

MLA INSURANCE AND GENERAL AVERAGE COMMITTEE – October 31, 2019

AIMU Report

I am highlighting a few topics and activities that I thought would be of interest to MLA members, with a particular focus on legal developments so far in 2019.

LEGAL DEVELOPMENTS

Conception Dive Boat Tragedy – Owner reportedly carried only \$2M of liability insurance - \$1M primary layer (written 50/50 by two insurers) and \$1M xs \$1M excess with another insurer. Thus, woefully underinsured for deaths of 33 passengers/crew in this September 2nd fire. The very prompt filing for Limitation of Liability less than a week later generated quite a bit of controversy and discussion. Might there be movement to amend or replace this 1851 Act?

Might this tragedy be an impetus for new requirements in the U.S. similar to Canada's Marine Liability Act? Effective January 11, 2019, Canadian passenger vessel operators must carry a minimum of \$250,000 in liability insurance for every passenger on board. Vessel operators who lack liability insurance could have their vessels detained and be fined up to \$100,000.

Batterton v. Dutra – Maritime law “story of the year” and already discussed at length. SCOTUS decision in June viewed favorably by marine insurers that punitive damages are not available for claims of unseaworthiness. [139 S. Ct. 2275, 2019 A.M.C. 1521 (2019).]

Amicus Brief Requests – Quiet year for such requests. So far in 2019, AIMU has received no requests. Earlier this year, the Texas Supreme Court reversed the Court of Appeals ruling that Joint Venture provision in insurance contracts does not limit the excess coverage for defense expenses. AIMU had joined the LMA and others in filing an amicus brief and the ruling was a disappointment to energy underwriters who have long relied on joint venture clause. [*Anadarko Petroleum Corp. v. Houston Cas. Co.*, 573 S.W.3d 187 (Tex. 2018).]

“Social Inflation” – Recent earnings reports from insurers, Travelers and WR Berkley to name just two, have brought this issue to the forefront. While not a marine insurance issue per se, the increasing trend to large jury awards and more accommodating attitude of courts toward these awards will have a knock-on effect to marine insurers.

ANNUAL IUMI CONFERENCE IN TORONTO

IUMI held its annual conference in Toronto and given the ease of travel, AIMU had a large delegation of 80 registered attendees. IUMI publishes all of the Conference presentations on their website (www.IUMI.com), but are password protected for IUMI members.

I would particularly highlight the work of the IUMI Legal and Liability Committee. This year Tom Wynne and Bruce Hennes gave an abbreviated version of the presentation delivered at the MLA spring meeting in 2017 on crisis management from the SeaStreak Ferry accident in NYC.

CYBER RISKS

Work ongoing at committee level to review and revise clauses to clarify coverage for cyber events. Over the summer, Lloyd’s issued a market bulletin requiring their insurers to provide clarity on coverage for cyber exposures. Many U.S. insurers are taking a similar approach and marine policies will need to address cyber coverage.

EDUCATION

AIMU continues to offer a wide range of training courses, webinars, and seminars – all open to members and non-members. Several webinars have been presented by maritime lawyers this year – one of them being Michael Sturley on Supreme Court Amicus Practice in March.

We were invited by MARAD Chief Counsel, Doug Burnett, to give a Marine Insurance Training class on October 16 to MARAD staff in Washington DC that was well received and also included staff attorneys from DOJ and MSC.

ANNUAL MEETING AND 121st ANNIVERSARY DINNER

We remind you that our Annual Meeting will be held at TKP New York Conference facility on November 21st and is open to the public. Our anniversary dinner will be held that evening at Gotham Hall in New York City but is restricted to AIMU members only. I hope to see many of you on November 21st in New York. Thank you.

Respectfully Submitted,

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