

## YACHT FISCAL2007 — Finance, Legal & Tax Issues affecting Superyachts

Day 2 — 7th March 2007

### Risks, Coverage & Protection — The Future

- **Yacht Managers** — Their involvement in the insurance world and claims management
- **Practicalities of builders' risk cover during construction** — Loss and damages
- **Dealing with uninsured yards and waivers of liability**
- **Casualties** — How to make a proper disclosure to insurers
- **Liabilities** — Captains, crew and owners
- **The different types of coverage and services that exist today**
- **Refit and repair** — the hot topic

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### Paul Miller

Martin quite rightly put the three sort of yard based areas in our session.

Builder's risk cover. I'm sure most of you are aware that it is currently comparatively expensive in terms of premiums and so forth and I thought it might be a good idea to give a little bit of background to this. From the insurance perspective or the insurance market's perspective there is no specific yacht builder's risk market in that sense. You are in the arena with the tankers, the cruise ships, and everything else where the builder's market is underwritten by the same people at the same point. So part of the reason that builder's risks insurance has gone up price wise so much in the recent past mainly stems from things like gas tankers in Korea having problems with their coatings that cost £250million, the Pride of America cruise ship that sank cost another £250million and so forth. There have been some very large claims around. It's all written by the same market, the yacht builder's risk market does not get separated from that, and that essentially is what's driving the current pricing in builder's risks. Now that said, one of the essential differences between the yacht builder's risks and commercial builder's risks is that we see very few yacht yards that are capable these days of building a yacht from A—Z without subcontracting huge volumes of the work. Whereas commercial shipyards seem to be a little bit more modular, and vessels are built within the yard and not a lot of subcontracting. In terms of how we go about assessing the risk, what we will look for partly is yard record—now the older established yards are the well known ones I think you're all probably pretty well aware of, the newer ones that got touched upon yesterday—we have virtual yards, we have a whole mixture of what I call smoke and mirror operations that sell you a concept and then go and find a yard to build it and then all the subcontractors that will put the rest of it together. They are a lot more difficult—we have a lot of builds where basically they just go and rent space in an area and build the boat. That also happens a lot with refits and conversions. Well, one of the essential things from an insurance perspective that we look for these days is something called a JH143. that's a survey format. It came from the commercial market but it's a format that is utilised everywhere and very few insurers will take a

builder's risk on without the JH143 survey having been completed. This covers a risk assessment of the yard, fire brigade response time, fire precautions within the yard, the general working practices within the yard—is it good, is it bad—do we have inflammable liquids left sitting inside sheds rather than outside or separated—I think from an insurance view we view this as commonsense procedures but that don't always get followed on a practical basis within yards. So I think the JH143 is essential if you want to find good quality builder's risk coverage. Our experience is that actually yards with good health and safety policies for their employees tend to be good yards right the way through. If they have good health and safety for the employees it follows through the quality of the yard is generally pretty good. The other real area of concern is subcontractors, and I think all insurers have issues with this. I'm sure you do, as project managers, or managers that are trying to get the job done and deal with it. We could do a JH143 on the yard —the yard can come out beautifully, but ultimately the risk is only as good as the worst subcontractor. If that subcontractor comes in and ignores the yard policies, ignores everything else, he basically puts the whole thing at risk. And it is very difficult for us as insurers to drill down to the subcontractors. Sometimes they're not agreed, sometimes we can't get to it, if you like, or it's something that occurs later on in the project. The legal panel yesterday tried to emphasise from their perspective getting the build contract right, that the more they get right at the beginning the earlier the involvement, the earlier the process starts, the better the job goes, and I think we would, without doubt, reinforce that view. One of the other things we focus on is the CV of the project manager. We like to see particularly on the big builds the owner instructing an independent project manager, not a yard project manager, but the owner having his own. We then get to the point of well, is he there one week in a month, is he there three weeks in the month, does he visit the boat once a quarter? The level of his involvement I think has a big impact on how we view the risk. We do focus on that—I guess we're slightly different in my operation in that we come at it from a yacht back ground rather than commercial underwriters looking at it as a pure build risk process so we focus on the yacht rather than is there anything new, innovative extreme within the build itself that perhaps we need to take a little harder look at. But the projects that we've been involved in where there is a good quality independent project manager generally run trouble free. I don't think there's much coming out of yards these days on time, there certainly doesn't seem to be, and one of the things that seems to delay projects, the ones that we've seen anyway, lately, things like Azipod drives —I don't think there's a build come out on time with Azipod drives and that's for a mixture of reasons. But I think one of the main ones is the fact that there's very little training of captains —there's nothing independent yet, although I believe there is some stuff being worked on, away from the manufacturers' own training scheme. So sea trials seem to become rather extended as the crew and captain get used to driving a ship with Azipods. That's certainly an area of focus for us, both in the build risk side and the navigation side from the insurance perspective.

That's probably from my side of it covered most of it, I mean geography plays a part, if you go and build a boat in Florida, go build a boat in Taiwan, you're exposed to hurricanes, cyclones, etc, which potentially disrupt the build process. Go and build it in Turkey and you've certainly got earthquake exposure, you can expect to get substantially increased deductibles for build risk in Turkey with earthquake exposure, and so forth. Natural catastrophe areas will without doubt generate additional risks and pricing all deductibles accordingly to try to absorb some of that risk. Away from that it's probably really it on builder's risks at the moment other than I think builder's risks are taking longer and longer to complete. I think you probably all agree with that one, that they're all taking longer and longer. Trying to find subcontractors to do jobs, no-one booked for the next year, or who's going to paint the boat, they're working, and certainly there seems to be some evidence of bidding wars between owners to

try to get the right subcontractor —*"I'm booked for this job"*—*well, I'll pay you another 25% for coming to do my job over here.* Certainly there is an element of that going on. That's probably it.

*Uninsured or underinsured yards — waivers of liability.* This is a big subject and it's something that's been running for the last couple of years, and obviously it links with the third point, which is the refit and repair clause, which is sort of insurers—shall we say—reaction to the fact that we've got far too many uninsured or underinsured yards.

I think essentially where we come from as insurers on this is —and ignoring yachts for the moment— if the owner puts his Ferrari into the garage to be worked on then if it's damaged while it's there the owner expects the garage to sort it all out. Now OK, we move that on to yachts or his corporate jet, whatever it may be—essentially we're very much of the view that the yards should be responsible for the work they do. I find it incredible that an owner can take his yacht back for warranty work and he's presented with a waiver of liability from the yard. They're basically saying yes, fine, we'll do the job but we're not taking any responsibility for it, having just sold him a £60million boat 6 months previously. I think that is a poor reflection of the customer care that perhaps goes on in this industry at times. That is a problem. Some countries are much better than others—I'm sure you all know who they are—I did write a few down. So the areas that we have more problems with in terms of uninsured or underinsured yards— France, to some extent, although some of their yards are very good, Italy without doubt (I'm sure you're all aware of that), Greece unquestionably, I think there's hardly a yard in Greece that has any cover. The good areas we see in terms of what's evolved over the last few years? Spain —very good, most Spanish yards have good levels of coverage, part of the reason for that is that within the general liability policies in Spain they include employers' liability so the employees are included, they have to buy, so most yards in Spain will carry a substantial or reasonable amount of coverage. Maltese yards have very good levels of coverage, UK is pretty good, the Dutch are good and the US market has generally very good levels of coverage. I mean in the US particularly if you go for refit work you'll find at the end of the bill there's a figure that says 1% or 1½% for insurance or whatever's been added on at the end. They may ultimately sort of charge it on to the client but they do have substantial insurance policies in place. I think the managers of the vessels, the people who are negotiating the refit work, some of it rests with you guys in the sense that if you don't have cover we're not going to give you the work. Ultimately the decision makers at that point have the ability to decide where to go. The other side of that is we do understand the practicalities as well, there's not that many yards, we have to find a slot, we need to do it within a certain time frame—that we do understand. But ultimately the owner should not be carrying the yard's liability on his hull policy, and that's what he's being asked to do by a lot of these yards at the moment. It's an issue, it's one that hasn't really gone away, we have seen since the introduction of the refit and repair clause, more yards buying cover without any doubt. We keep a sort of database of our own as we go along and it is getting better. But there's still an awful lot of yards out there that buy insufficient cover in terms of what we would view that the owner needs—I mean our refit and repair refers to a figure of €5million as a minimum. It's not a big number, quite frankly, if you look at the values of these boats that are going into the yards. You have to look at it that—if you're going for a refit that's costing €10million and the yard's got €½million of cover, you've got to question why you're going there, to my mind, or you've got to force the yard to provide the coverage that's needed. Whether the boat is worth 20, 30, 40 or 50 —we know everybody can't buy for 50million, some yards will say they can't afford it—then 10mins later they're saying well, we're so busy we're not sure we can fit you in. It's a difficult one in terms of that, but I think we would certainly appeal to the

managers to at least force the issue with the yards if you can and push them into it, because it really does your owner no good to be carrying the yard liability on his policy.

