109
春季
Spring
2015

Institute of Seatransport
海 運 學 會

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海運季刊

JOURNAL OF THE INSTITUTE OF SEATRANSPORT

The 2005 Hague Choice Of Court Agreements Convention: A way of cutting down the cost of international commercial arbitration

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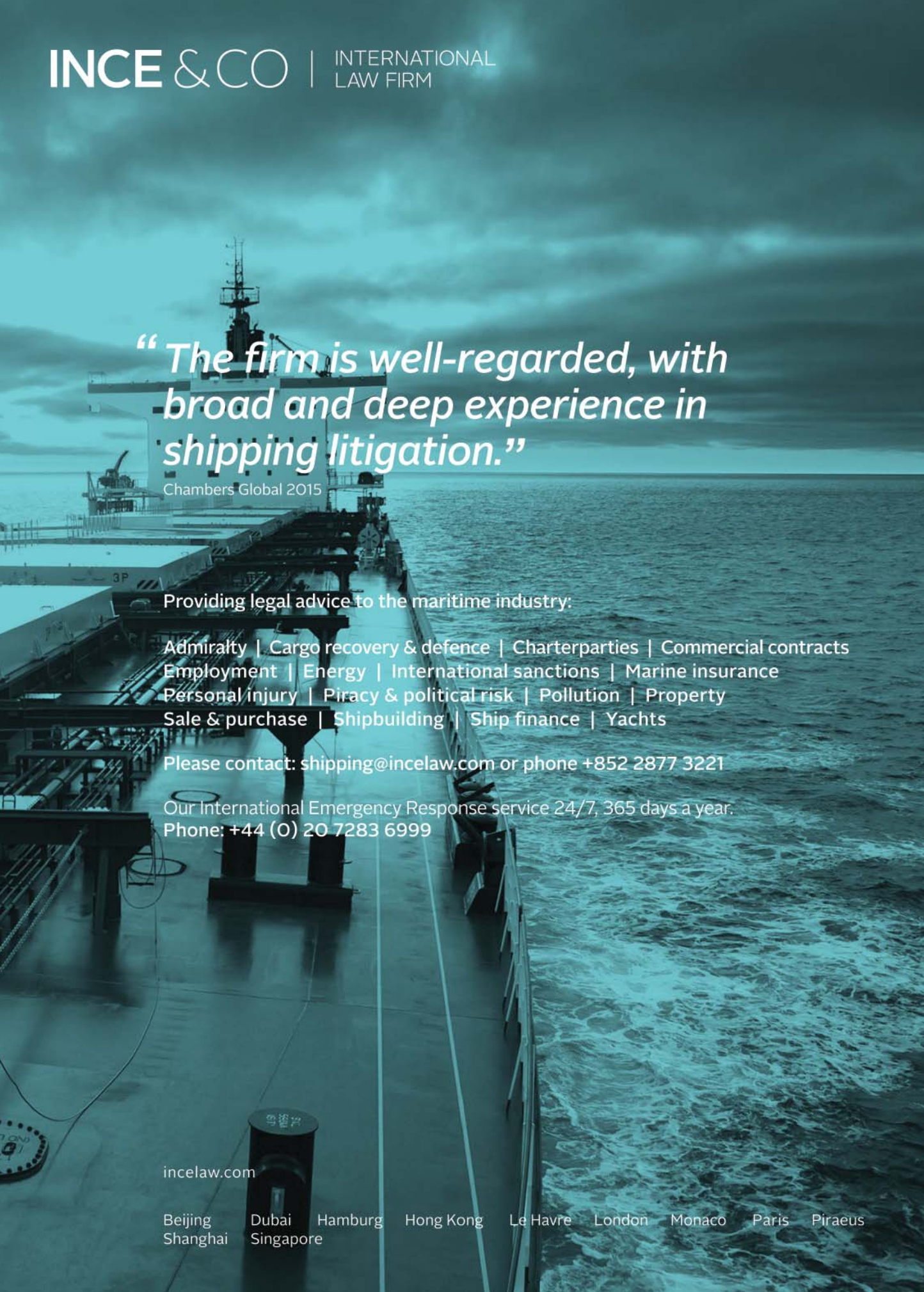

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Contents

目錄

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Determining the Nature of Marine Insurance Transactions for Jurisdiction Purpose under the U.S. Law

Owen Tang

Introduction

U.S. admiralty law jurisdiction normally includes most *"ocean marine"* insurance transactions, nevertheless there are exceptions. It is quite difficult to find a bright line of subject-matter distinction, as the Supreme Court of the United States opined in *Kossick v. United Fruit Co.* (1961): Although precedent and usage are helpful in drawing the conceptual boundaries of admiralty jurisdiction with regards to contracts of a maritime and non-maritime nature, *"the principle by reference to which the cases are supposed to fall on one side of the line or the other is an exceedingly broad one."*

For example, a contract *"to build"* a vessel is excluded from admiralty jurisdiction, while a contract *"to repair"* a vessel is within the scope of the federal court's admiralty jurisdiction. The rationale can be traced back from a very old case: *People's Ferry Co. v. Beers* (1857).

The *People's Ferry* used locality as the criterion of separating maritime and non-maritime contracts: For contracts which are made on land and are to be performed on land, these contracts are not considered to be of a maritime nature for purposes of jurisdiction.

About 63 years later, the Court applied the *People's Ferry* rule in *Thames Towboat Co. v. The Schooner FRANCIS MCDONALD* (1920) and opined that *"the doctrine is now firmly established that contracts to construct entirely new ships are non-maritime because not nearly enough related to any rights and duties pertaining to commerce and navigation."*

Subsequent cases tended to emphasize more on the follow factors:

1) whether the contract relates to the use of a vessel, or

2) whether the contract relates to navigation on navigable waters, or

3) whether the contract relates to the transportation of goods by sea or to maritime employment

If there are more 'yeses' in the answers of the above three questions, then the U.S. courts will likely decide the contract be of a "maritime" nature and therefore within the scope of admiralty jurisdiction, regardless of whether the contract will be performed

on land or at sea. In fact, the U.S. Circuit Court in Massachusetts rejected the English rule (which emphasized the location of the making of the contract shall be the standard to determine its maritime or non-maritime nature) in Justice Story's opinion in *DeLovio v. Boit* (1815).

This paper submits that neither the location nor navigation guidelines seem adequate in dealing with contracts of marine insurance transactions that includes both land and sea risks. The mixed nature associated with contracts of marine insurance transactions makes categorizing them a somewhat challenging judicial undertaking.

1. Classifying the Nature of Contracts relate to Marine Insurance Transactions

In general, under the U.S. law, marine insurance policies, as well as the marine re-insurance policies, are maritime contracts that are subject to U.S. federal admiralty jurisdiction. However, the legal rationale cannot be traced back to English common law. The critical judicial standpoint would be found in the 1870 Supreme Court opinion in *Insurance Co. v. Dunham* (1870). Justice Bradley's opinion in *Insurance Co.* elucidated three important points:

1) It represents the emancipation of American admiralty jurisdiction from the English common law

2) It states the definition of the proper measure of admiralty jurisdiction of contracts in general

3) It determines that admiralty jurisdiction embraces marine insurance contracts.

Regardless of the guidelines mentioned in *Insurance Co.,* they cannot cover new facts that may have been unanticipated at the time of Justice Bradley's decision. For example, in *Offshore Logistics Serv., Inc. v. Mutual Marine Office, Inc.* (1978), the U.S. Court of Appeals had to decide whether a District Court had the admiralty jurisdiction to hear an action by an insured against its excess liability insurer. The Court held that the case came within admiralty jurisdiction because it was a suit on contract of marine insurance. However, eight years later, in *Syndicate 420 at Lloyd's London v. Early Am. Ins. Co.* (1986), the U.S. Court of Appeals held that although marine re-insurance is a maritime contract subject to admiralty jurisdiction, an errors and omissions policy covering brokers' fault in obtaining re-insurance was not within admiralty jurisdiction. It seems that through out history, many new jurisdiction issues concerning marine insurance transactions have been decided on a case-by-case base. The following table summarized some well cited cases on certain maritime jurisdiction issues:

Action	Year decided	Admiralty jurisdiction
An action to recover insurance premiums	1879	Yes
An action for misrepresentation that was brought under a policy of marine insurance	1893	No
An agreement to obtain marine insurance	1931	No
An action on an oral contract of marine insurance	1952	Yes
Whether a claim for unpaid marine insurance premiums would create a lien cognizable in admiralty?	1986	Yes
An action to interpret a marine insurance policy	1987	Yes

2. Whether an action to Reform a Marine Insurance Policy falls within Maritime Jurisdiction?

In *Paul Marsh, Inc. v. Edward A. Goodman Co.* (1985), the court held that the reformation of a policy of marine insurance is not subject to admiralty jurisdiction. Reformation of an insurance policy is a remedy available to an insurer when an otherwise valid insurance policy does not, as written, fully or accurately express the agreement of the insurer and the insured because of fraud, inequitable conduct, or mutual mistake. When the policy fails to accurately express the parties' intent in such instances, a court may reform the policy to express the actual nature of the agreement between the parties. Legal scholars tended to see the decision in *Paul Marsh* as a confirmation of the rule that rests on the longstanding principle that, although admiralty courts determine cases upon equitable principles, they do not grant equitable relief. The key findings of *Paul Marsh* are summarized as follow:

Facts of Paul Marsh

Plaintiff Paul Marsh, Inc. imported a shipment of hog bristles and stored the bristles in a warehouse in New York. The bristles remained there for many years. Defendant Utical Mutual insured the bristles against all risks of loss during storage at the warehouse. When the Utica Mutual policy expired, Paul Marsh approached its insurance broker, and broker arranged to issue a binder on a policy of marine insurance from Federal Insurance. Later, Paul Marsh learned that the warehouse had filed for reorganization under Chapter 11 of the Bankruptcy Code. It immediately gave the warehouse written instructions to release all of its goods. At the very end, 202 cartons of bristles were not delivered, and a subsequent search of the warehouse failed to uncover the missing bristles. As a result, Paul Marsh sued against the broker and the two insurance companies.

