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In my article a year ago, I discussed the case of the bulk carrier, Tolunay and its collision with TCSG-25 (August 2016), resulting in the death of four Turkish coastguard personnel and the incarceration of the Master, Chief Officer and Bosun (the latter two released later in 2017).

The judge, flying in the face of the evidence he obtained from local experts in Turkey, convicted the Master and sentenced him to more than six years in jail. At the time of writing, I believe the Master is still denied his freedom.

In this article I will discuss the plight of an Indian Third Officer on a large container ship who, at the end of his 20:00 to midnight watch heading north, north-east on the high seas a significant distance away from the Chinese coast, observed a small vessel that wasn’t fishing, crossing his bow from starboard to port.

He carefully observed the track of the other vessel and his equipment told him that it would cross ahead at about 1.3 miles.

From this information, he quite reasonably concluded that no risk of collision existed as, if everything continued as it was, the other vessel would pass clear on his port side and that would be that.

Unfortunately, just after the small vessel crossed on to the vessel’s port bow, for some unexplained reason (that went to Davy Jones’s locker with the skipper of the other vessel), the small vessel turned to port on a new track that within a couple of minutes led it to collide with the bulbous bow of the containership.

The Third Officer forlornly attempted to avoid the small vessel, however, with the time available and the lack of manoeuvrability of the large...
A container ship he failed. The tragic result was that six lives were lost from the small vessel in the middle of a dark October night in 2017.

The officer, with the immediate assistance of the master, tried to establish what had happened to the small vessel, however, as there was no sign of distress and because of the size of the containership, it was impossible to exactly determine what had happened to the small vessel. It was in fact too late for such a large container ship to do anything constructively useful.

On arriving at the next port in China, an investigation took place and the ship was detained. The Master and Third Officer remained in China when the ship sailed pending completion of the investigation. The Master alone was released many months later.

The Third Officer is still in China 16 months after the event with no clarity about whether he will face any criminal charges. If he is eventually prosecuted, the trial is likely to last for yet another year, once it eventually starts. For the Third Officer there is currently no end in sight.

One of the difficulties faced in this particular case was that the local “expert” (for the containership), a professor, could not see that, prior to the small vessel bizarrely altering course to port, there was no risk of collision and therefore the steering and sailing rules of the Colregs could not apply – if there is no risk of collision there is no need for any vessel to make any changes to whatever they are doing.

Frustratingly, for the longest time “our” professor would not be moved from his position, which was that it was a crossing situation with the containership as the give way vessel. Eventually, after considerable time, effort, and expense (spent creating reconstructions, plots, what if scenarios, etc.) the professor finally agreed that the majority of the blame was not on the containership but on the small vessel.

So what conclusions can be drawn from both this case study and that of the Tolunay?

• It is difficult to avoid blame even when it is clearly an accident that is not your fault, or at least is more the fault of the other party.

• Justice is hard to find even when you are right.

• Don’t hesitate to get the best help in every necessary field that you can find – you can’t go back and try again later.

• Be aware that it is a cruel world – and not just for those lost at sea.
Once a vessel is southbound in the Malacca Strait (past Port Klang) and through the Singapore Strait until entering the South China Sea, either Malaysia, Singapore or Indonesia will claim territorial waters. It has perhaps been (mis)understood in the past that there are places along the way not claimed by any of the three countries. This is not the case.

Only if the vessel is passing through territorial waters without stopping, will it not be subject of any of the jurisdictions. The right of “innocent passage” is secured in Article 17 of the United Nations Convention on the Law of the Sea (UNCLOS). The passage, however, needs to be continuous and expeditious (art. 18.2). In practice, this means the vessel cannot stop except when forced to incidentally stop for reasons of safety, danger or distress. Slowing down also disqualifies.

We have recently seen an increase in situations where authorities from around the Malacca and Singapore Straits have ‘taken an interest’ in vessels and detained them for various reasons. Below is a short overview of what has caused the detentions.

Malaysia
If a vessel in Malaysian waters stops and anchors, the vessel needs to be cleared in and out of Malaysia and the Malaysian MMEA will require an agent to be appointed. If this is not done, the MMEA will likely detain the vessel and impose a fine. Ship-to-Ship (STS) operations at anchor is a good example of this. It is not an incidental stop and the right of innocent passage is ‘lost’.