*Refit and repairs*, Martin refers to it as the hot topic.

There is some confusion about this clause. One of the questions we continually get asked is well, what happens if the crew are working on the boat— well, crew working on the boat are covered. They are covered under the whole policy, it's got nothing to do with refit and repair and hot work. I think that the one area that is sometimes forgotten about is that crew working on a boat are subject most of the time to State regulations, particularly with regard to hot work. There are procedures in the flag states for this kind of stuff, they need to be referred to, you are going to have a problem with your insurers if the crew are let loose with a welding torch and procedures that are laid down are not followed. You need to make sure they are. Yet that occurs and I think it's one thing I would emphasise, and that really comes from both myself these days on the big yachts as a damage underwriter and the P+O clubs from the liability perspective. P+O clubs put a huge amount of faith in flag state rules and regulations. You have to make sure you follow them, and that your crew are aware of them. I think most of the rules are fairly straightforward commonsense stuff, clear the area, check around it, have fire checks before and afterwards, they're not particularly onerous impositions. They are there, and they need to be followed. I mean the refit and repair clause is really the insurers' attempt to at least bring the issue out in the open—at least make people aware that there is a requirement for it. Owners have responsibilities under policies, most of the management companies are co insureds and named under the policy, so you have the same responsibilities as the owner, the owner has effectively delegated his responsibilities to you as the professional manager and if you go and stick a boat in the yard that has no liability cover and there's a claim, or a fire, or a problem, ultimately I think you are going to have a problem because the owner's going to have a problem with his policy. I don't think it really matters which insurers are writing that, due diligence are the lovely words that get referred to. But there are some serious exposures there and it needs to be followed, and people need to think about it in the process of when you're negotiating with the yards in terms of getting the work done, where you go, and making sure that it's there. All we're asking is to be told what's going on, we may or may not charge an additional premium —I think that would be dependent on the work that's being done, the level of the work, the length of the time the boat's in the yard. I think a lot of hull policies do not automatically include major refits and repairs—yes, a vessel going into a yard for maintenance work or maintenance survey work, fine. Generally covered, not a problem. But if you're cutting the stern off to put another 10feet on, most hull policies do not cover that automatically. You need to advise your broker, who will advise you, and ultimately advise the insurers.

I think that's probably it for the moment from me, Martin? Hopefully no questions from the audience.

**Martin**

A question from the back. Paul, what is the typical cost of a yard liability cover?

**Paul**

I do some of the yacht yard stuff, but I don't write any of the bigger commercial yards. Essentially it would be charged as a percentage of the turnover of the yard. So whatever they do, €10million a year, €20million, at the end of the day that's how it'll

get priced. My guess is, and it's purely a guess, somewhere between 1% and 2% of the turnover of the yard. Where it changes to an extent for the yacht yards, is the fact that they then turn around and say I need to add 250 subcontractors to the policy, which tends to screw the maths a bit, and you then say well, can we categorise those into A B and C and let's take A as the ones who do the hot work who have a serious potential to cause problems and disrupt it, B less so and C—it's the French polisher that comes on at the end of the day or the smaller stuff.

Without any doubt—actually there is one point I forgot to mention is we're seeing more managers taking advantage of the opportunity when the vessel is coming out to have regular maintenance done or when it's in the yard to have stuff done and they are contracting people to come on board and do work directly. That is where the refit and repair will pick up. You need to make sure that your contractors coming on board do carry sufficient liability coverage whereas if you contract it all through the yard, the yard has sufficient coverage. All subcontractors of the yard will be covered under the yard's policy. But if you take the vessel out they're doing one set of work, you then contract with someone to come on board and do work directly, you need to make sure they've got sufficient coverage.

**Martin**

Do you know what they charge for a subcontractor?

**Paul**

Yes, well, as with all yards no doubt they get a bill from the subcontractors sticking another 10% markup on it or whatever it may be, some will and some won't. Certainly the yard's policy will cover the subcontractors if they are working for the yard.

*[from the floor]*

*In fact I did not find very appropriate the geographical areas as a point of evaluating the risk. Am I more correct in saying that wherever the yard has a proven track record of building either yachts or also commercial ships where builder's risk is a habit it is nothing but necessary then the yard can be considered sufficiently insured. Where instead the owners want to build a yacht virtually at no yard but taking subcontractors here, a slipway there, then he has to assume that the yard is not covered because the yard virtually doesn't exist and so cannot take any risk. This is the first question.*

**Paul**

Yes, absolutely. Where we have what is called virtual ship builders yes, what we tend to find—and certainly my experience is—that is where we see the owner coming in looking to insure the builder's risk himself. Then the yard pops up and says ah, we want to be named on the policy. We get to the point of who are you and what are we actually adding to the policy. The established yards will potentially have their own policy in force for the builder's risk so at that point the legal side of it in terms of the builder's contract is the really important bit, to make sure the owner has his name on the policy, he has title as we talked about with the lenders yesterday, and what you don't want to find is you've handed all your money over, then the shipyard goes bankrupt and it's an asset of the shipyard—you've lost your boat. That is really where you don't want to be, and it has occurred. Which is why it's so important to get the build risk contract right in the first place, and spending some good money on a good lawyer at that point is worth every penny ultimately.

*[from the floor]*

*This brings me to the second question. We very often now practically as a rule offer the owners a preferment bond for every down payment which practically guarantees the reimbursement of any money that is downpaid in case of breach of contract by the yard. We can say that never happened and so very often the owner does not want to go for that because it costs money. There are also owners that ask for fair downpayments that the insurance policy should cover at least the downpayment that they make during construction. This is in case we both have performance bond and this policy in place—I think it's an unnecessary cover because in case of total loss or total loss of the yacht in any case we will by performance bond reimburse the owners in cases necessary. So don't you think this is an unnecessary coverage, that causes two costs, two fees to be paid? One to the insurance and the other to the bank?*

**Paul**

Yes, I understand the question. I think the lawyers would turn round and say no, we want everything but the owner who is handing over his money would I think certainly feel that if he can get both he would want both. I think it's a difficult one. It's probably to some extent not one for insurers to answer, it's more the lawyers that would negotiate that in the build contract. That said, if you're offering both, then you should have a queue of people knocking on your door trying to do business with you, compared to some of the other yards that are offering nothing.

*[from the floor]*

*Clever owners, and they are all clever, if they are explained they understand that they make us spend double money with no further input from them.*

**Paul**

I think that most of that would be with the lawyers and the owners' representatives in terms of negotiating the contract rather than driven by ultimately the bit I deal with which is the insurance side of it. I think it probably is paying twice, in a way. But ultimately they serve different purposes.

**Martin**

James, do you want to respond?

**Paul**

Probably as James mentioned yesterday, force majeure, acts of god, I think the performance bond, these sort of things, that's perhaps where the insurance policy would step in.

**James Lawson**

But that's slightly different from the question—I think you're asking about double protection here, insurance and refund guarantees? I think that from where we are, the insurance protection is actually unnecessary, because if you have refund guarantees you're adequately covered as long as the banks agree if there's financing, and when you're acting for an owner, if there's insurance cover coming in place as well, the owner has actually got no control whatsoever over that insurance

cover. The yard is the one who controls it, therefore it's of little protection to the owner because the yard can do what they want, they can void the insurance cover or they can at least put that insurance cover at risk, the owner has no control over it and therefore refund guarantees where you know what you're getting from a first class bank and you know the terms under which you're going to get it and when you're going to get it are far far preferable, so I absolutely agree with you, I don't think insurance cover is required.

**Paul**

Fine by me!

*[from the floor]*

*Actually Paul, just before you finish off, can you just (it's not a loaded question) confirm that I understood you correctly, that crew doing hot work are not subject to your refit and repair clause?*

**Paul**

Yes. I've got it here and the first word is "whenever the vessel is contracted to undergo"—well unless you're trying to contract with your crew?....

