



**2017 Annual activity report**  
**Major Casualties Department/**  
**External Relations Department**

## 1. 2017 REVIEW

### 1.1. PROGRESS OF CASES

#### 1.1.1. Ongoing cases

The number of cases managed by CESAM's Major Casualties Department in 2017 included 40 major casualty cases (of which 4 were new) covering approximately 420 sub-cases<sup>1</sup> submitted by member insurance companies.

Summary files are available to insurers on request for each major casualty.

The total amount of provisions made and recommended by CESAM amounted to €1,007,401.14 and \$5,792,462.98 for all ongoing cases at the end of 2017, i.e. a total of €5,842,835.34 (exchange rate at 31/12/2017).

In addition to these marine casualty cases, the Major Casualties Department continues to manage several appraisal follow-ups as well as some unusual cases that will be mentioned in more detail in point 2.1 of this report.

#### 1.1.2. Closed cases

#### **CESAM - "Major Casualties Department" - List of closed cases in 2017**

<b>Ship</b>	<b>Date closed</b>	<b>Casualty</b>	<b>Financial year of the loss</b>
CMA CGM FLORIDA	15/12/2017	Collision	2014
FAIR ONE	28/02/2017	Engine failure	2008
HANJIN PENNSYLVANIA	10/10/2017	Fire	2002
PIONNER BAY	12/09/2017	Engine failure	2012
STX CHANGXING ROSE	14/06/2017	Fire	2013

Five general average cases were closed by the Major Casualties Department in 2017 following payment of general average contributions or after implementation of an amicable agreement concluded with the ship owner reducing the amounts of the cargo interests' liabilities.

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<sup>1</sup> Each sub-case corresponding to a separate insurance policy

### 1.1.3. Deductions

Deductions recorded in 2017					
Ship	Date of the casualty	Recourse/ amicable settlement	Change in general average provisions	Comments	Closed cases
NYK ARGUS	20/10/2004		USD 4,666.16		
SAF MARINE AGULHAS	20/06/2006		USD 1,552.56		
STX CHANGXING ROSE	17/12/2012		USD 9,393.40	General average contributions paid by P&I	x
FAIR ONE	30/08/2008		EUR 42,326.80	Abandonment of the general average	x
MSC FLAMINIA	14/07/2012	USD 20,040			
BOULARIBANK	08/08/2006	USD 2,006,482.69			

For 2017, it is important to highlight the amicable agreement that was concluded in the "BOULARIBANK" case (fire on 08/08/2006) and which enabled the insurers to achieve a significant deduction since the general average settlement imposed general average contributions of approximately €2.5m on the cargo insurers that entrusted their interests to CESAM.

An amicable agreement with the ship owner and various cargo interests finally enabled payment of only €650,000, i.e. a deduction of just less than 2 million euros. The fact that CESAM was able to represent a significant share of cargo interests for this claim enabled the implementation of this amicable agreement. Pooling the management of these cases thus allowed for a better defence of the cargo interests represented.

#### 1.1.4. Open cases

### CESAM - "Major Casualties Department" - List of open cases in 2017

Year	Ship	Casualty
2017	APL AUSTRIA	Fire and general average
2017	MSC DANIELA	Fire and general average
2017	KEA TRADER	Grounding and salvage
2017	HURRICANE IRMA/MARIA	Pleasure craft cases
2017	CMA CGM AFRICA	Appraisal
2017	LOUSTIC	Appraisal

## 1.2. CASE CHARACTERISTICS

### 1.2.1. General average and particular average

Once again 2017 confirmed that the management of particular averages by CESAM was inseparable from the management of the general average in order for the average adjuster to, in particular, more effectively manage this particular average at the time of assessing the contributory value of the cargo interests. Separate management of both these types of averages can prove harmful especially when the particular average, borne by the insurers, has not been clearly confirmed by the general average adjuster. This situation can lead to disputes that will prove very costly and difficult to manage.

### 1.2.2. Litigation

When we mention the scenario of a general average, the cargo insurers may face various types of litigation:

- litigation that seeks to dispute the general average as such<sup>2</sup>;

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<sup>2</sup> Some of the general average and or salvage cases managed at the Major Casualties Department are related to an unseaworthy ship (at least in part) that could be the cause of the casualty. If this is demonstrated and is the sole cause of this casualty, the payment of general average contributions could be opposed.

- litigation seeking to dispute the contributory value of the cargo interests involved;
- litigation seeking recourse against a third party liable for the casualty having led to the general average statement.

