

Crusading legal eagle has no retirement brief in mind

After 137 major casualties the legal expert's appetite for a fight remains undiminished

Jim Mulrenan **London**

Brian Starer has just turned 70 but the world's most experienced maritime casualty lawyer has no plans to sail away into retirement.

He has been involved in 137 major ship losses over the past 40 years and it is unlikely that anyone will ever match this record.

There is a German deck of cards that has famous maritime disasters as a theme with Starer's cases accounting for two-thirds of the casualties featured.

Starer has built a career representing owners and their insurers. Along the way, he has been dropped from helicopters on to the decks of burning ships, stood in oil up to his knees and sadly seen bodies floating ashore.

He is a mariner turned lawyer who would like his legacy to not be a count of cases won but a contribution to making ships safer.

Starer's cases include tanker spills from the *Amoco Cadiz*, *Exxon Valdez*, *Braer*, *Prestige*, *Tasman Spirit*, *Argo Merchant* and *American Trader*. There have been Gulf of Mexico rig-pollution cases, such as the *Deepwater Horizon* and *Exxon I*. The protracted break up of the wood-chip carrier *New Carrissa* is another memorable loss, albeit eclipsed by the marathon legal battle that followed the collision between the 136,517-dwt tanker *New World* and 50,550-dwt bulk carrier *Ya Mawlaya*.

But he is perhaps best known for three major attempts to make classification societies liable to third parties for any contributory role in casualties.

As a young lawyer, he took on Bureau Veritas (BV) over the Liberty Ship *Tradewinds II*, which broke in two in the Atlantic with the loss of 11 of its 38 man crew.

He has also been involved in two significant battles with American Bureau of Shipping (ABS) over a fire on the cruise ship *Sundancer* and, more recently, over the *Prestige*.

The classification societies have so far successfully fended off third-party liability challenges, so is the matter now settled with the *Prestige* the last of these battles?

"It is hard to say," replied Starer. "After the *Sundancer*, the Comité Maritime International [the legal association whose initiatives often end in IMO conventions] conducted a series of debates and I thought we were moving towards a convention or treaty that would have

put a certain amount of liability on the classification societies but that just fizzled away.

"My crusade, if you could call it that, has been trying to bring classification societies into the world of liability. It is all to do with safety and making the world a better place for seamen and protecting our environment," he added.

Starer says he has not sought out classification cases but in the case of the *Prestige*, the Kingdom of Spain and its local legal advisors came to his partner, Juan Anduiza, now retired, who had good connections in the Spanish speaking world.

The *Prestige* case is, however, not completely at an end as there are still appeal proceedings in Spain and the potential for litigation against ABS in France.

Although these high-profile cases have pitted Starer against the classification societies, he points out he has also been their defence council in a number of cases that have not made headlines.

EARLY EXPERIENCE

Starer cut his teeth as a casualty lawyer taking 70 depositions relating to the *St Constantine*, a cargo ship rendered a total loss off the coast of Hawaii, and then fighting the case that involved alleged ship deficiencies and crew training for five years.

Starer identifies the single toughest case of his career being the eight-year battle over the 1994 collision off Portugal between the *Ya Mawlaya* and *New World*.

There was a fire and explosion on the *New World* that killed eight crew members, with litigation running across five different jurisdictions.

Starer acted for the *New World's* owner, companies associated with Thomas Hsu's Consolidated Navigation/Expedo group.

At a crucial point in the legal battle, Starer went before India's Supreme Court against the advice of local lawyers as he had already been held in contempt by the Mumbai courts and could have been thrown in jail.

"The *New World-Ya Mawlaya* case was probably the hardest fought case in modern maritime legal history," said Starer. "Everything was involved but, when you have heavy loss of life, it is hard to take satisfaction even when justice is done."

Starer had earlier acted for Hsu's father, PY Hsu, whose 62,000-dwt

tanker *Burmah Agate* was in a collision with the bulk carrier *Mimosa* off Galveston in 1979.

An explosion followed, with the tanker on fire for two months, 31 of the tanker crew died and 160 miles (257 kilometres) of Texas shoreline was polluted.

Starer-led teams would have five or six major casualty cases running simultaneously through the '70s and '80s but as shipping industry standards have risen, bulk-car sinkings diminished, rust buckets were sent to the scrapyard and tanker spills become exceptional events, business for admiralty lawyers has dried up.

"We're in a period where a wet guy is lucky to have one case going on. That's been a challenge, no question," added Starer.

