

IUMI 2017  
TOKYO



## Hanjin a year on – have insurers' fears turned into reality?

Mike Roderick, Partner, Clyde & Co LLP.

CLYDE & CO



# QUESTION 1



This time last year were you worried about the impact Hanjin's bankruptcy might have on your business?

1. Yes

2. No

# QUESTION 2

This time last year were you worried that Hanjin's bankruptcy might be just the first?

1. Yes

2. No



# Agenda



- Where we were a year ago
- An update on Hanjin's bankruptcy
- An update on the container industry's response
- An analysis of the effect of Hanjin's bankruptcy on the insurance industry and how it has affected you

# Hanjin update



- 31.08.16 :
  - Hanjin files for bankruptcy protection in South Korea
  - Potential \$2 billion impact on the insurance industry
- A number of vessels were arrested in port, others remained at sea outside national waters
- Court rulings in various jurisdictions were made giving recognition to the South Korean bankruptcy proceedings - this prevented further vessel arrests in those jurisdictions (cf. the UNCITRAL Model Law on cross-border insolvency)
- Vessels were then able to enter and depart without risk of arrest
- Widespread initial supply chain disruption slowly eased

# Hanjin update



- 02.02.17 Hanjin declared bankrupt by Korean Bankruptcy Court
- 17.02.17 Bankruptcy officially confirmed
- 01.06.17 First creditors' meeting
- 01.06.17 Rickmers Line files for insolvency
- 03.08.17 Hanjin filing in New Jersey Court Chapter 15 proceedings
  
- Recoveries of \$220 million made but claims filed of \$10.5 billion
- A “*woeful result*” for creditors - any payout to unsecured creditors will be minimal and not for many months

# Hanjin demise a spur to action?



## Mergers and takeovers

- Dec 2016            Maersk                    Hamburg Sud
- May 2017           Hapag Lloyd            UASC
- July 2017           COSCO                   OOCL

## Alliances

- 2M – Maersk / MSC
  - The Alliance - Ocean Network (KLine/MOL/NYK) plus Yang Ming/Hapag Lloyd
  - Ocean Alliance – CMA CGM/COSCO/Evergreen
  - Korea Shipping Partnership
- 
- The commercial landscape is vastly different compared to what it was a year ago as lines seek economies of scale in a difficult trading environment
  - The outlook for small to medium sized players is uncertain

# In the wider world..



- IMF Growth Forecasts
  - January : *"after a lacklustre outturn in 2016 economic activity is projected to pick up pace in 2017 and 2018"*
  - July : *"The pickup in global growth anticipated in the April Outlook remains on track"*
- A fragile recovery in the liner shipping market
  - Increased demand and throughput figures up
  - Improved freight rates
  - Higher demolition rates, low new order book
  - Supply and demand more in balance but over capacity still affects the market
- **"Container lines have stopped losing money"** (Lloyd's List 07/09/17)



# In the wider world..



- Delivery of the OOCL Hong Kong and sister vessels – 21,413 TEUs (Maersk Triple E class 18,000 TEUs)
- Press reports of CMA CGM and MSC considering orders for 22,000 TEU vessels
- Impact on supply and demand?

# H&M insurance



- Hanjin's demise has had limited impact
- More general concerns remain :
  - Depressed charter/freight rates may lead to cost cutting on crew recruitment and training, deferred maintenance
  - The risk profile of the container fleet is changing - fewer but larger ships – and fewer clients
  - Vessel size has a direct impact on salvage, wreck removal and port of refuge issues
  - Also port aggregation
  - These issues are not directly related to Hanjin

# Bigger is better...



19.09.2017 Courtesy The  
Ipswich Star – OOCL Hong Kong  
at Felixstowe

# Bigger is better ...?



19.09.2017 – Courtesy  
Fleetmon



2017 TOKYO  
September 17-20

# Container lessee default insurance



- Policies typically cover loss or expense “*directly resulting from contractual default, bankruptcy (de facto or de jure), insolvency or going out of business or abandonment of Equipment by [the] Lessee*”
- Cover for physical damage, costs of recovery and repositioning, loss of revenue
- A number of policies paid out on a total loss basis
- Is there a reduced appetite for writing this business line?



# Cargo insurance



- Hanjin's demise has had an impact but not a major one - the risk was spread widely across international markets
- Cover continued “*during delay beyond the control of the Assured*” (cf. Clause 8.3 of ICC(A))
- Claims were for increased shipping and forwarding charges more than physical loss claims e.g. payments to terminal yards to secure release of containers, unpaid freight

# Cargo insurance



- Policies often contain extra expense clauses giving cover beyond ICC(A) so potential arguments over the scope, for example, of clauses 12 and 16 therefore avoided
- Extra expense clauses take a number of forms
  - Cover often not sub-limited
  - Nor dependent on the operation of an insured peril
  - Nor restricted to expense “*properly and reasonably incurred*”
  - And can override Policy exclusions

# Cargo insurance - extra expense clauses



***“Notwithstanding anything herein to the contrary**  
this insurance is also to indemnify the Insured for up  
to US\$ X... in respect of additional expenses incurred  
in attempting to prosecute the intended voyage  
(..including all forwarding costs..) as a result of ..*

*(a) the vessel being... detained and/or delayed  
for any time period and **as a result of any  
reason whatsoever** excluding however  
financial default and/or insolvency of the  
Assured...”*



# Cargo insurance – lessons learnt



- Markets writing on 1982 ICC clauses or equivalent were able to rely on the stronger insolvency exclusion in the 1982 clauses
- NVOCCs survived relatively unscathed – an NVOCC B/L contains an obligation to carry the cargo to destination - with no legal entitlement to claim extra charges!
- Extra expense clauses not sub-limited

# Aggregation



- There were fears of aggregation issues arising
  - *“any one loss or series of losses arising out of one event...”*
  - *“all claims ..resulting from any one occurrence or series of occurrences arising out of one event shall be adjusted as one claim ..from which there shall be deducted US\$..”*
- They have not been realised... at least so far

# QUESTION 3



- Have your fears about Hanjin's bankruptcy been realised?

1.Yes

2.No

# Conclusion

- The container industry is in a very different place to last year
- But is still buffeted by strong economic headwinds
- Hanjin's bankruptcy has not had a major impact on H&M or P&I insurance
- The effects have been felt more on the container lessee default and cargo insurance side – though not as great as first feared
- But there can be no room for complacency



# Q & A

Mike Roderick  
Partner  
Clyde & Co LLP.  
Website : [www.clydeco.com](http://www.clydeco.com)  
Tel: 0044 (0) 207 876 4534  
Email: [mike.roderick@clydeco.com](mailto:mike.roderick@clydeco.com)

CLYDE&CO