In its complaint, Paul Marsh argued that this is a maritime claim on the ground that the Utica Mutual and Federal Insurance policies were policies of ocean marine insurance. At a final pretrial conference, the Court asked the parties why a loss of this nature constituted a maritime claim. The Court pointed out that the goods in question had not traveled the seas in many years.

Issue

The issue is whether a contract of marine insurance with a warehouse endorsement is within the scope of maritime jurisdiction when the damage occurred long after the completion of the transport of the goods. This issue relates to a broader issue of whether a contract of marine insurance covers a vessel that is no longer engaged in commerce or navigation and is within the admiralty jurisdiction. This is an open question. Moore urged that contracts of marine insurance unrelated to commerce or navigation should be *"beyond the jurisdiction of the admiralty...."*

Decision

In *Paul Marsh*, the court made its decision by adopting the legal reasoning in *City Stores Co. v. Sun Insurance Co.* (1973) which held that a policy of marine cargo insurance did not cover goods destroyed before reaching the warehouse. The *Paul Marsh* court opined that *"Similar reasoning leads this Court to conclude that it lacks subject matter jurisdiction over the remaining claims against Utica Mutual and Federal Insurance. Once the hog bristles arrived in the United States, were moved inland, and placed with the plaintiff's general inventory of bristles, they became a simple inventory item in a warehouse. The bristles were then no longer a part of a marine shipment. Regardless of whether they were still covered by the Utica Mutual policy, a policy insuring ocean transport as well as storage, the existence of such coverage would not subject Utica Mutual to this Court's admiralty jurisdiction".*

The *Paul Marsh* court finally concluded that the claimant lacked the subject matter jurisdiction on a claim against the insurance companies because the *"warehouse endorsement cannot be fairly characterized as a marine insurance policy that would subject an insurer to this Court's admiralty jurisdiction".*

Conclusion

This paper submits that neither the location nor navigation guidelines seem adequate in dealing with the contract of marine insurance transactions that embodies both land and sea risks. Instead of using a checklist approach to categorize marine insurance transactions into maritime or non-maritime nature, the author suggests a principle-type approach. The maritime communities have to realize that the primary rationale for the existence of admiralty jurisdiction is to promote the public interest in unified judicial supervision of the maritime industry.

In the words of Professor Black: *"The main thing is that if the court of admiralty is to exist at all, it should exist because the business of river, lake, and ocean shipping calls for supervision by a tribunal enjoying a particular expertness in regard to the more complicated concerns of that business. If the federal government maintains such a court, it must be because the providing of such a tribunal, and the seeing it function, is a federal concern."*

In conclusion, the proper question to be asked in categorize the nature of a contract of marine insurance transaction is: Whether the claim bear a strong relationship to such *"federal cocern"*?

(Mr. Owen Tang: Department of Logistics, Program Manager for MSc in Global Supply Chain Management from Hong Kong Polytechnic University.)

船員優化計劃

朱志統

1. 現況

從人數上而言，小輪職公會約有 2 千會員。他們分別在渡輪、拖輪 (港口系泊拖輪及一般拖輪)、油駁 (主要自航)、游艇交通船等。這些大部份在香港存活了幾十年的海上交通及運輸工具說明了一個事實，他們不可能被代替。但業界普遍人手不足，嚴重影響船東有效運作。

至於遠洋船員，則更加缺少。直接影響有關行業之發展。本計劃可以把本地及遠洋船員在職業升遷上互補，形成一個好的人材流通渠道。解決了人材問題，這個行業就少了一個阻礙發展的絆腳石。亦有望於將來，有更多的船員最終發展為船東 (例如在希臘及中國)。香港亦有，但為數甚少。至於本地船或可發展為夫妻或父子檔的船員兼船東。例如日本、荷蘭甚至中國 (運河)。對本港經濟、環保、人材增值方面可以有個良性之發展。

2. 定義

船員 - 不管本地船，或遠洋船上的工作人員皆稱船員。

本地船長 - 本地船之船長。理想資歷中三加三、四年操船經驗。

大偈 - 本地船之機房主管。理想資歷同上。

船長 - 遠洋船之船長。

大車 / 輪機長 - 遠洋船之機房主管。

船主 - 即船東，船舶擁有人。

遠洋船之船長及大車，全屬專業人士。理想資歷為大學畢業 (中學畢業已足夠) 加數年的船上經驗加專業培訓及考試。可見，本地船長、大偈與遠洋船長、大車有很大的專業距離。

高級船員 - 包括船長、大車及各班值班主管船員，即所謂的大二、三副及二、三車。

3. 本計劃紙上談兵。想創造一個由本地船員晉升或過渡到遠洋船員的機制或渠道。另外，對公眾宣傳船員之工作、薪酬、待遇及船員岸上職位選擇。使到有志於從事船運行業的人，以更能瞭解船員之工作，升遷，待遇及岸上發展之選擇。

本計劃其實並不複雜，也易理解，實行符合發展趨勢，很自然。由於本地船員的要求較低，所以本地船員已較易升為船主或大偈。如果他們願意，我們應該有一套培訓計劃，把本地船員提升為遠洋船員。

由於本地船員基本上已入了行，很多基本知識已掌握，這樣做，順理成章。不

這樣做才是異相，把可用之人材，綑縛及限制在本地船上，對香港是個人才浪費。培訓計劃可以由學術及專業團體，例如海運學會、輪機及造船學會、海事處、船員組織等共同制定。基本上應以考試，培訓為主輔。考試可以加入口試以觀察船員對應急處理能力。制定了考試範圍，課程就可以編寫，就可開班。

4. 現行本地船員之入職及薪酬，見下表 :

職名	甲板初級船員	三級船長	二級船長	一級船長
資歷	合法年齡及培訓	一年操航經驗+考試	三級後一年經驗+短期培訓+考試	由二級升，短期培訓
		15 米船長以下	24 米船長以下	1,600 總噸
人工		12,000-15,000	14,000 -20,000	20,000 +

職名	輪機初級船員	三級操作員	二級操作員	一級操作員
		750kw 以下	1,500kw 以下	3,000kw 以下
人工		12,000 -15,000	14,000 -20,000	20,000 +

對持同等學歷 (中學畢業) 的入職者，人工是相當吸引，而且晉升的機會很多。加上船上工作的各項優點，如能加以正面宣傳，應可以吸引較高水準的人員入行。而入行也不必設立年齡限制。

現在遠洋船之人工 :

職名	三副	二副	大副	船長
証書	四級駕駛	三級	二級	一級
職名		三車	二車	大車
証書		三級	二級	一級
最低	23,250	31,000	54,250	62,000

而且，岸上現時有大量人工 5 ~ 8 萬的職位供有一級遠洋船長或大車執照之持有人仕。再進一步，更可望自己以後成為船東或自己開設提供專業的服務公司，可服務香港或世界各國 (因遠洋船資歷有很強的國際性)。對香港及自己個人升值，遠遠超過了初次入行只有中學畢業的資歷。

提供培訓給本地船員而令他們可以晉升擔任遠洋船員職位的投資，遠比投資在其他大學學位「物有所值」。第一，本地船員已有航海經驗，不會半途卻步。第二，給本地船員一個黃金機會，學員較成熟，會主動求學提升，將來工作對社會的貢獻也相應增大。

5. 船上工作環境，很多忽略了這一點。我們會呼籲船東給船員提供遠較岸上好的生活條件。在這樣的情況下，船員的所謂整體生活質素遠比岸上為佳，各人有獨立房間及浴廁，上下班不用迫車、等車、爭的士。下班不用在中環等幾班車才上到，吃飯不用付錢及排隊。一個人的空閒時間比岸上多幾倍，空氣清新，人工的九成可以儲蓄，二、三年後可以付首期買樓。這樣的工作，卻因宣傳不足而令入行者卻步，豈不可惜！

6. 傳統上，一級遠洋船長及大車執照 (證書 – 與執照不同) 有以下工作選擇。船公司技術監督、駐公司船長、海事處海事主任及驗船主任 (要證書不要執照)、港口引航、港口管理負責人、律師行、公証行、船舶買賣及租賃、造船業者、海難救助、保險 (船、貨、第三)。也可去外國公司做所有上述的工作。所以在無形中把職位選擇擴大許多。而且有機會再專業化，例如做客船、海供 (鑽油) 船、海難救助、化學品船、液化及天然氣船。

(朱志統船長：南運有限公司)

ICSHK Column - The 2005 Hague Choice Of Court Agreements Convention: A way of cutting down the cost of international commercial arbitration

Anselmo Reyes

Introduction

Arbitration is often touted as the method of choice for resolving international commercial disputes. It is thus commonplace today for contracts among commercial enterprises based in different countries to include an arbitration agreement. Unfortunately, the popularity of arbitration, the perception that arbitration is the only practical and effective means of resolving cross-border disputes, has led to arbitration becoming extremely expensive. Demand apparently exceeds the supply of good international arbitrators.

In essence, businesses are advised that if they want to enforce decisions in their favour in other countries, there is really no alternative to arbitration. This is because arbitration awards are perceived to be readily enforceable, in theory at least, in the 152 countries which are parties to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (popularly known as the "New York Convention"). Litigation (it is thought) has no equivalent mechanism by which the judgment of a court in one country may be easily enforced in a foreign jurisdiction.

But there is now an alternative that has the potential of making litigation competitive with arbitration as a means of cross-border dispute resolution. That alternative is the 2005 Hague Convention on Choice of Court Agreements.

Basic mechanisms of the Hague Choice of Court Agreements Convention

The Hague Convention deals with the situation where there is an exclusive choice of court agreement. That is an agreement in writing designating the court of a Contracting State to the Convention as the sole forum for deciding disputes arising out of the international commercial contract in which the choice of court clause is found.

Article 3(d) provides for the separability of the choice of court clause from the rest of the international commercial contract in which it is found. This is akin to the principle of the separability of arbitration agreements in commercial contracts.

Article 5 provides that the court designated by the choice of court clause will have jurisdiction over a dispute arising out of the underlying international commercial contract. Such court "shall not decline to exercise jurisdiction on the ground that the dispute should be decided in the court of another State".

