

Casualty investigation

→ In January the Hong Kong branch were delighted to welcome Richard Oakley, a master mariner and partner at Ince & Co., to speak on casualty investigation. After the brief chance to meet up at Christmas, the event was again forced online due to Covid restrictions, but around 80 people signed up for the presentation and were not disappointed.

Richard started by describing the shape of the 'traditional' investigation, as it was when he first embarked upon his legal career. Lawyers and/or investigators would visit the ships involved to examine charts, logbooks, course recorders and the like, and interview crew members. The drawbacks were that paper records can be adjusted and crew members may have faulty memories, or in some cases may deliberately lie about the facts. This could lead to much legal wrangling and long court cases.

Benefits of technology

The increasing availability of electronic aids to navigation have caused a sea change in methods of investigation. With GPS positions now highly accurate, AIS offering reliable heading data, ECDIS recording the track of the vessel and everything available via AIS tracking companies or the Voyage Data Recorder (VDR) system on board, it is now easier to discover what really happened. In addition, the fact that most crew members carry a mobile telephone with built-in camera means visual evidence may be available if the investigator asks the right people. Richard described a fascinating case of cargo liquefaction where, doing a remote interview with a crew member via an interpreter, he was able to discover that the crew member had filmed the cargo in its liquefied state. The film answered many questions. He also showed AIS footage of a collision which left little doubt about the events, and other interesting examples.

With the technology now available, the investigator can decide whether attendance on board is absolutely necessary by taking a view once the VDR and AIS tracking data has been analysed. Remote interviews might also be sufficient.

Updating court procedure

At the same time the courts, particularly the Admiralty Court in London, have also modernised. The Admiralty Court has a long tradition of maritime expertise and has constantly updated its case handling procedures. Traditionally, there would often be disputes over the facts and experts would be called to explain what might have happened, determine speed and angle of blow, or even to demonstrate whether logbook entries were written by the people who said they wrote them. Other experts might very well offer different conclusions, and

cases could last for several weeks as the tribunal attempted to get to the truth. Nowadays, there are fast-track procedures which may involve an early exchange of electronic evidence and the limiting of disclosure to near-contemporaneous documents and witness statements. Only the most vital witnesses may be deposed, or the court may consider dispensing with oral evidence. Expert evidence may be limited, or excluded altogether (cries of 'Shame!' from the experts in the audience) and in some cases the parties may be instructed to submit a memorandum outlining their points of agreement and disagreement. They may be instructed to submit their evidence as a bundle of documents with only a limited number of pages outlining their arguments. These changes have drastically reduced the amount of time spent on individual cases, and have probably increased the accuracy of judgements.

The obvious conclusion from this excellent talk is that the technology is now at a point where many of the facts in a case may be obvious without the need for witnesses or paper documents. It may not even be necessary for the investigator to leave their office to gather sufficient evidence. Richard finished by asking, particularly in light of the imminent arrival of autonomous ships, whether there will be any need for solicitor/mariners in the future?

Your reporter was more concerned about whether there will be any need for experts in the future, but even I was forced to admit this was a fascinating talk, delivered with quiet authority by an expert in the field. The numerous questions afterwards were a sure indication that the audience were fascinated by the topic, and it was a very worthwhile evening.

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