CESAM's Major Casualties Department intervenes at the request of insurers in these three types of litigation, the common characteristic of which is that they are complex procedures<sup>3</sup> and particularly costly, which is why it is advantageous to pool resources for managing these cases at CESAM.

Invariably in relation to previous years, the Major Casualties Department has attempted to prioritise amicable remedies compared with more costly legal proceedings but in certain cases, court litigation cannot be avoided. The courts referred to are mostly English courts. It should be noted that in 2017, the grounding of KEA TRADER off the coast of Nouméa on 12/07/2017 was referred to a French court since the case was referred to the Nouméa court.

### 1.2.3. The importance of amicable settlements

Furthermore, in 2017, the importance of amicable settlements was undeniable in the management of claims by the Major Casualties Department both for the general average and particular average part as well as the salvage part of these claims. The best example for 2017 is the amicable agreement concluded in the BOULARIBANK<sup>4</sup> case which enabled the cargo insurers that had entrusted their cases to CESAM to obtain a deduction of nearly 2 million euros.

## 2. 2017 REPORT

### 2.1. MANAGEMENT OF APPRAISAL MISSIONS AND UNUSUAL CASES

#### 2.1.1. Supervision of appraisal missions

For several years already, the Major Casualties Department has also managed the supervision of some particularly complex appraisal missions owing to its extensive knowledge of the CESAM network.

This capacity for intervention was especially demonstrated in 2017 as part of monitoring an appraisal of a flexitank damaged during transport. Thanks to its thorough knowledge of the latest innovations in this area and of the laboratories able to intervene in this type of case, the Major Casualties Department was able to advise the surveyor appointed for this task and help him to determine the safety failing at the time when the flexitank was loaded into the container.

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<sup>3</sup> The average management time of litigation disputing the general average is 5 years.

<sup>4</sup> Cf. table of deductions (point 1.1.3. of this report).

### 2.1.2. Supervision of pleasure craft claims as part of a major casualty: hurricanes Irma and Maria

The Major Casualties Department may also be required to intervene on behalf of insurers as part of salvaging pleasure craft affected by a mass loss. This capacity to intervene was requested by pleasure craft insurers in 2017 as CESAM was appointed by many insurers on the French market to supervise the losses incurred following hurricanes Irma and Maria in the West Indies (Saint-Martin, Saint-Barthélemy, Guadeloupe and Martinique) in the middle of September 2017. It should be noted that CESAM was already involved in similar cases at the time of hurricane Hugo (in 1989) and Luis (in 1995) in the West Indies.

Nearly 100 loss experiences have been centralised with CESAM's Major Casualties Department. This supervision made it possible to implement joint actions to respond to the urgency of this crisis situation. Guadeloupe's average agent, Mr Steeve Marsolle, was one of the first surveyors to arrive on the island of Saint-Martin after hurricane Irma. He drew up a very precise list of all the craft damaged in the French part of Saint-Martin in order to give the insurers a clear overview of the situation on the ground. The centralisation of these cases at CESAM made it possible to very quickly mobilise several surveyors who worked collectively to successfully complete all of the appraisals necessary for the insurers.

In addition, CESAM's intervention also made it possible to implement a simplified framework agreement to provide a framework for refloating<sup>5</sup> or decommissioning operations. This framework agreement was subsequently used for the large majority of refloating operations put in place in Saint Martin for insurers, including those that did not entrust cases to CESAM, and the various companies involved on the ground.

A little more than two months after the hurricanes, the Major Casualties Department travelled to Saint-Martin to meet the surveyors appointed by the insurers as well as the various parties involved in the repair or dismantling of craft<sup>6</sup> (representatives of Saint-Martin's local authorities, representatives of the various administrative services concerned, private companies responsible for dismantling operations, site representatives and sailing professionals, etc.).

The METIMER association, representing Saint Martin's sailing professionals largely facilitated the organisation of meetings.

In general, this mission in Saint-Martin made it possible to establish to what extent certain local difficulties can be an aggravating factor in the management of this crisis situation at all levels and not only regarding pleasure craft.

CESAM's mission also made it possible to identify the capacities of local sites and obtain a preliminary agreement from Saint -Martin's local authority in order to provide insurers, for a limited period, with a site located between the tourist office and the Marina La Royale in Marigot so that the damaged craft could be brought out of the lagoon.

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<sup>5</sup> Flat-rate refloating or decommissioning agreement in appendix 1 of this report.

<sup>6</sup> The report on this mission is available in appendix 2 of this annual report.