Recently, the Port of Johor and Singapore have “discussed” where the exact boundary is between the two countries and respective ports. The area “discussed” is also right at the entrance to Port of Johor and off Tuas in Singapore where vessels may be waiting or performing other types of operations. This may lead to confusion at the Western part of Singapore and the Singaporean MPA has asked that vessels avoid the area entirely to avoid any misunderstandings. There is a military presence on both sides.

Malaysia is a growing hub for bunker operations. We have been involved in a case where the bunker supplier turned out to be unlicensed. The owners’ vessel got detained as a result without any fault of their own. The bunkers are typically ordered by the charterer, and the vessel was only receiving it, but time was lost nonetheless.

Indonesia
It has often been overlooked that activities such as transhipment, crew change and cargo operations within Indonesian waters can only be performed by an Indonesian shipping company, operating an Indonesian-flagged vessel and manned by Indonesian crew.

Transhipment activities (including launch boats carrying stores or crew) are categorised as activities that may violate Indonesian Law No. 17 of 2008.

The Indonesian Navy has recently been upholding this rule strictly. We have been made aware that live ammunition has been fired by the Indonesian Navy towards a commercial vessel for an undisclosed reason.

Once the Navy takes an interest, they usually also check:
- the completeness of the ship’s documents
- the completeness of the cargo documents
- the ship’s signs and markings
- the ship’s records, logs/journals
- the crew’s documents

This may take several days and lead to fines, if papers and/or the vessel is found not to be in order.

Singapore
The rules and regulations are well established in Singapore and usually do not lead to any ‘regular’ cases. However, anti-bribery, anti-terrorism and international fraud is increasingly being investigated when it may involve Singapore.

The government takes it very seriously. It usually leads to thorough investigations and the powers of the police are far reaching. Severe measures may be taken to secure evidence for later prosecution, including detaining vessels for longer periods of time and they may even be confiscated.

Spica
Spica’s experience in dealing with the authorities in all three jurisdictions has been of value to owners and clubs, aiming to bring the international shipping community and local authorities closer together in cases with mutual interests.

Thomas Kjell LarsenFollowing 10 years with an IG P&I Club, Thomas Kjell Larsen is the Regional Claims Manager for Spica Services in Singapore overseeing the handling of claims in six South East Asian countries. Spica is present in and represents most of the IG P&I Clubs in Myanmar, Thailand, Vietnam, Malaysia, Singapore and Indonesia, as well as a number of fixed premium P&I and leading hull underwriters from around the world.
Navigating Precarious Politics in times of Strife

Andrew Leahy, Operations Manager Asia, Navigate Response

Kidnap and ransom
Dealing with a crisis is rarely a straightforward equation but when a situation becomes politically charged it often morphs into a different beast that requires companies to embrace counter-intuitive approaches and be fluid in reading the playing field.

Put simply, when the media glare is on an incident there are politicians and public servants who want to use it to push their own agendas and indeed their own careers.

To paraphrase a kidnap and ransom expert I dealt with recently: “In many ways dealing with the kidnappers is the easiest part; it’s in dealing with the politicians and their embassies, the media and of course the families where the real difficulties lie.”

Unfortunately, over the last 12 months we have dealt with a few cases off West Africa involving pirates and kidnap and ransom and they can prove very challenging in terms of the communications amongst stakeholders.

Obviously, for the families involved it is an extremely harrowing experience and they are desperate for any information they can get. Then there are the embassies involved because each missing seafarer is a national and those tasked at the embassies to follow the cases are always looking for information to prove they are doing their jobs and appease those above asking for answers.

Those above, generally the elected officials, are making very public claims and demands to show they care about their nationals and should therefore remain in office.

The problem with this demand for answers is that it doesn’t gel with the realities of kidnap and ransom situations.

K&R specialists try and establish a cool and calm dialogue directly with the kidnappers, limiting outside noise and interference to hopefully create fruitful negotiations to achieve a quick resolution in which the seafarers are released safely.

This process is extremely sensitive and is usually only successfully achieved by highly-trained and privately-employed operatives on the ground with the necessary contacts and experience.

The fact is that these situations often arise in and around countries with serious political, social and economic problems and the ability of local authorities to react in a professional and suitable manner is highly questionable.

