

The Italian Hull Claims Market Practices*

Introduction

The Italian Hull Market has always been relatively small in size and in recent years, the number of players has decreased even more. As a matter of fact, only about half a dozen companies still underwrite hull business, basically led by two major companies (SIAT and UMS Generali Marine), the majority of the business being produced by two or three main brokers. Also, claims are handled involving a very few number of law firms, surveyors and average adjusters. To knit the circle even more closely, most of the above are based in Genoa, which may be considered as the hub of the hull insurance market. However, there are still some exceptions coming from Naples and (very few) from Venice, Trieste and Rome.

The business generated by the Italian Market, which is made up of pure Italian and also a considerable amount of foreign business (mainly Greek) that is placed directly through Genoa, comes to the market through brokers, not infrequently from abroad but then rarely as the leading market. Where there are close connections between the insurance companies and the assureds it is not impossible - even if very rare - that the placement would be made directly by the assured. More frequently, this would occur with yacht and builders' risks business.

If the business is placed by the broker, then any contacts of any kind between insurer and assured are maintained via the broker, from the first advice to the final payment of the claim. Being the leader very jealous of his role as the "hub" in the appointment and control of the network of experts, he respects the role of the broker as a connection with the client, avoiding any direct contact and any interference.

Nowadays, with communications being so good, it is very rare that a claims representative is unavailable for consultation even outside working hours and therefore the need for the broker or the assured to act independently are exceptional indeed. On these rare occasions, anyway, the broker or even the assured is permitted to make the appointment of a surveyor or a lawyer. The smallness of the Italian market can be a benefit in such occasions, since this reciprocal knowledge minimises the risks of a late disagreement from the leader.

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A very particular case is the appointment of surveyor and or lawyer by the P&I, when some caution is needed with regard to any foreseeable conflict of interests; when no hurdle is in sight, then the leader is always inclined to confirm the appointments already made, also in a view of minimizing costs.

As a general principle, we may say that in the claims process the broker plays the role of the front-end of the assured, and is the channel of communications; he is also a facilitator in the sometimes problematic relationships with the client and we try and find solutions together when problems arise.

Business then goes abroad either as reinsurance (mainly in London) or - through the brokers or by the owners themselves - as direct co-insurance but following the Italian leader.

The leader also issues guarantees in salvage and collision cases on behalf of the Italian Market, and liaises with the broker to ease - whenever possible - the issuance of the other markets' guarantees.

Insurance Conditions

The majority of business generated in the Italian Market is placed on Institute Time Clauses, but the Italian market policy is based on the "Camogli Form", which stipulates that the insurance contract is subject to Italian Law and jurisdiction. This is not usually a problem, since the said form also specifies that the English clauses attached must be interpreted and applied as they are in England, but on occasions this can delay matters in the event of there being a dispute

The Italian system works on a strong market leader and there is an expectation that other markets will be obliged to follow the leader even when the business comes as a co-insurance, unless the policy states otherwise.

Role of the Leader

The leading underwriter in Italy controls the conduct of claims absolutely.

The leader receives first notification and reacts accordingly depending on the kind of accident. Whilst the first immediate step is the appointment of the surveyor, occasionally the first contact

could be the lawyer, particularly in collision cases, when issues such as statements, guarantees or jurisdiction are involved.

Surveyors are selected and appointed by the leading insurer from an unwritten list chosen mainly from previous experience and proven professionals, who have been working for many years with the company. It is not a rule, but it is a fact that most of these are members of AIPAM, the Italian Association of Naval Architects & Marine Engineers Experts in Maritime Casualties, a member of FEMAS (Federation of European Maritime Associations of Surveyors and Consultants). These bodies were set up to raise and maintain the qualifications and standards of surveyors both in Italy and the rest of Europe.

Whenever appropriate and cost-effective, local surveyors are also appointed, both in Italy and abroad, but big claims are normally handled by a very selective and trusted few. Consequently, there is no need for any formal instructions to be issued, nor are there written Terms of Engagement and/or Service Level Agreements. Similarly no special consideration or agreement on expense budgets are necessary. This kind of close relationship does not usually apply to other experts (e.g. fire experts, metallurgists etc.), chosen on a case to case basis by specialism and expertise.

There are the odd occasions when an Assured may have a preference for the appointment of a particular surveyor, usually because he has worked with him before or the surveyor may be familiar with the vessels in the fleet (on some very special occasions these surveyors are even named in the insurance policy) and provided the name suggested is of the required calibre, the leader would not usually raise objections unless there was any conflict of interest, incompatibility or other reason.

The principal surveyors in Italy are usually qualified as naval architects and marine engineers and therefore have the capability of dealing with most casualties. It is unusual for the Italian Market to use the Salvage Association as their methods of operation in the past are quite different to the role of the Italian Surveyor, which is more specialised.

The leader receives all reports direct and dispenses this information to following underwriters and co-insurers as required. He controls all discussions, negotiations and would only inform others where the importance of the case merits.

One special piece of information is of course the reserve, established by the leader on the basis of the survey report and taking into consideration legal or adjuster's advices (plus some personal feelings and experience, in particular with regard to costs).

