



An Interactive Workshop on Marine Insurance and Average

海事保險及海損互動工作坊

25 November 2016 Friday

6:15 pm to 9:00 pm

**22/F China Taiping Tower,
8 Sunning Road, Causeway Bay**



Organiser:

⚓ Marine Insurance Club



Co-Organisers:

⚓ Institute of Seatransport

海運學會
Institute of Seatransport



⚓ Hong Kong Maritime Law Association





Panel Speakers:

Rohan Bray
Stephen Cheng
Thomas Cheung
Richard Oakley
Raymond Wong
Jon Zinke

Thomas Cheung

Game Plan For Procurement of Marine Insurance



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Game Plan For Procurement of Marine Insurance

November 25, 2016 (Friday)
Hong Kong



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Thomas Cheung

Professional :

- Currently – CEO, CTX Special Risks Limited, Hong Kong, an independent marine insurance brokerage in Asia
- Ex-CEO, Mainland Headwear Holdings Ltd., HK, a HK public company trading in the HK Stock Exchange with business focus on manufacturing and retails
- Ex-Executive Director/Regional Director-Marine Asia – Aon Insurance Broker
- Ex-Project Manager – International Maritime Carriers, HK

Academical :

- Master Degree of Technology Management – MTM
- Master Degree of Business Administration – MBA
- Institute of Chartered Shipbrokers, United Kingdom – Fellow Member (FICS)
- Institute of Chartered Logistics and Transport, UK and Hong Kong – Chartered Member (CMICLT)
- Professional Certificate on Supply Chain Management



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INSURANCE



what my friends think I do



what my mom thinks I do



what society thinks I do



what customers think I do



what I think I do



what I really do



PROLOGUE



Vessel: M/V “HANJIN PENNSYLVANIA”

Type: Container Carrier

Year Built: 2002

GT: 50,242

Carrying Capacity: 4,000 TEU

What happened to her?

- 11/11/2002 an explosion occurred & fire broke out, about 150 KM off from South of Sri Lanka, while enroute from Singapore to Hamburg via Suez.
 - 25/11/2002 under tow
 - 16/12/2002 towed to Singapore
 - 9/1/2003 Arrived at Singapore
 - 3/2003 sold for scrap to a Chinese Ship broker at USD2.3mil
 - Early 2004 rebuilt in Shanghai, USD20-30mil, renamed as “PHOENIX TOWER”
-

Outcome:

Hull Loss – CTL USD60mil (Sold for scrap USD2.3mil)

Cargo Loss – USD75mil

Crew members – One died shortly and one unaccounted for

Hypothetical Scenario:

Your claim is denied!!!

- What is your reaction?



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- **Perspiration from both of your hands?**
- **Depression or general unhappiness?**
- **Anxiety and agitation?**
- **Moodiness, irritability or anger?**
- **Feeling overwhelmed?**
- **Loneliness or isolation?**
- **Suicidal attempt? Hara-Kiri?**
- **Other mental or emotional health problems?**

Remember:

The insurer is not relying on voodoo or sorcery to deny a claim



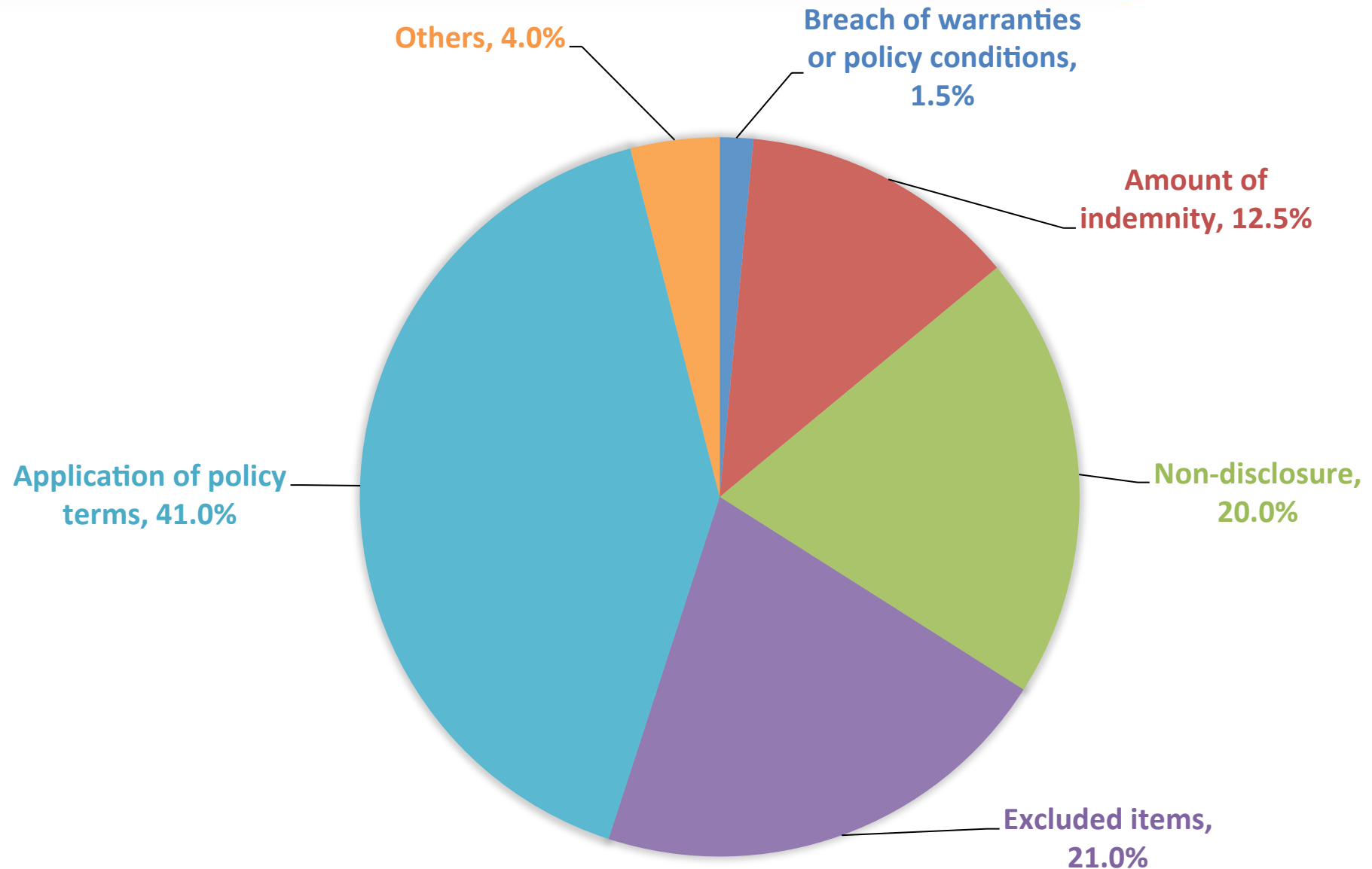
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Possible reasons why a claim could be rejected:



- **Lack of due care**
 - **Did not take reasonable time to answer all questions on the application truthfully and accurately**
 - **Mis-representation of material facts**
 - **Breach of policy warranties/conditions**
- and etc.**

Nature of Insurance Complaints for Year 2015



Prevention is better than cure!
Do your homework thoroughly!



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What are the risks involved in having a vessel?



➤ **Construction phase Risk (Completion risk)**

➤ **Operation Phase Risk**

➤ **Common Risks**

a) Participant risk

b) Technical risk

c) Currency risk

d) Regulatory risk

e) Political risk (most difficult to predicate)

f) Force Majeure risk

g) Credit risk

and etc

Understand the risk:



Why is risk important for insurance?

- **Risk is what makes you decide whether or not you need insurance**
- **Risk is what insurance companies measure when determining whether to offer you insurance and how much it will cost**

How do you handle your risk?



- **Avoidance**
- **Retention**
- **Transfer**

Then, what is insurance?

A legal contract that transfers the “risk” from a policy holder to an insurance provider.

Game Plan

What are the ingredients?



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Return On Investment (ROI)

Invest a significant amount of time, energy and passion in the endeavor



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Know yourself:

- Tolerance to risk
- Appetite to risk



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Basic Insurance Covers For a Vessel



- 1) P&I Insurance + optional FD&D (For disputes)**
- 2) Hull & Machinery Insurance + optional cover for owned/leased containers (for a container vessel)**
- 3) War Risks Insurance: Losses and liabilities arising from War and War-like perils**

1) P&I Insurance



Criteria in Choosing a P&I Club

- Financial Strength
- Underwriting Management
- Investment Management
- Year-on-Year Renewal
- Services (Claim/Loss Prevention/FD&D)
- Flexibility on deals/claims

1) P&I Insurance



➤ Financial Strength

- ☆ Free reserve - indication of financial strength and future stability
 - Benchmarking level – USD300mil
 - Vs size
- ☆ Magnitude of contribution to the IG pool – in fair proportion to its size?
- ☆ Dramatically increased to match its current size tonnages
- ☆ High pool costs

1) P&I Insurance



➤ Underwriting Management

a) General Increase

- ☆ Four Clubs - have consistently bear below the market average over five-year period
- ☆ One club was high, but over the last two years has beaten market average
- ☆ Two clubs have highest average general increase

b) Supplementary Calls

- ☆ Unbudgeted calls
- ☆ Return
- ☆ Release Calls

1) P&I Insurance



➤ **Combined Ratio**

- ★ Measure of underwriting account profitability (ratio of net premium against net claims plus expense)
- ★ Because of mutual basis, most clubs are content to run an underwriting deficit
- ★ Club should avoid running consistently above 105% to 110%

➤ **Investment Management – Prudently?**

- ★ De-risked portfolio
- ★ National Structural restrictions
- ★ Equity positions
- ★ Risks Vs Reward

1) P&I Insurance



➤ **Average Expense Ratio (AER)**

- ☆ Associated with operational management of association
- ☆ Number of branches: the more number, the higher AER
- ☆ Ratio of all expenditure Vs Combined premium + investment income
(expenses as a five-year average)
- ☆ Value for money?

