News Release

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ASSOCIATION OF
Average Adjusters

Harness marine market expertise to help resolve offshore energy claims, urges Association of Average Adjusters vice-chairman Keith Martin

A call for the offshore energy sector to draw on traditional marine market expertise to help handle more effectively insurance claims that can run into many millions of dollars has come from the vice-chairman of the Association of Average Adjusters.

Keith Martin, who is leader of energy claims advocacy at broking group Marsh, was speaking at the autumn seminar of the Association.

Mr Martin gave perhaps the most comprehensive public overview to date of the thorny question of adjusting claims involving offshore energy units. In offshore, risks derive both from modest operations and from huge and complex projects: for instance the world's first floating production unit – all told some 600,000 tonnes deadweight and valued at several billion dollars – for liquefied natural gas is being prepared for work off Australia, and the first Arctic floating production storage and offloading (FPSO) vessel is on station.

Along with 'green energy' installations, offshore units and supply vessels are vulnerable to storm damage and to accidents caused by human error. Mr Martin told the seminar, which took the form of a market briefing organised by the International Underwriting Association, that the wider application of marine market practice could add clarity and certainty to the assessment of energy claims.

Mr Martin expressed concerns about the present schism between energy and traditional marine: "In some claims, the same facts and figures might lead to a different result, depending on whether the adjuster applied the marine or the offshore approach and practices in arriving at his or her conclusions and recommendations." He suggested that "solutions may be found by harnessing the combined expertise available in our marine and offshore claims community."

Mr Martin reminded the well attended meeting, at the Baltic Exchange, that given the very long history of marine insurance, there was a large body of self-contained marine insurance wordings in use in the UK and other markets.

Most of the wordings for hull risks rely on the named perils basis for cover, meaning in practice that the cause of loss must be put forward by the insured and approved on behalf of the insurers if the claim is to be progressed. The corpus of standard wordings for the insurance of 'ship-shaped' assets in the oil and gas trades was similar but more limited.

Marine construction cover came under the Institute Clauses for Builders' Risks (1988), which was for energy construction incorporated into Welcar 2001, the principal form used for the purpose. In practical terms, the cover and the treatment of claims should be broadly similar in both classes, "but we need to bear in mind that the specific Welcar provisions, including valuation schedules and sub-limits, will trump the underlying Builders' Risks clauses in case of conflict," said Mr Martin.

He referred to the 'faulty design' clause of Builders' Risks, requires that loss and damage must be both caused and discovered during the period of the insurance. In contrast, the equivalent Welcar wording allows for a design fault to pre-date the policy, a more generous and quite broad cover. Such a wording reduces the likelihood of having to enter into a time-consuming debate around identification of the precise moment at which the defect might have been introduced or when its presence might have begun to have an adverse effect on what is insured, said Mr Martin.

In practice, he said, often the broker will be able to amend the standard clauses to reflect the circumstances of the construction project, or simply to reflect market conditions.

Nowadays most vessels operating offshore come under marine as part of an all risks package policy. They will be subject to the Institute Port Risks Clauses all risks cover as part of a marine package policy. As with construction risks, this will cover offshore vessels and subsea mooring arrangements, pipelines, and fixed installations such as platforms and wellhead equipment. In the case of an FPSO it will also cover the cargo being processed and stored.

In an offshore energy package, sub-limits within the agreed value often restrict the scope of the cover – a feature uncommon in the marine market.

The offshore market was much younger than marine, dating back to the 1960s, and the need to develop rules and bespoke wordings was addressed at what is known as the first Lillehammer Conference of 1995 which led to the first version of the Lillehammer Terms of Engagement in 2004. In a slightly different approach from the rules of practice on the marine side, the guidelines provide a pre-agreed framework for the services provided by the energy loss adjusting fraternity, said Mr Martin.

He explained that one of the salient features of the Lillehammer terms is the restriction which the energy market, unlike the marine market, places on the adjuster's licence to comment on policy coverage. In marine, the average adjuster makes up his or her mind on everything that goes into the adjustment, including the question of cause of damage, and the application of the policy. The average adjuster is invited to make a statement: this is not the case on the offshore side. "Why? Primarily, I think, historically the underwriters preferred to have the privilege of defining coverage reserved to them. That is enshrined in the Lillehammer terms of engagement."

On the other hand, Mr Martin said there were instances where the energy market has thought it useful to harness the skill set and experience of a qualified average adjuster, to provide clarity.

Many of the problems seen by the insurance market relating to FPSOs arose either from the anchorage and mooring lines or the swivel turret (which enables the hydrocarbons under the seabed to flow upwards for processing and storage, and offloading onto a shuttle tanker),

often resulting from heavy weather leading forcing the unit off position or disconnection of lines, and the need to seek a port for repairs.

Mr Martin turned to the important question of sue and labour (a provision which allows the insured to recover reasonable expenses incurred in order to minimise or avert a loss to the property) and said that only a handful of cases had been considered by the courts. In effect this meant that average adjusters were the day-to-day custodians of that venerable doctrine. Mr Martin was worried that insurers were tending to resist "what I see as our collective responsibility to ensure that sue and labour situations are recognised and dealt with as provided in the insurance contract." It might make sense to keep spending money, even beyond the end of the policy period, for the purpose of saving insured property.

Mr Martin referred to what he said was an ongoing, if sporadic, effort to overhaul the framework of Welcar, which he described as a "pretty ancient vessel that is becoming a bit leaky and in need of attention," especially its due diligence provision. "So far nothing has emerged. It may be worth the energy community inviting the average adjusters to make some kind of contribution to the committee engaged in that process."

He admitted that the energy market was wary of the Association of Average Adjusters Rules of Practice, invaluable in marine average adjusting. "I think the energy market likes the grey areas and does not want the same as the marine adjusters. The energy market is a little more flexible."

As to the Lillehammer process and the International Marine Claims Conference, held annually in Dublin, "I would personally like to see some work done on reducing the scope for disagreement as to what the insurance product is supposed to deliver. There should be more formal interchange between the communities," said Mr Martin.

He encouraged market practitioners, especially younger members of the profession, to look into the benefits of studying for relevant modules of the Association's exams.

The meeting was chaired by Andrew Paton, chairman of the Association of Average Adjusters. Mr Paton agreed that the principles of the marine claims approach might be used to try to solve some of the problems of energy claims. He said that sue and labour had always been a difficult area for marine practice, and perhaps the same was true for energy, where marine claims experience could perhaps assist.

Mr Paton, who is managing director of Richards Hogg Lindley, complimented Mr Martin for his "tremendous" work in bringing his detailed know-how of the topic to the attention of members of the Association and the wider market. ***ends***

Note to editors*: The Association of Average Adjusters promotes professional principles in the adjustment of marine claims, uniformity of adjusting practice, and the maintenance of high standards of professional conduct. Irrespective of the identity of the instructing party, the average adjuster is bound to act in an impartial and independent manner. The Association plays an important part in London insurance market committees, and has strong relationships with international associations and insurance markets.*

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