*[from the floor]*

*Just a couple of quick points. Firstly I think we should point out that this refit and repair clause isn't a part of every single yacht insurance contract—it's particular to what Paul does, so not everybody's boat in this room will have that clause attached to it. Secondly I just wanted to bring up with the guys is that the problems that we in the insurance industry have with yards at the moment is more on the refit side probably than on the new build side, from my perspective anyway. And Paul is quite right when he says that owners, managers, representatives etc need to be putting some pressure on the yards themselves to buy adequate cover for themselves but what I'd like to ask the panel is what we as an insurance industry can do from our side of it to put pressure on the yards to buy cover for themselves—i.e. not keep signing off these waivers of liability, which is what the market tends to do. We get sent a waiver from the yard that as a broker we get a waiver, take it to the underwriter who signs it and off it goes. So there's no real pressure being put on the yards to buy themselves adequate cover.*

**[Panel]**

I think the problem you've got there, Mark, is that we both know the reaction that we'd get from our client if we go back to him and say the underwriter won't sign off on the waiver. I mean we try and move hell and high water to try and get the underwriter to agree with the waiver so that the boat can go in the yard, you know—it's been mentioned that you have problems with time slots, you're talking about a week between charters and boats have to be lifted, you know the pressure is really on us to get the waivers agreed and I think that is the problem, that the onus is being put on the owners to try and sort out what's actually a sort of industry problem and it's coming back to the owners to sort it out. I think that's wrong because it's basically it's the owners that actually give us all our jobs and yet we're putting the pressure on them to sort out something that really the yards should be sorting out.

Well that's true. But we've got a yard here today that has, as far as I'm aware, a €1million liability cover. That's a big yard.

## Paul

I think whichever market's writing it, every policy carries a due diligence provision. Whether you have the refit repair in it or not, all we're trying to do is to draw attention to it. I don't see it as a restriction in coverage—all we're trying to say is make sure the yard's got €5million cover. Ultimately that is what it's doing. And the policy does not allow the owner or the manager to go and do what they want with the yard. Ultimately if you're cutting the stern off you have to tell people what's going on. I think people tend to refer to waivers of liability on a fairly blanket basis but ultimately is it a waiver of liability for fire, is it a full waiver of liability—is it purely just gross negligence? There's 5 different versions out there and how many times do you get the phone call from a captain saying the boat's in the yard, it's in the slings, they won't move it until I sign this piece of paper. It happens when the boat is half out of the water and if we don't get it back within the next 30mins we're going to lose our slot. They put us back in and we're gone. They've probably been negotiating to get the slot or working out the work and programme of what's going to be done potentially three months prior to that. Yet the phone call comes as it's being lifted. It's education.

Quite frankly I think it's part of the process of when you're negotiating a contract for all the other stuff—it's something that should just be there. How much longer has the yard got—bang—do we need to give them a waiver of any sort, you know we get waivers purely for storage which was intended to be the fire waivers in Italy particularly, they're fairly straightforward. The areas of concern that underwriters look to charge premiums for is where you're having substantial amounts of work done on the boat and the exposure to insurers escalates, and hot work is one of the prime motivators of that if you like. Some of it is establishing what waiver is actually required, because it comes in Italian, you get it to the loan broker's office, which doesn't speak Italian, oh—now what does this one mean? You run around the office trying to find someone who can translate it for you. I think it's part and parcel of the process.

Most losses that I see have actually come from subcontractors—you get the odd boat that's fallen over, going back probably about 10 years when the majority of this audience were probably all going off to Palma to an exhibition there and that big yacht fell over the day before. That was a pretty big claim at £20million or whatever it was, for that particular vessel, it fell over on the slipway. Well, that's not down to anyone but the shipyard and they had a minimal amount of coverage at the time.

I think you'll find the whole policy paid and there was a contribution from the yard on the basis of the small liability cover they had—there's no doubt the yard were liable if it fell over.

I think there was a lot of backwards and forward on that generally but yes, that yard is now buying substantially more cover. There have been a number of them, there was a big one in Greece 2 or 3 years ago—a boat of about £35million I think fell over and caught fire whilst it was being launched having been in the yard for about 2½ years. The risk isn't actually all while the vessels are being worked on. Hauling the boat in and out is a reasonably risky process.

*Refit and repair.* It's a clause that's getting put into policies; I'll read the first line "refit repair and hot work clause. It is a condition of this policy that you will whenever the vessel is contracted (and that's the key word, OK) undergo any refit repair or hot

work.....We're saying you'll give us notice in advance ..... ensure the yard carries at least €5million of liability and that no waiver of liability is given without advising us. That's essentially what the clause says. Where we get a lot of questions through brokers is well, if the crew is doing work on the vessel, we're not covered—but you are covered, all policies cover crew working on the vessel—I don't know a policy that excludes it. They are covered if they do hot work. The point we're making is that flag state rules do have some regulations about doing hot work on the vessel. If you don't follow those rules you're potentially going to have problems with your insurers if the crew are doing work on the vessel.

*[from the floor]*

*So a class approved welder has more risk than a chief engineer with a welder on board? Sorry it's very important because if you're crossing the Atlantic and you're doing hot work ? it doesn't make sense.*

**Paul**

Our experience is that the chief engineer is probably just doing small jobs on board the boat and just getting stuff done—for the bigger jobs most captains or managers or whatever will go to a professional operation to come in and do it. I mean if you are in the yard and your vessel is out of the water it's highly unlikely the yard's going to let your captain do anything on the boat, in fact you're almost certainly in breach of the contract with the yard if the crew are actually doing any work like that. Because the yard will have its own hot work procedures, they'll issue notice permits etc and if your engineer goes and does something you're going to have a major problem without that process in place.

*[from the floor]*

*Yes with all respect Paul there's greater risk with smaller hot works than bigger hot works.*

**Paul**

I don't disagree with you, but the policy covers the crew working on the vessel. What it doesn't cover essentially or directly is contractors coming on board because at that point you're paying someone else to come on board to do work on your vessel so at that point as insurers we're looking for a comfort level.

**Martin**

Have there been many claims based on crew doing hot work?

**Paul**

Not in my book, not that I know of. I'm sure there probably have?

**Martin**

Any more from the floor? Claire it's yours.

**Claire Lewis**

I'm going to talk briefly about yacht managers and their involvement in the world of insurance, hopefully there aren't too many in the audience.

Obviously they are involved initially when buying a boat or a boat is completed—they are quite often involved in choosing a policy even though they don't have in depth knowledge of insurance, they generally have great experience in the way claims have been dealt with previously with other companies, and the types of policy, so quite often they've given the owner quite a lot of advice at this point. So generally I would advise that they use a good insurance professional to give them the advice so that they are giving the owner the correct advice at that point. Quite often they're involved in completing proposal forms, providing all the technical data for the boat—this is extremely important that it is correct as obviously the proposal form when signed forms part of the contract. If the manager fills it in and signs it as the agent of the owner that's fine, but he needs to know that information is correct because 2 or 3 years down the line there could be a claim and they would then look back at the proposal form and if it's been completed incorrectly and maybe some previous claims weren't disclosed or something like that then the underwriter could basically avoid the claim. And then there would be an issue between the manager and the owner. Part of the manager's job is to manage the yacht, crew training, crew selection, refit maintenance schedules, all these things are extremely important because the better managed a yacht, the less claims there will be for insurers. As far as the skipper is concerned it is extremely important that he is aware of what insurance cover is in place. He needs to know exactly what is covered, for what crews to arrange cover for, if he's covered for charter or any information like that so that he knows too the insurance company know before he changes his crew's arrangements or before he increases his crew. We've just talked about refits—they need to be aware if there is a warranty on the policy and as we've previously said, not all policies have this warranty so they just need to know if they have to let someone know before a refit. Normally there's time to plan as we said—you do get calls saying the boat is in the slings now but normally you have a couple of weeks, I would imagine, when you know it's going to happen. As far as crew are concerned, make sure they have a full liability in place for covering the crew, the medical cover they need, if there are any crew changes they need to let underwriters know—just make sure that everything is up to date. The manager obviously has a liability, acting for the owner, they need their owner's professional indemnity in place to cover any advice or design—if they get involved in design of different aspects of the yacht—they need that. But generally they are noted as co assured on the policy which provides them with an element of cover; they are then acting as the owner but it will also cover their liability whilst they are sending the yacht in various directions or ordering the crew to do things.

As far as claims management goes, I'm not going to talk too much about this because John is going to go into the claims process, but basically a good manager can assist the claims process if there's a claim by providing all the information as soon as possible—the captain quite often will have to go off on a charter and do other things and his mind may not be on this insignificant claim. If the manager can be on top of it and provide all the information required at least it will speed the process through, so there's not too many delays in any claims payments that might be made. That was it on managers. Any questions ?

