

BY GRANT CYSTER

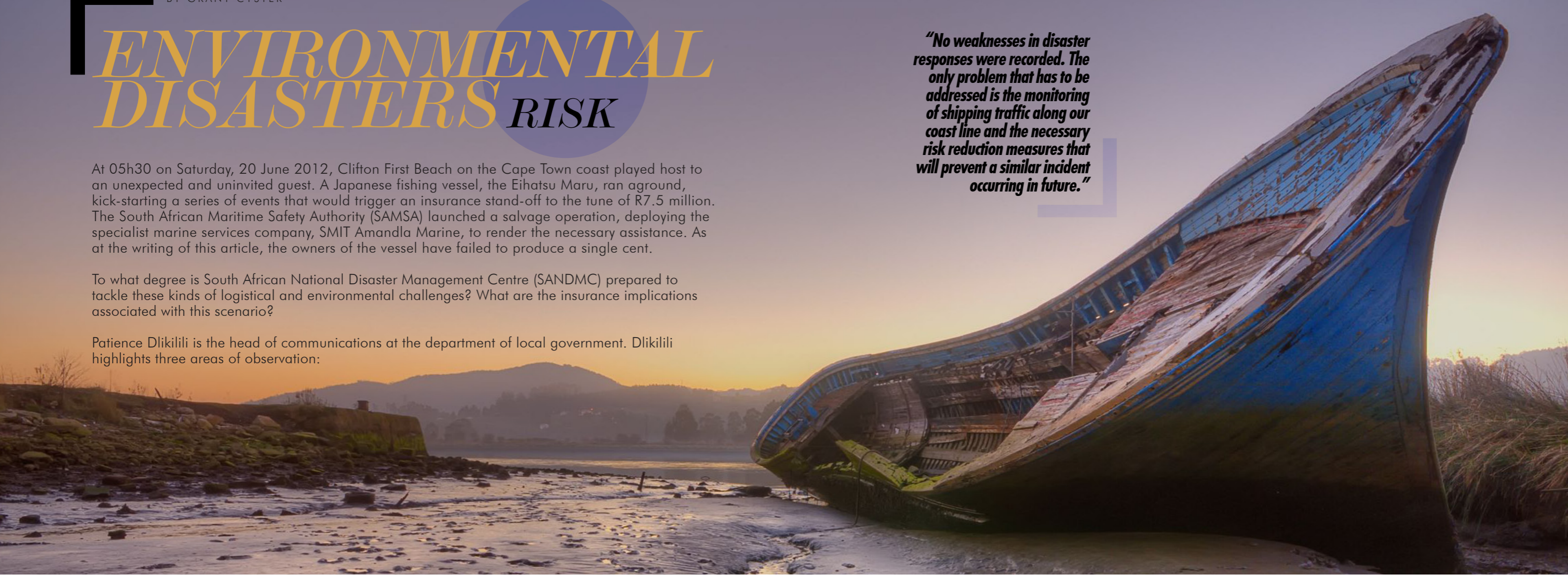
ENVIRONMENTAL DISASTERS RISK

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At 05h30 on Saturday, 20 June 2012, Clifton First Beach on the Cape Town coast played host to an unexpected and uninvited guest. A Japanese fishing vessel, the Eihatsu Maru, ran aground, kick-starting a series of events that would trigger an insurance stand-off to the tune of R7.5 million. The South African Maritime Safety Authority (SAMSA) launched a salvage operation, deploying the specialist marine services company, SMIT Amandla Marine, to render the necessary assistance. As at the writing of this article, the owners of the vessel have failed to produce a single cent.

To what degree is South African National Disaster Management Centre (SANDMC) prepared to tackle these kinds of logistical and environmental challenges? What are the insurance implications associated with this scenario?

Patience Dlikilili is the head of communications at the department of local government. Dlikilili highlights three areas of observation:



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THE PRESENT STATE OF READINESS

“The current preparedness level for maritime disasters is adequate. The incident involving the Eihatsu Maru was not deemed to be a disaster as this accident was taken care of as a normal maritime emergency. The sectorial responsibility for shipping accidents (emergency and/or disaster) is that of the national department of transport, and specifically SAMSA. Only if the department of transport, with its own resources, is unable to cope with a specific incident, will it request that a disaster be declared (within the ambit of the Disaster Management Act). It is at this stage that the disaster management fraternity, namely the City of Cape Town’s Western Cape provincial government, as well as the national disaster management centre, is activated for the purpose of co-ordination and monitoring of the incident.”

Dlikilili says that when a disaster declaration is required, the maritime disasters contingency plan will be activated which elevates the incident to a higher level of unified command. This allows for the national contingency reserve funding to be accessed under the auspices of a disaster declaration.