As a corollary, Article 6 stipulates that the courts of other Contracting States must suspend or dismiss proceedings brought in contravention of a choice of court agreement unless:-

(a) "the agreement is null and void under the law of State of the chosen court";

(b) "a party lacked capacity to conclude the agreement under the law of the State of the court seised";

(c) "giving effect to the agreement would lead to a manifest injustice or would be manifestly contrary to the public policy of the State of the court seised";

(d) "for exceptional reasons beyond the control of the parties, the agreement cannot reasonably be performed"; and,

(e) "the chosen court has decided not to hear the case".

The combined effect of Articles 5 and 6 is therefore that the designated court, and only that court, will have jurisdiction to determine a dispute arising out of an international commercial contract.

There is, however, an additional string to the Convention's bow. That concerns the issue of recognition and enforcement of the designated court's judgment in other Contracting States. Article 8 provides that, when faced with an application for the recognition and enforcement of the designated court's judgment, there is to be no review of the merits of the dispute by the courts of other Contracting States. The latter courts will be bound by the designated court's findings of fact, unless the judgment sought to be enforced was one obtained by default. However, recognition of the designated court's judgment may be postponed by the court of a Contracting state, if there is an ongoing appeal or review of the judgment in the state of origin.

Article 9 builds on the restrictions in Article 8, by identifying the limited grounds on which the courts of a Contracting State may refuse recognition or enforcement. Those grounds are that:-

(a) "the agreement was null and void under the law of the state of the chosen court, unless the chosen court has determined that the agreement is valid";

(b) "a party lacked the capacity to conclude the agreement under the law of the requested State [that is, the state in which recognition and enforcement of the judgment is being sought]";

(c) the defendant had insufficient notice of the proceedings before the designated court;

(d) "the [original] judgment was obtained by fraud in connection with a matter of procedure";

(e) "recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that state";

(f) "the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties"; and,

(g) "the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfills the conditions necessary for its recognition in the requested State".

The limited grounds for refusing recognition and enforcement of a judgment listed in Article 9 may seem familiar. That is no accident. Article 9 was modelled after the limitations to the recognition and enforcement of arbitral awards found in Article 5 of the New York Convention.

The combined effect of Articles 8 and 9 is that only the designated court can decide commercial disputes arising out of an international commercial contract and, that court having decided, its decision must be recognised and enforced by all Contracting States, subject only to the few limited grounds just specified. The more countries sign up to the Hague Convention, the more widely and easily will the judgments of a designated court be enforced elsewhere. The Hague Convention can do for litigation, what the New York Convention has done for aritration.

A competition of modes of dispute resolution

Once the Hague Convention comes into operation, commercial parties will have a choice of methods for resolving cross-border disputes arising out of their contract. If arbitration is perceived as too expensive, parties can instruct their lawyers to incorporate a choice of court agreement in their commercial contract, in lieu of an arbitration agreement. In other words, parties can opt for litigation (and not arbitration) as a means of dispute resolution. On the other hand, if litigation is perceived as too expensive, parties can do the reverse and tell their lawyers to put in an arbitration agreement, rather than a choice of court clause. The possibility of readily enforcing judgments in other jurisdictions under the Hague Convention will thus lead to a healthy competition between litigation and arbitration as modes of dispute resolution. That competition

would have the potential to bring down the costs of both litigation and arbitration.

Arbitration may still have some advantages over litigation, even in a world where the Hague Convention operates. For instance, arbitrations are typically confidential. Court proceedings, on the other hand, are normally open to the public. But, by the same token, litigation would have advantages over arbitration. For example, Court judgments are typically susceptible to appeal, whereas arbitration awards are usually not. There is no reason why the 2 dispute resolution modes should be exactly the same. There will inevitably always be pluses and minuses between the 2 dispute resolution products. It is precisely the choice between the 2 that, it is hoped, will lead to dispute resolution by either mode becoming more cost-effective and accessible for ordinary commercial businesses. The Hague Convention merely levels the playing field between litigation and arbitration by counter-balancing the enormous advantage to the latter accorded by the New York Convention.

Conclusion

The Hague Choice of Court Agreements Convention has yet to come into operation. Currently, only Mexico has acceded to the Convention. The US and European Union (EU) have signed, but they have yet to bring the Convention into force. It is anticipated that the EU will accede to the Convention by the end of 2014. In that case, the Convention will come into operation at some point later this year or the beginning of next.

One of the tasks of the Hague Conference (acting through its Asia Pacific Regional Office) is to persuade countries in the Asia-Pacific (whether or not Hague Conference members) to accede to the Convention. In the course of time, hopefully sooner rather than later, the momentum of countries joining the Convention will make the latter an effective counterpoise to the New York Convention, will bring litigation into its own as a competitor to international commercial arbitration, and will lead to the greater benefit of all.

Much remains to be done before the Hague Convention becomes as popular among states as the New York Convention has grown to be. In the meanwhile, everyone can help out by spreading the word about the Hague Convention and persuading one's home jurisdiction to consider acceding to the instrument.

(Prof. Anselmo Reyes:
Representative, Hague Conference on Private International Law, Asia-Pacific Regional Office)

(Prof. Anselmo Reyes is also Professor of Legal Practice at The University of Hong Kong and former High Court Judge of Hong Kong. This article is derived from his talk

on "Some Thoughts on Making Arbitration More Affordable" presented on 10 June 2014 at The Mariners' Club to the members of The Institute of Chartered Shipbrokers, Hong Kong Branch and the shipping professionals.)

香港求助步驟

林傑

最近參加了英國航海學會香港分會的研討會，聽講解搜索及救援，和最近國際搜救衛星的最新發展，學習新的知識；回想以前的搜救工作：

船舶發生意外，如不危及船隻或船上人員性命，便不應該發放遇難訊號。在香港水域內，可透過下列方式發出求助：-

(i) 用海事甚高頻頻道 12、14 或 67 向船舶航行監察中心 (VTC) [呼號：海事 MARDEP] 求助。

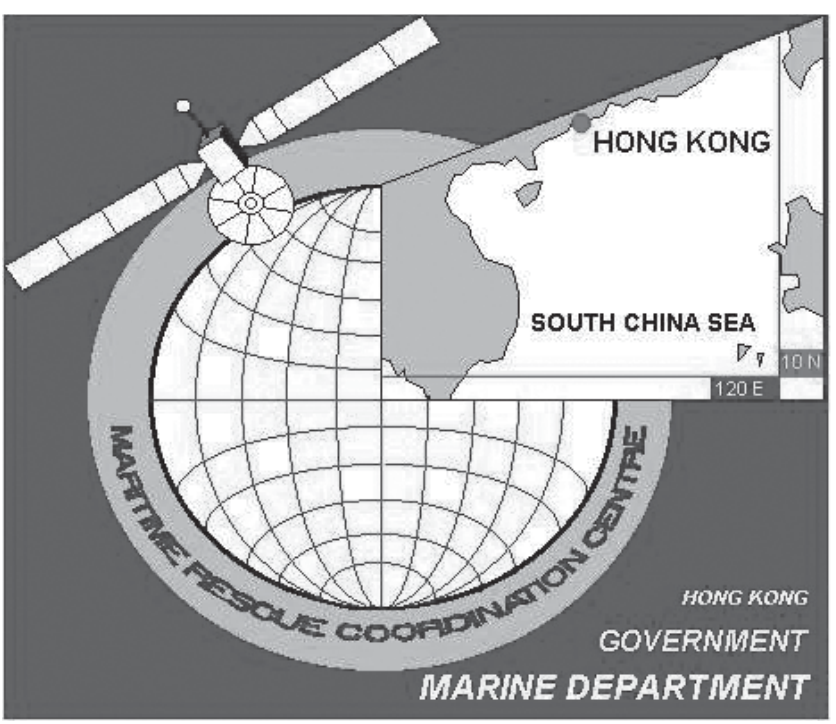
(ii) 政府船隻可用甚高頻頻道 13 向政府船塢求助。

(iii) 可打 999 緊急電話向警務處求助。

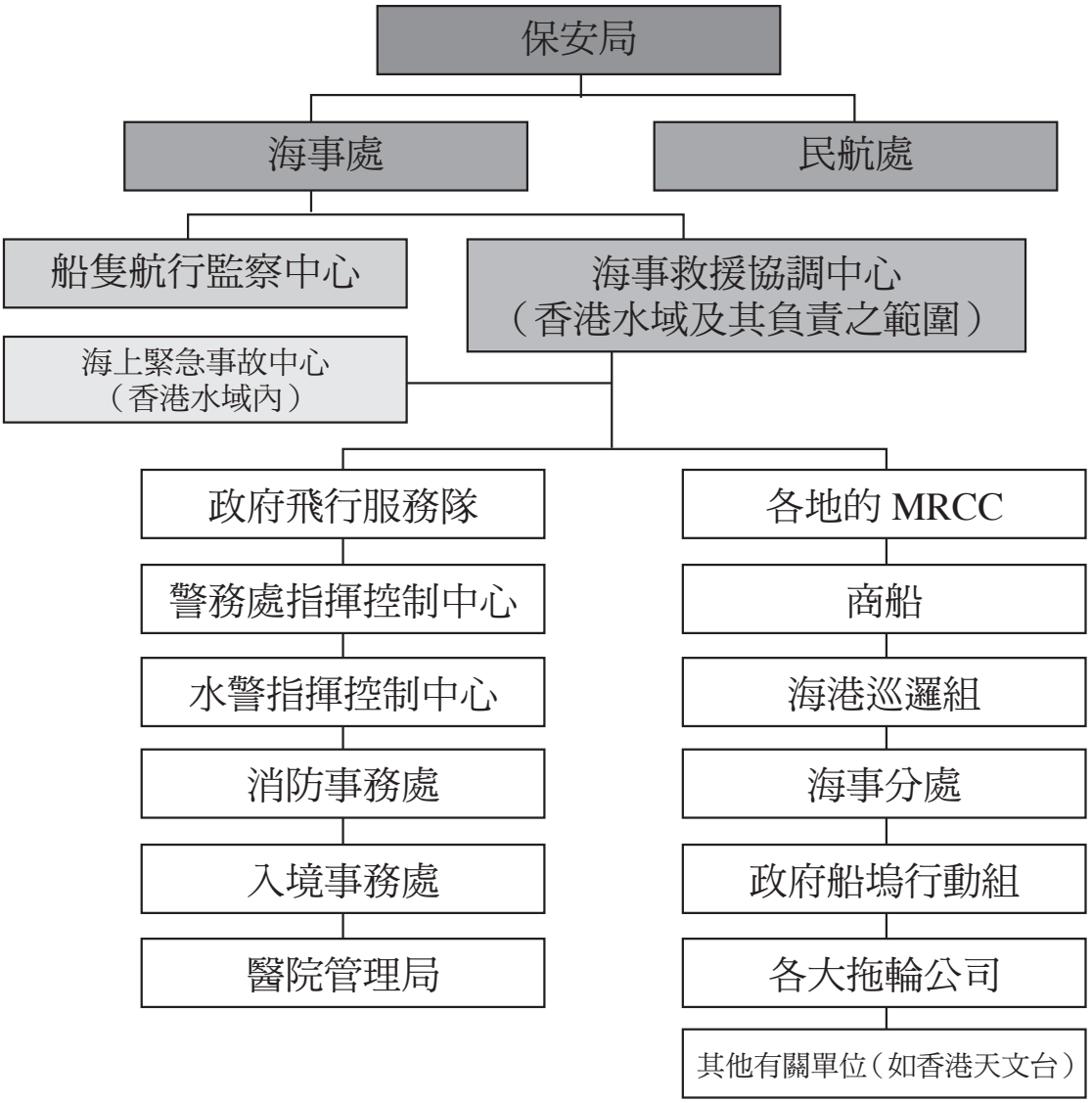
如事件危及船隻或船上人員性命，可發出遇難求救訊號，其中一種是用甚高頻 VHF 無線電話頻道 16 叫出含有「MAYDAY」字音的遇難訊號；或按動船上的 VHF 數碼選擇呼叫 (DSC) 頻道 70 發出遇難示警。海事搜索及救援協調中心 [呼號：香港救援或香港 MRCC 或 VRC] 祇是監聽著數碼選擇呼叫的遇難示警訊號。除了海事頻道外，當然也可打 999 緊急電話。