Whilst on the subject of communication and the establishment of reserves, one has to bear in mind that the original Broker and the assured are keys to the success of this operation whenever foreign markets are involved: the Italian leader in almost every case is not aware of the make-up of the following market and therefore must rely on the broker to pass any information or documents to other insurers/markets involved; on frequent occasions these days, there can even be more than one broker acting for an assured in which case it has to be the assured's responsibility to supply the correct information when required. It is worthwhile to point out that these considerations apply only to foreign accounts, since the Italian fleets are placed 100% in Italy.

The surveyor will attend the casualty, and will liaise closely with the Master and Owners' Superintendent to report on the damage, review causation and, unlike the SA, will work with the Owners' representatives in establishing and agreeing cause if at all possible at an early stage. Apart from this role, he would automatically inspect all relevant papers on board, which will now extend to ISM matters and will check that all these papers are in order. He will also liaise with the Classification surveyor on any matters affecting class and will also obtain copies of the current certificates for presentation to the leading insurer. These documents are then included in the final survey report presented to the leader.

The surveyor would also play an active role, together with Owners' representatives, in the preparation of repair specifications, choice of repair yard and will attend during repairs as required and may even negotiate the final price. He will also supply the leader with estimated costs of repairs so that proper reserves may be kept. Any confidential matters are dealt with in private correspondence with the leading underwriter.

Once all the repairs are completed and the final report is issued, this will include a breakdown of the costs between "average", "owners" and "items for adjuster consideration".

The surveyor also carries out other types of survey such as "speed and angle of blow" and "general average" and very often is called upon to assist the solicitor appointed by the insurers in the more important cases. It is not unknown for him to take statements from the crew and to share this information with the appointed lawyers.

Role of the Lawyer

Lawyers in Italy may be appointed on a different basis than other markets at least in the early stages, since usually they are considered as in-house consultants that deal with all the legal matters and in particular to act as liaison with the (inevitable) London lawyers. Again, of course, there is no need for any instructions to be issued, nor are there written Terms of Engagement and/or Service Level Agreements. It is not unknown that fees are not charged until such time as an assessment of the case is made and whether a lawyer may actually be required.

Role of the Average Adjuster

The Average Adjuster in Italy is responsible for drawing together all the information that has been obtained by the surveyor and to put this into a claims statement for presentation to the appropriate Italian Claims Committee. His role is very different from that in the UK as he is appointed by the Insurer and does not play a direct role in the handling of claims. Nevertheless, he is there to ensure that all parties have acted properly, that the figures are correct and that the interests of co-insurers and re-insurers are properly preserved.

The Italian adjuster (appointed by the insurers) may act as co-adjuster when the assured wishes to appoint his own adjuster (this happens almost always when the assured is not Italian). In this situation, the co-adjuster liaises directly with his foreign colleague and through their discussion the claim is led to the settlement.

Again, there are very few adjusters in Italy and almost all based in Genoa.

One aspect to emphasise is the amazing difference in the Italian adjusters' fees compared to their foreign colleagues (from Piraeus, for instance). One may suggest that the Italians enjoy the benefit of the preliminary and extensive work performed by the surveyor in reviewing the owner's claim (itself work duplicated by the owner's adjuster), but still sometimes the degree of the difference in these fees simply makes no sense, thus frequently causing difficulties in the settlement of the claim.

Italian Claims Committees

Although the Italian leader plays a primary role in the handling of claims, every claim has to be approved by one of the Claims Committees made up of claims managers of the various Italian companies before it can be passed for payment by co-insurers in Italy and other markets. There are two committees, the first in Genoa and the second in Trieste. The Genoese one is the most important, having SIAT and UMS prominent among the members; this Committee meets every Thursday morning, and the various claims documents for that week must have been submitted by the Friday prior to the meeting. These claims are then reviewed and presented to the committee by a former Senior Adjuster and discussed openly in the committee meeting. When the claim exceeds a certain limit (currently 500.000 euro), all the supporting documents are available for inspection by any of the companies' representative prior to the meeting.

Once the claims are approved, they are then dispatched to the co-insurers concerned. Notification regarding this approval appears on Claims bordereaux that come into London. Because of the strong following clauses that appear in the policies, there is an expectation that following underwriters will pay automatically within 30 days unless they can show just cause for doing otherwise. It is unusual for the Italian underwriters to provide original documentation to reinsurers (although it is sometimes possible to gain extracts where there are genuine reasons for investigating the claim); the following markets involved with direct business as co-insurers, on the contrary, receive all the relevant papers (survey reports, adjustments etc.).

Summary

The Italian claims market is very leader-centric and relies heavily on claims being controlled by the leading underwriter. It is his responsibility to appoint surveyors, lawyers, adjusters and any other experts that may be necessary in the successful handling of any claim. To achieve this, there has to be a strong element of confidence and trust in the leader as, without this, the system could not work effectively.

There have been criticisms in the past about insufficient information being circulated by Italian leaders to co-insurers, which really is a reflection on the handling of Italian claims by a strong leader. However, there is now an awareness that there is a need for better information being made available to following markets, particularly with regard to keeping reserves. Hopefully this will not lead to a mountain of documentation being sent all round the world. Our view is that the leader

should be allowed to lead and only on those more important occasions should there be the need for extensive consultation with co-insurers.

Reinsurance is still an area where the market in Italy expects other markets to follow, unless of course there are important issues which need to be addressed before the original settlement is made. On these rare occasions, consultation with reinsurers will take place.

Perhaps the strength of the market rests with the Italian Claims Committees, to whom all claims have to be submitted for approval. However, once this is done, full claims settlement follows quickly, usually within 30 days.

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