



## About YPSN

The YPSN monthly newsletter aims to provide you with the latest developments affecting our members in shipping in Hong Kong and broader China.

If you are interested in registering as a member, sponsoring an event or suggesting activities for YPSN to organize, please feel free to get in touch with us on [youngprofessionals.shipping@gmail.com](mailto:youngprofessionals.shipping@gmail.com)

## The YPSN does China Maritime and Spring Social

On the 18th and 19th of February Hong Kong was host to China Maritime 2014, a two day conference offering an extensive programme with 3 main tracks and over 30 presentations. This year, the conference focused on topics such as Regulatory Requirements, Crew Welfare and Managing in the Shipping Industry.

The YPSN occupied the last few hours of the conference on the 19th where they introduced speakers Rory MacFarlene of INCE & Co, Caroline Thomas of Holman Fenwick Willan LLP and Rafael Riva of Lloyd's Register in Shanghai. The YPSN crowd packed the room to listen to pressing concerns including the legal and practical issues arising from increasingly utilizing the Northern Sea route, recent trends in marine insurance and how government policy in Hong Kong and the UK is due to affect marine insurance practices and procedures, and global marine trends that may define the shipping industry by 2030.



YPSN attendees at China Maritime 2014

More specifically, Mr. MacFarlene spoke about the economic advantages and disadvantages of the Northern Sea route. He pointed to the fact that although attributes such as less time, distance and speed, less bunkers and less risk of piracy make the Northern Sea route potentially cheaper and more attractive to shipowners, aspects such as seasonal differences, navigational difficulties due to the route's non-linearity and decreased visibility, the challenge of responding promptly to casualties, the cost of cleaning potential environmental disasters and the non-flexibility of the route commercially, are all factors that may deter the prospects of the route competing on the same scale as other more established trade routes. Legal issues that may arise include higher insurance costs, the lack of statistical data and the sufficiency of ice breakers. From an insurers perspective, there may be adaptations needed to be made due to the differing nature of ice class vessels and the regulation of the passage. The speech also pointed to issues accruing from legislation drafted and enforced solely by Russian authorities that may be restrictive to some international carriers. Although the volume of vessels that commercially use the route has risen from 2 vessels in 2009 to 46 vessels in 2012, the commercial viability of the route on a greater scale is still unknown.



Rafael Riva of Lloyd's Register Shanghai presents Global Marine Trends 2030

Following a brief coffee break, solicitor Caroline Thomas presented upcoming changes to insurance policies in Hong Kong as well as in the UK. She touched upon the consolidation of the IIA and the influence of risk based capital and captives on marine brokers, insurers, customers and consultants. She stressed the necessity for everyone in the shipping industry to be aware and compliant with any new rules and regulations being enforced in order to remain relevant and competitive.

The closing speech of the seminar was given by Rafael Riva of Lloyd's Register in Shanghai who analyzed possible calculated future trends that may have transformative effects on the shipping industry as we know it. As outlined in the comprehensive report entitled 'Global Marine Trends 2030', Mr. Riva discussed influencing factors such as resource needs, the growing global population, globalization and, in particular, the rate and scale of China's growth which he predicted will become the world's biggest economy by 2030, as key drivers that will shape the shipping industry over the next two decades.

As the seminar came to a close, all the YPSN attendees were invited to the YPSN Spring Networking Social party held at Socialito bar in Central. The party brought together over 250 maritime industry professionals from various specialist sectors who had the opportunity to catch up, meet new faces, discuss deal prospects or simply have fun. Judging by the feedback we have received from our members and beyond, the day was an overwhelming success.



Evelyn Liu of Walkers (right) presents Rugby Seven's ticket to lucky draw winner at YPSN Spring Networking Social

Andrew Oates, Wah Kwong Maritime Transport Holdings Limited

## Victory at Sea



Capt. Igal Dafni

Igal Dafni talks exclusively to Lloyd's List about his legal battles with former employers Zim and CMA CGM.

"HE IS no doubt a man of strong character, tenacious and determined, and very experienced in the shipping industry."