香港拯救單位和組織

香港於 1989 年成立了國際海事組織規定的海事搜索及救援協調中心 (簡稱 MRCC)，負責協調南中國海北部由北緯 10° 以北至東經 120° 以西，至鄰近地區、國家的領海邊緣的範圍之搜索及救援，整個面積四十五萬平方浬。範圍見下圖。



香港拯救單位和組織圖



一般上，香港水域內的任何海上緊急事故，皆由船舶航行監察中心統籌辦理，除非事故發展至某階段，例如事故發展至香港水域以外，MRCC 便會隨即接手，或啟動海上緊急事故中心，繼續處理及協調。香港水域內的海上意外和緊急事故，大多由水警直接處理：水警是香港水域內的海事搜索主力救援單位。

以上各救援單位在工作上均有緊密的聯系，使香港特別行政區政府在海事搜索及救援上贏得國際美譽。(多謝英國人「煩叔」Philip Weaver)

(林傑船長：Master Mariner, M.I.S., MH.)

P.S. Philip Weaver, OBE (Master Mariner) was a Senior Marine Officer of Marine Department. He created HKMRCC since 1989. He did the good jobs and have let HKMRCC famous over the world. He retired in 1995.

Have you ever had Legionella?

Grenville Cartledge

Strange question you may think. "Of course not" most of you would say, however, the chances are that you will have been exposed to Legionella bacterium at some time without knowing it and many of you will also have been infected, as the symptoms of some strains of the virus are very similar to influenza (flu).

It is now widely accepted by the scientific and medical community that the current statistical analysis of Legionella-related illnesses is inaccurate and entirely misleading. Most people will not bother seeing a doctor for flu-like symptoms and simply rest and self-medicate until the symptoms pass. If they do consult the doctor, in most cases, he/she will normally diagnose flu.

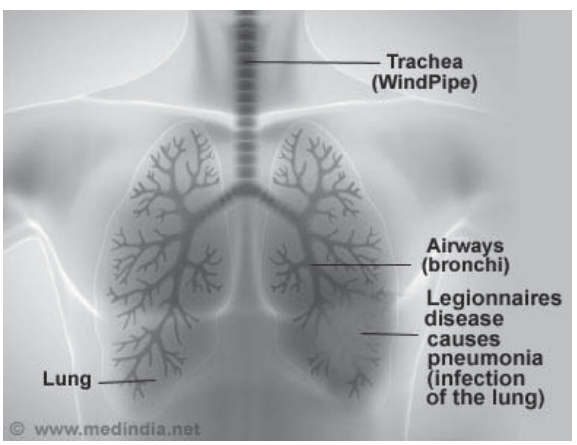
There are over 40 different known species of legionella bacteria - although *legionella pneumophila* causes around 90% of all infection. One type of legionella infection is known as Pontiac Fever, a respiratory disease with a short incubation period of 1-3 days and, usually, non-fatal but with symptoms similar to acute flu. Full blown Legionella disease, which includes pneumonia, is incubated between 2 and 10 days and can be fatal in 15 to 20% cases, with much greater risk for the elderly and people with a poor immune system.

Water mist can contain legionella

Legionella is transmitted by an air borne mist and can develop in still water between 20c and 50c. Legionella can also lie dormant in otherwise 'safe' water systems for several years, as it protects itself in other matter available in the water system biofilm.

Many unsuspecting people have contracted legionella-related illness from such things as showers that have been unused for several days/weeks, from poorly treated recreational water such as whirlpool and Jacuzzis, spray from decorative fountains or water features. Technicians have contracted Legionella from standby water pumps and water tanks that have not been in recent use or appropriately treated. There are documented cases of shipyard fitters contracting Legionella and dying from contracting it whilst stripping down pumps. Legionella risk assessment should be included in ship repair specifications and shipyards should be aware of the risks before the ship arrives at the yard.

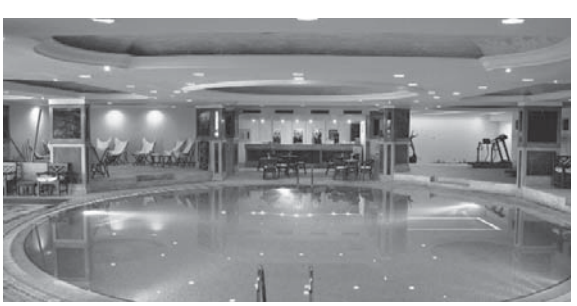
Ships and hotels should implement a water management safety plan (WSP) as recommended by the WHO Water Safety Guidelines. This plan should cover all potential risks and should be reviewed and improved on a regular basis with regular risk assessments supported by independent auditors.



X Ray showing impact on Lungs

How often and where do people catch Legionella? It can happen in many places. CTI Marine, a specialist in legionella prevention and water safety plans, had a client who stayed at a 5 star hotel in Shanghai at the beginning of January 2014. The hotel had been quiet over the Christmas period, meaning a lot of rooms had been empty for at least one or two weeks. Immediately after arrival the client took a shower to freshen up. Within 12 hours he thought he was getting flu as he began showing respiratory symptoms. The client had travelled from Europe for a week long training course so he attended the course in spite of these symptoms. He met over 30 people each day, none of whom developed similar symptoms and he would go to bed at 6pm to try and sleep off the symptoms. By the end of the week his symptoms were greatly improved, however he reported his breathing was poor for over 2 months, particularly with wheezing at night time. On reflection, it is very likely that the client was suffering from the legionella related Pontiac fever which can only be detected by specific tests.

A recent fatality of a cruise ship captain from legionella may have been caused by something as simple as putting on the bridge windscreen washers, where the water had been sitting in the pipes for some days. At a recent EU SHIPSAN meeting it was highlighted that legionella cases are much more prevalent on passenger ferries than on cruise ships as the cabin showers are used infrequently meaning water can be sitting in the pipes for days.



Poorly treated recreational water can generate contaminated mist

Legionella can be designed and managed out of ships and hotels. Prudent operators should consult with legionella prevention specialists who can review piping systems, procedures and advise on the most suitable water safety management plan. These plans must be able to be effectively managed and audited by the Technical and Hotel team, who would update their risk assessments as required. This operation can then be verified for compliance by a suitably accredited hotel and marine legionella prevention company.

There also needs to be more public, scientific and medical awareness related to the causes and symptoms of legionella infection before accurate reporting is possible and better statistics can be generated. In addition, regulators need to be make operators responsible for legionella control. For example, UK legislation dictates that hotels require a legionella risk assessment and that other relevant documents are in place and reviewed regularly and/or when significant system changes are made. Clearly, similar requirements should be in place internationally for hotels and ships. The EU have established and funded the development of SHIPSAN with the objective of implementing common, European-wide, ship health and hygiene standards. The development and implementation of water safety plans is an integral part of the best practice guidance within the SHIPSAN manual. It is very likely that other major port health authorities such as USA, Brazil, Australia and Canada will adopt similar requirements for water safety plans in the near future. It is also understood that the Chinese authority responsible for port health is already considering the adaptation and implementation of the SHIPSAN guidance.