I don't think you can calculate the cost factor—I think you'd need a level of liability and to let the people for whom you're working know that that's the level you have. Because if you have 7 projects and they're all for yachts which are worth 5 million or 10 million each you couldn't afford to buy enough cover to cover them all, you'd have to—there is a realistic cost factor.

*[from the floor]*

*Yes, that's my problem. Someone mentioned to me that appropriate liability would be the value of the contract—the management contract. Is that appropriate? Because you just mentioned that if you're involved in design and of course we are— if the system we've designed is faulty it's probably going to cost more than the contract even though I wish it didn't.*

**Claire**

That's what you need professional indemnity cover for, and I'm not sure what level you can buy.

**John**

I think you might want whatever level you can afford? That's a sort of problem. We're just quoting for someone who's involved in a big build and we were initially asked to give them quotes of 2million and 6million and they've now taken legal advice and been advised they should have 4million. So it's the comfort level. I don't know what their contract price is involved in that new build.

**James**

Yes, that's one of the points, Richard, that we were going to talk about yesterday — limit of liability. Limited liability on yacht management contracts. The standard form of document that most people use is based on the Shipman 98 contract and in that the yacht manager's liability is capped at the annual fee, so your annual management fee is the extent of your liability unless you've been grossly negligent, in which case that cap can be broken. Therefore your cover should be placed for each claim or claims in aggregate up to the point of your management fee per contract. That should be affordable.

**Paul**

I would perhaps add a slight comment to that in that I think where James is coming from purely in terms of the yacht management which is fine —but if you're actually designing stuff it's a whole different exposure. I assume that your manager's liabilities are within ITIC which is where most of it is. If you read the policy I guarantee you it doesn't cover you for design and that kind of stuff. It's purely in relation to your contract as a yacht manager and the process of managing the boat. Ultimately it's a business risk—you as a business saying well, what protection do we think we need to buy to—I mean the appropriate level is really down to you as the partners within the business to decide the risk you want to run or how much you're prepared to pay for.

*[from the floor]*

*There is an involvement in the design of a new build, for example, or a refit, there is no responsibility by the owner —it is the builder, unfortunately, that is liable.*

*[from the floor]*

*Design is not actually that different because I think that the same approach is generally taken that the designer has liability and often it's by reference to the fee that he's getting for the job or sometimes it's a margin of the fee for the job, but it's*

*always limited in that way for the same reason that it applies in a shipyard — you cannot afford cover for any loss that might arise and clients have designers who — when I have them on the other side —take offence at that in the first instance, but when you explain the situation to them they understand first of all that there is insurance cover in place —I never like to disclose how much there is because it tends to be an invitation to a claim at that level but —nevertheless they take comfort from the fact that the insurance is there and they understand the point that it's just not available or affordable at a reasonable price and there has to be a limit.*

**Paul**

I totally agree with you.

There is no coverage for design work in the ITIC wording. That's my point. The ITIC wording is geared towards yacht management not design.

*James*

*I don't think that's the case. There are a number of cases.*

**Paul**

OK. You're the lawyer. You write the words. It's worth checking.

**Martin**

Any more comments on management?

**John Theed**

I'd like to make just one final comment on management. I think certainly that the management companies do help in the general insurance procedure in that, because they're dealing with several boats, you tend to start to get a sort of continuity of standard of cover that's required, and whilst price is always going to be an issue I think the management companies do come to appreciate maybe some of the additional covers that can be added to a policy. There may be an additional premium but because of their experience in claims issues they can see how that cover can come into play. Whereas if you're dealing with an individual owner who may have his first yacht he hasn't got that kind of past experience and sometimes he's just totally price driven and sometimes maybe he misses out on areas of cover which 2 years down the line he may wish he'd bought. Maybe he can't appreciate the importance of it to start with. I think the experience of management companies within the insurance procedure helps matters. I think there are also conduits for passing out information to their management— if we look at refit and repair clause I think all the management companies have highlighted that to their owners when that was brought in, so again it's a helpful tool for insurance brokers to get the message out to some more of the large yachts—it's always a problem to get people understanding the cover that they're actually being provided with.

**Martin**

The refit and repair clause. How many underwriters actually write those into their policies?

**John**

The refit and repair clause that Paul has been referring to is just in his policies.

**Martin**

Are there equivalents in other policies?

**John**

Yes, there are similar types of clause in other policies coming out of the woods which don't require the specific liability limits that Paul refers to and there are other underwriters that don't have refit and repair clause at all, so it's one of these things that different insurers have different approaches to what they require in a policy which we'll come onto later when we talk about the sort of products that are available out there. I think certain insurers react to claims experience they have had maybe to their more specific knowledge of a certain area of the market, which is sort of Paul's reaction. It varies between insurers.

**Paul**

You're commenting on the refit and repair bit— it's not —or possibly is— viewed as being negative but it's actually not meant to be negative —all we're trying to do is say tell us what's going on, advise us what's going on rather than sitting there making no comment on it and then when insurers get presented with a claim for a vessel that's gone into the yard, for some contracted refit work or whatever it may be, the yard has no coverage, there's a fire loss and you as the managers or whatever are named on the policy as responsible for negotiating that and the insurers turn around and say actually due diligence applies here, you're the professionals, as the managers you should have made sure the yard had cover. Then there is a problem with the claim. All the policies that are silent on it all have due diligence provisions in them. Whatever they may do they all have due diligence provisions and all we're trying to do to an extent is be upfront about it and say tell us what is going on and this is the level of coverage we're looking of.

**Martin**

Do they ever come to you for a fleet policy or has that ever been discussed?

**John**

We've certainly been approached. I think it's very difficult to come up with a fleet policy because if you look at the different sorts of vessels that make up a particular fleet of a management company. you can find that some insurers will go for one type of — one problem is MTU engines. Some insurers are quite relaxed about MTUs, others aren't. Others will double the deductibles or maybe put 50% on the hull deductible. Which means that you can't —one insurer may be good for one particular risk and another insurer may be good for another risk so that's where fleet policies fall apart and I think most people are looking for fleet policies to get the most effective premium, but it's a fact of life that as soon as a premium is published someone else is going to come in and try to undercut it one way or another. So you don't necessarily get the actual benefit for your client that you were initially looking to achieve. So yes, we've looked at it.

**Martin**

Is it realistic?

**John**

I don't think it is. I personally feel that individually tailor made policies for each yacht is probably still the best way to go.

**Paul**

I don't disagree with John— we get approached on a fleet basis —I think that it's a commercial world therefore if you're bulk buying you are going to potentially get a discount, which can be reflected and passed back to the owners. The downside of it of course if you have one owner who has a problem vessel which generates substantial amounts of claims everybody pays more, and that's the downside of bulk buying. It's not going to go up for the one individual boat that's had the claims.

**Martin**

Assuming it'll leave the fleet policy anyway if that happens.

**Paul**

Potentially, yes. But at the end of the day we still look at it on a 3 or 5 year record. What have we done over the last 3 or 5 years? The price will reflect that.

**Martin**

Claire. You talked about professional indemnity cover for managers. Are they all covered to the right level?

I don't know actually. I don't do professional indemnity cover. I would think not, we're talking about design, and I don't think they are. I know lots of people who do a bit of design here and a bit—you know, during a refit— if you actually looked at it, they wouldn't have the right cover in place. It is very expensive and difficult to get, I think.

*[from the floor]*

*A question for Claire. You mentioned managers' responsibility to inform you of crew changes. Is that — it's not one I've heard before.*

**Claire**

Not necessarily individual crew changes but definitely increase in crew— if you've got protective indemnity cover it's a certain number of crew are covered, with employers liability. Some medical policies require that the individuals are noted but you don't have to say my deckhand has left and I've replaced him with another one. Numbers definitely, if you've gone from 5 to 8 then you're best off letting them know.

*[from the floor]*

*I'll just get a couple in quickly. Apologies if anyone spoke about these before I came in. With hull insurance for yachts, could you comment on benefits to be gained from playing around with the split between the basic cover and the additional cover and whether you think there is any difference. I hear different things from brokers about*

*that—whether it's a good idea to have a higher or a lower basic value and more in additional cover. And the other thing is a comment on putting yachts into P+I Clubs.*

**Paul**

If you're referring to additional cover as increased value? We are seeing and being requested to give bigger and bigger splits between the hull or it's section and the increased value part. Increased value is total loss only, effectively, so we are being asked to give bigger splits. The market is to an extent giving it, particularly where we've got the increasing values of secondhand vessels without any doubt. You know, an owner buys a boat for £35million and a year later potentially it's worth £40 or £45 whatever that may be, part of that—in establishing that value it's balanced against the cost of building a new one, the timeframe in actually a new one being delivered, and so forth. So yes, we are seeing bigger and bigger splits. The way the premium is calculated yes, there is a much lower percentage price put against the total loss element as opposed to the all risks element. I think there's probably a level to which underwriters won't go beyond—in that sense of it, I mean if an owner wants to buy total loss only cover, there's a market available to do that. If he feels that it's a well run boat and he can afford it then fine, he can buy on a total loss only basis. I think most brokers would potentially advise against it, not because more premium is charged on all risk bases, just essentially that you need to be very clear with the owner about the risks he's running and whether he's prepared to run that and understand it.