➤ **Year-on-Year Renewal**

- ☆ Flexibility
 - Can do deals
 - More sympathetic
- ☆ Stability
- ☆ Problem-resolving

2) Hull & Machinery/War Risks Insurance



- Financial Strength
- Goodwill
- Leadership
- Price Strategy
- Underwriting Philosophy
- Flexibility
- Attitude of cooperation on claims
- Speed on payment of claims/payment on accounts
- Reinsurance Structure
- Maritime Knowledge/expertise
- Maritime Resources for advice/claims
- Degree of respectfulness on letter of undertaking
- Applicable laws & Jurisdiction
- Cooperability with following markets

Aristotle

The roots of education are bitter, but the fruit is sweet.



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Q & A

THANK YOU

“An Imaginary Casualty”

Chaired by Jon Zinke

- Jon Zinke is a graduate of the State University of New York Maritime College and Brooklyn Law School. He is admitted to practice before the State Courts of New York, the United States District Courts for the Southern and Eastern Districts of New York, the United States Supreme Court, and is a registered foreign lawyer with the Law Society of Hong Kong. He holds an unlimited Oceangoing United States Coast Guard Chief Mate's License and sailed as a deck officer on various United States flag vessels prior to commencing his legal career in 1980.
 - Mr. Zinke was associated with a maritime firm in New York from 1980 to 1985 when he transferred to that firm's Hong Kong office as resident partner. In 1997 Mr. Zinke joined Keesal, Young & Logan and became resident partner of the firm's Hong Kong office.
 - Mr. Zinke provides advice to the firm's clients in the Far East regarding various maritime, aviation, and commercial disputes involving United States law and provides advice and assistance to law firms throughout the United States on matters involving Asia. He is also actively involved in handling maritime and commercial arbitration disputes in New York and Asia.
 - He is a member of the American Bar Association, The Maritime Law Association of the United States, The Nautical Institute, a past Chairman of the Maritime Law Committee of The Inter Pacific Bar Association, Deputy Chairman of The Maritime Law Association of Hong Kong, and an alternate to the Executive Committee of the Hong Kong Shipowners Association, an honorary member of the Hong Kong Marine Insurance Club, an Associate Member of the Average Adjusters Association, is on the Board of Editors of The Institute of Seatransport "Seaview" Magazine and was the 2005 Chairman of the American Chamber of Commerce in Hong Kong, on whose Board he served from 1998 to 2007. He was also the Chairman of the American Chamber of Commerce Charitable Foundation in 2006 and 2008 and serves as a permanent Trustee of that organization.
-

“MIC BUDDY”

Motor Container Carrier

DWT: 50,500

Built: 2007

Carrying capacity: 4300 teu

Casualty: 1st June 2016 – collision with
motor tanker “SEA LORD” or
position 22° 32.6’N 115° 36.4’E



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CARGO ON BOARD

- The “MIC BUDDY” was carrying a general cargo under 1,500 Bs/L, stuffed in 1,000 containers loaded at Far East ports for North European ports.
- The “SEA LORD” flying Singaporean flag had a full cargo of crude for Busan, Korea.



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CONTRACTS OF CARRIAGE

- The “MIC BUDDY” was operating as a liner to a fixed and advertised schedule. Bs/L provided for “General Average to be adjusted at any port at carrier’s option according to York-Antwerp Rules 1994” , incorporating Hague-Visby Rules and stating “Freight Prepaid”.
- The “SEA LORD” was on long term charter to IST Multinational Oil Co.



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INSURANCE CONDITIONS

- The “MIC BUDDY” was insured for the 12 months commencing on 1st January 2016, with Underwriters in Hong Kong through Brokers, on Hull & Machinery, etc. , for US\$12,000,000 so valued, subject to I.T.C. – Hulls 1/10/83 and Shipowners’ Special Clauses including GA Absorption Clause of US\$2,000,000, with a Deductible (Clause 12) of US\$100,000 each accident.
- In addition there was an Increased Value Policy for US \$3,000,000.



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INSURANCE CONDITIONS

- Most of the cargo on board the “MIC BUDDY” was insured subject to either ICC (A) 1/1/82 or ICC (A) 1/1/09.
- The “SEA LORD” was insured with Singaporean insurers.
- Both vessels were respectively entered with Protecting and Indemnity Association within the International Group insuring the P&I risks in the normal manner.



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EXTENT OF DAMAGE

- To “MIC BUDDY”— very extensive. “SEA LORD’s” bulbous bow struck “MIC BUDDY” midships portside below water level, rupturing a bunker tank which leaked bunkers; the bow further struck the vessel above water line damaging the vessel and knocking two containers into the sea and damaging others; “MIC BUDDY” developed a list to port.
- The “SEA LORD” only sustained damage to her bulbous bow.



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ACTION TAKEN IMMEDIATELY AFTER CASUALTY

- The vessels have moved apart immediately after the collision; because of the list to port, few containers were jettisoned but eventually to prevent her from sinking, the Master of the “MIC BUDDY” beached the vessel and asked for salvage.
- The “SEA LORD” proceeded on her voyage.



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SALVAGE OPERATION

- Lloyd's Open Form was signed with Chinese Salvage Company to refloat the "MIC BUDDY" and tow her to Hong Kong. Unfortunately, during the course of refloating operations, fire broke out in the vessel's engine-room (probably by crew negligence).
- Fire extinguished and vessel refloated by Salvors and vessel was towed to Hong Kong.



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SUBSEQUENT ACTIONS

- On arrival at Hong Kong, all cargo on board the “MIC BUDDY” was discharged, which was subsequently forwarded to destinations by other vessels. Inspection afloat revealed very extensive damages to the “MIC BUDDY” and Owners believing that the vessel was a constructive total loss in terms of Clause 19 of ITC-Hulls 1/10/83, tendered notice of abandonment to Underwriters.



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SUBSEQUENT ACTIONS

Specification for repairs was drawn up and Repairers in the region were invited to tender for repairs of:

- a) Collision damage
- b) Grounding and refloating damage
- c) i) Fire and ii) fire-fighting damage (to engine room)

Options to Owners:

- a) Where the total estimated costs of salving and repairing the vessel barely exceed the insured value of US \$12,000,000;
- b) Where the vessel is not a CTL in terms of the above-mentioned Clause 19.



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VALUES

Sound market value of the “MIC BUDDY”	:US\$7,500,000
Scrap value of the “MIC BUDDY”	: US\$ 500,000
Cargo CIF	: US\$90,000.00
Containers	: US\$1,500,000



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RAYMOND T C WONG



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<http://www.averageadj.com>

- Fully qualified in 1980 by stringent examination, becoming the first Chinese Fellow of the British Association of Average Adjusters (better-known as AAA). He is sitting on the Advisory & Dispute Resolution Panel of the AAA.

- Raymond started his career in 1966 with the oldest average adjusting firm, William Richards & Sons (currently named Richards Hogg Lindley). He was an equity partner of Richards Hogg prior to its incorporation and following its acquisition by Charles Taylor plc., he was appointed to sit on the latter's Board of Directors between 1999/2008. After retirement from the firm he had worked for some 46 years, Raymond continued his service and commitment to the maritime and insurance communities and has now launched, in conjunction with colleagues in the region, the average adjusting services under the umbrella of Asia Maritime Adjusting (Hong Kong) within TCWong Average Consulting Ltd.

- Raymond is a regular lecturer/speaker on general average and maritime claims related topics. He is a founder member and former chairman of Marine Insurance Club (established in 1979), current chairman of Institute of Seatransport (established in 1984), a founder and executive member of HK Maritime Law Association (established in 1987).