(Mr. Grenville Cartledge:
Managing Director, Four Gold)

2008 年以來國際乾散貨運輸市場簡要回顧 (3)

王守仁

(…上接 2)

2. 2014 年國際乾散貨運輸市場展望

年的價格作為 100 來計算的，也就是說，今年以來的鋼價已跌破 1994 年的價格水平。

2.2.3 鐵礦石貿易發展展望

據克拉克森研究公司 2014 年 3 月統計，2013 年全球鐵礦石海運量 11.87 億噸，比 2012 年的 11.09 億噸堅挺增長大約 6.6%；預計 2014 年全球鐵礦石海運量 12.97 億噸，比 2013 年的 11.87 億噸強勁增長大約 9%。

在中國方面，據中國海關最新資料顯示，2013 年 12 月中國進口鐵礦砂及其精礦進口 7338 萬噸，同比增加 3.44%，環比 11 月的 7784 萬噸下降 5.74%。當月進口鐵礦石單價為 127.7 美元 / 噸，環比微降。2013 年全年進口鐵礦石 8.2 億噸，同比增長 10.2%，累計進口單價 129.03 美元 / 噸，同比上漲 0.4%。據中鋼協預計，2014 年中國鐵礦石進口 8.7 億噸，增幅將比 2013 年的 10.2% 低 4 個百分點。中國海關最新統計數字顯示，2014 年 2 月份我國鐵礦砂及其精礦進口量為 6124 萬噸，較上月減少 2559 萬噸，環比下降 29.5%，較上年同期增加 481 萬噸，同比增長 8.5%；2014 年 1-2 月我國累計進口鐵礦砂及其精礦 14808 萬噸，同比增長 21.8%。在進口商品中，主要大宗商品進口量增加，進口均價普遍下跌。2014 年前兩個月，我國進口鐵礦砂進口均價為每噸 795 元，下跌 3.9%。2014 年 2 月 25 日期貨日報載文認為，2014 年 2 月以來的鐵礦石期貨價格下跌主要受到全國削減過剩鋼鐵產能、全國房地產增速明顯放緩、年初鐵礦石庫存與進口量激增、海運費指數回落和鋼鐵產量增速回落的共同影響。

“新華—中國鐵礦石價格指數”顯示，截至報告期 2014 年 3 月 18 日—3 月 24 日，中國港口鐵礦石庫存 (沿海 25 港) 為 10586 萬噸，較上期 (3 月 18 日—3 月 24 日) 增加 17 萬噸，環比上漲 0.2%。中國進口品位 62% 的鐵礦石價格指數為 109，與上周持平；58% 品位的鐵礦石價格指數為 97，下降 2 個單位。對於當前港口庫存水平，有分析師稱，主要還是城鎮化的推動作用，政府的基礎建設投資沒有停下來。全球兩大礦業巨頭必和必拓及力拓稱，近期鐵礦石價格大幅下跌主要是因為中國銀行緊縮以及中國港口鐵礦石庫存過多，不過對鐵礦石未來價格很有信心。必和必拓鐵礦石負責人 Jimmy Wilson 不認為近期鐵礦石價格下跌為週期性價格下跌的開始，並且預計一旦中國粗鋼產量增長，鐵礦石價格一定會再次反彈。到 2015 年，中國粗鋼產量將由 2013 年 7.3 億噸增

至最高 11 億噸。不過，花旗預計 2016 年鐵礦石價格或降至 80 美元 / 噸，必和必拓認為該預計價格稍低。中國冶金工業規劃研究院院長、中鋼協常務副秘書長李新創 2013 年 12 月 6 日說，受全球鋼鐵生產對鐵礦石需求剛性影響，鐵礦石價格還將居高不下。預計 2014 年我國鐵礦石成品礦需求量 11.72 億噸，其中進口鐵礦石的需求量仍佔 70% 以上，權益礦不到 10%，對國內鋼鐵行業發展極為不利。

2.2.4 煤炭貿易發展展望

據克拉克森研究公司 2014 年 3 月統計，2013 年全球煤炭海運量 11.14 億噸，比 2012 年的 10.62 億噸堅挺增長大約 5%；預計 2014 年全球煤炭海運量 11.64 億噸，比 2013 年的 11.14 億噸堅挺增長大約 5%。

自 2009 年中國成為煤炭淨進口國開始，煤炭進口量保持穩步增長。2009 年至 2013 年的煤炭進口量分別為 1.26 億噸、1.66 億噸、1.82 億噸、2.9 億噸和 3.3 億噸。據《每日經濟新聞》記者瞭解，中國進口煤量在 2013 年 11、12 月份以及 2014 年 1 月份一直都維持高位，尤其是 2014 年 1 月份，進口煤量達到了 3591 萬噸，一度刷新進口煤單月進口量的新高。中國海關總署日前發佈的資料顯示，2014 年 2 月份我國煤及褐煤進口量為 2282 萬噸，環比減少 1309 萬噸，下降 36.45%，同比減少 48 萬噸，下降 2.01%。資料還顯示，2014 年 1-2 月我國累計進口煤炭 5873 萬噸，較去年同期增加 488 萬噸，增長 9%。進入 2014 年 3 月份以來，神華集團牽頭，幾大煤炭巨頭跟進開始大幅降價，已經進一步對進口煤市場形成了衝擊，目前進口煤價格已經倒掛。國內煤價的下跌導致進口煤的價格優勢迅速減弱，加上國際海運費近期上漲和人民幣持續貶值，進口煤到岸價顯著提升，甚至高於國內煤炭到岸價。

中國煤炭行業協會預測，2014 年煤炭需求將小幅增加，市場供求繼續呈現總量寬鬆的態勢，仍將保持 7% 左右的增速。由於前期形成的巨大國內煤炭產能釋放的壓力仍然較大，煤炭供給方面，預計 2014 年全國供應能力將達到 40 億噸。雖然國家將採取加強商品煤品質管制等限制劣質煤進口和使用的措施，但全球煤炭市場產能過剩的壓力依然存在，國際煤炭價格看跌機會較大，預計 2014 年我國煤炭進口仍將保持較大規模，全年進口量或在 3 億噸左右。

2.2.5 穀物貿易發展展望

據克拉克森研究公司 2014 年 3 月統計，2013 年全球穀物海運量（包括小麥、粗糧 / 大豆）海運量 3.77 億噸，比 2012 年的 3.72 億噸穩定增長大約 1.3%；預計 2014 年全球穀物（包括小麥、粗糧大豆）海運量 3.85 億噸，比 2013 年的 3.77 億噸穩定增長大約 3%。而其中大豆 2013 年全球海運量 1.03 億噸，比 2012 年的 0.96 億噸堅挺增長大約 7.3%；大豆 2014 年全球海運量 1.10 億噸，比 2013 年的 1.03 億噸堅挺增長大約 7%。烏克蘭是僅次於美國的全球第二大穀物出口國，據臺灣“中時電子報”3 月 3 日報導，烏克蘭危機可能引爆歐洲糧食和能源供應短缺問題，進而衝擊全球穀物市場。

據中國國家統計局 2013 年 11 月發佈的報告資料顯示，2013 年中國糧食總產量達到 60193.5 萬噸，同比增長 2.1%。在中國糧食產量連續增產的背後，早在 2004 年起，三大主糧淨進口的常態化趨勢已經出現。中國 2013 年大豆進口量為 6340 萬噸，同比增長 10%，大豆進口量創歷史新高，中國已成為名副其實的全球頭號大豆購買國。2014 年 1-2 月大豆進口量激增跡象，其中大豆 1、2 月進口量激增。海關總署資料顯示，中國 2014 年 2 月份進口大豆 481 萬噸，2014 年 1-2 月份累計進口 1072 萬噸，同比增長 40.1%。

中國 2013 年全年共出口玉米 77540.344 噸較 2012 年的 54616.284 噸增加 22924.06 噸。2013 年 1-12 月我國共進口玉米 3264533.411 噸，較 2012 年同期的 5207815.926 噸減少 1943282.515 噸。據海關總署的資料顯示，2014 年 1 月中國玉米進口量達到 650904 噸，去年同期為 396887 噸，同比增長 64%。中國 2014 年 2 月從美國進口玉米數量大幅下滑，因中國拒絕接收未批准的轉基因玉米。海關總署公佈的資料顯示 , 中國 2 月共進口 205776 噸美國玉米，較 1 月進口量 641843 噸下滑逾三分之一。自去年 11 月以來，中國已拒收約 90 萬噸美國玉米，因在船貨中監測出未經中國農業部批准進口的先正達公司的 MIR162 轉基因成分。但烏克蘭玉米進口量激增。資料顯示，中國 2014 年 2 月進口烏克蘭非轉基因玉米數量激增至 192374 噸，使得當月進口總量達 479758 噸，較上年同期增加 21.74%。中國從去年底開始進口烏克蘭玉米，飼料加工商繼續訂購船貨。中糧生物化學和生物能源部門的副總經理在會議上稱 :“中國 2013/14 年度玉米進口預計將從上一年度的 270 萬噸小幅升至 280 萬噸”，交易商預計中國最早將於 5 月釋放龐大的國儲玉米。

2.3 國際運力供應展望

據克拉克森研究公司 2014 年 3 月 21 日資料（見表 2），預計 2013 年底（扣除該年內拆廢數量後的）世界乾散貨船隊總量 7.226 億載重噸，比 2012 年底的 6.828 億載重噸增長大約 5.9%。預計 2014 年年底（扣除該年內拆廢數量後的）世界乾散貨船隊總量 7.72324 億載重噸*，比 2013 年底世界乾散貨船隊總量 7.226 億載重噸增長大約 6.9%。

表 2：2011-2014 年 3 月 1 日世界乾散貨船隊及新船訂單情況表

乾散貨船隊	2012 年底（百萬載重噸）	2013 年底（百萬載重噸）	2013 年 3 月 1 日		手持訂單量			預定交付（百萬載重噸）		
			艘數	百萬載重噸	艘數	百萬載重噸	占船隊份額%	2014 年剩餘時間	2015 年	2016 年以後
好望角型（10 萬載重噸以上）	279.3	293.1	1576	295.6	337	65.4	22.1%	20.2	23.0	22.3

巴拿馬型（6-10 萬載重噸）	169.9	185.5	2386	188.1	431	34.7	18.5%	20.4	9.0	5.3
大靈便型（4-6 萬載重噸）	146.5	157.4	3007	158.9	658	38.8	24.4%	15.8	13.8	9.2
小靈便型（1-4 萬載重噸）	87.1	86.7	3077	87.3	422	14.6	16.7%	6.2	5.6	2.7
乾散貨船隊總量	**682.8**	**722.6**	**10046**	**728.8**	**1848**	**153.5**	**21.0%**	**62.6**	**51.3**	**39.6**
兼用乾散貨船	0.9	0.7	5	0.5	**乾散貨船隊增長規模：2013 年底乾散貨船隊總量 7.226 億載重噸，比 2012 年底 6.828 億載重噸增加 3980 萬載重噸，增長幅度 5.8%；**					
限制船隻	1.2	0.6	9	0.6						
封存船	0.1	0.2	4	0.2						
經營船隊規模	682.3	722.6	10038	729.6	**預計 2014 年 3 月 1 日乾散貨船隊總量 7.298 載重噸，比 2013 年底 7.226 億載重噸增加 720 萬載重噸，增幅 1.0%。**					

