

APRIL 2022

## Superyacht insurance and the role of the crew

In the world of yacht insurance, policies come in many shapes and sizes. The spectrum includes the commonly used American R12 "all risks" cover; the more traditional "named perils" cover of the Institute Yacht Clauses; and the various bespoke clauses, some of which naturally build on the standard form wordings. A yacht owner/its managers are likely, if well advised, to seek the guidance of a suitably qualified insurance specialist to effect the necessary insurance. That is to ensure that the insurance cover is properly tailored to meet the requirements of the given yacht and ensure that terms which are particularly important to an insurer (e.g. warranties, subjectivities, particular exclusions or limitations) are appropriately highlighted/understood. This is key because, although insurers/brokers do much to make policy documents clear and accessible, they remain complex and warrant appropriate investment in terms both of time and money.

The focus of this article is a brief exploration of some of the issues which arise, in an insurance claim situation, out of the yacht's crewing. This article does not go into any of the numerous crewing/broader yachting/insurance-related issues arising out of the developing and tragic events in Ukraine, the subject of huge significance and concern on multiple levels.

Crew are a critical part of a yacht and, just as with insurance, proper investment is crucial. Insurers also appreciate this, which is why policies will very likely include particular requirements in terms of the crew, some of which we explore below.

One of the difficulties which has arisen in recent years is the increasing cost associated with securing and retaining crew talent. This can come as a surprise however, to a new owner, who may not have appreciated the significant and ongoing financial commitment that comes with crewing a yacht; there is also of course an associated

insurance cost. Interestingly, Michelle der Merwe of Pantaenius tells us: *"Often, when quoting a yacht with a large crew number, the crew medical/accident insurance premium will be a substantial part of the annual premium cost and it is often questioned, or a part of the quotation where the owner thinks costs can be saved or reduced. Unfortunately, it can also be either overlooked or dismissed, when it is a privately registered yacht, or the lowest option is chosen without considering the navigational area of yacht and/ or the residence/nationality of the crew."*

In many casualty situations, the attention is often initially focused on the crew. In the aftermath of a casualty the insurers (both insurers of the yacht i.e. "hull and machinery" insurers, and liability insurers i.e. "protection and indemnity" insurers) will ask for crew certificates to ensure that the yacht was properly manned, and documentation to ensure that appropriate protocols were in place to ensure their proper training and competence. This is likely to be for a variety of reasons depending on the circumstances - in terms of dealing with incoming (liability) claims, outgoing recovery claims, and potential coverage issues.

Proper management of the yacht is thus crucial at multiple levels, be that by the owner/his family office or by a third-party specialist management company. As Louise Holloway, Director of Yacht Management Services (and previously Head of Crew Management) at Sarnia Yachts, a leader in yacht and crew management (and yacht ownership) – put it: *"It is paramount that crew are working within a safe environment. This is achieved on the vessels under our management by working closely with our Captains to create a safety-minded culture and ensuring that crew have regular training by means of a thorough induction, regular drills, and safety meetings. We would also recommend in addition, that crew members receive specific instructions and*

*training on the operation of any machinery used onboard, and that there are systems in place to ensure that equipment is maintained in accordance with the manufacturer's instructions and/or flag state requirements. "*

Music to a yacht insurer's ears. Louise goes on: *"Commercial Yachts have mandatory requirements with regards to safe manning, however flag states tend to be more forgiving with these aspects on private vessels. We have our own internal safety net checks to ensure crew are adequately trained to work on board private vessels, in that we apply STCW certification requirements, or we look for an equivalent with a combination of similar qualifications and experience and levels of safe manning. This together, with an open dialogue and check-in with our Insurers give us peace of mind that the safety onboard is maintained."*

A prudent owner, whether that be with the guidance and monitoring of an independent specialist manager, should of course have a properly qualified crew on board. They should appreciate that having a competent, properly certified and trained crew on board with appropriate training, safety procedures and monitoring is not just a tick box "nice to have"; apart from potentially being the difference between a small casualty and a total loss with loss of life, it also has real implications in terms of insurance coverage including (amongst other) the following:

1. Specific warranties: policies routinely include warranties in respect of the crew and their qualifications. Those warranties range from: (a) ostensibly broad and generic warranties; two examples of those are warranties requiring (i) the yacht to be "fully crewed" or to have a professional skipper and crew always in charge, which the Courts have traditionally not construed as strictly as one might expect; and (ii) compliance with Flag State requirements - depending on the size/use of the yacht and indeed the Flag State, Flag State requirements may include specific requirements in terms of manning/qualifications; to (b) more narrow, specific and more clearly signposted warranties e.g. stipulating particular certification or experience that specific crew members must have.

