



How does your claims leader create value?

The role of the claims leader in modern hull and machinery insurances explained.

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Introduction Hull and Machinery (H&M) insurances are normally insured by a group of insurers. The assured will often employ a broker to assist with negotiation and contract administration. A central feature of claims administration is to give one of the insurers the power to act on behalf of all the insurers involved in matters relating to claims – the claims leader. Casualty handling, in particular, has become very demanding due to the increasing technical complexity of vessels, media attention, and the need to deal with authorities in a wide variety of jurisdictions. It is essential for the assured to have one decision maker to relate to in respect of the many complex insurance issues that arise in an emergency and during the subsequent claims settlement process. Today there is no shortage of capital willing to provide marine insurance cover but there are not many insurers who have the organisation, expertise and not least values that are needed to support the assured and create confidence and trust among all the other participants involved.

The right resources, in the right place, at the right time *In-house* In principle, it is possible to outsource many functions associated with emergency response and claims handling generally. In practice, a good claims leader must have considerable in-house expertise and capacity in a wide range of disciplines. The two core areas are:

- Technical maritime expertise based on seafaring experience and working for shipowners, classification societies, surveyor organisations, and
- Intimate knowledge of how international maritime law functions in practice. This includes charterparty law as well as knowledge of international conventions and general maritime law such as salvage and general average.

The first enables the claims leader's staff to understand the realities that the vessel and its master and crew are facing as well as the salvage, removal and repair processes. The second enables the claims leader to understand and explain the consequences of the various options under consideration, such as the effect of transshipping cargo or the rules governing wreck removal in the particular location if salvage attempts are abandoned. Other types of in-house expertise can also be beneficial. By way of illustration, below is an example from a Gard matter showing the value of specialist in-house expertise:

Several Gard vessels experienced problems with extensive hull corrosion after visiting an Asian port. Our own marine biologist did a thorough investigation (at no cost). She demonstrated that the corrosion was due to the special composition of the different water layers in the port. See Gard News article [Vessel corrosion in stratified river system](#), Gard News 211, August/October 2013. The result of the investigation enabled the shipowner to claim an indemnity against charterers – and most importantly, to understand what had caused the extraordinary corrosion.

Access to a global network of correspondents and service providers There are in excess of 200 coastal states in the world. In the case of the US one must add to the list 23 US states with an ocean coastline and 7 US states with a Great Lakes shoreline. Maritime casualties can occur in a very wide variety of geographical conditions and can be subject to the jurisdiction and control of many different nations and their legal, judicial and administrative institutions. A first priority must,

therefore, be to have access to a global network of well qualified local correspondents. In addition, the need to understand local law and deal with local authorities means that it is sometimes necessary to employ a competent and experienced local lawyer. Other forms of expertise can become important as the casualty unfolds. Issues relating to navigation, weather, fire, to mention a few might be crucial to defending or pursuing a claim by or against a third party and advanced technical expertise is often needed in connection with vessel repairs. Collisions between vessels and shoreside facilities of various types often generate significant claims for business interruption. Without accountancy skills and detailed knowledge of the nature of the business involved, it can be very difficult to understand the complicated reports and documentation that are submitted to support such claims. Below is another Gard example:

Following a collision between a Gard vessel and a terminal in a major European port Gard received a claim for business interruption, backed by very complex reports and documentation, that far exceeded the vessel's limitation amount. The first reaction was that Gard had no alternative but to focus our efforts on limiting the claim to the limitation amount. However, Gard engaged a local forensic accountant familiar with the nature of the terminal's business. After a lot of very detailed work the accountant was able to show that the extent of the terminal's claim was excessive. His witness statement in court resulted in the other side seeking a settlement during the proceedings, resulting in a final settlement equivalent to 40 per cent of the limitation amount.

Claims leader's office locations The structure of global trade and the location of the world's major shipping centres mean it is essential to have offices in key places. This provides essential local and regional knowledge and contacts as well as language capabilities. It also ensures that an organisation is fully functional in all time zones. The world of shipping never sleeps and major casualties have no respect for normal office hours as illustrated by the following Gard case:

Following a serious grounding in China, the Gard duty claims handler was promptly notified of the casualty and local Gard employees were on site in a matter of hours. Gard's local attendance at a very early stage ensured that owners and underwriters received prompt and accurate real time information about the casualty and an early involvement with the authorities was achieved.

The claims leader's relationship with professional salvors The first task that usually must be done when a casualty occurs is to engage competent salvors, under an appropriate contract, operating on site as soon as possible. A claims leader with a long lasting, strong and trusting relationship with reputable salvors with a global capacity can ensure prompt and efficient salvage, as well as a cost efficient and fair settlement of the salvage award, as demonstrated by the following Gard example:

A ship in distress after a fire on board managed to berth, but in doing so penetrated her hull due to the failure to retract her stabilisers. Her stability was compromised as water flooded in but the local authorities were not equipped to handle the situation. Through its emergency response arrangement with a large, professional salvage company, Gard as claims leader managed to very rapidly put in place professional salvors and equipment. Proactive risk management, reliable stability calculations and good use of effective equipment by skilled staff enabled the salvors to stabilise the vessel just in time to avoid the vessel capsizing. Most

likely, this saved the owners and insurers from suffering a total loss, potential liability for damage to the berth, pollution in the port and a subsequent expensive wreck removal.