That was a comment by a Hong Kong High Court judge in a verdict released on February 10 this year, which encapsulated the second court triumph for Igal Dafni who has battled with his former employers, Zim and CMA CGM, two of the world's most prominent shipping lines.

"It was tough. What can I say? I was the sole witness on my side in both proceedings, completely alone. People in both companies were afraid of testifying against their employers. In the Zim hearing, there were 10 witnesses on the opposite side, seven in CMA CGM case".

"But I felt very strong because I knew I was telling the truth, so it was only a matter of time for justice to come," said Capt Dafni, after the Hong Kong ruling which ordered the French line to pay him \$2.3m in emoluments as a result of his forced resignation in March 2008.

Born in Israel in 1946, Capt Dafni joined Zim as a cadet in his 20s. He spent the next two decades on the high seas with the last 10 years as captain of general cargo ships, tankers, bulkers and containerships. Retiring from the sea in 1985, Capt Dafni took up various executive positions in the Haifa-headquartered company, including building its West African network from scratch. In 1994, he relocated to Hong Kong to head Gold Star Line, the intra-Asia subsidiary of Zim that was running a \$0.5m annual deficit on four multi-purpose ships when he took over.

In the following decade, Capt Dafni revived GSL. "By the time I left, GSL was among the top five intra-Asia lines with a fleet of over 28 fully containerised vessels, \$300m in turnover and \$30m in profit annually," he said.

In 2004 Capt Dafni was appointed president of Zim's Asia Pacific region, a promotion that put him in a team of executives directly reporting to then-chairman Idan Ofer and one that eventually cost him two jobs and subsequent lawsuits. He subsequently tendered his resignation and was immediately headhunted by Farid Salem, group executive officer of CMA CGM, to spearhead the planned acquisition of Taipei-based Cheng Lie Navigation Co, with a promise from Mr Salem to head the target company's operation for three years if the buyout was consummated, according to court documents. In March 2007, CMA CGM bought CNC Line for \$160m and appointed Capt Dafni as chief executive and managing director.

"It was a good deal for the seller and an even better one for the buyer," said Capt Dafni. "One year later, I think CNC Line was worth around \$250m."

With 20 years of operational experiences under his belt, Capt Dafni quickly rejuvenated CNC Line, which was facing bankruptcy just six years before the French line took over. By the end of 2007, CNC Line reported that monthly loading volumes surged 75% from the takeover level and revenue per teu increased 3%, court papers show. That success generated attention from not only the media but also his former employer. "Zim was worried what I was doing at CNC was a copycat of what I did with GSL and that it would eclipse GSL's business, although I never took any GSL business," he said.

In December 2007, Zim sued Capt Dafni in Singapore, along with five other parties who were Zim's shipping agents, over breach of contracts and fiduciary duties. "It was very clear to me that the Zim litigation was a tactic to stop me from expanding CNC and nurturing it into a meaningful, fierce rival against GSL," he said.

Although Capt Dafni was cleared of any wrongdoing in the Singapore High Court in 2010, the legal action by an Israeli company against an Israeli employee by birth — and the subsequent media coverage — caused huge embarrassment for CMA CGM and its Lebanese-born founder Jacques Saadé, according to court documents.

In March 2008, Capt Dafni was forced to resign from CNC. Four months later, he sued CMA CGM over unpaid salaries and bonuses, while the Zim litigation was still underway. Still, the ongoing legal wrangles did not inhibit his entrepreneurial drive. During the 30 months that he was embroiled in two court cases, Capt Dafni started up two companies.

In 2009 he co-founded Asian Shippers' Association, an umbrella platform for small- and medium-sized freight forwarders, with six other people. The following year, he established Great Eagle Shipping Line in Hong Kong, which provided feeder services to Vietnam and the Philippines in joint sailings with Yang Hai Shipping of South Korea, which was founded by former KMTC chairman YH Choi. Neither venture lasted long. In 2011, ASA was closed down. In 2012, Great Eagle was out of business following the bankruptcy of its South Korean partner.