At the end of 2017, nearly all of the damaged craft followed-up by CESAM had been brought out of the water and were in the dismantling or repair phase. Preliminary reports were submitted by the surveyors for the large majority of cases. However, a certain obstruction slowed down the submission of certain reports by the surveyors appointed the most on the occasion of these hurricanes. As the proposal made by CESAM to distribute the loss experiences at an early stage between the various surveyors present in Saint-Martin was not completely followed<sup>7</sup>, some surveyors were called upon more than others and therefore had more time to submit reports. Careful monitoring by the Major Casualties Department of the sensitive cases will make it possible to close these loss experiences as quickly as possible.

Such monitoring has also enabled CESAM to inform the FFA (French Insurance Federation) of the local situation, the particular difficulties encountered in Saint-Martin and the progress of dealing with the damaged craft.

Finally it should be noted that close collaboration with FIN<sup>8</sup> and the METIMER association enabled the Major Casualties Department to be as close as possible to the reality on the ground in Saint-Martin and to quickly identify the issues encountered.

#### 2.1.3. Unusual cases

Completely unusual cases were still being handled by the Major Casualties Department in 2017. The PICASSO<sup>9</sup> case already mentioned in previous reports hardly progressed in 2017.

CESAM was approached by the British administrative authorities concerning the recovery of a shipment of copper that was on board SS HARROVIAN when it was sunk by a German submarine off the coast of England on 16 April 1916. Operations to salvage this cargo are planned by a private British company. As it is an extremely old case, all of the archives related to this incident are now destroyed. It is therefore very difficult to make the connection between the insurers at the time and the possible companies now representing the rights of the latter. CESAM therefore asked the British authorities to keep it informed of any operations undertaken on this ship.

### 2.2. BENEFIT OF POOLING RESOURCES

The benefit of CESAM combining the management and monitoring of major casualty cases was again reinforced in 2017 since it enables member insurance companies of CESAM involved in an incident to share the management costs of these cases while having more influence at the time of various amicable negotiations and proceedings encountered in these types of incidents.

In addition, the unusual case of managing the losses incurred following hurricanes Irma and Maria has undeniably demonstrated the use of pooling resources as part of managing a mass loss.

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<sup>7</sup> In the majority of cases centralised at CESAM, it is the local brokers who have appointed the surveyors.

<sup>8</sup> Fédération des Industries Nautiques (French Nautical Industries Federation)

<sup>9</sup> Recovery of the amounts compensated by the transport insurers following the theft of a Picasso painting in 1979.

## 2.3. RESOURCES PUT IN PLACE FOR MANAGING CASES

### 2.3.1. Set-up of CESAM guarantees

In 2017, CESAM issued no guarantee on behalf of its cargo insurer members whether as part of a general average procedure or salvage procedure. However, CESAM's intervention as a management body has often facilitated the dialogue between the representatives of ship owners and primarily the average adjuster and the cargo insurers concerned. This is particularly true when it concerns African insurance companies that do not always have the rating required by the average adjuster. Therefore, the general average and/or salvage guarantee is accepted without the need for a cash deposit enabling the release of any goods on board a craft affected by a general average statement or the signing of a LOF salvage agreement. For the average adjusters, the very fact that an insurance company is a member of CESAM is often an additional guarantee to compensate for a rating that is slightly too low.

As a reminder, in order to issue a CESAM guarantee, the Major Casualties Department blocks the amounts corresponding to the temporary rate of contribution to the general average and/or salvage in a frozen bank account bearing interest. If this rate changes, the amounts frozen will be adjusted according to this change. At the time of the final payment of contributions and/or salvage operations, unless otherwise stated by the company concerned, these frozen funds will be used to pay said contributions. The remainder and the interest will then be transferred to the company.

### 2.3.2. Access to the Lloyd's List

In 2017, CESAM once again renewed its subscription to the "Lloyd's List Intelligence" database. This makes it possible to inform CESAM members of any marine casualty but also to track the movements of a ship, its technical characteristics, properties, the controls and/or sanctions taken by the various competent authorities against a ship as well as to obtain certain information related to the ports and their infrastructure.

In addition, following the renewal with the "Lloyd's List Intelligence" website, alerts can be put in place to indicate the presence of a specific craft within a given geographic area or to identify any craft entering a given geographic area.

CESAM members can therefore request the intervention of the Major Casualties Department for any searches on this database. This service will be invoiced at €50 excluding tax insofar as it is limited to sending the ship record requested. A rate for the time spent will be applied if the service is more complex.