Raymond Wong

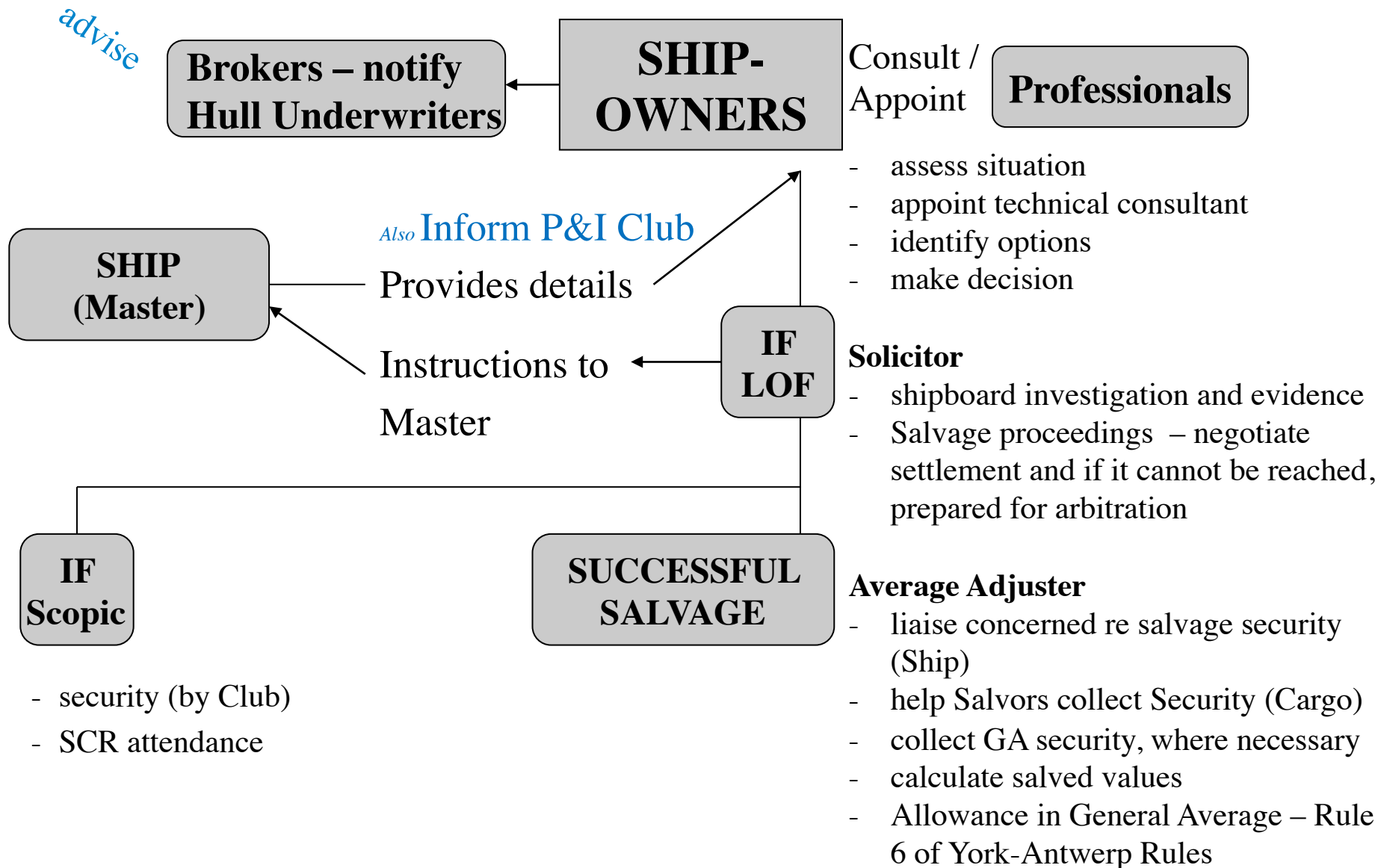
Casualty management – “professional” average adjusters advising and assisting in handling all aspects in aftermath of a casualty giving rise to GA; where necessary, coordinating the involvement of other professionals concerned; involving but not limited to....



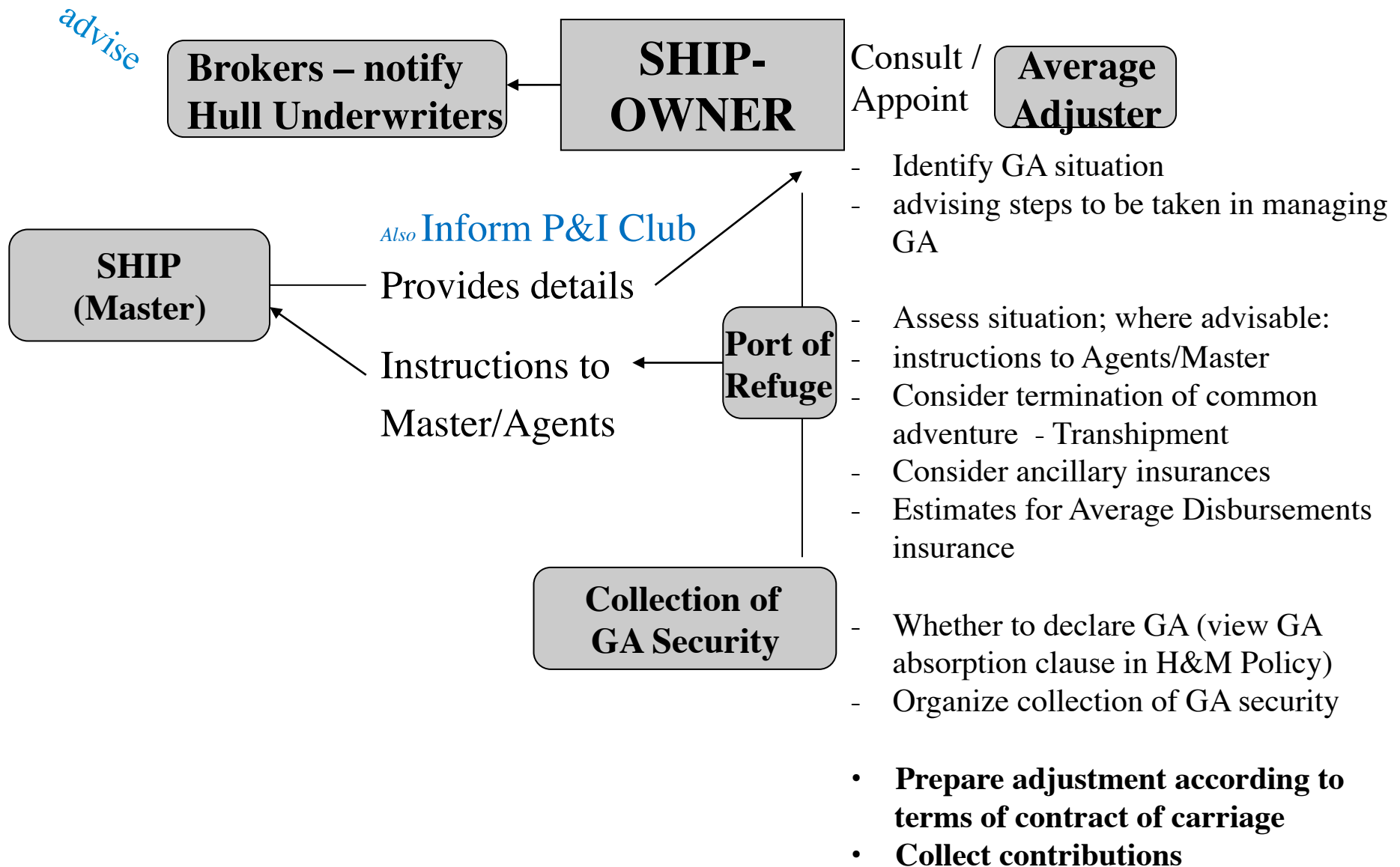
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Salvage



General Average



COLLISION

Advise Brokers to notify

Hull Underwriters

**SHIP-
OWNER**

Consult /
Appoint

**Professional
(Casualty Lawyer)**

Advise **Club who takes lead
in collision proceedings**

Instructions to :