"The environment in container shipping has completely changed. It is now a playing field for the big companies. Entry barriers for newcomers are very high," said Capt Dafni, now a partner at Hong Kong-based ILP Freight Limited, a consortium-like organisation that brings together 45 freight forwarders and non-vessel operating common carriers in Asia, Europe, South America and Africa.

"I don't want to work for anybody anymore. I'm not used anymore to being dictated on how to do things. I enjoy the flexibility and freedom at the current job, where my entrepreneurship can be better applied. I relish the joy of building up a business, seeing it's growing, similar to what I've done with GSL and CNC," said Capt Dafni.

ILP, which stands for International Logistics Providers, has a goal to issue its own bill of lading to grow into a "reasonable enough" player, he added. "What do freight forwarders and NVOCCs need? Two things: good rates and a space on the ship. So to work as a freight forwarder I can take advantage of my experiences and connections to help them develop," said Capt Dafni, who joined ILP in October.

He called the super-sizing of container vessels “unbelievable” and observed that consolidation of lines is “almost a must” to achieve maximum efficiency and coverage of ports.

“I don’t see any way for anybody to stop P3. There may be a delay in regulatory clearance, but it will get approved and be in operation eventually. Lines keep ordering big ships when oversupply is already severe. More ships can’t make rates increase. Most lines are suffering. Unless they see things I don’t see, I no longer understand how this business is working. People are fighting for market share rather than the bottom line, which doesn’t make sense to me. Or maybe I’m an old-timer who doesn’t know what’s going on anymore”.

“Sitting at the other side of the table, one of the amazing findings for me is how serious shipping lines are when fighting for cargoes. I once had two carriers in the same consortium offering completely different rates, extensively undercutting one another, which is unimaginable. For example, quotes of \$400 difference for slots on the same ship. Shipping lines are so big today that power is being delegated. In some sense they’re losing control,” he said. At the age of 68, Capt Dafni said he still feels he has a lot to contribute to small and medium companies in the logistics side.

Jing Yang, Lloyd’s List  
www.lloydslist.com

(republication of article from Lloyd’s List and Containerisation International)

## Ship Managers find Port of Refuge before the Hong Kong courts

Like buses in London or taxis in Singapore, you wait an age for one and none come; but when they do, three come along at once. That is exactly what happened in Hong Kong with the Hong Kong court handing down 3 important decisions relating to a ship manager’s right of arrest under Hong Kong law.

### Ship Managers fees – a development in Hong Kong?

In *The Oriental Dragon* (HCAJ 162/2012, 9 December 2013), the Admiralty Judge decided that a manager was entitled to arrest for a Lump Sum fee which included a fee payable for “ship management”. Whilst the reasoning behind the decision is not entirely clear, he appears to have relied upon the case of *The Westport No. 2* [1966] 1 Lloyd’s Rep 342 which held that a ship’s agent is entitled to include a reasonable figure for his own services in his claim for disbursements made on account of a ship. If the claim that arose related to services provided in respect of a named ship, for her operation or maintenance, it could fall within either section 12A(2)(l) or (o) of the High Court Ordinance. Although, the Lump Sum fee in *The Oriental Dragon* was payable under a Consultancy Agreement, some of the services being rendered by the “consultant” were ship management services.

This case gives Managers grounds in some cases to at least argue on an arrest application that they are entitled to arrest for unpaid management fees in Hong Kong.

### Running accounts – a potential trap?

Is there a right to arrest for the unpaid balance in a running account? The traditional view adopted by the English courts has been ‘no’.

However, in *The Ruby Star* [2014] HKCU 205, the Admiralty Judge decided that the line of English cases was overly mechanistic and found support in the relatively more recent case of *The Kommunar* [1997] 1 Lloyd’s Rep 1 in holding that a manager can arrest in respect of a running account provided the underlying nature of the costs or invoices comprising the unpaid balance of a running account falls within one of the recognised maritime claims under 12A(2) of the High Court Ordinance.

This decision is potentially subject to appeal but until the decision is overturned, it is good law in Hong Kong.

Notwithstanding this development, a prudent Manager should structure his accounts so as to avoid creating a running account in the first place.

