

# Resolution of Marine Insurance Disputes: the Maritime Arbitration Commission at the Chamber of Commerce and ▶ Industry of Russia

*Dmitry Davydenko*

Ph.D. in Law, Executive Secretary and Arbitrator at  
the MAC

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# MAC Rules

The Maritime Arbitration Commission (MAC) has been a dispute resolution centre over 85 years.

The MAC Rules rely on the centre's best practices and global trends:

- ▶ Normal and expedited arbitration procedures;
- ▶ Possibility to apply for interim measures before the formation of the Tribunal;
- ▶ Wide use of electronic information exchange; hearing via video communication;
- ▶ Possibility to consolidate several claims.



# New Developments in the MAC Rules :

- ▶ Arbitrators now have 6 months to issue an award from the date of the tribunal formation. It used to be 30 days after the hearing previously. This period may be extended if necessary.
- ▶ The extension has become more difficult: the issue must be decided by the MAC Presidium, and not by the Chairman, as it used to be before.
- ▶ Electronic form is a general rule. Only the most important documents must be sent in paper.
- ▶ Expedited arbitration procedure as an option for smaller claims. The parties, however, still prefer ordinary arbitration even for small claims.

# Subject matter and Origin of Disputes

from contractual and other civil law relations arising from commercial navigation;

- ▶ between subjects of Russian and/ or foreign law;

*The parties to disputes in 2016 - 2018 comprised companies from various countries, including Hong Kong, the UK, the USA, Poland, Malta, the United Arab Emirates, the Dominican Republic, the Seychelles, the Marshall Islands.*

The bulk of the disputes included controversies between ship owners/ ship managers and insurance companies and concerned the damage to mechanisms, equipment of the vessel as well as the payment of insurance compensation.



# Features of Insurance Dispute Resolution at the MAC

- ▶ Normally disputes contain a lot of complex issues of law and fact.
- ▶ Most claimants are the policyholders.

Cases initiated by insurers normally concern:

- ▶ Non-payment of the insurance premium; or
- ▶ insurance indemnity payment by way of subrogation.

The MAC's approach: if the insurer has obtained the right of claim to the carrier from the consignee by way of subrogation, he can have recourse to arbitration as agreed between the consignee and the carrier.



# Statistics Figures

- ▶ About 70 disputes from marine insurance contracts submitted to MAC arbitration from 2003 to 2011. Since 2012, this figure has come to 100 disputes. Thus, the number of such disputes is growing.
- ▶ From 1932 to 2010 741 marine insurance disputes.
- ▶ The amount of claim is usually up to \$ 1,000,000, but from time to time the claim value exceeds this figure (at least one such case annually).
- ▶ MAC arbitral tribunals normally hold 2-3 hearings for each case (but sometimes it comes to 7-8 in extremely difficult cases)



# Applicable law and burden of proof

- ▶ The applicable law is set out normally in the insurance policy. Usually it's Russian law.
- ▶ However, the arbitrators can apply, for example, the English law on marine insurance if so specified in the policy.
- ▶ To determine the reasonableness and validity of the losses, the insurer normally appoints a surveyor. The policyholder often also appoints a surveyor.

Both parties often rely on surveyor reports on the cause and the amount of damages, causes of the vessel accident, on assessing the damage etc.

# Arbitral Tribunal Formation

Normally 2 arbitrators hear the case.

Each party selects his arbitrator (more often from the MAC list).

The parties exercise their right to elect an arbitrator in 90% of arbitral proceedings.

- ▶ If the parties do not elect an arbitrator on time, an arbitrator is appointed by the Appointment Committee (not very often).
- ▶ If two arbitrators do not agree on how the dispute should be resolved, the Appointments Committee appoints the chairman of the arbitral tribunal (from the MAC list).

# Issues often decided by the arbitrators

- ▶ Is the incident covered by the insurance policy?
- ▶ When did the damage occur? For what reason? Was it accidental for the policyholder? Did the ship owner take due care of the ship's condition? If not, is this the cause of the damage?
- ▶ Do the damages caused to mechanisms directly relate to maritime hazards?
- ▶ If the accident occurred as a result of wear, then what are the causes of this wear?
- ▶ Do the operation and repair conditions of the ship comply with its class (classification requirements)?

# Major case patterns

- ▶ Was there an official investigation into the incident?
- ▶ Was the ship repaired under the supervision of the classification society before the accident?
- ▶ If the ship owner asks for compensation for the loss of freight, what are the reasons for decommissioning the ship?
- ▶ Are all the ship owner's costs of repairing the ship at the dock after an emergency event reimbursable by the insurer?

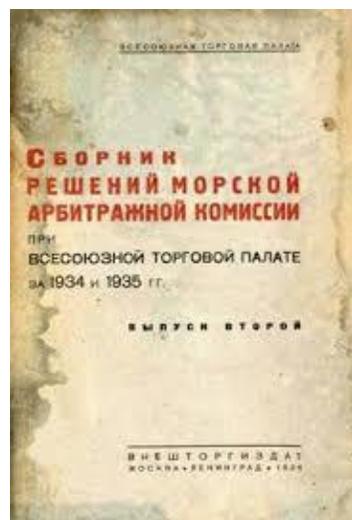
# Some trends in the insurance dispute resolution practice at the MAC

- ▶ Parties often engage external consultants.
- ▶ More procedural motions and questions as to the form arise.
- ▶ Growing volume and quantity of pleadings submitted by the parties.
- ▶ Electronic information exchange with the MAC in almost all cases.
- ▶ Stricter deadlines. Procedural schedules. New submissions accepted if in compliance with these schedules.
- ▶ The volume of the awards growing (on average, 30 - 70 pages).



# How to learn more about the practice of MAC

- ▶ MAC is engaged in the work on the compilation and analysis of the arbitration practice.
- ▶ We publish reviews of dispute resolution practices at MAC in the leading periodicals.
- ▶ Extracts from the awards are published as separate collections too.



# Contact Information



## ***Dmitry Davydenko***

Ph.D. in Law,

Executive Secretary and an Arbitrator  
of the Maritime Arbitration  
Commission at the Russian Chamber  
of Commerce and Industry

Phone: 8-495-6200177

E-mail: [marine@tpprf.ru](mailto:marine@tpprf.ru);

Web-site: <http://mac.tpprf.ru/ru/>