Master

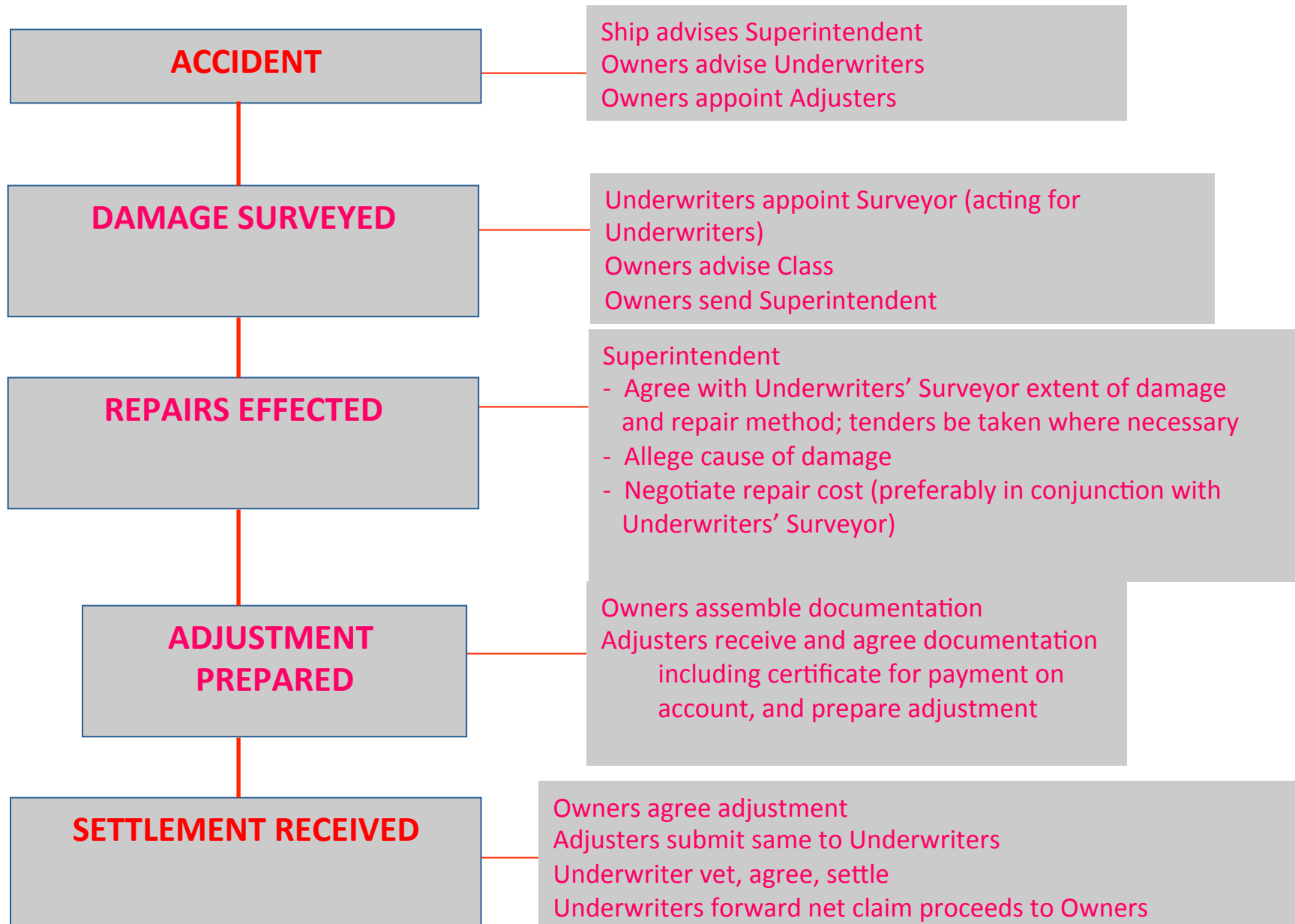
- Preserve evidence
- Disclose nothing
- Record details of pre-collision navigation
- File Note of Protest (only if necessary)
- “Hold liable” letter to Opponent

- Security from colliding vessel
- Coordinating with Club where necessary:
 - Jurisdiction
 - Shipboard investigation
 - Documentary evidence
 - Preliminary advice on collision facts
 - Liability negotiation
 - Negotiation of claims
 - Court proceeding the final resort

Average Adjuster:

- Help calculating security amount
- Adjustment of General Average and claims on H&M Policy
- Help draw up claims statement against colliding vessel
- Adjustment of RDC claim, division of recovery and costs in collision

Outline Damage Claim Process



CTL Scenario

Specification for repairs was drawn up and Repairers in the region were invited to tender for repairs of:

- a) Collision damage
- b) Grounding and refloating damage
- c) i) Fire and ii) fire-fighting damage (to engine room)

Options to Owners:

- a) Where the total estimated costs of salving and repairing the vessel barely exceed the insured value of US \$12,000,000;
- b) Where the vessel is not a CTL in terms of the above-mentioned Clause 19 – to repair or not to repair



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Clause 19 of ITC-Hulls

Institute Time Clauses - Hulls, 1.10.83

Clause 19.1

- To tender Notice of Abandonment
- Insured value shall be taken as the repaired value.
- Damaged or break-up value of the vessel or wreck shall not be taken into account.

Clause 19.2

- Only cost relating to a single accident or sequence of damages arising from the same accident shall be taken into account.



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CTL claim, if admitted

- Apparently no CTL where fire caused by separate accident, negligence of ship's crew)
- But if a CTL claim is admitted, Shipowner recover the insured value:
 - H&M US\$12,000,000
 - IV US\$3,000,000
- H&M Underwriters retain the proceeds to which they are entitled MIA sec.63(1)

“Where there is a valid abandonment, the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto”

But see WD FAIRWAY....



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Abandonment

Following the case of the *WD Fairyway* (2009), Hon. Mr. Justice Tomlinson, in his chairman's address at the 141st annual general meeting of the Association of Average Adjusters on 13th May 2010, states that:

“It follows in my view that if when paying for a CTL underwriters say to their assured without more “we elect not to exercise our right to take over your interest in the vessel” they will thereby deprive themselves of any entitlement to the residual value of the vessel. Whether the assured thereafter repairs the vessel and retains it in his own service or sells it to a third party, the underwriters have renounced any interest in the residual value of the vessel, however measured. They have no further entitlement.”



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Damage Repaired

- MIA, sec.69

H&M Underwriters to pay:

Reasonable cost of repairs (limited to insured value each accident) less Deductible US \$100,000 (each accident)



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Damage Unrepaired

MIA, sec.69 and ITC Clause 18

H&M Underwriters pay, each accident:

- Depreciation (Sound value less Damaged value)
- Limited to cost of repairs
- Limited to insured value
- Less Policy Deductible

Owners to retain vessel in damaged condition



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Grounding & Refloating Damages

- Allowable in General Average – Rule V
- Allowance made per Rule XVIII of YAR
- Proportion attaching to Cargo and Containers to be credited to H&M Underwriters



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Cargo Insurance

Cargo insurance - Institute Cargo Clauses, 1.1.82 or 1.1.09 A, B and C would cover:

- Loss of cargo due to collision/fire.
- Loss of cargo due to General Average sacrifice – grounding/refloating and fire fighting.
- Cost of forwarding to destinations?
- Cargo's proportion of Salvage and General Average (subject to under insurance as specified in the Marine Insurance Act 1906, s. 73).
- Credit any net recovery from “SEA LORD” attaching to the claims paid.



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Steps to be taken by Cargo

- **Cargo owner to notify Insurer**
 - Cargo damage/loss
 - contribution towards Salvage and GA
 - Provision of securities
- **Insurers to look at actual wording of Policy issued and consider defence and recovery aspects**
- **Insurer may appoint professional (consultant or lawyer) to deal with various problems, also Surveyor.**
- **To collect as much evidence as possible asap - cause of casualty, extent of loss**
- **To forward claims documents to GA Adjusters to take into account in adjustment**
- **In collision cases**
 - To notify carrying and colliding vessels
 - To identify best jurisdiction
 - To seek security



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THANK YOU FOR YOUR ATTENTION

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Asia Maritime Adjusting Pte Ltd – Singapore
Rogers Wilkin Ahern LLP – London
PT Global Internusa Adjusting – Jakarta
Taipei Marine Survey Co., Ltd. - Taipei*



Richard Oakley

- Richard is a solicitor and master mariner and has a wealth of experience in advising and handling a full range of admiralty matters including casualty investigation, collisions, pollution, grounding and total loss cases.
- Richard joined Ince & Co London in 2008 and soon relocated to the firm's Shanghai office where he led the China casualty investigation team, coming back to London in 2012 obtaining further in-depth experience of the full range of disputes arising out of marine casualties. Richard has recently returned to the Asia Pacific region joining the firm's Hong Kong office to build upon his successful practice.
- Prior to embarking on his legal career, Richard spent five years at a leading international P&I Club where he handled the full range of P&I and FD&D matters, and prior to that he served for nine years in the merchant navy where he worked on a wide variety of vessel types including container ships, coastal bulk ships, Ro-Ros, ferries, passenger ships and high speed catamarans and obtained his master mariner's qualification.