The teams Starer now leads are smaller than they used to be but, if there are fewer casualties, there are still plenty of occasions where advice is sought by owners or underwriters or even a view on a case handled by another law firm.

Starer is reluctant to name his top clients but says he has worked for many owners, all 13 of the International Group protection-and-indemnity (P&I) clubs and many insurance companies and Lloyd's syndicates.

But you can get a hint of his connections from a long list of donors to a huge bronze relief monument to the 343 firefighters who lost their lives in the 9/11 terrorist attack on New York's World Trade Centre.

Starer chaired the memorial wall committee with Gregory Hadjileftheriadis of Eleton, the Hsu family and the Teekay Foundation springing out of the list of well over 1,000 names.

Although Starer lives in New York, he has a farm in the Adirondacks on the border of Vermont and New York state but rents most of the land out to an Amish dairy farmer and has no plans to lift a pitchfork any time soon.

"I've got a lot of energy and I'm in an industry that I love. I have no intention of retiring. I think in many respects I'm at the top of my game," said Starer.

"You know, I've watched people retire and seen what happens to them. And I've said to myself, it's not going to happen to me. As long as there are people who have trust in me and make a phone call, I'm going to be there until I'm not useful anymore."



A voyage that began

Brian Starer was born in rural upstate New York where his father was a chemist and gas technician.

So there was no salt water running through his veins until he joined the US Merchant Marine Academy at Kings Point as an alternative to enrolling at West Point. A key attraction of these military establishments was that you did not face big university fees.

It was during the Vietnam war, so Starer's Kings Point training was accelerated and he was soon at sea as a deck officer on Victory Ships taken out of mothballs by the Military Sealift Command (MSC) to run ammunition and other cargoes to Vietnam.

It was a baptism of fire but,

after 27 months, Sealift Service Starer switched to a leading US-flag shipping outfit of the period, American Export Isbrandtsen Lines, with the Isbrandtsen in question an entrepreneurial Danish American cousin of AP Moller.

By the time Starer came ashore to study at Albany Law School, he had seagoing experience and an unlimited US master's licence that helped win him a job with Haight Gardner Poor & Havens, a renowned New York law firm that had been instructed on many famous cases, which included the 1912 loss of the *Titanic* to the 1956 collision between the *Stockholm* and *Andrea Doria*.

Haight Gardner was a "white shoe" law firm that normally recruited Ivy League graduates so

THE MARITIME LAWYER WHO PREFERS A DECK TO A DESK

Brian Starer is a hands-on casualty lawyer who likes steel decks rather than life behind a desk and has often returned from ships bruised and filthy.

"I've come home black and blue. On a ship, you're striking one-inch steel for the most part and it leaves its mark. But if you can get on board a ship within the first 24 hours, it is a great help in the ultimate defence or resolution of the matter," said Starer. You want to get to the people involved before others have influenced them."

So is justice mostly done in the courts and by the legal process? "Not always," he replied. "But one thing I like so much about being an American lawyer is the fact that our court system allows discovery in a true sense. Where you can see the documentation and where you can take depositions from a witness under oath. By the time you get near trial, you've learned what the weaknesses and strengths are of your and your

opponent's case. It's not trial by surprise, it's trial by knowledge. Is it expensive? In the beginning it's very expensive but in the end it's more certain."

Starer has won or saved clients' sums running to hundreds of millions of dollars but says he has not kept a win-lost tally of his battles.

'WRONG SIDE OF A CASE'

But has he ever felt he has been on the wrong side of a case working for the bad guys.

"In a collision case, you never know until almost the case is over whether you are on the upside or downside. I've never thought in those terms of being on the wrong side of a case," he replied.

"I know I have been criticised for representing the Kingdom of Spain in the *Prestige* case by some of the P&I underwriters. They said 'why in the world would a man who's spent his life representing shipowners represent the kingdom of Spain?' I thought then and I still think now

that was an odd question to ask," he added.

So what should the shipping industry be doing better? "Our biggest failure has been in training and properly manning ships. I think the marine industry has not concentrated on this to the degree that it should."

"You can put the most sophisticated equipment in the world on a ship but, if you don't properly train the officers and crew members to operate it, you might as well not have it on the ship because it becomes just an object that is not only ignored but is something that everyone is a little afraid of."

Another key lesson of Starer's years as a casualty lawyer is that perhaps 70% of the casualties he has seen are down to human factors and things go wrong when there is crew fatigue.

"One of the big problems today is there may well be fatigue, and that is as bad as a crew not being trained properly," he added.

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