I mean, P+I club side—I'm sure John and Claire can comment on it a bit—at least from my side of it we're seeing more and more vessels go to the P+I clubs, to my mind from where we were or where we've been the last 2 or 3 years it makes an awful lot of sense because what we had was some vessels with the P+I club entry but the water sports—so the jet skis, the water skis and the other bits—were still in my hull policy, so what you've got is 99% of the liabilities in one place and the other 1% elsewhere. To me it just doesn't make sense to have it split like that. The P+I clubs are now comfortable in accepting the water sports liability and it was an area that was very very grey because—the example I've always used is—I mean the P+I clubs have come from a commercial background so they're used to insuring tankers and passenger ships and whatever. The grey area particularly with water sports was on a commercial vessel, the tenders or craft or whatever came with it, generally used for ship to shore transfer. That's it. That's how the P+I wording is if you like constructed. So if you take a yacht, you moor off an island, the passengers go in the boat, they go round the island and back to the vessel—it would fall in my bit of the policy in a water sports perspective. If they went ashore and someone stepped off, put one foot on the beach and got back on, it's in the P+I club. Because you stepped ashore. It was a very grey area and essentially now that's been cleared because P+I clubs are prepared to take the water sports. Therefore it all goes that way. They're also accepting full force RDC or collision liability whereas traditionally in the old way it was split—they're happy to accept that, so it's really been totally split between now physical damage and liability into the P+I clubs. You can probably explain the concept of P+I clubs better than I can but you're a member of the club, you get a price, ultimately you may 2 years down the road get asked to contribute a bit more. It's mutuality, is what it comes down to. Claire?

**Claire**

I don't want to say anything now because I'm going to say it in 5 minutes time!!

**John**

Maybe sort of historically it used to be that the hull insurers were able to offer a liability limit up to the old value and then I think probably post 9/11 we suddenly found that the hull insurers were only prepared to offer 5million liability cover and that's when you had this move. There used to be a thing called excess P+I insurance so you'd buy a separate cover over the 5million but that —following 9/11—became very expensive and all of a sudden it became far more cost effective to actually arrange the liability cover with the P+I club. There's basically 2 clubs involved, the ship owners' is a true P+I club —you've got mutuality— and they offer the full P+I club sort of limit, which I think is currently about 5.45 billion dollars. The other company that's involved in it is British Marine, which is actually an insurance company. They offer the sort of P+I type cover but there is a fixed premium —there is no mutuality there. They offer 500million cover. On the water sports side, yes there has been this problem in the past, where the water sports has been covered under the hull policy. BML have been fairly relaxed about what they call over the side activities and will write it from the ground upwards. I say the ground upwards—they do have a \$10,000 deductible so that is the downside of moving the water sports liability off your hull policy to a P+I club because all of a sudden you get a \$10,000 deductible each claim, whereas under the hull policy depending on which clauses you're on, maybe you've only got a \$500 deductible or maybe a \$1000 deductible so that's something to take into account. P+I club would cover over the side activities so they covered scuba diving, Ship Owners which is the other club, would not cover scuba diving, so there's an area of exposure there. Ship Owners have just literally in the last 2 or 3 weeks decided that they need to do something about scuba diving—I got a quote from them last week—they wanted 20 additional questions answered in order to provide scuba diving. They didn't give an indication of what the AP would be, the additional premium. But most of the questions were almost impossible for anyone to answer because they mostly related to a fixed diving facility rather than—you know, they were talking about what are the local facilities like. Well, it depends on where the boat's cruising. So it was almost impossible to get cover. Really that's the sort of history. Personally I think it's better to leave the water sports under the hull policy. What's now happened is that we've got certainly one insurance company that is now able to offer 500million as part of their hull policy so we're now seeing a move away from the larger yachts being in the P+I clubs—certainly with that particular insurer—is starting to pick up liability business because it can offer the 500million under the hull policy. So to a certain extent you have to pick the market where you can get the cover that's needed at the time, and as markets evolve so you tend to restructure the programme. My personal feeling is that if I can do one stop shopping to get all the risks with one particular insurer then he can't really start—you avoid any sort of difference in condition type claims. You avoid gaps in coverage. You can get it all with one insurer. That's the latest sort of trend. It chops and changes depending on what's available in the market.

## **Paul**

I think I would add one bit to that in that the one area we're being approached on —brokers and underwriters—which is where a lot of these wealthy owners are going, are AUVs, or submarines as everyone else likes to call them. It's a very difficult area. There is a specialist underwriter in London called Leviathan who writes submarines—they only provide a ½ million liability with that. It's a very very difficult risk to deal with and place, an extremely limited market in terms of who will write that. And we've recently had an approach on a boat in build where they wanted to add a submarine which I think had a value of something approaching 25million—a 6 man submarine capable of going to several hundred metres of depth. Well, I can't see anywhere where you're going to be able to buy the liability coverage people will be requesting

for owners of vessels like this to go down to those depths to dive, to do all these things. It's an incredibly difficult market and extremely limited. It's not something I get involved in at all. But we get asked the question as hull insurers, it comes in through brokers and to us. And from the point of view of dealing with the owners' insurances as the managers or whatever, that area is extremely difficult. Certainly virtually impossible to achieve the levels of liability coverage people are looking for.

## **Claire**

Liabilities. The owner of the vessel obviously has a liability for all third party accidents, guests, crew, collision—he needs the cover in place to cover himself at least to the value of his asset so if there are any claims against him he is protected. We've just mentioned P+ I insurance—that's generally for larger yachts that need the higher level of protection that is offered; your standard cover would be on a third party liability basis which normally is two clauses —it doesn't give any cover for paid crew so you need to be aware of that —it can be extended for water skis and toys and all the use of those things, normally at a lower level of cover. We mentioned the P+I and water sports—if you do have separate policy which is under the hull cover in the water sports and you've got a separate P+I insurance you just need to be aware that they fit together well and there are no gaps in cover. Normally it's fine, but you just need to have a look at that. The owners have a liability to their paid crew —Red Ensign flag boats have a statutory obligation to have employers' liability in place —a minimum of 5million. There is a stand alone employers' liability policy you can have which for smaller boats is ideal but definitely one thing it does do under that policy is to exclude Americans and they can't be added. It's just a set policy. Americans are also a problem under P+I but they can be included—normally at an additional premium and a lower level of cover, normally 1million. They are restricted so you need to be aware if you are employing Americans that it can be a problem. All owners who employ crew and pay them should be recommended to have some sort of employers' liability cover in place—be it a stand alone policy or a P+I package, just to protect themselves, along with medical cover. Under P+I and employers' liability it's important to remember that generally underwriters want to approve any crew contracts. If the crew contract is a standard one as per flag state regulation then you have no problem but if there are extra benefits placed in the crew contract then the underwriters need to approve it. If they haven't approved it and there's a claim, they may not pay the extra added benefits that were promised in the crew contract. That's one thing to remember.

Day workers: we did mention it yesterday. The owner does have liability to day workers—under a standard liability policy they would be excluded as they are paid crew. So if you have an employers' liability policy and a standard third party liability policy as part of your package you do not have any package for day workers. There are other liability policies on the market which cover contractors and paid individuals on the yacht and you won't have a problem. Under P+I I've checked with two ship owners who said that day workers are covered; they would want them to be supervised by crew; they do not have to be signed onto the yacht or have a contract of employment but they're considered as third parties in the event of claim, not as crew. British Marine also have the same —they didn't say about being supervised but they consider them as third parties and they are covered under the policy, but they don't have to be mentioned and no additional premium is required to cover them.

The other liability the owner may have is to charter guests —as long as the boat is listed and they've paid the appropriate premium, charter guests would be included for accidents on board, using toys, and generally whatever they do on the yacht. However charterers' liability is a separate issue which quite a few Americans are now

requiring—it can be purchased as a separate policy but would not be included under a standard hull policy.

