Marine Insurance Report

It has been a farely quite summer in marine insurance field and underwriters are now looking at this year's market's needs.
It is though interesting to report a decision by the Commercial Court in London regarding a dispute under a "Loss of Hire" marine policy. Issues in respect of non disclosure and misrepresentation were raised by insurers as well as whether the assured failed to act with due diligence.

The series of events and arguments refer to defendants insurers who issued a loss of hire marine policy for the year commencing May 2008. The daily sum insured was $70,000 and Institute Time Clauses – Hulls 1983 included "excess" clause and "inchmaree" clause for loss or damage caused by, amongst other things, negligence of master, officers and crew.

The claim by the assured for $2,100,000 equivalent to 30 days off-hire was a breakdown of propulsion motor after which vessel was placed off-hire by her charterers.

The insurer defendant's arguments were focused on the basis of material non-disclosure and misrepresentation on the grounds that there had been more than one hull claims on the vessel and the assured gave wrong information and further that vessel experienced significant off-hire periods in the past during repairs contrary to assureds' information that apart from scheduled dry-dockings and few hours off hire vessel did not experience in the past any long off- hire periods. In addition insurers argued that vessel did not have any excellent hull record and the assured failed to disclose that the motor suffered from two design problems and no notification had been conducted.

It was held that the claim on the policy succeeds and could not be avoided for nondisclosure of misrepresentation. The materiality of previous hull claims on the vessel were linked to the extent to which they caused loss of hire and previous off-hire periods were not material and did not result in major business interruption.

Although a statement was made by the assureds' brokers that there was an "excellent hull record" this was made in good faith.
It was interestingly stated that the defendant had not made out inducement and the Court was not satisfied that the senior underwriter would have proceeded any different had he been told of the two previous hull claims of previous only few days off-hire. Additionally there was no want of due diligence by the assured as the standard of care under the due diligence proviso to the Inchmaree clause was want of reasonable care, therefore there was no lack of due diligence on the claimant's part.