THE MARINE INSURANCE INDUSTRY:

A GENERAL OUTLINE OF
THE PRINCIPAL MARKETS

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This paper sets out a general overview of the principal marine insurance markets, followed by a review of the likely marine insurance covers sought by those involved in the plight of the "AMICUS CURÆ".

MARINE INSURANCE MARKETS

1. THE LONDON MARKET

In his Chairman's Report of June 1995 Mr. Len Campbell of the Institute of London Underwriters (the "ILU") stated that:

"The London market remains the primary marine market in the world, and although we should not become complacent I am convinced that we are streets ahead of every other comparable market".

London is a market formed of international business companies, covering the complete spectrum of insurance and reinsurance needs, split approximately 50% between insurance..."
companies and Lloyd's: a market place representing 44% of Britain's non-life insurance business estimated at US $64.3 billion in 1992.

A. LLOYD'S OF LONDON

When one thinks of marine insurance, one immediately thinks of Lloyd's of London.

The Lloyd's marine insurance market began more than 300 years ago and the story of how it all started in a London coffee house is well known. Suffice to say that since the late 17th century the name "Lloyd's of London" has been synonymous with insurance, primarily marine insurance for the first 200 years. The vitality of the Lloyd's market has certainly played an important role in the development of the insurance industry and related activities in the city of London.

Mr. David Rowland, the chairman of Lloyd's, during his presentation as guest speaker of the Canadian Club, in Montreal, on October 11, 1995, boasted that many of the world's leading underwriters are based in Lloyd's Underwriting Room and that the market attracts more than half the international insurance premiums (all sectors of insurance not only marine) that flow into London. Mr. Rowland added that throughout its history, Lloyd's has been at the leading edge of developments in the insurance industry. It produced the first motor policy, the first satellite cover and the first cover against computer fraud. Lloyd's has indeed been very
innovative in the types of coverage offered to its clients. One cannot but agree with Mr. Rowland that this form of innovation on the part of Lloyd's has been possible due to the structure of its market, namely a market where individual underwriters accept risks on behalf of syndicates of individual members (or names) whose financial resources provide the security behind Lloyd's policies. A syndicate is not a legal entity: each member of the syndicate is responsible only for the proportion of business written on his/her behalf.

Lloyd's has succeeded to maintain and, at times, increase its share of the insurance market by very rapidly meeting its clients' insurance needs on either standard or tailor-made terms and conditions. Lloyd's has always had the reputation of being more flexible than insurance companies and thus more responsive to its clients needs. This can be explained in part by the degree of responsibility (i.e. freedom to bind) granted to Lloyd's underwriters.

The Lloyd's market is divided into four (4) areas;

Marine, Non-Marine, Aviation and Motor.

The marine market, as earlier mentioned, is by far the oldest market at Lloyd's. It provides insurance for all types of vessels, for the largest tanker to all classes of yachts, for all types of cargoes and for the diverse risks associated with the off-shore oil and gas industries. The 1993 year of account, the most recent year of account, is not yet closed (the rule at Lloyd's being that a year of account will not be closed until three years later, a rule that is soon to
change to one year), however, we can estimate that the marine market will likely represent approximately 25% of the net premiums received at Lloyd’s. This is more than $2 billion in what was a contracting market in 1993.

Underwriters in the non-marine market cover risks of almost every description. Lloyd’s will underwrite major infrastructure projects, risks associated with the nuclear industry, insurance of fine art and jewelry, many forms of professional indemnity, product liability etc...

Lloyd’s issued the first standard aircraft insurance cover in 1911, and Lloyd’s aviation market today leads the world in the provision of cover for all aspects of the global aviation industry, from damage to aircraft to the liability risks faced by airline operators, airport authorities and manufacturers.

The motor market provides cover primarily for commercial fleets and private motorists in the United Kingdom.

The following comments on how the marine market works at Lloyd’s can also apply to the non-marine market.

The Underwriting Room at Lloyd’s is the market place where Lloyd’s brokers (discussed hereinafter) and underwriters negotiate the placing of insurance and re-insurance.
Underwriters traditionally serve several years of apprenticeship before becoming a deputy underwriter and later the underwriter of a syndicate. Until the early 1990's, underwriters generally developed their skills and expertise on the job and for the most part did not receive any special training or higher education. However, from the recent presentation of Mr. Rowland this may now be a thing of the past.

Because of a number of circumstances in recent years (amongst them financial difficulties due to exceptionally heavy trading losses and continuing problems over litigation within Lloyd's), the Lloyd's market has had to readjust and reorganize itself. Amongst the improvements are professional qualifications and participation in continuing education program. These are now mandatory for underwriters and those aspiring to become underwriters.