Richard Oakley, Master Mariner & Solicitor



Casualty Investigation

Initial notification

Financial exposure/remedies

Legal implications of actions

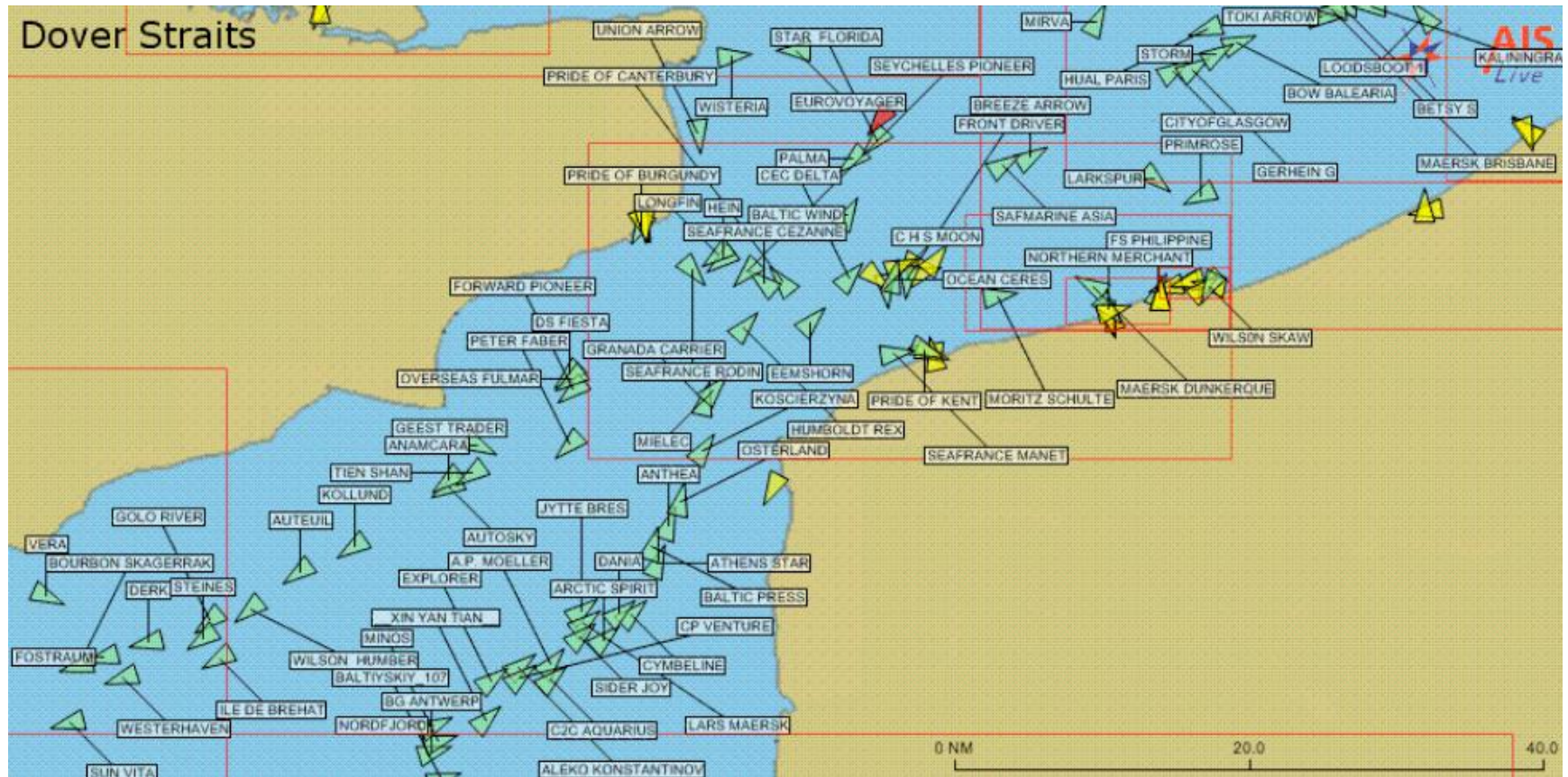
Salvage, port of refuge/transshipment, redelivery etc