Certainly, they’ll try and insert themselves into proceedings but inevitably the K&R experts want them limited to providing advise and smoothing out the hostage’s departure upon release. The politics of the situation adds in a lot of moving parts. It’s not just piracy in West Africa that involves problematic political practices.

Hotspots
The war in Yemen has resulted in several attacks on commercial vessels, many blamed on political motivation to hurt certain owners.

Even just the facts around the attacks seem warped by whose version you believe, with significant variations in reports on how many vessels have been attacked and even what they were attacked with?

Venezuela continues to make headlines as it continues its spiral into chaos with a deepening of the economic crisis and political instability, leading experts to forecast violent civil unrest and increased refugee outflows in 2019.

A recent article in Forbes Magazine by Kenneth Rapoza says it best:

“Collapsing oil exports, a hollowing out of the domestic production base, hyperinflation, an exodus of able bodies, sanctions and corruption have brought this country to its knees.”

Recent incidents in Venezuela have seen vessel detentions drag on as differing government departments clamber to mark their territory in blatant attempts to survive the coming “bloodletting”.

One detention can be lifted from one entity yet remain in place from numerous others as they attempt to reinforce their importance in a crumbling system, all understandable as it becomes a survival of the fittest.

Inevitably, though with the world’s biggest proven oil reserves, Venezuela will continue to trade oil on some level but even companies with a long history in Venezuela will be treading very carefully with the knowledge that the precarious political situation could easily lead to entanglements which are not only damaging to reputation but also very damaging to the bottom line.

Outlook
As the heralded Greek statesman Pericles once said: “Just because you do not take an interest in politics doesn’t mean politics won’t take an interest in you.” And in the year of 2019 when there is rising gloom over the economic and political outlook it behoves responsible operators to be aware of the rising dangers.

Depressingly the World Economic Forum’s “Global Risks Report 2019” starts with the question: “Is the world sleepwalking into a crisis? Global risks are intensifying but the collective will to tackle them appears to be lacking. Instead, divisions are hardening.”

So be careful where you step, or indeed ship!

www.weforum.org/reports/the-global-risks-report-2019

www.navigatorresponse.com
Post-crisis review – looking at the macro environment

We often witness the all-too-familiar sequence of post-crisis events; the smoke clears, the dust settles, losses are tallied, and the finger-pointing begins.

Finger-pointing or the blame game has taken on a different complexion with the rise of digital media platforms and citizen journalism. Organisations find themselves increasingly facing trial by media when they are involved in major crisis events that impact public safety.

The court of public opinion typically portrays the crisis-stricken organisation as a dysfunctional entity plagued with systemic problems. The verdict? The crisis, as a product of systemic failure, could have been avoided if the organisation had identified and addressed those underlying problems.

Tenuous parallels
Following a crisis, some critics may view the event as a microcosm of a much wider ongoing crisis. In doing so, they may draw tenuous parallels and make bold assumptions.

Take for instance the 2018 food contamination crisis in Australia which involved needles found in Australian strawberries. Shortly after the contamination in Queensland and Western Australia was announced, the food scare spread to all six of the country’s states. Supermarket chains in Australia as well as major food retailers in New Zealand and other countries began frantically pulling Australian strawberries off their shelves.

During this period, there was a spike (no pun intended) in the number of reported food contamination incidents. Needles and sharp metal objects were allegedly found in other fruits such as apples, bananas, mangoes and oranges. It was convenient for the media to link these incidents – possibly unsubstantiated claims or the work of copycats – to the strawberry contamination crisis.

The tabloids did so to support sensational narratives and conspiracy theories such as commercial sabotage, foreign terrorism and even false flag operations.

Taking a wider perspective
In identifying the root causes of a crisis, it is important toanalyse not just the organisation in question but also the macro environmental forces at play. From this perspective, crisis events are the product of a series of interactions between an organisation and the macro environmental forces. Conducting a PEST analysis (political-legal, economic, sociocultural and technological factors) provides context for the crisis.
Economic factors
With the world economy more globalised than ever, changes in economic factors such as commodity prices, foreign exchange and interest rates are felt swiftly across global markets. When economic factors move in predictable fashion, the markets usually “price in” the expected change, and organisations can respond accordingly.