As mentioned earlier, underwriters accept risks on behalf of their syndicates. The market is based upon the principle of spreading risks and each risk is underwritten by a number of syndicates. Very often each member (name) participates in several different syndicates. The Lloyd's market presently has approximately 160 syndicates, down from over 401 in 1990, however, its capacity (premium limit which determines the maximum amount of business which the syndicates may underwrite) has been restored this year to its level of 1990, approximately U.S. $16 billion. The number of syndicates has been reduced through a large number of mergers, and syndicates going into run-off. Each syndicate has one underwriter, and it may have several deputy underwriters.
During a normal trading day the underwriter will be sitting at his desk (box) in the Lloyd's Underwriting Room and will be meeting Lloyd's brokers who will be proposing various businesses. The underwriter will consider the risk, decide if he wishes to subscribe to it and if so for what portion and on what terms. Most often the broker will commence placing a risk with an underwriter who is considered by the market to be a specialist for that type of risk. That first underwriter who will accept a portion of the risk by scratching (initialling) the broker's placement slip will often be considered the lead underwriter on the risk. The broker will then offer the risk to various underwriters until the risk is fully written. The reputation of the lead underwriter will help the broker place the risk with the following market in good time for his client, the assured. It can therefore be easily understood that an underwriter's reputation is important and that the market is sensitive to rumours.

The mechanics of placing a risk has been oversimplified for the purposes of this paper. However, it is evident that competing underwriters have created a very flexible system whereby experienced and specialised underwriters are able to take on-the-spot decisions to the great benefit of their clients.

The risk will often be offered, negotiated and accepted in a relatively short period of time, and often policies are issued after a loss has taken place.
The policies are secured by the financial resources of the members of each subscribing syndicate and by the various securities schemes in place at Lloyd’s. The liability of the members has always been unlimited and traditionally membership was limited exclusively to very wealthy individuals who pledged their entire personal fortunes to meet policy holders’ claims. This has also changed.

As part of the reorganisation presently underway at Lloyd’s, since January 1994, the admission of corporate capital with limited liability has been permitted in order to inject new capital into the system. This very recent radical change in the Lloyd’s system is being monitored closely and various administrative and regulatory adjustments will likely continue to be made to satisfy both names and corporate capital. Corporate capital accounted for 23% of the Lloyd’s market capacity for 1995.

Lloyd’s is a self regulated organization operating under the provisions of the Lloyd’s Act 1982 and with the recent changes the governance of Lloyd’s has been tightened. This includes a ruling Counsel which is empowered to enact by-laws, and separate market and independent regulatory boards. The market board is responsible for the commercial management of Lloyd’s and the independent regulatory board will be adopting regulations to better control the activities of the various Lloyd’s players.
B. LLOYD'S BROKERS

The role of a Lloyd's broker is not significantly different from any other broker, and like any other broker it is governed by the general principles of agency.

Traditionally, Lloyd's underwriters do not have direct contact with an assured seeking cover. Insurance and re-insurance business are brought into the market via Lloyd's brokers.

To become a Lloyd's broker one must adhere to certain Lloyd's standards of professional conduct and meet strict financial and operational criteria. Brokers that are not Lloyd's approved brokers can access the market by entering into "umbrella" agreements with Lloyd's brokers.

Like any other broker, the success of a Lloyd's broker will depend on his relationship with his clients and his ability to keep abreast of the developments in what are at times very specialized fields. He must also have the latest market knowledge such as capacity, level of cover, premium rates etc... The broker will suggest strategies to his client for the management of a risk, and when that involves an insurance product, he will initially broke it in the market most favourable at the time for his client. The broker will endeavour to make the best possible presentation of the risk to the underwriters, always careful not to omit any "material" facts or misrepresent the risk. The successful broker, whether a Lloyd's broker or not, will market his skills by insisting that he is creative and innovative when it comes to finding solutions to
insurance problems. Indeed, brokers can play a very important role in the placing of their clients' risks by drafting new clauses, arranging innovative covers and adjusting premiums in line with their clients' requirements in constantly changing market conditions.

C. THE INSTITUTE OF LONDON UNDERWRITERS (ILU)

The ILU is an association of British and foreign owned (over 55% of the membership) corporate members who write world-wide coverages for all aspects of marine, energy and aviation insurance.

The ILU, which celebrated its 110 anniversary this year, is an important player in the London insurance market. On June 1, 1995 the ILU had 65 company members. These insurance companies cooperate through the ILU to promote London as a single marine insurance market and to streamline the market practices. However, the ILU is not a cartel and all company members of the ILU compete with one another, Lloyd's and the general insurance market as a whole.