Establish the facts early

Collisions



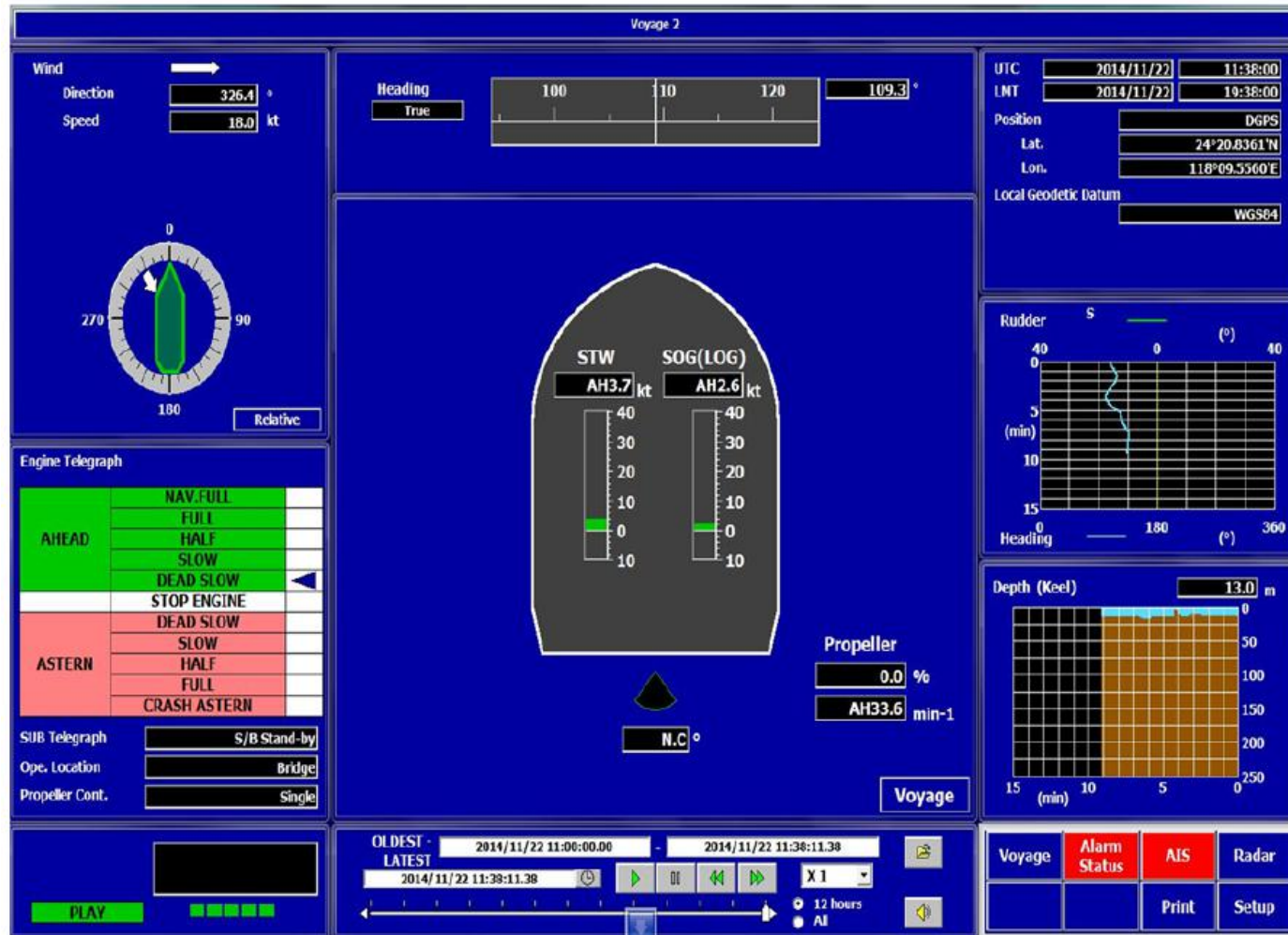
Automatic Identification System



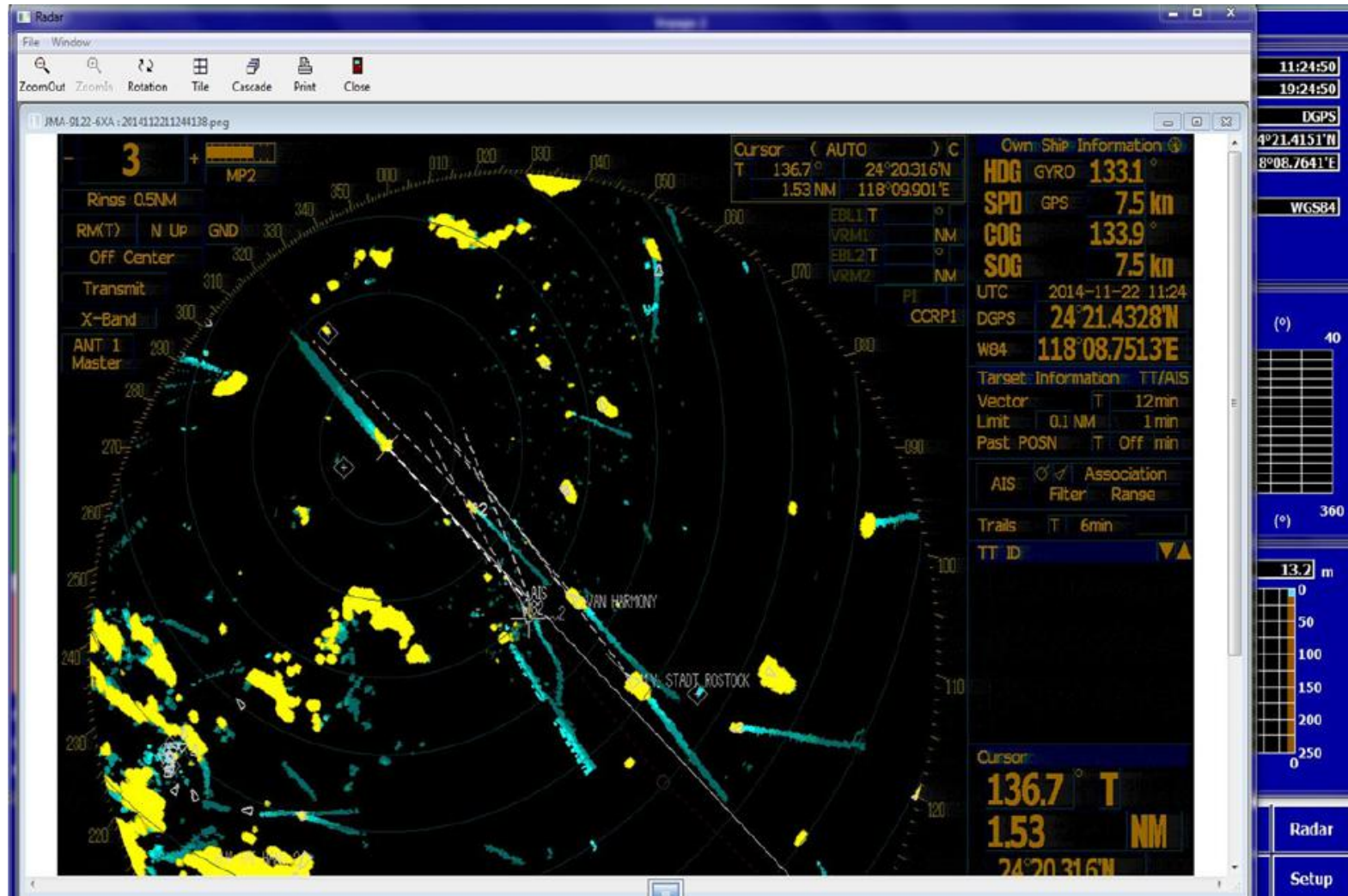
Voyage Data Recorders



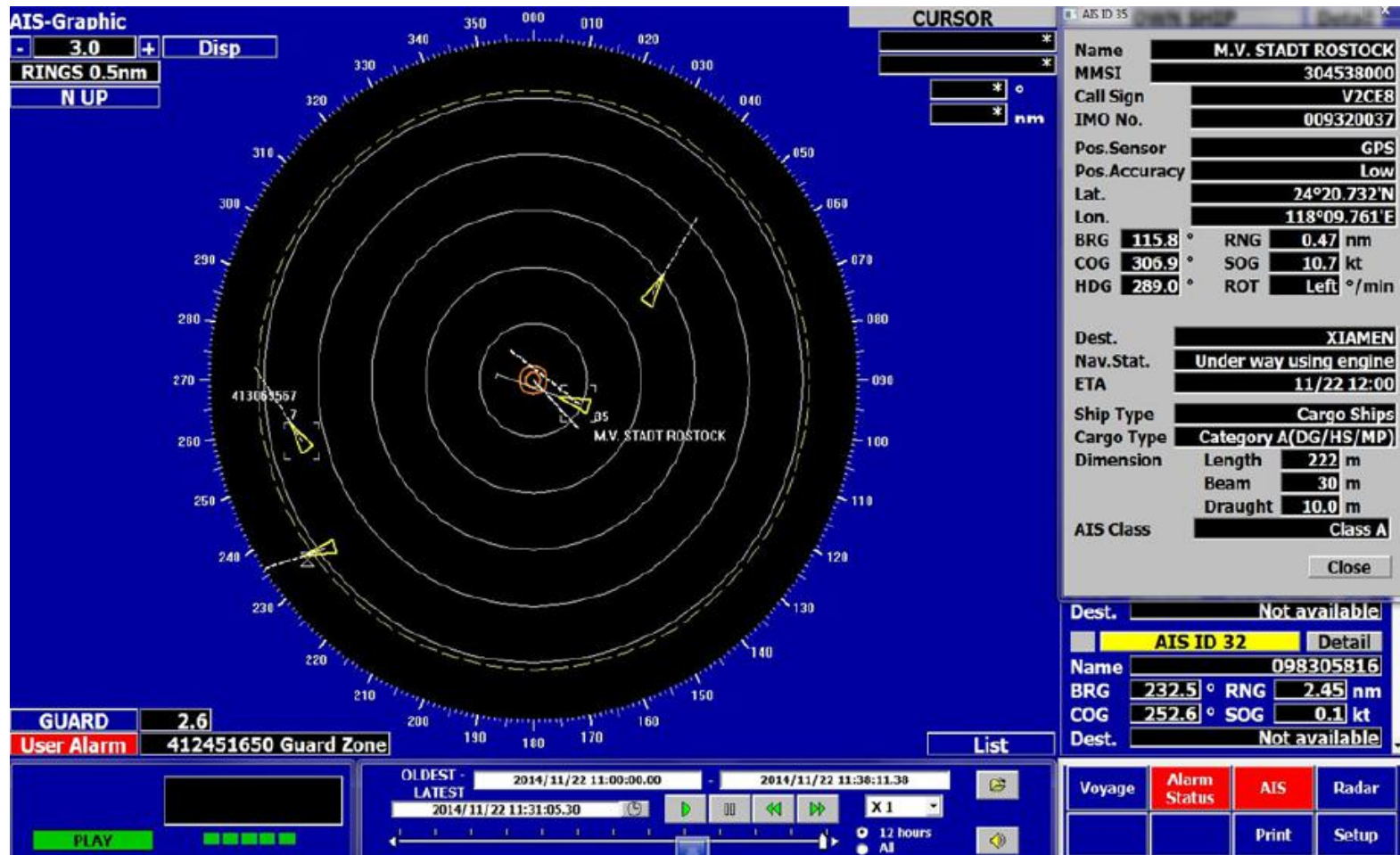
VDR display



VDR radar picture



VDR AIS display



Lloyds Open Form

LOF 2011



LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

(Approved and Published by the Council of Lloyd's)

NO CURE - NO PAY

1. Name of the salvage Contractors: (referred to in this agreement as "the Contractors")	2. Property to be salvaged: The vessel: her cargo freight bunkers stores and any other property thereon but excluding the personal effects or baggage of passengers master or crew (referred to in this agreement as "the property")
3. Agreed place of safety:	4. Agreed currency of any arbitral award and security (if other than United States dollars)
5. Date of this agreement	6. Place of agreement
7. Is the Scoopic Clause incorporated into this agreement? State alternative : Yes/No	
8. Person signing for and on behalf of the Contractors Signature:	9. Captain or other person signing for and on behalf of the property Signature:

A Contractors' basic obligation: The Contractors identified in Box 1 hereby agree to use their best endeavours to save the property specified in Box 2 and to take the property to the place stated in Box 3 or to such other place as may hereafter be agreed. If no place is inserted in Box 3 and in the absence of any subsequent agreement as to the place where the property is to be taken the Contractors shall take the property to a place of safety.

B Environmental protection: While performing the salvage services the Contractors shall also use their best endeavours to prevent or minimise damage to the environment.

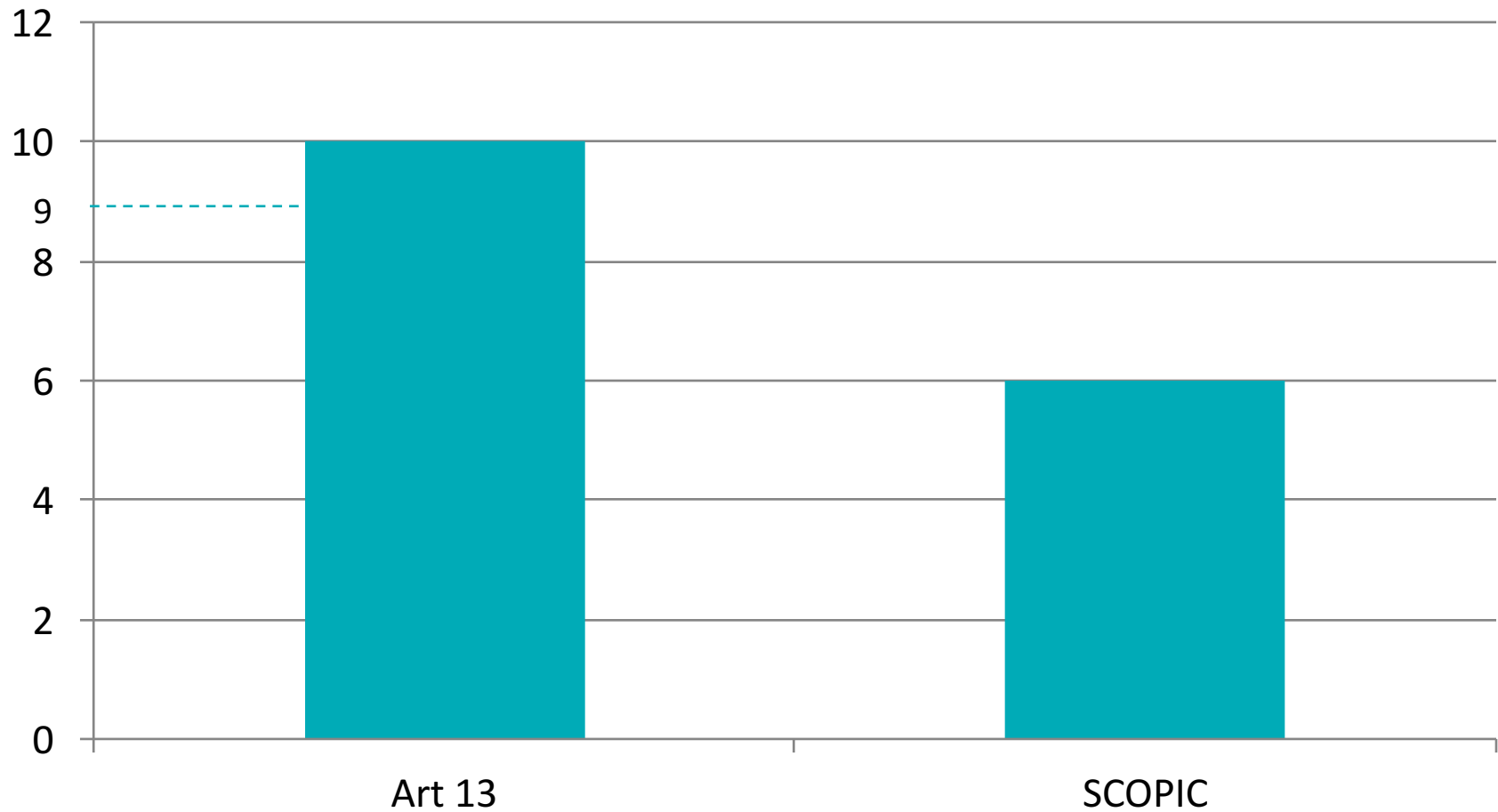
C Scoopic Clause: Unless the word "No" in Box 7 has been deleted this agreement shall be deemed to have been made on the basis that the Scoopic Clause is not incorporated and forms no part of this agreement. If the word "No" is deleted in Box 7 this shall not of itself be construed as a notice invoking the Scoopic Clause within the meaning of sub-clause 2 thereof.

