually occurred.



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## Beware the Ship's Cat

A hot topic in the London Market this year has been on the subject of 'Cat Fines'. Paul Hill of Braemar has given some lectures on the subject and we attended one such presentation to the Association of Average Adjusters. The Joint Hull Committee has now formed a working group to look at the problem.



Cat fines are hard ceramic compounds of aluminium and silicon held in suspension in residual fuel oil. They are used as a catalyst in the crude oil refining process to enable higher yields of distillate fuels to be extracted from the stock in a process called catalytic cracking. They are anywhere in size from one micron to 75 microns where a micron is 0.001 of a millimeter. (Human hair is 50 to 70 microns in diameter whereas fine beach sand is about 90 microns). Cat fines larger than 5 microns can, in sufficient quantities, start to cause excessive wear and tear. Cat fines in the 10 to 25 micron range can be especially harmful. Cat fines larger than this become less likely to make it through the filters and purifiers. Braemar have seen an increasing number of cases (12 in 2012) where engines

have worn excessively in the matter of a few weeks. Repairs have cost up to US\$1M so this is an issue worth noting.

Damage mainly occurs to large, slow speed main engines. This is because the larger fuel injection components allow

sizeable cat fine particles into the cylinders. The small cat fines pass through fuel injection equipment and embed themselves in the cylinder liners. As cylinder lubricating oil is minimally applied to the cylinder walls in such engines the particles can get lodged in the cylinder liners. As these particles are exceptionally hard, this can then cause damage to cylinder liners, piston rings, fuel pumps, injectors and valves. Medium and high speed engines are less at risk of this kind of damage as they use a more copious splash lubrication method in the cylinders which washes away the cat fine particles

### Cat fines in brief

- Small particles in fuel oil
- Cause excessive engine wear
- Expensive to rectify
- Expected to cause a spike in claims

The quality of residual fuel oil going into the world's fleet has steadily reduced over the past few decades. However, recent environmental legislation (IMO MARPOL Annex IV) demands that the sulphur content of fuel is reduced and often fuel is blended to achieve this which increases cat fines. The level of cat fines in worldwide bunker fuels are increasing and average about 30 mg/kg in 2011. Leading engine manufacturers recommended the maximum level of cat fines in fuel that is put into their engines is 15mg/kg whereas the International Organization for Standards sets cat fine limit in marine bunker fuel at 60mg/kg and some charterparties (eg: Shelltime 4) have a clause that the fuel must only meet this specification.



The current economic climate means commercial demand for the cheapest fuel that meets the minimum criteria in the charterparty is high. Experts consider that Insurers should be aware of this issue and encourage Owners to implement measures such as: a recognised testing programme and keep fuel samples when bunkering; review maintenance procedures; inspect tanks and ensure residue removed; encourage Charterer's to have liability insurance that will cover their liability if fuel is found to be below specification.

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