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Preparing for the avian flu pandemic

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Scientists and health care experts are warning of the inevitability of an avian flu pandemic. Governments are starting to listen and take halting steps to address this perceived problem. The challenge for the maritime industry is determining likely impacts and initiating measures now to counter or mitigate those impacts.

What is it?

Influenza viruses are quite common, particularly in birds and to a lesser extent other animals such as pigs. Humans who come into contact with these infected animals may acquire one or more of the viruses inhabiting the animals. Most influenza viruses present minimal health risks to humans, as most of us have been exposed to them previously and have acquired some limited degree of immunity. For most people, the flu causes congestion, fever, and body aches for a few days and then goes away – sort of like a bad cold. For some people, though, particularly those with impaired immune systems, the common flu can result in severe health problems and possibly death. Flu vaccinations generally provide immunity, if the pharmaceutical industry can correctly anticipate the flu strain before it becomes wide-spread and design the vaccine to counter that strain.

Problems arise due to the ability of the influenza virus to mutate rapidly. As a result, a particular vaccine may be only partially successful in providing immunity. If the mutation is great or unanticipated, the vaccine may largely fail to protect humans.

In the past few years, scientists have detected a significant mutation in the influenza virus in some birds. This new virus is officially referred to as H5N1, but is commonly called the avian flu. It was first found in domesticated birds being raised in China and southeast Asia. It has since been found in wild and migrating birds throughout Asia and in Europe. It is only a matter of time before the virus will have spread worldwide. Because the avian flu is significantly different from previous influenza viruses, humans have no immunity. The mortality rate for humans known to have been infected with the avian flu is quite high – over 50%.

Fortunately, in its current form, the H5N1 virus lacks the ability to infect one human from another human. Thus, almost all cases known to date involve persons who worked in close

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contact with birds on a daily basis. The concern is that eventually the avian flu will mutate again and acquire the ability to move easily (i.e., through airborne fluids such as in a sneeze) from one person to another. When that occurs, the stage is set for the human version of avian flu to move rapidly around the entire world, temporarily incapacitating a large percentage of the populace and resulting in the deaths of millions (It is estimated that 40 million people worldwide died during the 1918 Spanish flu pandemic).

What are the likely impacts for the maritime industry?

The major impact of an avian flu pandemic for the international maritime industry will be delays and diversions on a large scale. For a period of time (perhaps six months), commercial activity will operate at a fraction of the level immediately preceding the outbreak. Ship owners and operators with long-term contracts will be unable to fully perform or will find that their commercial partners will be unable to perform. The labor pool, both for sea-going jobs and maritime positions ashore – such as longshoremen – will be seriously depleted as employees become too ill to work or have to stay home to attend to ill family members. The labor pool for the jobs that manufacture goods for eventual shipment and the consumers who might purchase those goods will face similar impacts.

President Bush recently asked Congress to appropriate billions of dollars to initiate the process of preparing the United States to deal with this threat. He also promulgated the National Strategy for Pandemic Influenza. The strategy outlines how the federal government intends to prepare, detect, and respond to a pandemic. It also outlines the roles envisioned for state and local governments, the international community, and the private sector. The pillars of the national strategy are: (1) preparedness and communication; (2) surveillance and detection; and (3) response and containment. Surveillance and detection will involve, among other things, increased reporting and recordkeeping from arriving ships and aircraft.

The U.S. Department of Health and Human Services (HHS) has issued a Pandemic Influenza Plan providing more details to supplement the National Strategy. (The UK Health Protection Agency issued a similar Influenza Pandemic Contingency Plan in October.) The Centers for Disease Control and Prevention (CDC) recently issued proposed rules that would modify and strengthen current quarantine regulations. Among the changes proposed to current regulations that might impact marine carriers are more detailed reporting requirements when persons on board are suspected of having a communicable disease, increased sanitation requirements when so directed by the CDC, and broader authority by the CDC to order various quarantine measures.

Governments, in an effort to slow the spread of avian flu to their citizens, will impose restrictions on ships arriving from foreign ports. These restrictions will include reporting requirements, particularly with regard to prior port calls, the health of all persons on board, and keeping track of persons who might depart the ship. (In October, the Panama Canal Authority began requiring ships to include in their advance notice of arrival information regarding any birds that have died on board; whether any of the previous ten port calls were in nations

identified as having outbreaks of avian flu; and whether any persons on board are experiencing flu-like symptoms.) It will be difficult, if not impossible, to fly in new crew members for routine crew changes or as replacements for ones who might become ill. Ships may be delayed in port because they can't get their cargoes unloaded or get new cargoes loaded.

What can be done?

Governmental restrictions (sometimes called "restraint of Princes") and other delays will have major financial consequences. The party that bears the financial impact will be determined, to a large extent, by the various contracts and legal relationships between those involved. Most contracts in use today (charter parties, contracts of affreightment, insurance policies, etc.) were not drafted with consideration to avian flu. Thus, the parties, arbitrators, or the courts may have to ultimately determine the allocation of the financial consequences without benefit of knowing what the parties contemplated beforehand.

Fortunately, the maritime community has some time to plan ahead to address the challenges posed by the risk of an avian flu pandemic. The impact can be minimized through good contingency planning. The financial consequences can be allocated through careful drafting of legal instruments.

Carriers and shippers should develop alternatives that can be utilized if some ports are closed. Ship operators and managers should carefully monitor the health of their crew members and shoreside employees and consider alternative crewing sources that can provide qualified seamen on relatively short notice to replace regular crew members who might fall ill or stay home to care for their families.

Charter parties, contracts of affreightment, and insurance policies should be redrafted to allocate the risks posed by the avian flu pandemic. In the long run, it matters less where the risk falls than that it be clearly allocated beforehand. Once the risk is allocated, parties will know who has the primary duty of preparation and who needs to obtain additional insurance or other coverage to protect their interests.