Until August 2016, as a matter of English law a breach of warranty would automatically discharge the insurer from liability, even if the loss in question was unrelated to the breach of warranty in question and even if the breach was remedied before the loss, which may explain to a degree the Courts' previous reluctance to

construe some crewing warranties as strictly as other warranties. The 2015 Insurance Act has now changed the way that warranties operate, (broadly) to the advantage of an assured owner. That said, warranties need to be carefully complied with: not just because failure to comply could prejudice cover (despite the more favourable 2015 Insurance Act regime), but more to the point, because warranties are imposed for good reason and as a way to manage risk and allow risks to be underwritten on more competitive terms.

2. Seaworthiness: as a matter of English law, if it can be shown that the yacht was sent to sea in an unseaworthy condition known to the assured, and that unseaworthiness is causative of the loss in question, insurers will have a defence to the claim. The general concept of unseaworthiness is not difficult to grasp – the clue being in the word itself. From the English authorities on point, including a recent Supreme Court decision, what it boils down to in most cases is whether a prudent owner would have required a particular defect, had he known of it, to be made good before sending it's ship to sea. If the assured owner knows that the crew are not properly trained (i.e. are incompetent) and that this renders the yacht unseaworthy, then the owner may find itself facing an uphill struggle with its insurers if it transpires that this incompetence caused the loss.
3. Due diligence: depending on the wording of the policy in question, certain (or possibly all) perils may be subject to the assured owner's/manager's exercise of due diligence (i.e. essentially acting prudently/with reasonable care, or not being negligent). The R12 American Yacht Clauses for example make the fire peril subject to the exercise of due diligence on the part of the assured or owner. This can result in a potentially significant, and potentially unexpected gap in cover. Imagine a situation where a small engine room fire breaks out but by reason of the inadequate response of the crew (because they have not been properly trained to use the yacht's equipment) it spreads and causes a total loss of the yacht. Whilst crew negligence is covered such that instinctively one might conclude this is a vanilla, covered loss, difficult legal issues will arise if it is shown that the cause of the loss by fire is not crew negligence, but rather the underlying failure on the part of the owner to have in place proper training/procedures to ensure the crew are able to properly respond to a fire on board. What

constitutes due diligence may vary depending on (among other factors) the size and use of a yacht.

So where does all that leave us? Perhaps a few takeaway points: (1) get expert advice when arranging cover, to ensure terms are not unduly onerous and are clear in their requirements and effect; (2) ensure that crew are properly certified and remain properly certified. That involves ensuring the crew are provided regular training with appropriate systems in place to check the training is being undertaken and is effective; and (3) engage with your insurers if, for example, there is any doubt as to the scope of cover or what is required by particular policy terms.

Pantaenius' closing thoughts to us were rightly – and consistent with the views of Sarnia Yachts - to reiterate the importance of crew welfare, such that crew insurance should never be considered as a lesser important part of the insurance package. As Michelle put it *"Owners have an obligation as employer to ensure that their crew are adequately insured 24/7, especially when crew claims can be the most complex and contentious claims; after all we are dealing with such an emotive subject - someone's health. There are very good comprehensive products out there and there are some policies that only respond in certain circumstances which can leave the yacht owner/employer with a large invoice to pay. Our advice is to talk to your insurance provider and give the crew package being offered the same careful review as you would do for the Hull itself."* Issues relating to the terms of crew cover itself is another topic all to itself, of course.

Ultimately none of this should come as a surprise to a good owner. Its interests are aligned with that of their insurers and crew in seamlessly protecting against the risk of loss of or damage to life, the environment or property. Achieving such protection allows owners to enjoy the use of their yacht. And that, after all, is the fundamental point of it all!

## Contact us



**Richard Hugg**  
Partner, London

T: +44 20 7809 2199  
E: richard.hugg@shlegal.com



**Mateusz Bek**  
Associate, London

T: +44 20 7809 2506  
E: mateusz.bek@shlegal.com



**Alex Davis**  
Practice group leader, MIT, London

T: +44 20 7809 2671  
E: alex.davis@shlegal.com



**Joe O'Keeffe**  
Partner, London

T: +44 20 7809 2518  
E: jok@shlegal.com



**Ezio Dal Maso**  
Senior associate, Paris

T: +33 1 44 15 82 17  
E: ezio.dalmaso@shlegal.com