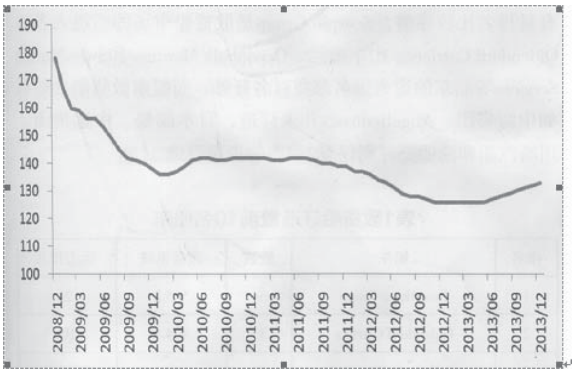
（資料來源：Clarksons Research Limited 2014 年 2 月）

表 3：2011-2014 年全球乾散貨船拆解市場情況表

船型	年份（百萬載重噸）				
	2011	2012	2013	2014	變化（%）
好望角型船	10.5	11.9	8.2	1.3	**-37%**
巴拿馬型船	5.2	8.8	4.5	0.5	**-52%**
大靈便型船	2.2	4.6	3.3	0.0	**-51%**
小靈便型船	5.3	8.2	6.3	0.9	**-42%**
乾散貨船總計	23.2	33.5	22.2	3.1	**-44%**
兩用船	2.2	2.1	0.4	-	**-100%**

（資料來源：Clarksons Research Services Limited 2014 年 3 月 28 日）

儘管全球船東仍然面臨融資困難這一局面，但運費率的改善以及船價未來將要上漲的預期仍然推動船東不斷下單訂造新船。2014 年 2 月 13 日中國船舶工業經濟與市場研究中心包張靜認為，儘管 2013 年航運市場表現依然不佳，但全球新造船市場卻迎來強勁反彈，新船價格在經歷了兩年多的持續走低後開始企穩回升。2013 年，全球成交新船 2155 艘、14056.7 萬載重噸，載重噸位同比大幅增長 199.7%。接近 2010 年“小陽春”的成交規模。其背後的主要推動因素是船舶價格的持續低位和新型節能船型的推出，吸引全球資本聯合部分船東大量投資新造船。2013 年 12 月，克拉克森新船價格指數上升至 133 點，同比上漲 5.6%。各典型船型新船價格普遍呈上漲態勢，尤其是受好望角型散貨船受船東訂單集中投放推動，2013 年 12 月底的新船價格較 2012 年同期漲幅高達 16.3%（見圖 4）。



（中國船舶工業經濟與市場研究中心主任包張靜 2014 年 2 月）

圖 4: 2009-2013 年全球新船價格指數走勢

展望 2014 年全球船舶市場，全球造船市場週邊環境依然不容樂觀。航運市場供求關係將適度好轉，但運力過剩壓力依然較大。根據經濟貿易增長預期，預計 2014 年海運量增速為 3.8%。考慮到運力交付情況和船舶拆解情況，預計全球船隊運力增長 3.6%，低於海運量增速，航運市場供求關係將出現一定程度好轉。但由於危機以來運力增速長期高於海運量增速，積聚了大量過剩運力，2014 年航運市場過剩運力壓力依然較大。由於 2013 年的成交放量透支了後期的市場需求，2014 年新船成交量或將明顯回落，預計達 9000 萬載重噸，較 2013 年有 30% 左右的回落，全年將呈現前高後低的成交格局。新船價格上升動力逐漸趨弱。大噸位船舶仍有一定市場空間。

不過，由於諸多原因，運力供給增長情況存在很大不確定性，2014 年下半年乾散貨需求端可能低於預期供求關係改善不會很明顯，需密切關注供求情況及其變化。運力供需平衡的基本面決定運價的基本走勢，無論是全球乾散貨市場整體而言，還是就某一個別地區和或某一船型在某一時段而言都是如此。

2.4 國際油價展望

石油輸出國組織 (歐佩克)2014 年 2 月 12 日發佈的月度石油市場報告調高了 2014 年全球原油市場的需求預期，認為 2014 年全球原油市場需求增長量將達 109 萬桶 / 天。這一預期比其之前的預測資料有所增加。歐佩克報告說，歐美經濟的復蘇帶動全球能源需求上漲是其上調需求預測的主要依據。歐佩克當天發佈的報告還顯示，歐佩克 1 月原油日產量達 2971 萬桶，環比上升 2.8 萬桶 / 天。利比亞成為歐佩克成員國 1 月原油產量增長比例最高的國家，其原油日產量較 12 月增長了約 27 萬桶，達到 51 萬桶，產量翻倍。近幾個月以來，受非歐佩克產油國家及地區原油產量增長的影響，歐佩克在全球原油市場份額呈現小幅下降趨勢。2013 年全年，歐佩克原油產量基本維持在 3000 萬桶 / 天，歐佩克一攬子原油價格維持在 100 美元 / 桶以上。奈及利亞和利比亞供應中斷，最大原油消費國美國的經濟資料也提振了投資者情緒，布倫特原油 2014 年 3 月 26 日升至 107.00 美元上方。NYMEX 原油持穩于 99.00 上方，窄幅盤整。北京時間 17:44，NYMEX 原油報 99.31 美元 / 桶，布倫特原油報 107.09 美元 / 桶。美國總統奧巴馬及其盟友贊同暫緩對俄羅斯（全球最大的原油生產國）實施更具破壞性的經濟制裁，除非莫斯科在控制克裡米亞後有進一步行動，烏克蘭局勢緩和，油價漲幅受限。交易員和分析師表示，因美國原油庫存或連續第十周上升，NYMEX 原油可能不會守住漲幅很久，再次承壓。市場對烏克蘭局勢的擔憂緩解令國際油價 2014 年 3 月 31 日小幅回落，5 月交貨的紐約輕質原油期貨價格下跌 0.09 美元，收於每桶 101.58 美元。

2.5 運價和 BDI 指數走勢展望

2.5.1 影響運價上漲的主要因素

影響未來運價走勢的最主要因素是乾散貨市場的供求關係，即海運貿易量以及運力供給之間的關係。除此之外，還有其他一些因素也會對運價的走勢產生影響。運價上漲的主要驅動因素包括：（1）世界宏觀經濟基本面向好，海運貿易需求增加快；（2）中國、沙特等發展中國家推遲大量社會基礎建設計畫將拉動大宗散貨海運需求；（3）主要大宗商品價格處於低位；（4）運力增幅較前大為降低，運力過剩局面將有所緩解。與此同時，運價上漲的抑制因素包括：（1）美國逐步退出 QE 影響發展中國家金融穩定，經濟增長面臨風險；全球大部分海運航線仍然受制於經濟增長減速負面因素的影響，特別是歐元區經濟與中國經濟增幅降緩；（2）運力的存量仍存，使得運價上漲的空間受到限制；（3）運力拆解的步伐放緩；（4）中國進口鐵礦石總量也有萎縮趨勢。

2.5.2 2014 年運價和 BDI 指數走勢預測

Commodore Research & Consultancy 乾散貨專家 Jeffery Landsberg 在為中國海事服務網提供的專稿《乾散貨市場回顧 2013 展望 2014》中指出，2013 年乾散貨航運市場經過漫長時間的等待，終於迎來了復蘇跡象。雖然年初 BDI 指數僅為 698 點，但是年底已經跳漲至 2277 點。好望角型船運價以 38999 美元 / 天位居各散貨船運價之首，這與年初日均運價 4864 美元相差甚遠。其他三種散貨船運價也同樣得到支持。巴拿馬船型運價 2013 年以 14556 美元 / 天結束，年初時為 7702 美元 / 天。靈便型船運價以 11500 美元 / 天結束，年初時僅為 6603 美元 / 天。乾散貨租船費率能夠在 2013 年顯著增加（平均增加 226%）是由於新船交付量大幅下降。2013 年交付靈便型船約 250 艘，略低於 2012 年 289 艘的交付量。約有 260 艘大靈便型船交付，而 2012 年交船 303 艘。約 285 艘巴拿馬型船交付，遠低於 2012 年 370 艘的交付量。約 106 艘好望角型船交付，與 2012 年 210 艘的交付量相差甚遠。尤其是好望角型船交付量達到了自 2008 年以來最低交付量，這是該船型運價 2013 年能夠回升並且達到穩定水平的主要原因。

2014 年散貨船訂單量遠低於 2011 年和 2012 年的高峰交付量。正因為如此，2014 年對於乾散貨船運價前景依然看好。但是預測仍有大量的巴拿馬型散貨船交付。2014 年巴拿馬型船訂單量約為 225 艘，而好望角型船的手持訂單僅為 90 艘。大靈便型的訂單量約為 100 艘，靈便型船為 120 艘。好望角型船交付量有望再次達到四種散貨船中最低，因此該船型 2014 年運價最為看好。由於巴拿馬型船在 2014 年交付量較大，所以該船型運價並不被看好。儘管該預測稱有充分的理由對 2014 年的乾散貨航運市場保持樂觀，特別是對（2014 年）3 月及以後好望角型運費（因為中國鋼鐵產量通常會在每年三月大幅上漲後，保持在穩健的水準）。通常每年 1-2 月中國鋼鐵產量會保持在低位，但是隨著時間的推移，市場對進口鐵礦石的需求會逐漸增加，從而助力好望角型船運價。每年會出現對整體乾散貨需求季節性增加，因為乾散貨運量通常在每年年底出現峰值。預測 2014 年乾散貨運價在後幾個月出現跳漲，並以年底高運價結束。

儘管目前部分大型投行預計，2014 年波羅的海指數 (BDI) 會有較明顯起色，但航運諮詢機構的預測則比較謹慎，整體來看 2014 年 BDI 指數會受到過剩運力減輕影響而上行，但仍會保持振盪態勢。但是總體來看，衰退最嚴重的時期已經過去，

將呈現震盪向上態勢。但是在 2014 年將有很大可能比以往任何時候都更加波動。乾散貨市場運力供需基本面不平衡情況仍然存在且呈長期化趨勢，航運業低增長高競爭將呈常態化。特別是大量新船交付加劇運力過剩。