And the captain. The captain has a liability for operating the vessel but provided he has been approved by insurers if he needed to be and he's acting generally responsibly he would be covered under the policy as if he were the owner.

**Martin**

Any comments or questions on that?

*[from the floor]*

*What about signing on temporary crew? Guest 13 ? Bodyguards!*

**Claire**

Under most P+I policies the quote is as per the number of crew so it would be 10 or 11 crew. So under the hull policies the number of crew is normally noted, so if you have temporary crew you should let the insurers know; they may just make a note of it or they may charge. You can have guests on board—while the boat is in port, over the number normally allowed, but not actually as crew.

*[from the floor]*

*On the Red Ensigns there is a third category which is employers are the owner, and employees are the charterer, which are not crew members but are now specifically recognised as people that could be on board the vessel. Because you're limited on the number of guests to 12 you should let them know but they could have like PAs or security people —they're not crew members but they are — if you look in LY2 they call them charterers employees or owners employees.*

**Claire**

The owners' employees such as the PA would have to be insured under an owners' business employment policy —it wouldn't come under the employment policy of the yacht. And the same would apply to the charterers. If they're there for work, then it would be the charterers' responsibility. They'd be covered as a guest for accidents and things that might occur, but as an actual employee they wouldn't be an employee of the yacht.

*[from the floor]*

*Just on that point, would you not sign them on as a supernumary and then be covered under the hull?*

*[Could you repeat the question please?]*

*Would you not sign the additional staff on as a supernumary?*

**Claire**

It depends on who the employer is. If the employer is the same as the owning company of the yacht then you can probably do that, because if they employ the PA then they also employ the crew. But if it's a potentially different company that they

have an employment contract with, you couldn't sign them on as crew. They'd have to be as a guest.

*[from the floor]*

*Some of this question relates back to the first question, in that temporary crew—*

**Paul**

Exactly. If the charter party is 12 guests, and the owner wants to bring his bodyguard, the bodyguard will often get signed on as temporary crew. Yes, that should be declared to the P+I or the liability insurers. If he signed on as temporary crew he'll be added as temporary crew. It's pretty straightforward. If he signed on as crew and there's a contract in place, he'll be covered as temporary crew.

**Martin**

Is there a limit to the number of temporary crew you can have?

**Paul**

No. It's depends on how deep your pocket is. Ultimately P+I will look at it that way. So you'd sign the charter as shall we say 13th guest if you wanted to quote them as temporary crew.

The P+I Club will want to see an employment contract. If flag state regulations limit it to 12 guests then if they want to go on board they're going to have to go as temporary crew. There's no other way of dealing with it.

*[question from the floor]*

*One other question for Claire. The P+ I cover for day workers. You said they'd be covered when they're on board, but what would they be covered for? Our employment contracts would give benefits, whatever we'd negotiated with the club, but the day worker isn't going to have a contract, so how are they going to determine the benefits?*

**Claire**

They wouldn't be covered in the same way as crew would who'd get wages and medical and repatriation —they'd be covered as third party who'd had an accident and then they would have medical care following that. But they wouldn't be covered if they'd lost 6 weeks work etc but as a third party who's on the boat and has had an accident. Not as an employee.

**Martin**

If they had an accident and couldn't work for 6 weeks —would they be covered for that?

**Claire**

That would become part of the claim. Potentially they could claim for it, yes.

**Martin**

Do many workers know that?

**Claire**

I hope not!

**Paul**

Ultimately they've got to show negligence—that either they've been provided with an unsafe working area or whatever it is or may have occurred, but they're also going to turn round and say well, show me your pay packet for the last 6 months to show that you lost 6 weeks' work. And if he's paid cash he's got a very difficult job.

**Claire**

We've got an Argentinian at the moment who's claiming something like \$10,000 in 2 months that he hasn't worked.

*[from the floor]*

*If you sign on as temporary crew I believe under Red Ensign those temporary crew will have to carry out certain safety procedures and have training, so if there are any owners who want to sign them on as temporary crew they'd better know that they've got sea survival things they have to learn, they've got to learn certain medical stuff, and that's why I think this business of having them as employees rather than as temporary crew is rather important to remember.*

*[from the floor]*

*It's difficult for the whole industry because there's a lot of them and people go out on the larger yachts and there's a lot of these people around and the thing is, if you look in LY2 they also tell you what you have to do as far as your safety training goes, so the managers should put that in their safety management systems. How you're going to train these people, because they don't have to go to STCW training but they do have to be trained on board, which could just be a safety brief, which you would give to the passengers and guests as well. But it should be defined how you're going to train them and that should be documented that you do train them.*

**Paul**

I think it's probably more of a question that perhaps the brokers here should take away and discuss—I mean that's where the risk is going to fall in P+ I Clubs. Obviously there's nobody here from P+ I Club to express an opinion.

**John**

This is going to have to be rapid, because I have 5 minutes to cover 2 subjects.

Claims: First, an initial advice of any incident that's likely to produce a claim as soon as possible is the number one. So that we can at least put insurers on notice—it doesn't matter how brief the details are—at least if we put insurers on notice as opposed to what happens on occasion, like 6 weeks after the event you get the first notice and the insurer throws his hands up in horror and says if only someone had told me 6 weeks ago I would have done this, that and the other. So the whole

procedure has started off on the wrong foot. A completed claim form is going to be needed, in due course. Depending on the type of incident if any witnesses are around that's good. Photographs, if there's material damage to your own yacht or to another yacht that's always very helpful, particularly in this day and age when you can email these and the insurer can actually see what sort of damage he's looking at, 24 hrs later rather than waiting for a surveyor's report. It's also handy—again, depending on the type of incident, formal witness statements may be taken in due course; it's not normally the case but it's always handy if crew can maybe just jot down a few notes of what happened there and then so if formal statements are required in due course they've got something to refer back to rather than their memory, because memories can get clouded, very rapidly. Depending again on the nature of the claim and the extent of the claim, a surveyor may be appointed by insurers in due course, repair estimates will be required, sometimes again depending on the extent of the claim, maybe alternative repair estimates will be required. But normally it's only one. And insurers will normally require original receipted accounts before they'll make settlement, although again in the event of a large claim they quite often pay the yard direct because the yard may well require stage payments so that can be sorted out on a direct basis. If we look at damage caused by a third party, that can either be the original build yard so maybe it's a sort of warranty type claim; maybe a refit yard where damage has happened, maybe another yacht has hit you or perhaps it's just down to an individual—the main thing particularly if it's another yacht or an individual is to obviously obtain the name of the yacht and registered owner. Most importantly, contact details, because that yacht is going to set sail maybe the next morning and the last thing you want to do is be trying to track down this yacht somewhere in the Mediterranean or an individual who's disappeared. So contact details are important.

As soon as possible you want to hold them liable in writing, not orally, actually in writing for the damage that's been caused and also any consequential losses. It doesn't matter if you don't know whether there are any consequential losses, but say that we hold you responsible for the damage caused and any consequential losses. That could be if you're a charter vessel, you could lose the next two charters, so there's loss of charter income. If it's a private pleasure yacht and the damage is extensive then the owner may have to charter a replacement yacht, so if you just stick in consequential losses in your letter holding them liable it covers all these issues—I don't know whether the lawyers want to comment on that one or if it's a broad enough brush stroke?

If it's damage been caused by a third party you need to give them and their insurers the opportunity to inspect that damage before you carry out repairs. That way they can't baulk at the extent of the repair later on and similarly when you've got your repair estimates give the third party a copy of it so again they know (and more importantly their insurers know) what sort of level of compensation they're likely to be in for. A third party insurer may not initially wish to send a surveyor along to look at the damage but when he sees that the repair account is €50,000 he'll probably send the surveyor along straightaway. So keep the third party involved. It's like dealing with your own insurers — if you don't provide them with any major surprises, hopefully the whole procedure will go through fairly smoothly. If you provide an insurer—whether it's your own or a third party insurer—with a surprise as to the level of repair damage that's when the problems start coming. Quite often if it's a material damage claim the claim will actually be settled under your own policy and then your insurers will go against the third party's insurers under subrogation—that's quite often the quickest way to get your boat repaired and up and running again. Which is always our aim as brokers and as underwriters.