There are currently adequate disaster contingency plans in place for maritime disasters, and these plans are reviewed on an annual basis. During the mentioned maritime incident, officials of the City of Cape Town’s disaster management centre (DMC) monitored the situation and supported SAMSA where it was required. The head of the provincial DMC, Colin Deiner, requested that an SANDF helicopter assist with rescue and relief activities. The helicopter was made available.

WEAKNESSES

“No weaknesses in disaster responses were recorded. The only problem that has to be addressed is the monitoring of shipping traffic along our coast line and the necessary risk reduction measures that will prevent a similar incident occurring in future,” says Dlikilili.

OWNER’S INSURANCE

Dlikilili adds, “The Western Cape has adequate resources and disaster management capacity to deal with the consequences of maritime disaster. Since 2000, the Western Cape has demonstrated a

very good track record in handling similar maritime-related incidents and/or disasters. The only aspect that might require urgent attention is the compulsory shipping owner’s insurance coverage which, according to recent news reports, is totally inadequate as currently specified in South African legislation. This is an issue that needs to be addressed by the national department of transport.”

PROFESSIONAL INSIGHT INTO MARINE INSURANCE

Rob Hoole, a specialist in maritime law, serves as legal

and insurance adviser to SMIT Amandla Marine. He says that there are essentially two main types of marine insurance procured by most vessel owners.

Protection and indemnity (legal liability) insurance

This cover is procured on a vessel by vessel basis. Protection and indemnity (P&I) cover is provided either on a mutual basis or on a fixed premium basis. Mutual P&I cover is largely provided by mutual insurers which are part of the international group of P&I

clubs. About 90 per cent of the world’s shipping tonnage is insured via mutual insurers which are members of this group. P&I insurance covers the vessel owner’s legal liability to third parties and would include liabilities arising out of injury to passengers or crew members, damage to cargo, damage to fixed or floating objects, wreck removal and pollution. It would generally also include a ship owner’s liability for damage caused to another vessel in the event of a collision with the insured vessel.



Hull and machinery (asset) insurance

This insurance covers the vessel itself (both its hull and its machinery) for accidental damage or total loss.

Hoole says that in the case of salvaging operations like the one involving the Eihatsu Maru, the owner of the vessel in distress is primarily responsible for all costs related to salvage or emergency services rendered. "Salvage services can be offered on a commercial basis (such as via a Lloyd's open form – no cure no pay – form of salvage agreement) or the appropriate state body (such as SAMSA). If the circumstances demand, it can instruct the master of a vessel in danger of polluting the South African coast to take specific actions (including the taking of an emergency tow) to prevent pollution. In the latter case, SAMSA has the necessary authority to recover from the vessel's owner any costs it may incur in assisting the vessel or preventing pollution. Generally, in maritime law, a party which has rendered salvage services has a maritime lien over the vessel. This lien acts as security for the claimant. If the vessel owner does not provide the necessary security for the claim,

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the claimant can arrest the vessel and can eventually sell the vessel in execution of its claim."

As for the cover that a company like SMIT Amandla Marine requires, given its involvement in the salvaging operation, Hoole adds, "In principle SMIT Amandla Marine would be liable to the vessel owner (of any vessel to which it renders services) for any damage it causes to that party's personnel or property, and would also be liable to third parties for any pollution it causes, even if the services were being rendered in an emergency situation. This liability could, however, be limited by contract and the tug owner would also, in certain cases, be entitled to a statutory limitation of its liability. Ultimately this liability would generally be covered by the tug owners P&I cover, under a specific extension which allows for the rendering of salvage and towing activities."

In the view of Mike Brews, chief operating officer of Santam division, associated marine, the amount of vessels stranded along the South African coast serves as a warning to local ship owners in the business of sending vessels out to sea without the necessary insurance cover in place. It is an issue that

Brews feels could adversely affect the local maritime insurance sector. In an open letter dated 8 June 2012 to the South African Minister of Transport and the head of shipping law at the University of Cape Town, Professor John Hare, stated that limits of compensation available to European maritime states affected by oil pollution was increased to R9.3 billion. This increase in compensation was spearheaded by an EU effort, subsequent to a long list of costly shipping disasters. However, as Hare went on to say, South Africa is in a far more precarious position.

Referring to the risk of future disasters, Hare says, "We still do not sleep easy in South Africa. If the somewhere is here, and the sometime is before our government gets its act together in relation to liability and compensation for oil pollution from tankers, all we will be able to claim in compensation is a paltry R180 million from the owner or insurer of the stranded ship."

Clearly, South Africa has got some way to go in readying itself for a possible shipping catastrophe that could cost taxpayers billions. Until such time that relevant legislation is modified to guarantee the necessary safeguards, our beautiful and fragile coastline remains vulnerable to a future calamity.



"We still do not sleep easy in South Africa."