由於 2008 年以來航運業轉暖的形勢出現過反復，我們對行業走勢的判斷仍應抱謹慎樂觀態度。航運不景氣的背景原因，是全球範圍內的經濟低迷和貿易不景氣。當前，全球經濟整體向好，正緩慢復蘇，尤其是發達經濟體出現較強的復蘇勢頭。但與此同時，新興經濟體面臨的風險有所增加。中國經濟保持高速增長將使不少新興經濟體從中獲益，但內需不足、流動性緊缺、外資抽逃等問題將對部分國家經濟造成衝擊。世界經濟復蘇恢復動力，但尚未完全釋放增長潛能，仍在希望與不確定之間搖擺。但從整體市場來看，全球貿易量已經告別了高速增長的時代，進入到一個中長期內低速的增長態勢之中。有宏觀經濟研究者認為，從全年來看，2014 年中國對外貿易進出口增速將維持在8%～10%，這將是一個合理的增長區間。這是 2014 年全球航運經濟穩步好轉的背景原因。航運業“最嚴峻”時期已過。但是，全球經濟低速增長仍將是制約乾散貨海運需求的重要因素之一。對於中國經濟來說，目前正步入穩定增長的週期，人口紅利與全球化紅利都在減少，此外，資源、環境保護意識增強，也將在一定程度上制約過快發展。中國經濟增長從過去的高速增長階段向中速增長階段的轉換。中國全方位改革之後將是兩年的經濟收縮期。實際上，全球經濟的低迷特別是中國經濟的減速使得市場對煤炭、鐵礦石等大宗物資需求增速明顯放緩。挪威投行 RS Platou 下屬研究部門報告稱中國增速放緩或比歐元危機對船運影響更甚。儘管如此，中國對大宗散貨運輸需求或許仍將是全球乾散貨運輸市場重要支撐。

不同時期、不同船型新船交付量、舊船拆解量及不同時期、不同地區海運貨量的變化影響運價的變化。鑒於乾散貨運輸市場所面臨的不確定性，包括國際政治經濟貿易、中國經濟宏觀調控政策、油價波動、氣候變化、港口擁堵、鐵礦石定價機制、三大礦商及大宗商品貿易商操控市場、鐵礦石金融化和遠期運費協議（FFA）市場的投機性和反復無常等諸多因素影響而使運價突然發生變化，各船型運價表現各異，特別是在接下來的兩年裡好望角型船和巴拿馬型船市場波動性增強、規律性降低。我們仍不能掉以輕心，既不應過分悲觀，也不應盲目樂觀。觀察未來市場還需不斷跟蹤上述多方面的發展變化，及時做出比較符合客觀實際的判斷，並不斷對此前的判斷相應做出及時的修正。當然，四類乾散貨船型除了其共性和相互關聯影響以外，由於各自的供求平衡關係及其他相關因素有所不同，因而其發展前景也會有所不同。

我們認為，2013 年乾散貨航運市場出現了復蘇跡象，運價有較大幅度反彈。2014 年 3 月 10 日中港網高級分析師鄭平表示，未來 BDI 有望結束以前的下跌和震盪趨勢，單邊持續上漲，今年上半年有望衝擊 2000 點大關。上海國際航運中心乾散貨分析師也表示贊同，他還稱，比較看好後續的乾散貨市場，二季度可能會更好。“現在市場上的遠期價格（FFA 和期租費率）都比現貨價格要高，說明市場擁有較為強勁的向上預期。”對於當前 11193 萬噸的港口庫存水平，上述分析師稱，主要還是城鎮化的推動作用，政府的基礎建設投資沒有停下來。

儘管如此，國際乾散貨市場運價尚處歷史低位。有航運業分析認為，隨著 2014 年中國春節長假效應的逐漸消失，需求將迎來釋放，國際乾散貨市場有望緩慢走出

“休整期”，但由於當下積累了較高的庫存，消化需要過程，除非有較大的熱點需求出現，運價的回升不可能太快太大，中小船市場的回暖更是如此。而好望角型船的反彈有望最早來到，因 2014 年 3 月份後中國一批新建項目將破土動工，或推升煤電、鐵礦石等需求。在 2014 年 2、3 月份，隨著中國市場商貿活動逐漸恢復，國際乾散貨市場運價將可能出現緩慢回升的趨勢。同時南美糧食季節運輸需求將加大，也將帶動巴拿馬型船的運價，對 BDI 指數形成一定的支撐。在國內外貿資料明顯好轉前，暫不宜對航運市場過分樂觀，特別是對二季度乾散貨市場。但是，2014 年仍難言根本好轉和明顯復蘇。航運業較為明顯的復蘇有可能要到 2015 年。國際乾散貨航運市場整體而言，2013 年好於 2012 年，2014 年好於 2013 年，2015 年好於 2014 年。隨著 2014 年中國春節長假結束，國際乾散貨市場呈觸低回升走勢。2014 年下半年可能好於上半年，全年可能呈現前抑後揚的走勢。但是要警惕，市場回升勢頭可能在 2016 年後消退，屆時過剩的運力可能會再次衝擊乾散貨市場運價。我們也不應對 2014 年抱有很高的復蘇預期。

如今，乾散貨海運市場的主要矛盾已經不單是運力的超額供給與需求萎靡之間的矛盾 , 還有造船產能過剩與需求高增長不可持續之間的矛盾。當市場無法同時在兩個矛盾間重新找到平衡點時，就不可能有市場的復蘇。航運業仍處於去產能階段。在航運業如此低迷的形勢下，一些船東的造船衝動並沒有消減，大手筆訂單不斷湧現。從國際乾散貨的基本面來看，儘管較前期有所改善，但遠未到足以支撐運價大幅攀升的程度。行業仍面臨較大的虧損壓力，且運力過剩狀態短期難改。總體看行業目前仍處於週期底部回升階段，行業產能利用率仍處於底部區域，趨勢性拐點尚看不到。扭轉上市公司業績需要 BDI 指數維持在 2000 點甚至 2500 點以上（筆者注：各船東公司的情況有所不同）。預計即使航運業扶持政策出臺短期內也難以扭轉行業頹勢。當國際乾散貨運輸市場處於低谷期且租家普遍認為市場仍有下跌空間時，往往不願長期租進運力，造成期租市場成交量及日租金大幅受挫。而如果市場處於前底後高走勢，那麼租家的租船策略可能有所改變。從更長遠看，有支持乾散貨運輸市場的有利因素，特別是中國、印度、巴西等新興經濟體的工業化、城市化進程還遠遠沒有完成，在未來 10 年內將帶動大量原材料和能源需求。但是，必須看到，乾散貨運輸市場所面臨的不確定性和風險性因素比以往大大增加。

3. 建議與對策

散貨船東要防止資金鏈斷裂。由於運費低迷，人們普遍認為，散貨船東將面臨現金流量疲弱的情況。散貨運輸市場低迷狀況已經持續多時，使得散貨船東的營收大打折扣，但同時，營運成本還需要源源不斷付出，比如需要用自有資金支付的後續新造船費用、燃油成本、港口費用等等。此外，對於某些高租船比例的散貨船東而言，大量的高租金船將是沉重的負擔，壓力非常大。在營收欠奉的低迷市場裡，散貨船東的競爭主要來自于成本的競爭。可以想像，如果散貨運輸市場低迷繼續下去，越來越多的散貨船東將面臨越來越大的資金壓力，而當成本支出遠超營收，自有資金以及各方募集資金都難以為繼的時候，散貨運輸市場勢必將面臨一輪洗牌風潮。同時，我們還要認真注意美元實際有效匯率變動對航運業的影響。美元貶值將使中國航運物流企業的營運收入下降，而人民幣升值將使支出成本增加，一降一升之間將使中國航運物流企業的流動資金的充裕性大受影響。

航運物流業是一個資本、技術密集型、投資金額大、回收週期長的行業即強週期、重資產行業，落後產能淘汰慢。我們也要看到，作為一個典型的週期性行業，航運業無疑屬於高風險和波動性大的投資品種，在金融危機以至全球經濟衰退面前難以獨善其身。在後危機時代，國際政治和國際經濟和國內經濟形勢將更加複雜多變，航運市場的波動震盪將更為劇烈。今後國際乾散貨運輸市場仍然會在震盪波動中有降有升，跌宕起伏，仍然會有季節性和局部性或地區性的供求平衡和不平衡。

航運企業將面臨嚴峻的挑戰。特別是，中國擴大內需政策難以體現在國際航運上這種變化對中國的出口貿易和國際航運業的發展是個不小的挑戰。既有挑戰，也蘊藏著機遇。面對困難和機遇並存的複雜形勢和不確定因素，我們要保持清醒頭腦，冷靜觀察、科學判斷、未雨綢繆、深入研究後危機時代國際、國內政治經濟發展趨勢和航運業的發展趨勢，及時研判市場的變化。要突出把握好穩中求進的工作總基調，深入貫徹落實科學發展觀 , 牢牢把握市場的趨勢和主動權，審時度勢，順勢而為，因時而變，與時俱進制定前瞻性發展戰略和策略應對措施，樹立信心，增強憂患意識，機遇意識、風險意識，增強快速應變能力 , 加強自身風險管理，增強應對危機衝擊的能力和沉著、周密做好應對各種風險和挑戰的準備、獲得可持續內生性增長。穩健經營，靈活應對，全面提升國際競爭力。加強戰略合作和成本管理，適時捕捉發展機遇，謹慎擇時而動，特別是依據市場趨勢前瞻性地把握好成交的時機 (Timing is everything)，以求得生存和發展。

(本文根據中國對外貿易經濟合作企業協會王守仁先生 2014 年 4 月 10 日在香港理工大學物流與航運系萬邦曹文錦海事圖書館暨研究及發展中心的專題講座整理。)

*(*2014 預計世界乾散貨船隊總量 7.72324 億載重噸 =2013 年底世界乾散貨船隊總量 7.226 億載重噸 +2014 年底前交付的訂單 0.626 億載重噸（尚未把延遲交付的訂單量扣除）- 預計於 2014 年底之前拆廢的 0.12876 億載重噸)*

Best in Shipping at the Asia Women in Business Law Awards 2014

Ince & Co

Ms. Rosita Lau is appointed as Legal Advisor of the Institute of Seatransport. She is awarded the "Best in Shipping at the Asia Women in Business Law Awards 2014". The article is appended below to encourage the members that maritime industry is prosperity career development in the industry!

Euromoney Legal Media Group names Rosita Lau Best in Shipping at the Asia Women in Business Law Awards 2014.