Key principles – “Best Endeavours” contract,
“No cure no pay”

Article 13 – Reward Criteria

- a) Salved values (vessel, cargo, bunkers etc.)
- b) Skill and efforts of Salvors in preventing / minimising environmental damage.
- c) Measure of success.
- d) The nature and degree of danger.
- e) Skill & efforts of Salvors.
- f) Time, expenses and losses incurred by Salvors
- g) Risks of liability
- h) Promptness of the services rendered
- i) Availability and use of vessels and other equipment for salvage operations.
- j) The state of readiness and efficiency of the Salvors' equipment.

Problems with LOF and SCOPIC



The LOF arbitrators



Elizabeth Blackburn



Simon Kverndal



Lionel Persey



Jeremy Russell



Vasanti Selvaratnam



Sir David Steel

Tonnage limitation

A key issue in post-collision strategy

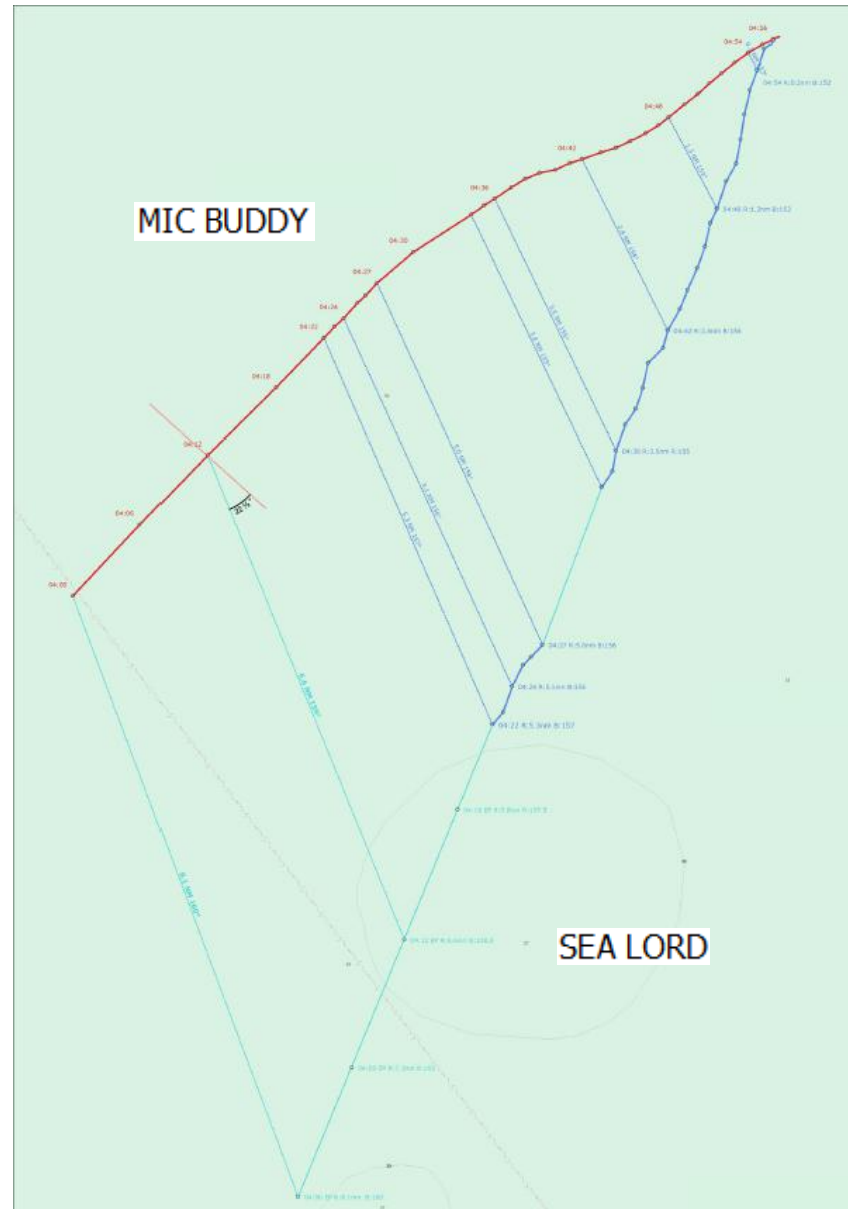
Receiving party will want a secure the most favourable jurisdiction in terms of gaining the highest limit

Paying party will want the opposite

There is often an advantage in terms of being the first to commence proceedings

Need for early, decisive action – but that requires early assessment of (i) likely levels of claims and (ii) likely apportionment of responsibility: the key ingredients in determining who is likely to be the paying party

Step 1 Estimate liability



Step 2 – Estimate claims

Say 80/20 in MIC BUDDY's favour

MIC BUDDY claims

Repairs:	US\$3,000,000
Salvage:	US\$4,500,000
Loss of profit:	US\$2,000,000
P&I claims:	US\$1,500,000
Total:	US\$11,000,000

SEA LORD claims

Repairs:	US\$500,000
Loss of profit:	US\$250,000
Total:	US\$750,000

Step 3 - Set-off

Internship Payments / Collections

MIC BUDDY recovery US\$11.0m @ 80% = US\$8,800,000

less

SEA LORD recovery US\$750,000 @ 20% = US\$150,000

Balance of inter-ship claims to MIC BUDDY = **US\$8,650,000**

Limitation funds

Ship	1957 Convention Property Damage	1976 Convention Property Damage	1996 Protocol Property Damage	1996 Protocol with 2015 amendments
SEA LORD	USD 1.5m	USD 4.5m	USD 10.7m	USD 16.1m
		South Korea Singapore	Hong Kong Japan	UK

Richard Oakley, Master Mariner & Solicitor

Rohan Bray

- Rohan Bray started working for Steamship Mutual in the Club's London office in 1994 handling FD&D claims, before moving to the Hong Kong office in 1997 where he has remained ever since. He is currently the Director in charge of claims for the Club's Hong Kong office.
- Rohan graduated with honours degrees in both Psychology and Law from the University of Sydney in Australia. He worked in private legal practice for a year in Sydney before moving to London and commencing work for the Club. He is admitted to practice as a solicitor in both Australia and England and is a member of the Chartered Institute of Arbitrators. During his 22 years at the Club he has dealt almost exclusively with Far Eastern members and travelled frequently around the region to meet members and give seminars.

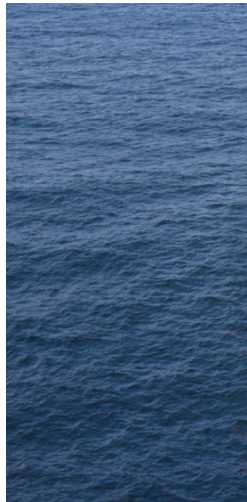
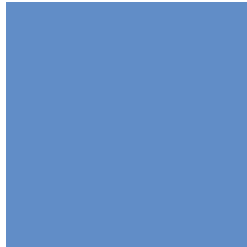


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Workshop on Marine Insurance and Average

Rohan Bray – Claims Director, Hong Kong



Preview



“MIC BUDDY” is entered with Steamship Mutual

We will look at:

- Claims Handling – The Role of the Club
- Liabilities covered by P&I
 - Towage
 - Pollution / Fines
 - Cargo
 - Collision



Claims Handling



- Owner notifies Club shortly after the collision and beaching
- Appoint correspondents in China, who will arrange for surveyor(s) to attend and report on (a) pollution; and (b) the vessel's situation / need for salvage
- Depending on the extent of pollution, possible appointment of PRC lawyer
- Instruct Admiralty solicitor at an early stage, probably in conjunction with hull underwriters. Hong Kong based solicitor would seem an appropriate choice