However, when price changes are abrupt and significant, it can lead to crisis. Such as in the 1973 oil crisis, when an OPEC-led oil embargo quadrupled oil prices within months with global dramatic effect. It led to the 1973-1975 recession in many countries, ignited the search for alternative energy and changed the way energy-reliant industries operated. The gas-guzzling American muscle car started making way for more-efficient Japanese and German cars.

The oil crises of 1973 and 1979 seared into the consciousness of global businesses that conventional energy and its low prices could no longer be taken for granted. It also catalysed investments in alternative energy such as shale oil and renewable energy sources such as solar power, biofuels and tidal power.

Technological factors
We live in a technology-driven era, inundated with buzzwords: Artificial Intelligence, Industry 4.0, Blockchain, Internet of Things and Augmented Reality – buzzwords that remind us of the new world order.

Society tends to embrace new technology for the comfort and convenience it brings. The same cannot be said for certain businesses when threatened or even displaced by disruptive innovation. As the millennium turned, we saw many businesses and products falling victim to technical obsolescence. Blockbuster gave way to cable TV, but not before posting a loss of US$268 million in 2010 and filing for bankruptcy protection in the same year. With the rising popularity of on-demand streamed content from companies such as Netflix, traditional cable TV operators may soon share the same fate as video stores. Similarly, Polaroid Corporation and Kodak were unable to keep pace with technological advancements and reinvent themselves.

New threats and challenges
Technological advancements have brought about new threats and challenges. Our reliance on the internet, smartphones and wearable technology, has exposed organisations and individuals to new and evolving cybersecurity threats. Maritime is no exception as it continues with its digital transformation. Shipping companies must be vigilant against new threats that could emerge from greater connectivity.

Operating in a globalised economy requires us to understand the macro environmental factors at play; how they bring about opportunities as well as challenges. At Navigate Response, we work closely with our clients to scale their crisis preparedness in tandem with their global operations.

Political-legal factors
Political-legal factors would include political turmoil, regime change and new legislation by local jurisdictions or supranational organisations.

Organisations operating in countries experiencing political upheaval may face unconventional threats in their business operations. For example, some maritime organisations have come under threats of extrajudicial actions and politically-motivated investigations when operating in certain parts of Latin America and Africa.

Another example is legislation such as the Oil Pollution Act of 1990, a statute which radically altered the liability of parties responsible for oil spills and had a big impact on the oil and gas industry and their insurance providers.

More recent environmental examples include significant IMO conventions that could potentially lead to operational crises, including: the Ballast Water Management Convention and the marine pollution (MARPOL) directives concerning waste emissions from ships (read: 2020 IMO fuel sulphur regulation).
Our attentions jump to the headline in a newsfeed, where a story doesn’t even have to be written. “We will update this page when we…” have a story. Attention-spans, at barely eight seconds, ensure we don’t return.

Communication, if it’s anything at all, is clarity. It must cut through the fog, or join the dots, if what’s out there is puzzling, intriguing or alarming. I’m stating the obvious. But total accuracy and clarity – or transparency as society prefers – is rarely achieved in a single news day. And tomorrow? well, it’s yesterday’s news.

Press officers, in an information vacuum, walk a fine line to hold effectively with a line drafted for media enquiries. In any incident, say a major shipping collision or an aircraft down, the push-back from journalists can be intense: You must have more than that…we ran with that an hour ago…But at least we tell them what we know to be accurate.

Similarly, you can yell at the TV when the government minister sounds guarded or ‘economical with the truth’. So, it’s refreshing when a secretary of state talks more candidly, answers what he can and explains how it is based on what he knows now – not next month – whilst making a key point on national security in the same breath.

Put simply, spokespeople inform, they hold a line, respect public opinion and dispel the hunch. Facts should be forthcoming. Fragmented details must already be out there when journalists appear to know more than their questions suggest. So, clarify and correct. Nothing is gained by concealing what is known, and very different from safeguarding detail that isn’t and may be subject to an investigation.

Press officers also ask the difficult questions, to get acceptable answers. It’s about understanding why information is restricted, recognising the context and boundary as you reason with a seasoned policy official. It’s having the rationale to accept what is in the public domain and what isn’t.