Ince & Co Hong Kong-based partner Rosita Lau has been named winner for "Best in Shipping" at the Asia Women in Business Law Awards 2014, organised by Euromoney. Rosita was one of eight women shortlisted in the shipping category. She is the first Hong Kong lawyer to win this award in Shipping.

The Awards celebrate the advancement of women in the legal profession across the Asian region, recognising women's achievements and prominence in their specific industries.

Rosita said: "I am honoured to receive this award, and I'm proud to be recognised as being among the best Asian women in the legal profession, and to represent the achievements of women in the wider shipping industry. This award belongs to all my colleagues, clients and members of the maritime industry who have supported me."

David Beaves, Senior Partner, Hong Kong said: "I am delighted that Rosita has been named winner for shipping. Her strength of character, motivation and commitment to her clients, together with her substantive shipping industry experience, significant professional accomplishments and savvy, makes her a well-deserved winner."

Rosita has been acting for domestic and multinational clients on matters throughout Asia for many years - specialising in transportation law, including all aspects of dry shipping, insurance, international trade, commercial law, and personal injuries law. Rosita also has extensive experience in Hong Kong, London and Chinese arbitrations and litigations. She is very popular among clients and members of the maritime, insurance and international trade industry.

Rosita has been recognised as a leading shipping lawyer, domestically, regionally and internationally for over a decade by major industry publications and legal trade directories. Rosita was the first Chinese and hitherto is the only Hong Kong lawyer to be ranked as one of the Top Ten Maritime Lawyers of the World and a Law Personality in the Lloyd's List Top 100, a review of the most influential people in shipping. She won this accolade in Lloyd's List's inaugural ranking of global maritime lawyers and personalities in 2010.

Rosita has been a Chairman of the Hong Kong Appeal Tribunal under the Building Ordinance for many years and is an appointed member of the Maritime Industry Council, the highest advisory body of the Hong Kong Government in formulating maritime policies, which she makes much contribution to enhancing the status of Hong Kong as an international maritime centre. Amidst her busy work schedule, she has also been contributing to Hong Kong's society by participating in the free legal advice scheme run by the Hong Kong Law Society, and has been the legal adviser of many shipping associations, providing them with pro-bono advice.

Rosita has also written many articles and is an author of the book "Arbitration in Hong Kong – A Practical Guide," which has since its publication been an authoritative book for the legal profession and cited in hearings. She has been repeatedly invited by governmental and private bodies to chair and speak in conferences in Hong Kong, China, England, Japan, Canada, Korea, Taiwan and Vietnam.

Rosita speaks fluent English, Cantonese and Mandarin and is qualified in four jurisdictions: England & Wales, Hong Kong, Australia ACT and Singapore.

The awards ceremony took place on November 13th at the JW Marriott in Hong Kong. The evening celebrated the advancement of women in the legal profession throughout Asia, and included rewards for individuals in practice area categories.

AA TALK
SUE & LABOUR

Raymond T C Wong

SUE & LABOUR

It does not appear that there is a legal definition given in the Marine Insurance Act 1906 as to exactly what Sue and Labour means, though Sue and Labour charges are referred to as Particular Charges (both being to all intent and purposes the same, yet not all Particular charges fall into the category of Sue and Labour). The particular charges are defined by section 64(2) of the Marine Insurance Act 1906 as "expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges".

Section 78 (1) of the Marine Insurance Act 1906 provides that "Where the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss".

Modern policy conditions of insurance on ships provide as per Clause 13 – Duty of Assured (Sue and Labour) of the Institute Time Clauses – Hulls 1/10/83 that:

13.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.

13.2 Subject to provisions below and to Clause 12 the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. General average, salvage charges (except as provided for in Clause 13.5) and collision defence or attack costs are not recoverable under this Clause 13.

13.3 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

13.4 When expenses are incurred pursuant to this Clause 13 the liability under this insurance shall not exceed the proportion of such expenses that the amount insured hereunder bears to the value of the Vessel as stated herein, or to the sound value of the Vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value. Where the Underwriters have admitted a claim for total loss and property insured by this insurance is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value.

13.5 When a claim for total loss of the Vessel is admitted under this insurance and expenses have been reasonably incurred in saving or attempting to save the Vessel and other property and there are no proceeds, or the

expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or the expenses in excess of the proceeds, as the case may be, as may reasonably be regarded as having been incurred in respect of the Vessel; but if the Vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance.

13.6 The sum recoverable under this Clause 13 shall be in addition to the loss otherwise recoverable under this insurance but shall in no circumstances exceed the amount insured under this insurance in respect of the Vessel.

There have been some interesting court cases lately concerning Sue and Labour charges incurred following a casualty giving rise to actual or constructive total loss of the vessel – not all of which have gone along with traditional average adjusting thinking or approaches. In this connection, the International Underwriting Association in co-operation with the Association of Average Adjusters held a Market Briefing session in London on 27th March 2015 when two former chairmen of the AAA, namely, Richard Cornah and Keith Jones revisited some of the topics relating to Sue and Labour and proceeds after a Constructive Total Loss and probably looked closely at the question of when does the right to claim Sue and Labour expenses stop, which it is submitted in Arnould's Law of Marine Insurance and Average" (para 25-13, 17th Edition) that " .... it is common practice when a notice of abandonment is given for the insurers to agree a writ or claim form as having been issued. In such a case, assuming the claim for constructive total loss is ultimately admitted of succeeds at trial, it would seem to follow from the reasoning of *Rix J in Kuwait Airways* that any expenses incurred after the deemed date of commencement of action will not be recoverable as sue and labour".

Pending the outcome of the London market discussion (which the Editor hopes to be able to report on in the next issue) and subject to the appeal in the "Brillante Virtuoso" – Suez Fortune Investments Ltd. and Piraeus Bank SA v. Talbot Underwriting Ltd and others (2015), the Editor would, without prejudice, suggest that whilst each case be treated on its merits, claim for the Sue and Labour charges would probably stop upon the Underwriters admission of the Constructive Total Loss of the vessel at the latest since any further expenses would not serve the purpose of averting or minimizing the loss which would be recoverable under the policy of insurance.

However, in real life the Assured are often obliged to incur expenses in the nature of maintaining the wreck subsequent to the notice of abandonment having been tendered, pending agreement that the vessel is indeed a Constructive Total Loss and thereafter, which are likely to form a claim against any proceeds of the sale of the wreck.

In the meantime, using figured example for Clause 13.4, say:

Vessel's sound market value at time of casualty US$15,000,000

Vessel's insured value and amount insured US$10,000,000

Vessel became a Constructive Total Loss and Underwriters pays the sum insured US$10,000,000

Sue and labour expenses incurred US$2,000,000

Proceeds realized from the sale of the wreck
(after deducting charges against proceeds) US$1,000,000

Claim

Sue and labour expenses US$2,000,000

Recoverable in full up to amount of proceeds US$1,000,000

[Proceeds from the sale of the wreck can be used to settle the Sue & Labour.]

Balance of US$1,000,000 subject to under insurance.

If sound value US$15,000,000 pays US$1,000,000 then insured value US$10,000,000 pays US$666,666 (Amount recoverable)

Furthermore, using figured example for Clause 13.5, say:

Vessel's sound market value at time of casualty US$15,000,000

Vessel's insured value and amount insured US$10,000,000

Vessel became a Constructive Total Loss and Underwriters pays the sum insured US$10,000,000

General Average &/or Salvage expenses incurred US$2,000,000

Apportioned over contributory (salved) values:

SHIP	@	US$500,000	ppn	US$1,000,000
CARGO	@	500,000	ppn	1,000,000
		US$1,000,000		US$2,000,000

(Cargo Interests will pay only US$500,000 leaving the Assured to bear the balance, US$500,000.)

Claim on H&M Policy

Proportion of expenses reasonably regarded as having been incurred in respect of the Vessel	US$ 1,000,000
Proceeds (presumably kept by Assured)	500,000
If sound value US$15,000,000 pays	US$ 500,000
Then, insured value US$10,000,000 pays	US$ 333,333

Substituted Expenses

In the judgment of the "LONGCHAMP", Mitsui & Co. Ltd. & Others v. Beteiligungsgesellschaft LPG Tankerflotte MbH & Co. KG & Anor, handed down on 24th October 2014, it was decided that certain expenses including bunkers and crew wages incurred whilst the vessel was detained by Somali pirates pending negotiations on the ransom initially demanded in the amount of US$6m but eventually settled at US$1.85m, were held to be allowable in General Average in terms of Rule F of the York-Antwerp Rules 1974. Stephen Hofmeyr QC, sitting as a Deputy District Judge, considers the operation of Rule F and the principle of substituted expenses; permission was however given to the cargo interests to appeal to the Court of Appeal.

(Mr. Raymond T C Wong: Average Adjuster)

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浙江國際海運職業技術學院
Zhejiang International Maritime College

教学楼
Classroom Building

国际海员培训楼
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船舶实训中心
Shipbuilding Training Centre

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International Communication Centre

学生公寓
Student Apartment

• 学校是一所以航海类专业为重点，船舶工程、港口物流、海洋旅游专业并进发展的普通高等职业技术学院。

• The college is a higher vocational and technical college focusing on marine majors, together with shipbuilding, port logistics and maritime tourism.

• 学校开展国家海事局批准的25项船员培训项目，其中驾驶台资源管理、机舱资源管理、电子海图等培训项目走在了全国同行的前列。

• The college has been running as many as 25 seafarers training programs approved by the China MSA, of which the BRM, ERM and ECDIS are at the leading place among her counterparts.

• 学校坚持“立足舟山，服务浙江，面向海内外”的办学宗旨，全面推行ISO9001：2008质量管理体系和中华人民共和国船员教育和培训质量管理规则。

• The college upholds the mission of “getting rooted in Zhoushan, catering for Zhejiang Province and gearing towards the world”, fully implementing the ISO9001:2008 Quality Management System and the Seafarers Education and Training Quality Management Codes of PRC.

• 学校与香港船东会、香港东方海外货柜航运有限公司等航运企业有良好的合作关系，至今有2000多名学生在海外航运公司工作。

The college has established a long stable cooperative relationship with the HK Shipowners Association and OOCL. So far, more than 2,000 graduates are employed in overseas shipping companies.

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