Service: capabilities and attitude

24/7 availability A 24/7 emergency telephone service is a basic prerequisite for any claims leader but to be truly responsive this must be manned by experienced and professional claims people who have been given the necessary authority and resources to respond effectively.

Capacity and resources It is natural for emergency response to receive a lot of attention but experienced claims leaders also know that this is only the beginning of a process that can place great demands on an organisation over a long period of time. Endurance and the will to support the shipowner until the vessel is back in operation are also a crucial part of the claims leader service.

The claims leader's LOU/guarantee facilities A major concern when a casualty occurs is to avoid delays and minimise interruptions to the vessel's operations. In collisions and other cases with a liability potential it is of crucial importance that the claims leader can put up letters of undertaking (LOU) or bank guarantees in the shortest possible time to avoid detention of the ship. Of particular benefit is a P&I club letter of undertaking, which is generally acceptable and recognized in most cases/locations around the world, as demonstrated by the following Gard case:

A ship insured for collision and FFO under the H&M policy hit a berth in a South American port during her berthing operations with pilot on board. The owner of the berth arrested the ship and insisted on security by way of a bank guarantee issued by a bank located within the jurisdiction – on terms not favourable to the shipowner – but was eventually persuaded to accept an LOU issued by Gard P&I, which was counter-secured with an LOU from Gard Marine on behalf of all H&M interests. One reason that the owner of the berth could be persuaded was that he had previously accepted an LOU from another International Group P&I Club in an earlier case involving FFO damage.

Culture: Problem solving in the face of commercial and operational realities Experienced claims handlers know that they have to have a pragmatic, problem solving attitude to their work. Shipping experiences more than its fair share of Shakespeare's "slings and arrows of outrageous fortune". Technical and practical operational matters can be challenging enough but it is often the commercial, local administrative and legal issues that create some of the biggest problems. It is all too easy for vessels to be held back followed by demands for unreasonable levels of security. Whatever the issues, it is essential that claims handlers can see beyond formal rules to the underlying practical, commercial and local realities. Good judgement in applying rules within a difficult context comes with long experience. A good claims leader must have experienced claims handlers who see every problem as an opportunity to create a solution.

Joint hull and P&I claims leader Gard is among the very few organisations that have a significant claims lead portfolio for H&M and related insurances as well as being a major P&I club. We believe that there are considerable advantages to having the most important interests handled by the same organisation.

A sound basic principle is that the existence of insurance should not affect the decisions that are made during a major casualty and its aftermath. In casualty situations it is often necessary to weigh up different courses of action and their associated costs and risks. A rational uninsured shipowner would choose the alternative that would minimise the total cost and risk without concern for how the individual costs and risks would be distributed. Where one organisation is involved both in relation to H&M and P&I, the whole insurance focus can be aligned with the Owner's focus on what is the most rational course of action.

Information can be shared and decisions made more rapidly leaving the allocation of costs and any residual risks for later when they can be done without difficulty and without legal costs being incurred.

Good claims handlers need to understand the complex relationships between the different types of claim arising out of a maritime casualty. Often claims handlers representing one interest must work together with their counterparts representing another. In such cases specialist knowledge of one type of insurance is not sufficient as can be seen in this Gard example:

After a grounding in Nordic waters involving severe damage to our vessel, Gard H&M were instrumental in arranging a Lloyd's Open Form and participated in the process of evaluating with salvors the alternative courses of action. At the same time Gard P&I arranged all necessary support to the master and crew who had been evacuated in dramatic circumstances. As it became apparent that the vessel was about to become a total loss, the Lloyd's Open Form contract, primarily a Gard H&M responsibility was seamlessly transformed into a Wreck Removal contract with Gard P&I.

The importance of documentation in marine claims handling Compared to dramatic salvage operations, airlifting of crew from grounded vessels or even managing a complex repair job, documentation can seem dull and boring. However, the ultimate goal of all claims handling is to ensure that claims are compensated at the right level and paid in a timely fashion. Claims documentation in the form of a payment on account certificate or a final adjustment is essential to the process. Co-insurers must also be kept informed and reliable up to date statistics must be produced for each renewal. Good administration is a crucial part of being a good claims leader and will also have an impact on how an insurer is perceived in the market.

As is well known, when acting as claims leaders, Nordic insurers often adjust claims as well and consequently have very competent adjusters on their staff. Whether or not a shipowner chooses to use the option of in-house adjusting, it is an advantage to have adjusting expertise available to support claims handlers as well as owners.

Conclusion

A good claims leader must be able to:

- create value for the assured by being effective both in handling crises and practical administration
- inspire trust in brokers and co-insurers and

- find practical commercial settlements that all parties can support

To do this a good claims organisation must have:

- In-house legal, nautical, adjusting and other expertise
- Claims handlers with long experience
- Round the clock global accessibility
- Access to a global network of agents, salvors, lawyers and other service providers

and all of the above must be guided by the right set of values.

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