From its inception it was the ILU's aim to represent the interests of company marine insurers, and to create a forum of informed opinion to further the interests of the London market. The ILU has become a powerful influence in the insurance industry, with its expertise
embodied in famous clauses which evolved in close cooperation with Lloyd's. The ILU, like Lloyd's, is both a trade association and a market place.

In one of its latest publications the ILU reported that more of its members are now taking an active interest in energy insurance, with an increasingly high proportion of the London market being lead by ILU companies.

2. **THE DOMESTIC MARKET**

Insurance companies carrying on the business of marine insurance in Canada are for most part members of the trade association known as the Canadian Board of Marine Underwriters (CBMU) which was founded in 1917. As of November 1, 1995 the CBMU had 23 corporate members. All of these companies are Canadian subsidiaries of foreign insurance companies and the company writing the largest portion of marine insurance in Canada is an American company with offices, *inter alia*, in New York, San Francisco and Houston. Members of the CBMU carry on business throughout Canada. However, Toronto is the main centre for marine insurance, with smaller markets in Vancouver, Halifax and Montreal. The volume of marine insurance business written in Canada in 1994 totalled approximately $128 million of net premiums.
In 1994, just over 50% of the marine insurance premiums were collected on cargo, 30% on hull, and 20% on yacht policies respectively.

3. THE PROTECTION AND INDEMNITY CLUBS (P & I CLUBS)

P & I Clubs are mutual associations of shipowners who provide custom made coverage for their members’ ships and their liabilities. Standard products offered through P & I Clubs include liability insurance (P & I coverage), freight, demurrage and defence coverage, loss of hire coverage, war risks etc... Some Clubs also offer hull and machinery insurance.

Most Clubs have managers or agents of managers situated in London. The association will render support services to their shipowner members such as technical assistance, claims settling services for cargo claims, collisions, crew and personal injury and defence. The association, as a service to its members, may also provide security for claims via Letters of Undertaking to facilitate the release from arrest of vessels.

Clubs will tend to group shipowners having similar or common interests. Other associations will cover specific risks. For example the Strike Club covers such risks as crew’s strike, port strikes, etc..., and the Through Transit Club covers the standard liabilities of freight forwarders, through transit operators and stevedore/terminal liabilities.
4. FOREIGN MARKETS

In most countries there is a domestic cargo market and normally the coverage for such product will not be placed internationally. Most developing countries have enacted restrictive measures in the field of marine insurance, such as forbidding buyers to insure imports abroad, to protect the domestic market. The London market and also to a lesser extent the New York market, where cargo insurance is available for international trade, are exceptions to the rule.

With respect to hull and machinery coverage the United States and European markets are available for international placing and will be used when the London market prices reach certain levels. Insurance companies in the United States, France, Germany and Norway, to name but a few, will compete and/or complement the London market from time to time.
PLACEMENT OF MARINE INSURANCE WITH RESPECT TO THE PLIGHT OF

THE "AMICUS CURIAE"

1. THE SHIPOWNER

To insure its good vessel the "AMICUS CURIAE", the Australian shipowner will likely have retained the services of London brokers. It may also have done business through a local broker who will have brought the business to its London counterpart.

The first type of cover that the broker would likely place is the hull policy covering the hull and machinery risks of the vessel. After having received all of the (material) information from the shipowner or its broker, and having prepared his brief, the Lloyd's broker will walk over to the Lloyd's building to meet underwriters and obtain quotes from the syndicates he has targeted and made a presentation to. That same broker, or one of his colleagues, will also present the risk to ILU companies at the ILU building.

The actual placement file will stay at the broker's office and more often the broker will only have a synopsis of the risk when making his presentation to underwriters. The broker does not always have a technical background or full knowledge of the file when the risk is placed and must take care to insure that no material omissions or misrepresentations will arise. The Lloyd's broker may also present the hull and machinery risk by phone and fax to various foreign markets.
and may well contact prospective insurance companies in Norway, France, Singapore or the United States. If indeed inquiries are made in the United States, the broker will most likely deal with the New York market which, generally speaking, is the only market place in the United States where international business is accepted.

At that stage it will be important for the broker to determine if one or more Lloyd’s or ILU underwriters are ready to lead the market and, if so, on which terms. As advised earlier, the broker will attempt to entice a lead underwriter to accept the risk at a fair price, and will then use this to successfully place the balance of the risk in good time with the following market. The broker will go back to his client, the shipowner, with either a firm quote which he will have to deliver or with an indicated quote which is exactly that: an indication of a quote to be firmed up if the shipowner is interested to pursue on that basis.

At the same time that the hull and machinery needs are being satisfied the shipowner will want to have all of the potential liabilities covered. It may use the same Lloyd’s broker to prospect the London market for protection and indemnity coverage. Such cover is available with Lloyd’s and the ILU companies, however various layers of cover will be required to be arranged before the shipowner can properly cover the liabilities in regard to its ship "AMICUS CURÆ".