### 2.3.3. ASSTRA database



The ASSTRA database has been operational since the start of 2016. This database is used to simplify the management of cases entrusted to CESAM's Major Casualties Department since via the recording of the OPTIFLUX key of all the open cases on this database, the issue of periodic bulletins allows for the regular and systematic update of all open cases. In addition, all of the costs related to the claims can be paid directly via the OPTIFLUX system after validation by the lead underwriter.

However, despite systematic requests made by the Major Casualties Department at the time of opening any loss experience, no case entrusted to this Department could be completely recorded in this database failing the agreement of the companies appointing CESAM.

#### 2.3.4. Access to the LAMYLINE database

Subscription to the LAMYLINE database was also renewed for 2017. This legislative, case-law and doctrinal database<sup>10</sup> can be used to carry out searches for member companies, notably for older documentation.

For this service, the Major Casualties Department will apply an hourly rate.

#### 2.3.5. Archiving of closed cases

During 2017, the Major Casualties Department carried out a large archiving operation of cases previously closed. Around ten cases representing approximately 0.5 m3 were sent to the archives, involving the company RECALL. These archiving operations make it possible to streamline the case management of the Major Casualties Department. In addition, as any archived case is systematically numbered and identified, any request to return a case is very simple at a cost of €50/box.

### 3. GOALS AND DEVELOPMENTS FOR 2018

#### 3.1. PROGRESS OF REFERRED CASES

For several years already, the Major Casualties Department has offered member companies extensive help with any type of major incident and is no longer solely restricted to cases of salvage and/or general average statements. From this perspective, the Major Casualties Department can therefore intervene in cases not submitting salvage or general average statements, but where the interests of several member companies are involved (collision, grounding, major weather event, etc.).

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<sup>10</sup> Lamy assurance (since 1997), Bulletin des Transports (since 1996) and Droit Maritime Français (since 1990).

In addition, in close collaboration with the Networks Unit, the Major Casualties Department can intervene in support of the appointment of a surveyor of the CESAM network in particularly complex cases. The synergy that exists between these two CESAM departments can be used to learn a certain number of lessons. This makes it possible both to support the Committees created as part of the implementation of pleasure craft and freight transportation certification, but also to more effectively supervise the CESAM networks by streamlining the management of an appraisal.

Finally it should be noted that the Major Casualties Department is very often called upon by owners of freight or various intermediaries in the transport chain to find out the progress of certain major casualty cases even though this freight has not been entrusted to CESAM. In the interests of transparency and keeping the market well-informed, CESAM responds favourably to these information requests to the extent of the information in its possession.

### 3.2. NEW HOURLY RATES

The CESAM Board of Directors has decided to reduce the amount of the hourly rate applied by the Major Casualties Department for the management of cases entrusted by member companies. It will be reduced from €250/hour to €150/hour with a minimum charge of €400 per sub-case (each sub-case corresponding to a separate insurance policy).

### 3.3. THE GENERAL FRAMEWORK OF THE GENERAL AVERAGE: YORK-ANTWERP RULES 2016

As announced in the previous annual report, the new York-Antwerp Rules 2016 applicable to the general average have been translated into French by the CMI working group<sup>11</sup>. This translation was being finalised at the end of 2017. It should however be noted that none of the latest general average statements registered with CESAM refer to the latest version of the York-Antwerp Rules 2016.

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<sup>11</sup> See Appendix 3 "York-Antwerp Rules 2016".

## APPENDICES

A.1. FLAT-RATE REFLOATING OR DECOMMISSIONING AGREEMENT FOLLOWING  
HURRICANES IRMA and MARIA – SEPTEMBER 2017

[http://www.cesam.org/common\\_html/documents/reseaux/rapports/2017/Annexe1.pdf](http://www.cesam.org/common_html/documents/reseaux/rapports/2017/Annexe1.pdf)

A.2. REPORT ON THE SAINT MARTIN MISSION

[http://www.cesam.org/common\\_html/documents/reseaux/rapports/2017/Annexe2.pdf](http://www.cesam.org/common_html/documents/reseaux/rapports/2017/Annexe2.pdf)

A.3. YORK-ANTWERP RULES 2016 – DRAFT TRANSLATION

[http://www.cesam.org/common\\_html/documents/reseaux/rapports/2017/Annexe3.pdf](http://www.cesam.org/common_html/documents/reseaux/rapports/2017/Annexe3.pdf)

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