IMAGE: GETTY

(NSRA) was established by the Russians and in 1991 published its regulations for navigation on the seaways of the Northern Sea Route.

The regulations require that ships are ice classed and personnel are sufficiently experienced and qualified to operate in the Arctic environment. Full details of the voyage, its route and the proposed dates are required and an inspection of the ship in question will also be carried out.

Ships are then escorted by at least one Russian ice breaker to aid them on their journey. Further details of what is required are outlined in the box on this page.

Commenting on some of the issues at hand, John Flaherty, partner at Clyde & Co who specialises in this area, says: "Even though you can now sail across the NSR it is still only really open from mid-June through to September and you still need to be behind an ice breaker. You still need to be an ice classed ship and as you are in Russian waters you are still under their authority."

Indeed, Russian ice breaker fees are a central consideration to the economic viability of ships using this route and ship owners are looking for not only certainty around the availability of ice breakers to escort them, but also around the charges that will be levied for doing so.

Growing interest

To date, the NSR remains an exciting prospect that a small number of ships are using and a small number of underwriters are providing cover for.

"We want our managing agents to consider the full range of risks when they get involved in underwriting commercial ventures in this area…"

However, it is an area that is being increasingly analysed as Neil Smith, manager of emerging risks at Lloyd's, says: "We want our managing agents to consider the full range of risks when they get involved in underwriting commercial ventures in this area, so we are trying to provide as much support and information as possible."

To this end, Lloyd's has recently published a research paper entitled *Arctic Opening: Opportunity and Risk in the High North*.

How developed the NSR and the insurance market that supports it become, will depend on the ability of companies to extract the Arctic's energy assets successfully, the need for them to ship cargo out of that area and the scale of ongoing climate change to keep the shipping lanes open.

For now though, interest in the possibilities continues to grow rapidly.

CONSIDERATIONS REQUIRED TO ARRANGE PASSAGE ALONG THE NSR

NSRA rules for navigation include these headings:

- Request for guiding through the route
- Requirements to vessels and their commanding personnel
- Due security of liability
- Check (inspections)
- Order of navigation
- Control of navigation
- Suspension of navigation
- Removal of vessels off the route
- Liability
- Notification (pollutants)
- Permission to pass through the NSR could be issued by NSRA upon completion of a satisfactory survey of the ship and her compliance with the 1996 requirements, such to be conducted at any suitable port at owner's expense.

NSRA regulations for icebreaker and pilot guiding require advice of:

- Name of vessel, flag, owner
- Gross and net register tonnage
- Total displacement
- Principal dimensions, engine output, draft, speed, year of construction
- Ice class, classification society, date of the last attesting
- List of deviations from the 1996 requirements on design
- Approximate date of the voyage
- Certification of insurance of liability iro pollution
- Purpose of the voyage (cargo transport, tourism, scientific research).

NSRA requirements for the design, equipment and supplies cover:

- General provisions
- Hull of vessel
- Machinery plants
- Systems and devices
- Stability and unsinkability
- Navigation and communications equipment
- Provisions and emergency facilities
- Crew of vessel.

Source: www.lmalloyds.com/lma/jointhull

Credit where credit is due?

A trio of recent cases have shed some light on the issue of credit hire and the level of recoverable losses that can be claimed

At the end of 2011 the Court of Appeal handed down two judgments concerning points of principle that arose in cases involving the hire of replacement cars on credit terms: *Pattni v First Leicester Buses* and *Bent v Highways & Utilities Construction*.

Following hearings the court handed down a single judgment. In Pattni, the claimant hired an alternative car on credit terms despite being able to afford to hire without credit, and under the agreement was (at least nominally) contractually obliged to pay interest on the charges for the period from the end of the hire until the claim was finalised.

In Bent, the footballer Darren Bent hired on credit terms where he could have hired a suitable replacement without such a facility. The first appeal considered the recoverability of interest on credit hire charges and the second appeal examined the appropriate method of assessing rate evidence where a claimant has hired on credit and the cost of the additional benefits provided in such hire need to be stripped out of the recoverable rate.

HELD: In Pattni it was found that interest a claimant was liable for under the contract was not recoverable as it was an additional benefit provided within credit hire and which must be stripped out unless the claimant proved to be impecunious. Furthermore, interest was not recoverable as there was no evidence a loss had been suffered by the claimant.

Additionally, the previous courts were entitled to refuse to award statutory interest in accordance with their discretion. Bent confirmed that in order to strip out the additional benefits provided in credit hire and not recoverable for a pecunious claimant, the court is to carry out an objective assessment and seek to identify the basic hire rate. Additionally, when considering the appropriate tariff of rate evidence, the court is entitled to have regard to whether the claimant could have foreseen that the period of repairs was such that a longer period of hire was likely.

Sayce v TNT UK

The claimant pursued a claim for hire following a non-fault accident. Prior to hiring the claimant was offered a replacement vehicle by the defendant, but rejected it. At first instance DJ Flood found that the rejection was a failure to mitigate and awarded no damages, as acceptance of the offer would have negated any loss. The claimant appealed. Prior to the appeal, the Court of Appeal had heard *Copley v Lawn*. Copley indicated that if the claimant unreasonably refuses an offer of a car from a third party, they could still recover as damages the cost of the provision of that car. Despite this, HHJ Harris QC upheld the appeal. He considered that the judge's finding of failure to mitigate was one she was entitled to reach and he would not interfere with it. Furthermore, he upheld the award of no damages stating that he was not bound by Copley and preferred other House of Lords' decisions.

HELD: HHJ Harris's decision not to follow Copley was reached despite neither party making submissions on the same. This was a procedural irregularity sufficient for the appeal to be granted. Although the finding in Copley as to the recoverable sum is not part of the ratio of the judgment, where a court is not bound by the decision of a higher court they ought to follow it even if they do not agree with it when it was given to provide clarity for the profession. The court had some difficulty with the Copley judgment and therefore permission to appeal might have been considered. However, it would not be granted as the appeal had to succeed due to the procedural irregularities and because permission was recently refused in Copley.

All three cases have given guidance to the level of recoverable losses in credit hire claims. Pattni is a significant step in closing the door on claims for interest, while Bent has established that the assessment of BHR is objective, moving away from the practice of always recovering at the top of the bracket.

In Sayce, the Court is very critical of HHJ Harris's decision and appear to revert back to Copley but does give an indication that issue of the recoverable sum may still be suitable for the Supreme Court.

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WHAT IS THE SIGNIFICANCE?

- **Judgments concerning points of principle in credit hire claims.**
- **Significant guidance to the level of recoverable losses.**

IMAGE: GETTY