A more likely scenario is for the shipowner’s broker or the shipowner itself to approach a P & I Club to insure such liabilities. The Club will normally offer to cover the shipowner’s
liabilities, including pollution liabilities up to an initial cover of U.S. $500,000,000 "each vessel any one accident or occurrence". Some P & I Clubs also offer competitive hull and machinery insurance to their members.

The shipowner will also be able to place on the same London market or through the P & I Club loss of hire coverage for the vessel, strike cover, war risks etc... The prudent shipowner will pay the necessary extra premium to the P & I Club to have full coverage for Freight Demurrage and Defence.

2. CARGO OWNER

The terms of the sale of the cargo will determine who is responsible to insure the cargo on the "AMICUS CURIAE". If the wood pulp and hazardous cargo have been sold on a CIF basis, the Canadian shipper/seller will have placed the insurance on the cargo. Should the cargo have been sold on a FOB basis it will be for the consignee/buyer of the goods to buy insurance. In either situation the shipper or consignee will likely make arrangements with its domestic broker to place insurance on the cargo. The countries of shipment and receipt have active cargo markets and it is likely that the party organizing the insurance will place the cover in its proper country. The major exception to that rule is the London market which offers competitive international cargo coverage and to a lesser account the New York market.
Assuming the cargo is sold on a CIF basis, the Canadian shipper's broker will canvas
the Canadian market by phoning and faxing the coverage requirements to various Canadian
insurance companies. If the broker is in Vancouver it is likely that it will contact the marine
insurance market in Vancouver, which is largely a separate market from that in Toronto or
Montreal. The Vancouver market is primarily an agency market where managing general agents
of insurance companies have binding authority to issue policies for such insurance companies
of for pools of companies. The broker may also contact insurance companies in San Francisco,
Toronto or Montreal which are not members of the Vancouver companies or pools of
companies. The Canadian broker will also most likely contact its London counterpart who will
attempt to place the risk on the London market. If the risk is placed in Canada or in the United
States it will most probably be 100% with one insurance company or at least with one general
agent fronting for a pre-arranged pool of companies. If the risk is placed on the London market
it will most probably be by way of a subscription policy.

Should the shipper of the wood pulp or of the hazardous cargo also be the charterer of
the "AMICUS CURIAE", the shipper will need to obtain charterers' liability coverage, or if the
shipper has entered into a contract of affreightment whereby he guarantees a safe loading berth,
he will have to buy safe berth insurance. These types of coverages are available in the local
market in Canada and on the London market.
3. **THE TUG AND BARGE OWNERS**

The Canadian owner of the tug "FOREVER READY" and the Canadian owner of the barges (whether one and the same or two different entities) will want, like their Australian counterpart, to fully insure their assets to cover all reasonable liabilities. Incidentally, shipowners' will insist on very strict insurance covenants whereby their lenders' loans are secured as much as possible by the various policies in place.

The tug owner will have the opportunity to place its hull and machinery cover on the Canadian market or London market. The tug owner will contact its local Canadian broker who will communicate with Canadian insurance companies to place a hull and machinery cover. The Canadian broker will also communicate with its primary Lloyd's broker who will canvass the London market as well as the European markets. Many scenarios are possible, one being a Canadian insurance company being chosen to lead the risk with a following market in Canada and/or the London market and/or other foreign companies.

With respect to the tug owner's liability coverage, its broker, through its same counterpart in London, will of course have the London market available to place the owner's risk. It is likely that the hull and machinery insurers of the tug will also write the liability coverage. The tug owner will also have a limited choice of P & I Clubs in light of the small tonnage of the ship to be insured. Most likely only two clubs will accept entries for such a
small vessel. One of these also offers hull & machinery coverage. As earlier advised, the tug owner will be at liberty to access the Clubs directly without having to go through a broker.

The tug owner of the "FOREVER READY" will have been prudent to obtain, in advance, a blanket cover for salvor's liability included in his P & I cover.

The broker of the tug owner will have obtained a copy of the standard towing conditions of the tug prior to placing the liability coverage since those conditions are material to the placement of the risk and must be brought to the attention of the underwriters.

The owner of the barges will go through the same exercise as the tug owner did to fully insure its assets and its liabilities. However, if the owner's fleet consists of unmanned barges only, it is likely that no P & I Clubs will accept such an entry and recourse will be made to the other markets. The prudent barge owner will also obtain coverage for tower's liability. The broker of the barge owner should also take great care to obtain full pollution coverage for the fuel barges whether with a P & I Club or on the London market.

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