The other area is crew claims. Probably this is the area where sort of initial advice of claims seems to come in late quite frequently. I can understand it on the small medical type claims where someone has had to go to the doctor a couple of times and at the end of the season the skipper does a clear up of all his paperwork and you quite often end up with half a dozen claims of €50 each. You can accept that although insurers don't quite understand it. But every now and again — I think the most I've had is someone who suddenly turned up with €10,000 worth of claims about 50% of which was air flights and the insurers actually settled the medical bills but only 50% of the air flights. This guy was flying all round Europe to see doctors. We knew nothing about it. Again, initial advice as soon as possible. Most medical packages have a medical assistance company connected to them and it's very important to make contact with the medical assistance company if there's going to be hospitalisation; the medical assistance company will help find the right doctors, the right consultants or whatever. Most importantly, they'll actually settle hospital bills direct, so it's advantageous. It potentially breaches or prejudices your cover if you don't make contact with the medical assistance company. Again, a claim form is going to be needed, as I say, hospital bills are normally paid direct, insurers will normally need a recent receipted account for any other bill, so make sure that crew members take care of that, and if there's going to be a salary indemnity then a medical certificate will be required stating that someone was unable to work. The medical certificate normally forms a part of the claim form that you'll be given.

I think that's it on claims.

#### **Paul**

I've just got one comment to add to something John said with regard to payments directly to yards. One of the lovely benefits of the FSA from the UK perspective is that technically we're only allowed to pay a claim to the policyholder without shall we say a letter in writing on the company letterhead stating that they want the payment to be made to the yard. Without that, no-one is going to sign it. It's all to do with money laundering; we cannot pay a claim to a third party without having a distinct letter on file saying please pay the yard. We know, we've got evidence, we've got a surveyor, but there's no way my FD is going to sign something when he's facing ten years in prison for money laundering to make a payment to a third party, without something on file. So as part of the process it's key early on to get that letter on file or to your broker. Your broker will be able to advise you on that as well. But that's key, if you want payment to a third party and not to the owning company.

#### **Martin**

John, how many claims are made on an annual basis? Significant ones?

#### **John**

I suppose we probably get about 100 in total, of which ones that are significant—last year wasn't too bad. Previously we had two total losses in four hours! If you go back to the late 1990s we had a horrendous run when I was with Marsh and we had our business with his yachts—something produced in 18 months about \$100million of claims. It's the luck of the draw.

#### **Paul**

Generally if you were writing a regular small yacht book of business in the UK or Europe you'd expect to see about 10% of policies have claims. As you move to the bigger boats the frequency is much much less, but big boats don't have small claims.

**Martin**

And are all claims paid out?

**John**

All valid claims, Martin!!

**Paul**

There's clearly the occasional argument over quantum. But as John says, all valid claims are paid out.

**Martin**

John — one final ?

**John**

Right. I'll skip through this, obviously it's one of the things that can go on and on and on as to what's available and the in depth of cover.

The main insurance is the hull insurance. Claire has covered the liability issues. But on the hull insurance probably one of the areas that frustrates most specialist yacht brokers is the hull insurance because the scope of cover provided by a policy can be dramatically different. Pricing is always going to be a big issue, but it gets very frustrating when everyone just looks at the bottom line without actually comparing what's above it. The policies can be anything from a named perils policy which basically covers those risks which are actually named in the policy. The very basic named perils policy was the old Institute yacht clauses which was actually designed decades ago for 35 footers say around the UK. The French market particularly still tends to use these clauses for mega yachts—€50million worth is still on Institute yacht clauses, which I find frightening. On a named perils policy you've got the Institute tie clauses which are designed for commercial shipping far more appropriate than to the sort of yachts that we talk about nowadays. I think Claire describes the Pantaenius policy as a sort of named perils but a very extensive named perils policy. Paul, how would you describe yours?

**Paul:** Excellent!!

**Claire:** Mine's excellent as well!!

**John**

When do I get the money??

We then go to an all risks type policy which basically covers all risks of physical loss or damage excluding those items which were specifically listed as exclusions on the policy. The main one on that is Form R12 which is the current version which is commonly used in the market. If you go over to the US market you've got the AIG who basically have an all risk policy form but I think if anyone has an all risk form

here it's probably going to be the AYF R12. On both sets of forms with both the named perils and the all risks you can delete exclusions, you can add additional clauses, and at the end of the day in the hands of a specialist yacht broker there's probably not too much difference in scope of cover between a named perils policy that's been enhanced and an all risks policy. The big difference is in the event of a dispute over a claim on a named perils policy, where the onus is actually on the insured to show the underwriter that the risk is covered within one of the named perils. Under an all risks policy the onus is actually on the insurer to show that the damage is excluded by one of the exclusions on the policy, so there's a big difference there. But at the end of the day in the hands of a professional yacht broker there's probably not too much difference between the two types. However I have seen some startling differences between what we're offering — probably everybody on this panel has — and some of the policies that have been written on mega yachts. Over and above that we've got some hybrid wordings which I call all risk named perils, which are based on the Institute yacht clauses but have still got a lot of the exclusions in there of the Institute yacht clauses so they are all risk but not really. Some of the companies actually do a risk management survey as part of their service where they'll send a surveyor down — this isn't a structural survey, it's basically to go round the boat with the captain and the crew and try to highlight areas where from their past experience they've seen claims arising. So they're to the benefit of everyone involved in the enterprise. They can try and cut down the potential for claims occurring and that's a fairly recent innovation — URS do it — so that's a benefit that's provided and paid for by the insurer.

**Martin**

So it's a free service?

**John**

It's a free service, yes. So really that's it on the hull insurance. I can go down as to what to look for such as different levels of deductibles on competing quotes.

**Martin**

It's all on your website?

**John**

It can be tomorrow, if you want, Martin!

The other big area of concern is crew insurance which is becoming a more and more important area in recent years with the lack of qualified crew which is going to be an ever increasing problem, I think, in the industry, with all the new tonnage that's coming out. In every seminar I go to it seems to be one of the issues that is highlighted. Nowadays as part of their remuneration package crew are expecting to get a full health package. Quite a few of the hull policies will actually include a medical benefit of 100,000 for any one person. This includes crew.

Policies which are for named crew or for unnamed crew—personally I prefer unnamed crew because it's a lot easier to administrate—the captain doesn't have to tell you every time a deckie changes. When we used to do named crew decades ago you used to find when it came up for renewal 50% of the names on the crew list had actually changed, which meant that 50% of the crew probably hadn't been insured for the last 6 months.

What I call a basic policy is you get medical expenses, obviously the sum insured is what you pay a premium for —our standard tends to be €200,000 — that will also include repatriation expenses and for unfortunate accidents burial expenses. You then have personal accidents section of the policy — normally that will cover death and capital benefits; sometimes you can actually have a fixed sum insured for that — maybe €200,000 or €100,000 — I think the traditional way of doing it is that the sum insured is three times salary. Which is good because it then links directly to each individual crew member's salary, so you don't have to worry about different sums insured and the more important you are on the boat the higher the compensation limit is. That can be extended to include continental scale benefits if you want—death and capital benefits is like loss of eyes, whatever. Continental scale is when you start getting paid if you lose half a thumb or the tip of your finger or a big toe or whatever. There's an additional premium involved. But you can extend the scope of cover if you want. It can also pay for salary indemnity during periods of temporary total disablement—which is when someone is unable to carry out any part of their normal duties on board the yacht and the policy will then reimburse the salary, excluding the first 7 days. The rationale being that if you have to get a replacement crew effectively it's paying the salary for that replacement crew so the owner is not out of pocket. It can be extended to include crew replacement expenses—which is where a crew member has to be replaced either temporarily or permanently as a result of a claim under the policy so again, if someone has broken their leg and is laid up for 6 weeks then you need to bring in a replacement engineer; it'll pay for the crew agency fee (if there is one) and it will also pay for the travel expenses to get that engineer from wherever he happens to be. It's not one that we see a lot of claims on but when you look at the salaries nowadays if you do happen to get a claim it can be quite expensive so it's worthwhile looking at. You can extend the policy to include winter sports extension — I think most of the yachties that sit in the Mediterranean during the winter seem to go up on the mountain on their ski boards — you keep on getting claims for twisted knees and broken legs etc. Again, it's a cover worth having. Depending on which insurer it's with — you can get it as cheap as \$50 for the whole season. It's cheap insurance and it's worth it if it happens.

The basic policies will normally cover dental treatment for the extraction of teeth or following an accident — so if you fall over and smash your teeth I will pay for that. One policy wording does cover dental treatment to alleviate pain and suffering — which of course opens up a whole new gambit because why else would you go to the dentist, certainly from my point of view. What it doesn't cover is normal dental care. However there are new products which are coming out because of the vast increase in the number of crew and the demand from crew for better products, there are new products coming out onto the market. There are new people coming into the market where you can extend the policy to include normal dental care. It will include pregnancy expenses although there is a 10 month delay factor on that — which I think means someone has to be on board for 10 months before they can submit a claim. On that product you can also get true life insurance as well, so there is an increasing demand by crew for these products and the market is responding to that.

