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Good morning gentlemen,

It is a very great privilege to have been asked to share a few thoughts with you this morning, it is also a little intimidating because I wasn't exactly sure what I could talk about that you may possibly find of interest.

Like you, I have spent a great deal of my life in The Industry. Unlike you I have not had the honour of becoming an expert in any particular field, and I always have a great deal of admiration for people who know so much about a particular topic. I consider myself the epitome of that person who knows just enough about a lot of things to get in trouble, and more importantly know **WHEN** I am in trouble. I would like to think, however, that experience itself is one of life's greatest teachers. So, since I cannot add to the intellectual aspect of your meeting here today I thought I could perhaps draw on my experiences and share with you a small insight into the life of a Risk Manager, and how that job has changed over the last quarter century.

I work for a local shipping company. It owns some 65+ ships worldwide, and uses outside ship management (V.Ships). I have been with this company for 34 years. The role of Risk Manager, certainly in my company, has evolved over the years to mean many things. When I started in this department over 20 years ago most, if not all of my time was spent in filing insurance claims and paying invoices, whereas today it is all that plus a lot more actual "RISK MANAGEMENT".

One of the biggest challenges for the "Insurance Guy" (as I am "affectionately" known) is trying to find out what's going on. People seem loath to share things with the Risk Manager until there is clearly going to be an insurance claim or they have totally lost control of the situation or they have become bored or frustrated with the problem in hand. In the old days it was easy, I could get in early and simply walk around the office and read the overnight incoming faxes. The advent of e-mail was a sad day for Risk Managers everywhere. Thankfully though people still print out e-mails, and even more thankfully they

are often too lazy to go and pick them up right away, so there is still a window of opportunity early every morning to snoop.

But still the most important source for intelligence is simply talking to people. I was in China recently and I overheard conversation about towing a vessel from a lay-by berth to another location some 30 miles away in the Yangtze River. Under our H&M policy a tow of any nature requires underwriter's agreement. Had I not been there to hear the conversation, the vessel would have been in breach of the policy and the insurance would have been voided. Luckily we could intervene, appoint a surveyor and cover was not breached.

We are in the 21st century and the ships today are highly technologically advanced. Accident and incident reporting, with V.Ships at any rate, is done electronically. The ships fill out a form in their in-house program and then file this electronically with the office. The challenge was to know when reports were made. It was becoming very difficult to get advice of new incidents or get copies of reports. The system for example did not alert anyone to new events, and even if it did, they were not always being read in a timely manner. I had developed my own database for keeping track of these incidents, but it could only record what I knew, and the data had to be re-input. So we developed a link with the V.Ships program, and now, whenever a ship reports an incident in the Manager's database magical things happen. Satellites link up in space, computers around the world burst into life and the information seamlessly passes from the V.Ships computer in Glasgow to my database computer in Chicago, which sends me (and anyone else I ask it to) an e-mail advising that a file has been opened. And all of this takes only about 30 seconds from when the ship hits the SEND button.

The second challenge is, once you know something has happened is to understand the "CODE" – and I say code because people never say what they really mean. I have developed what I affectionately refer to as the inverse square theory - the severity of the incident is inversely proportional to the square of how innocuous is the initial report. So, for example, if the Master reports that he **may have rubbed against the dock while berthing**, chances are he has demolished it. And this is not a new phenomenon, one of the first claims I ever handled over 30 years ago was from a Master who claimed he may have touched the dock while berthing, it turns out he physically moved the Tyne Coal dock 3 meters – and caused our first ever P&I Pool Claim!

Some of our crew also seriously need to know the difference between a “Near Miss” and an actual incident. I recently received a photograph of an excavator that had fallen from a sling while being lifted on board. It landed upside down on deck. There was a hole in the deck and the excavator was a total loss. Yet this was reported as a NEAR MISS.

My personal favourite is actually a fairly recent claim. We had a small barge on charter and it had broken loose in a storm and “drifted” onto the beach. I was called into a meeting with the President, VP and several operational type Directors, and a few V.Ships personnel. All attempts to refloat the barge had failed and it was absorbing an inordinate amount of management time (I was told) – but wasn’t this an insurance issue! Call in the Risk Manager – he’s got lots of spare time. When I saw a photograph of the accident scene the barge was high and dry and my first question was, where’s the water? Well at low tide it was almost 200 meters away, and at high tide it barely lapped against the offshore side of the barge! It gets better – the barge grounded at a high spring tide in a storm surge, and by the way the latest ice report shows the Bay would be frozen over in two weeks.