Sources are a different can of worms. Their names often hidden, unattributed, retracted. Eyewitnesses, as primary sources in a crisis add vital detail, even evidence, but ‘anonymous sources’ who substantiate an article within a protracted saga of events often have an agenda for the delicate truth, if not twisting the realpolitik.

Whilst society enjoys life online with its boundless – if unregulated – benefits, consumers tread their own line: content pushed by news editors, if no longer a human one, tracking our preferences like retailers. And the willy-nilly clicking and sharing which, somehow, we never really used to do so much of. I read somewhere that… takes on a lame equivalence when you can send the story.

As for the guy with the hidden tattoo… Public domain – either she is, or she isn’t.
Rumours of Hong Kong’s shipping demise…

Russ Green, RTG Communications, Navigate Response Hong Kong partner

As Hong Kong’s container terminal sector suffers yet another annual decline in volumes and slips down the global rankings to number seven in the world, it would be easy to think that the shipping sector as a whole is following the exodus of boxes over the border to the Mainland.

However, in other shipping sectors the reverse is true and Hong Kong’s new administration has elevated the importance of shipping to the city’s economy and is funding new initiatives and incentives to attract a broad range of shipping companies to the Special Administrative Region (SAR).

Singapore has for a long time been the destination of choice for shipowners and ship services companies. However, there are signs that this may change as a surge of capital from Chinese leasing companies pours into shipping and Hong Kong is their city of choice to set up shop.

Peter Mellet, Managing Director, BMS Group is equally optimistic that the maritime insurance sector will flourish in Hong Kong, saying that the main drivers for Hong Kong’s potential as a maritime insurance hub are location, China and shipowners.

“There is a maritime focus already (in Hong Kong) and clients are close at hand. As the world moves east to Asia then so will shipping services, and insurance is a natural addition to all of the other needs of a thriving shipping community,” he told Forward with Toll news website recently.

China government policy is also aggressively supporting shipping and the country already boasts global players in shipbuilding, shipowning and legal services. Mellett sees maritime insurance following on from this as Hong Kong already has the international finance and insurance infrastructure and expertise in place.

In the ship management sector, Hong Kong is a global leader and all the world’s leading managers are long-term residents, including Anglo Eastern, Fleet and BSM. The strength of this cluster is partly explained by the many Indian superintendents who have called Hong Kong home for 50 years or more and form the backbone of many ship management companies.

The roots are deep and the expertise and experience of the Indian shipping expatriate community has consolidated Hong Kong’s role as the world’s ship management capital.

Most of the major global commercial fleet is now managed by Hong Kong-based companies.

The foundations and commercial successes of Hong Kong have been solidified by building the city into a global financial, shipping and trading centre.

Despite the tectonic changes over the last century and a half in these key sectors, Hong Kong has a knack for reinventing itself and prospering. With Government support from both China and Hong Kong the future of shipping looks bright.
I’ve got you thinking, haven’t I? I’ve made you suspicious of the meme and of Facebook.

I’m not an expert in facial recognition and I’ve presented you with hardly any facts. Reading the first three paragraphs it’s easy to think that I’m claiming Facebook manipulated you. Read them again. I made no such claim, instead I merely raised the question.

I’ve done this to make a point about how rumours spread, and opinions are formed, but its surprisingly powerful. Even now as I’m pointing this out to you, you’re still thinking Facebook may have done it.

Does that really make sense?

Facebook has many billions of photos of people in every imaginable situation already helpfully tagged with the person’s identity and for 100’s of millions of people this massive trove of photos already spans well over 10 years. Do you really think the relatively tiny number of photos shared as part of the 10-year challenge would make a difference? It was a drop in the ocean. Then again, why are you listening to me? I’m not a facial recognition expert and again my argument lacks meaningful facts.

We’re all gullible and easily primed to believe things.

“Did the shipping company cut corners on safety? How else do you explain the fatalities?” “Are UK Port State inspectors unfairly targeting EU-flagged vessels in the runup to Brexit?”

Now you’re thinking, and you’re primed. You’re not sure. If you see a social media post or a news article that appears to raise the same question, you’ll be a little more likely to believe that there’s been wrongdoing. Ten more sources raising the same question and you’ll believe the shipping company is negligent and the inspectors are malicious all without a shred of evidence.

So, in crisis communications what do we do about this human willingness to believe?