Other products are available very briefly—mortgage interest—we had the bankers speaking yesterday about loans and the rest of it—I assume that on all of them they have a mortgage interest insurance, which basically protects them if the hull policy doesn't pay out. As they're banks, they normally demand that this is arranged to protect the loan and the borrower actually pays the premium, so it's a no lose situation for the banks.

Charterers' liability has always been a difficult product to buy until recently. There are now 2 facilities available for charterers' liability, which has become an important issue because it's recently been "discovered" is probably the best way of putting it—neither of the liability programmes provided by the British Marine or Ship Owners actually comply with clause 16 of the MYBA Charter Agreement, which basically says that the charterer is entitled to the liability insurance arranged by the yacht owner. Neither BML or Ship Owners comply with that, so the insurance industry is actually responding to that and there are now two charterers' liability facilities available for a charterer to buy his own separate charterers' liability insurance in his own name.

There's charter cancellation which protects a charterer if he has to cancel — I'd have to say the scope of cover is pretty limited under that mainly because the claims' record in the past is absolutely horrendous. It tends to be one of those insurances where you feel that the insurers are being selected against and if you look at claims experience it's probably true. There is a product out there which some people use.

Loss of charter hire—probably even more difficult to arrange than charterers' liability. As far as I'm aware, there's only one insurer that does it and he'll only do it on yachts that he insures so it's not an open market facility. The rationale behind that is that if he insures the boat and gets a claim under loss of charter hire policy he can make sure the boat is repaired as quickly as possible so he's controlling the whole issue.

Professional indemnity—well, I think we touched on that before. Professional indemnity for general brokers' houses, management houses, charter brokers — is a specific requirement by the MYBA —if you want to be a member you have to have professional indemnity insurance.

**Martin**

Do they stipulate how much?

**John**

Pass. If there a member of MYBA here? I have to pass on this specific question.

Also PI insurance for individuals that may be involved in specific build contracts. There's an insurance available for DPA insurance which is better to keep separate from the PI insurance from the company because there may be a claim whereby the interests of the management company actually conflict with the interests of the DPA as an individual so you can get a separate DPA insurance.

Finally an insurance normally arranged WQIS (Water Quality Insurance Syndicate) in New York which provides the financial guarantee for an American COFR — Certificate of Financial Responsibility which is a requirement if you're going to go cruising in US waters and you're over 300 tons.

That's pretty much it, without going in depth.

**Martin**

Any final further comments?

*[from the floor]*

*Just a first comment to make is that Lloyds have actually been providing charterers' liability coverage for some time. But there is an issue there of bare boat charter as opposed to ordinary charter. If you could expand on that, just the difference between the two, for the audience?*

**John**

Sorry. The difference between bare boat charter and normal charter—well, a bare boat charter is whereby you actually are responsible — you take over total responsibility for the yacht and most particularly the crew —that's the American way of doing it, I think, so your responsibility as a charterer or your liability as a charterer is far wider than under the MYBA Agreement, where basically the yacht is supplied with crew —you don't take over the responsibility for the whole crew. All you're doing is taking over the liability dictated in the MYBA Agreement and you're having your own sort of liability should someone decide to come and sue you as you're the charterer on board, then you've got your own liability programme that will respond to that.

*[from the floor]*

*I've already had the discussion with Paul but perhaps he can elaborate on the leaving warranted areas, either cruising grounds or crewing activities—this is what I was asking Claire earlier. We have 3,600 seafarers employed today on all kinds of vessels so making sure that we always stay within any warranties either on cruising grounds or on what crew are on board is very very important to us and we obviously have the systems in place to do that. It was only recently that I found out that if you leave your warranted cruising grounds under UK cover, when you come back you're not automatically covered. I think Paul could explain about it better than I could. I think quite a few people here would appreciate that.*

**Paul**

I'm sure the lawyers could explain it better than I can! But essentially—the main difference is that under US law, if you have a navigating area stated on the policy and you breach that, then arguably you're uncovered while you're outside that. But as soon as you get back inside your navigating area coverage is automatically in force. Under UK law if you breach your warranty you breach your warranty— and potentially coverage is then cancelled at that point. Most insurers will not have an issue with an accidental breach as long as you come and tell them. If you tell them 9 months after that you've been cruising round the South Atlantic when you're supposed to have been in the Med, you might have a bit of an issue. I think anybody would have with that. Or understandably underwriters are going to want a substantial increase in premium to provide that coverage, albeit retrospectively. At that point the owner decides whether he wants to pay it or not. It's just a difference between the way US law works and UK law. Most insurers I think for accidental breach will look on it pretty kindly. The problem potentially occurs if an accident occurs while it's outside and that's ultimately going to be the issue. Most insurance policies wherever they're bought clearly state what the navigation areas are — you go from world wide back — there is clearly a price differential quoted. We do, and I know other insurers do, if you want Med coverage it's this price, if you want world wide it's this price. You get quoted those prices at the beginning so from our perspective and from the brokers' perspective as well it's just purely by virtue of the way it's priced it's made fairly clear to insurers that this is what you get for your money. The bottom line is tell your insurers what's going on. You'll never have an issue if you tell them what's going on.

**Martin**

Do you have a policy that involves a number of days cruising?

**Paul**

Yes. We have policies whereby someone comes in and says he's limited to 3 days cruising or it's laid up for 11 months a year when he doesn't use it and they'll get a price that reflects that.

**John**

A lot of policies do actually include a breach of warranty clause so if the breach of a warranty is without the knowledge of the owner then the cover will continue. The clause normally says breach of warranty by captain crew or charterer of the yacht so the owner remains protected.

That's not in all policies.

**Paul**

Quite right. And a lot of my policies have that. Your problem is if the owner's on board cruising the South Atlantic. He can't say he wasn't aware.

*[from the floor]*

*The owner could take everybody for lunch — everybody is off the boat, the warranty is breached and you're not automatically back in cover.*

**John**

Where are the lawyers? That's Marine Insurance Act. Breach of a warranty voids the policy and reinstatement of the breach doesn't reinstate cover.

**Paul**

I think it's a case of advise your insurers as soon as you're aware and if they note it, and it's accepted, then it's not going to be an issue.

**Martin**

Is that something that doesn't happen?

**Paul**

No no, we regularly get told — Sorry we forgot to tell you we're in the Maldives. Fine. OK. We want an additional premium or we don't. Generally we get told before the boat goes. The other area of concern particularly on stuff like this is war risks coverage—you do have listed in all policies specifically excluded areas for war risks. Boats going thro the Suez and heading in that direction — the further East, shall we say, you get in the Med — there are excluded areas, I'm sure you're all aware of them. They're fairly obvious places. The things we get asked for is we need to make a refuelling stop at this point — an additional premium is charged at times and other times it's not.

Can I perhaps make just one very quick point. On the crew PA element one other thing that's continually coming up as an area of issue, for want of a better way of putting it, is crew that are injured get repatriated to country of domicile then find they have no coverage. Crew PA policies are generally expanded travel policies. That's essentially how they work. You buy coverage for 12 months, you get your medical and so forth. The problem occurs I'm going to say for UK nationals after 5 years, Canadians after 6 months, US I can't remember how long. But if you are out of the country and (this got touched on a little bit yesterday) you're not paying your National Insurance contributions — either the employer is not paying them for you or you as the employee choose not to pay them, you go back to the UK after you've been out for 5 years you cannot get into the National Health system. You are outside it. And policies will not provide coverage in country of domicile. All these policies expect you to pick up ....

**John**

I'd have to disagree with you on that.

**Paul**

Sorry. The majority of policies.

**John**

I think the policies that we are writing would actually — I agree, they've all evolved out of what were travel insurance policies. One of the things we did years ago was get rid of this sort of excluding claims in country of domicile. And in fact country of nationality as well. It just created so many potential problems.

**Paul**

OK. We're not going to argue about it now, but if you buy your policy in Lloyds, Lloyds syndicates are not licensed to write medical and health. They cannot give you coverage in country of domicile. You have to go to BUPA, you've got to go and fill in reams of forms, and give prior medical history, etc if you want full coverage in the UK. I think you'll find none of the crew PA policies in Lloyds will provide coverage in country of domicile. Because they're not licensed to do it.

**John**

We'll have to agree to disagree Paul.

**Martin**

Alright. Thank you very much everyone. We'll break for 20 minutes. Thank you to the panel.