As interesting as the salvage was – and yes we did salvage it before the winter set in – there were a couple of legacy issues. By the way, the salvors (who coincidentally were also the barge owners) would ONLY sign a time and material agreement, they refused to sign a no cure/no pay)

The first legacy was that as part of the salvage plan, which involved among other things, digging a ditch around the barge, CSL had to commit to an absolute undertaking to restore the damaged environment to its pre-grounding condition. This couldn’t possibly be addressed until at least the following spring, by which time I had hoped the Department of Fisheries would have forgotten about it. Unfortunately they did not. We had no idea how to address this topic, we had already engaged a local contractor who billed us \$50k just to clear some wires and tires from the area, but eventually we hit on the idea of having the two local universities bid on the job. The winning university has completed the job for a little over \$70k. And, as an added bonus, the official from the department of fisheries was an ex- student of the professor who provided the winning bid – so no problem getting the final work approved!

But, while working for so long in a field brings expertise in that field, it can also lead to a somewhat myopic vision. We tend to forget that those around do not have our depth of knowledge, and what may

be obvious to us may not be as evident to others. I have already given an example above of a potential breach of tow warranty, but let me explain more fully.

Last week I realised I had offended someone I work with and for whom I have a great deal of respect. I did not do this on purpose but quite by accident. We are in the process of bringing in some new vessels, laying-up some older vessels and indeed scrapping some ships. This person worked in the accounting department had simply asked about an estimate of the how this would affect the year's financial forecast. She was clearly having trouble understanding what different insurance policies covered and how premiums were calculated. I had just explained the H&M policy in great detail, we had talked about Navigating Risk, Port Risk, Net Premiums, Net/Net Premiums, Cancelling Returns, brokerage commission, deductible periods and quite possibly a few other things. I was quite frustrated and exhausted by the time we had finished, and I was ready to get back to something important, perhaps finishing a Soduko or a crossword puzzle, I don't exactly recall, when she started asking about Increased Value, and I could see from her sheet of paper that there were an awful lot more policies to go through. Although it was quite unintentional I think my tone must have been somewhat condescending because I heard afterwards that I had made her feel stupid.

All this to explain that I think we tend to forget that the things we take for granted as part of our everyday life are, many times, totally unknown and alien concepts to our co-workers who know such things exist, but really don't need to know any more. We run into this problem daily in claims handling, while it may seem pretty obvious to us what costs may or may not be claimable, to the superintendent who is handling the repairs things are not always so black and white. I recall a particularly long debate because we disallowed repairs to a rental generator that was being used as a replacement for a ship's generator that was under repair following a damage. In the Superintendent's mind the only reason that the generator was on board was because of the initial damage, so **BUT FOR** the initial damage the rental generator would not have been on board, so would not have been damaged, **so** the repairs should obviously fall under the main claim. . . . In another case I was asked if we had an insurance cover for loss of hire, when I asked why I was advised that the ship's main generator had failed and would probably have to be replaced. My next question was why I had not been informed, and an insurance claim initiated. The answer - well the damaged was caused because the crew forgot to put lube oil in the machine, so why would this be an insurance claim? It did not occur to the manager that crew negligence could be insured.

While there is this lack of understanding of Marine Insurance in general , there is an even bigger lack of understanding of the concepts of Particular Average in general and General Average in particular.

As much as this is true for people within the Industry I think it is even more true for outsiders – including shippers. The questions I get asked most frequently, and the concept I have to explain most frequently is General Average. As far as I know this idea doesn't exist anywhere outside of the marine field. The reality is that we deal more and more with non-traditional shippers, and we are dealing more and more with US – Non-Marine Lawyers. I recall a telephone call I had one day a couple of years ago from a lawyer who was scripting a Contract of Affreightment for a client. He had returned our first draft with the General Average clause deleted. Our marketing department undeleted the clause and advised the lawyer that this clause was non-negotiable – it had to be part of the COA. They came to an impasse and the matter was deferred to the Risk Manager for resolution. So I spoke to the lawyer, I seem to recall he was from somewhere down south and had a distinct drawl in his accent. He said “I don't understand this General Average thing. Let me see if I can explain it. So I am moving home, and I have a contract with a trucking company to move my furniture from Texas to New York. Driving along the highway the truck blows a tire and runs off the road and down an embankment. They send me a letter and ask for security for my share of the cost of the tow truck to pull the semi out of the ditch.” I replied that I didn't understand his question, he had explained the concept of General Average perfectly. I then added insult to injury by telling him he had better hope the tow truck doesn't damage the semi pulling it out because then he will also be asked to contribute to the repairs! I won't detail his next words. It didn't seem to placate him by telling him that that is Marine Law and there is no way around it.