• Anticipate possible loaded questions and indirectly answer them before they’re ever asked.
• Build a reputation over time so people will be primed to believe good things about you and to doubt the negatives.
• Ensure a flow of information early on to discourage speculation and to fill the media landscape with your side of the story which makes it harder for attacks to take hold.
• Accept that you’ll never be 100% successful and know when to ignore baseless allegations and speculation.

Public opinion is easily swayed but once swayed it is very difficult to undo the damage. I bet you’re still wondering if Facebook might have used the 10-year challenge to train its facial recognition software.

#10YearChallenge: Have you been duped?

Dustin Eno
COO and Crisis Response Manager, Navigate Response

Was the social media meme calling on people to share a picture of themselves from 10 years ago alongside a current photo of themselves a scheme to help train Facebook’s facial recognition algorithms?

Millions of photos were made easily minable through a single unique hashtag that conveniently juxtaposed two images of the same person looking quite different. In the quest for accurate facial recognition this could be a gold mine of opportunity allowing machines to focus on the underlying relatively timeless features of a face.

We don’t know if Facebook started the meme, but its rapid spread raises questions about whether Facebook may have helped this meme to gain and retain a surprising level of prominence.

See what I’ve done there?
When Seaspeak Combines with Globish English

Edward Ion, Director Navigate Response Asia

One of the basic requirements of good crisis communications is that the protagonists understand each other in one language. As the English language is the universal ‘language of the sea’, a basic understanding of English is an essential to anyone wanting a career in shipping.

There have been many shipping casualties over the years in which a failure to communicate clearly in English has been a significant contributory factor.

This was brought home to me most vividly when I worked as a reporter. I was assigned to cover a criminal court case brought against two masters in Singapore who were in the dock following the infamous Evoikos casualty, the republic’s worst oil spill.

In October 1997, the Thai-registered crude-oil tanker, Orapin Global collided with Cyprus-registered tanker, Evoikos. More than 28,000 tonnes of marine fuel oil spilled into the sea when the vessels collided in the Singapore Strait. It took 650 people and 90 anti-pollution craft three weeks to clean up.

As I sat in the court room it was painfully apparent that both masters in the dock had limited English language skills. Both spoke in heavily accented English (one was Greek, the other was Polish).

Evidence produced by the prosecution included tapes of the VHF conversations between the two ships immediately before the collision. As these were played to a hushed court, it was clear that a language barrier played a major part in the misunderstanding between the two ships’ bridges.

While this casualty took place more than 20 years ago, I wonder how much the use of standardised English (or ‘Globish’) has improved in the industry since those times? After all, whether on the high seas or at port, misunderstood communication can lead to serious and even deadly situations.

Judging by our diverse client base of ship managers and owners across Asia, I would say the use of English has improved immeasurably since the Evoikos incident; greatly assisted by the parallel rise of Seaspeak, the basic language of the sea that every seafarer who steps on board a deck or a bridge should know.

When we discuss the media – training seafarers in places such as China, Indonesia, Myanmar and Korea – it is obvious that we now have the first global generation in which people from outside the English-speaking world can speak near perfect English.

This development has enormous implications for world shipping because it puts non-native English speakers on the same level playing field as native speakers. Not only does this have profound commercial and economic implications, it will also play an increasingly important role in the advancement of safety on board vessels.

It was not so long ago that the US and the UK dominated ocean shipping and it was estimated that 80% of ships’ crews were native English speakers.

By the end of the 1970s, however, the situation had reversed, and today 80% of ship’s crews do not speak English as a first language. In the 1980s the International Maritime Organization (IMO) produced the new shipping language named ‘Seaspeak’.

Seaspeak defines the rules of how to talk on a ship’s radio. The number of words is limited to ensure that messages and conversations are short and clear. Eight words, called message markers, precede each sentence: Advice, Answer, Information, Instruction, Intention, Question, Request, and Warning.

An important rule of Seaspeak is that numbers made up of two or more digits are spoken in single digits. For example, the number 33 is spoken as “three three” and the time 9:33 a.m. is spoken as “zero nine three three.”

As Seaspeak and Globish English become ever more entwined, the scope for the kind of misunderstandings witnessed during the Evoikos spill will hopefully be a thing of the past.

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Crisis communications for shipping

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Navigate Response is recommended by P&I Clubs in the International Group.

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