As I explain this more and more, I have a much more difficult time defending the idea of General Average, certainly in the case of my company where we have a bulk carrier and the full cargo is owned by one shipper (usually a long term customer). That shipper has entrusted his cargo for safe delivery to my company – a reputable ship operator. The agreement is memorialized in a contract. The shipper has no control over the operation or conduct of the vessel. So why should he be asked to contribute to the salvage of the “venture” after an incident? The answer in equity is that he shouldn't!

Even in the case of a clear cut General Average situation, it is my experience that the other party never simply pays his share willingly, promptly and in full. There is always a long, involved, and no disrespect

to my learned friends here from the legal profession, expensive period of litigation before a compromise is reached, and the compromise is typically to the detriment of the ship owner.

There are, however signs of a major change of attitude coming.

It used to be that every Contract of Affreightment absolutely had a Safe berth / Safe Port provision. This was one of those terms that was sacrosanct. It cannot be changed. About 5 years ago, it began I believe in Australia, one of our customers absolutely refused to warrant the port. He was happy to guarantee the dock – but he had no control over the port. Besides, we are the ship operators, we have access to Notices to Mariners, we should be able to know if a port is safe for our vessel to come and go. So why should he be responsible for failings of the port authority to provide safe access. And we see this more and more, and I would venture to guess that the contracts WITHOUT a safe port provision are now in the majority. Fortunately we have managed to retain the safe berth provision, but even that is now being questioned.

The latest challenge has been to General Average. We recently lost a cargo because we refused to indemnify the shipper for General Average contribution. I rebutted with my usual – you cannot refuse to contribute to General Average – it's law. Their response – fine, then we will not ship with you. The cargo has since been shipped, so I must conclude that a shipping company somewhere agreed to their demands. Perhaps it was agreed in ignorance without input from their Risk Manager, perhaps it was a conscious decision to absorb the risk. The reason is immaterial. I have since seen the same response from two other inquiries for rates.

The fact is that General Average is not only not well understood but its whole concept is counter intuitive. I would go as far as to say that the very idea of paying extra to retrieve your property after someone else has caused its loss is offensive to a shipper who has paid good money to get his cargo from point A to point B. General Average may have sound roots in history, to a time where the Captain owned his own little ship, where his crew were cullied in drunken stupor from the local taverns, and where he stood on the dock and truly entered into a Marine Venture with enterprising merchants who really had no great expectation that their goods would arrive safe and sound. These were the days when a ship sailed, and with any luck you would hear from it 6 months or so later when (and if) it arrived where it was supposed to. But this is the 21st Century. Ships are never more than a satellite phone call

away from the Ship Owner, there is an application available whereby their track can be followed on your computer constantly. There is an absolute expectation that a cargo will arrive on time and in sound condition.

I think the writing is on the wall, I believe that in five years or so we will regularly see COAs where there is an agreement that the shipper will not contribute to General Average. I am sorry gentlemen. While you are diligently working to update and modernize York Antwerp, I really think you need to prepare for the day when York Antwerp will not be needed because General Average will not exist .

The day will soon be here, I hope, when H&M policies soar into the 21st Century and when the perils no longer make reference to “the Adventures and Perils - - - of the Seas, Men-of-War,- - Rovers,- - Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, - - - Restraints and Detainments of all Kings, Princes -- - and so on”

It is no longer a Marine Venture, it is a highly sophisticated business. And the businesses that survive are the ones that provide exemplary and innovative service to their clients, not ones that look to their customers to help them get out of trouble that they alone have caused. And I do not think an insurance product is a solution. I don't want to have to buy another policy to cover cargo's contribution to General Average. That doesn't solve anything. Instead of arguing contribution from the cargo owner I am simply then arguing with another insurer. No, the only solution is to remove the concept of General Average from our H&M policies, to have the H&M underwriter pay for the damages for which the ship owner buys insurance. Remember the idea of exemplary service . . . well that is not only what we want to give to our customers, the shippers, we expect the same from our insurers. In our time of need following a casualty don't cut us short and tell us to go and get the rest of our money from a party (cargo interests) who doesn't want to pay me. It may cost us a little more, but give us full cover for my damages under our H&M policy.

I stress, this is just my own personal humble opinion. Perhaps I am wrong and it will take more than five years, but truly I believe the concept of General Average in Marine Insurance, certainly in some markets, has only a limited remaining lifespan. Perhaps I am wrong, and GA will never disappear, but in equity, I ask you to put yourself in the shoes of the shipper. Where is the principal of equity in the application of General Average?

THANK-YOU