Claims Handling



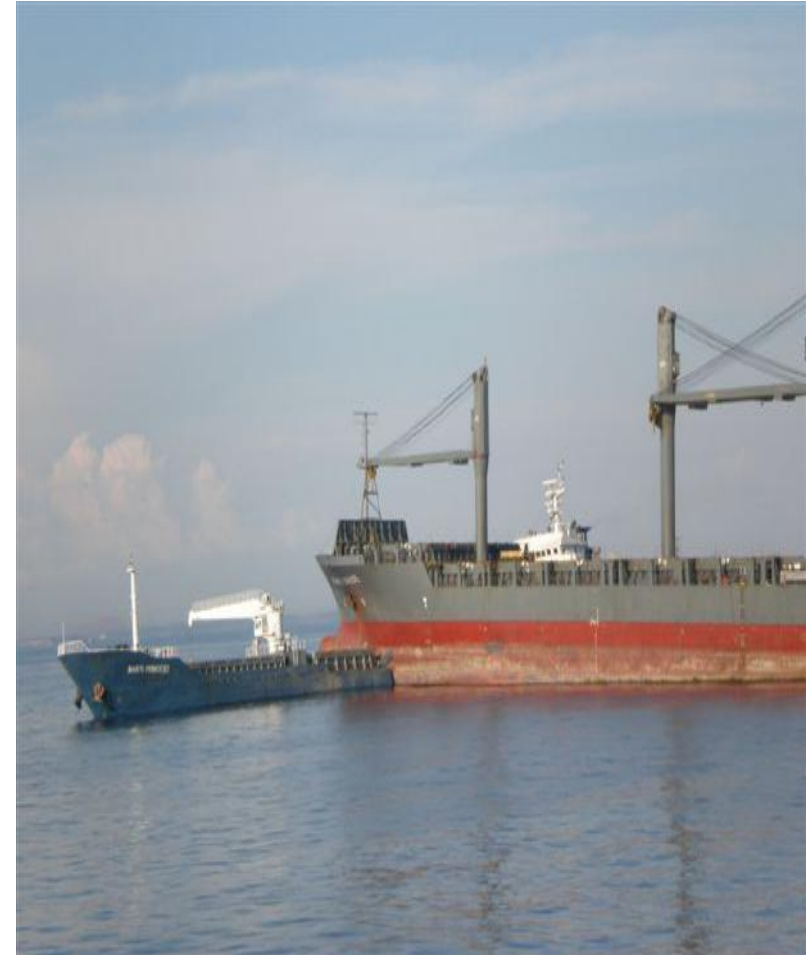
- If the vessel is in a difficult situation as far as salvage is concerned, an expert might be appointed to attend and/or advise
- Provision of security in PRC to allow the vessel to leave?
- Once she arrives in Hong Kong, surveyor will carry out a “straight” survey of the vessel (shared with hull?)
- A survey will be needed to document any cargo damage
- Appoint surveyor in Korea to conduct a “without prejudice” survey on the “SEA LORD” (shared with hull)
- Provision of security to “SEA LORD”?



Liabilities Covered - Towage



- Cover for liabilities arising from towage of an entered ship (SSM Rules, p. 67)
- Does NOT include the cost of any contracted service
- Limited to “normal” P&I risks as set out in the Rules
- Towage must be on acceptable terms, normally either knock-for-knock (for daily rate or lump sum), or LOF



Liabilities Covered – Pollution / Fines



- Cover for liabilities arising from escape of substances from the entered vessel (SSM Rules, pp 64-66)
- Includes liability for third party loss or damage claims, clean-up costs, prevention costs and SCOPIC costs in excess of any Article 13 salvage award
- Fines for pollution are covered under a separate rule (SSM Rules, pp 76-77)
- Cover is provided as of right for fines where there has been an accidental escape of substances.



Liabilities Covered – Pollution / Fines



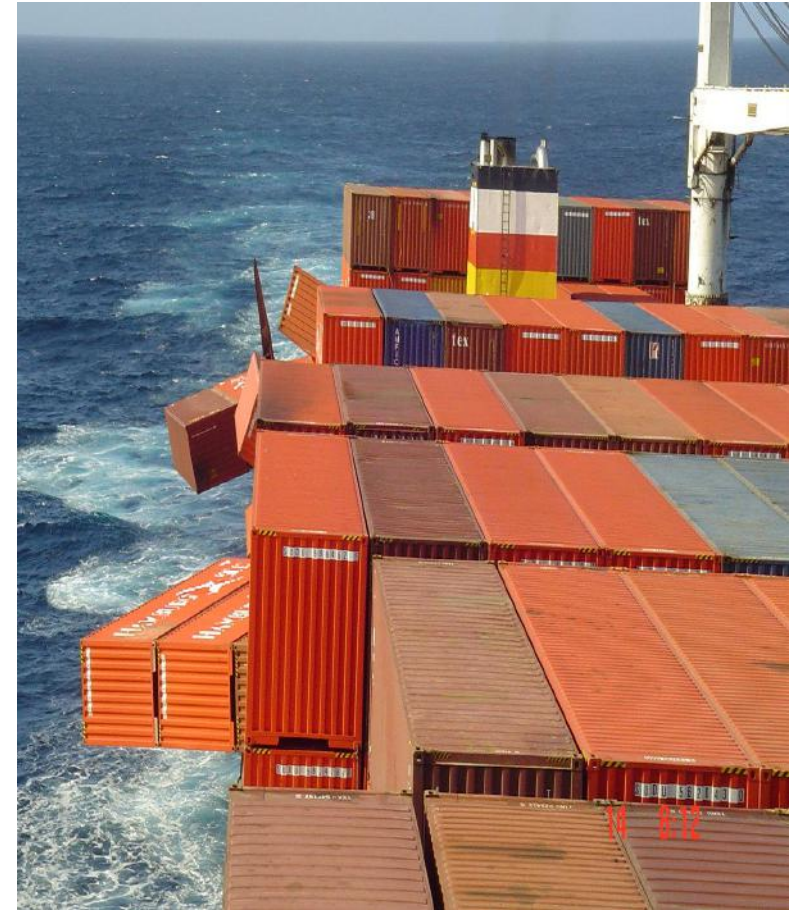
- PRC is a signatory to the Bunkers Convention 2001, which will be applicable here. “MIC BUDDY” has a “Bunkers Convention Blue Card” issued by Steamship Mutual so direct action against the Club is possible
- Strict liability for pollution damage and prevention measures, up to the vessel’s limitation fund under PRC law
- “MIC BUDDY” calls regularly at PRC ports, so has a contract with an authorised SPRO
- Security may need to be provided to the MSA in respect of potential fines, and to the MSA or SPRO for clean-up / prevention costs, before the vessel leaves the PRC



Liabilities Covered – Cargo



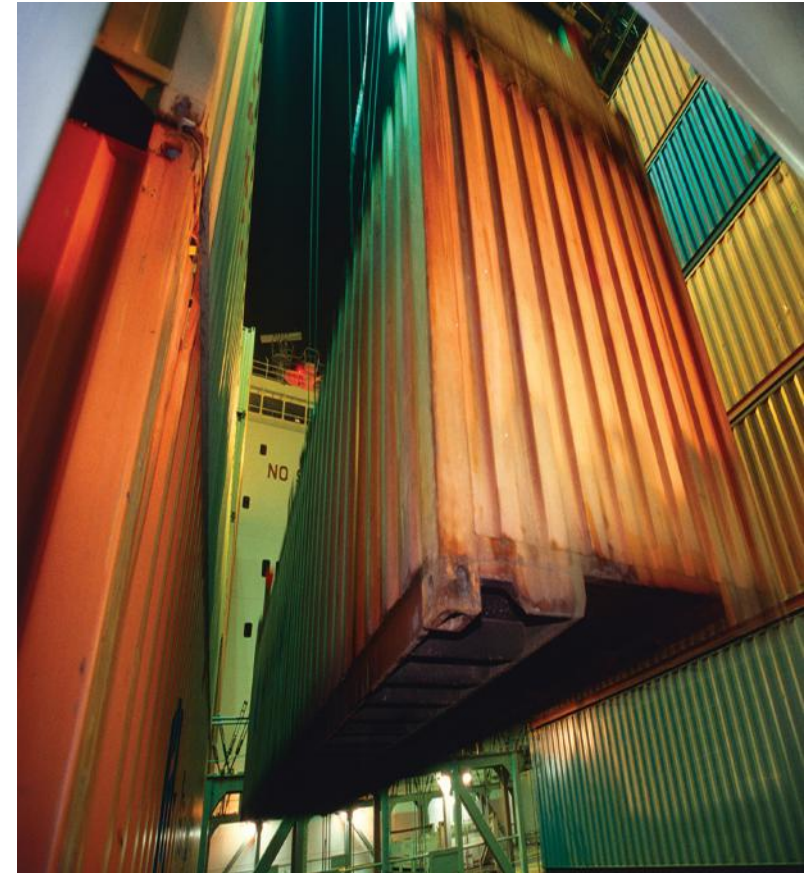
- Cover for loss of or damage to cargo and/or cargo's proportion of general average and/or salvage (SSM Rules, pp 71-76)
- Containers were lost from “MIC BUDDY” in the collision, and others were damaged. After the collision some containers were jettisoned in an attempt to correct the list
- Overlap between the “cargo” and “collision” rules, although cargo cover under the latter is subject to the same restrictions as exist in the cargo rule (SSM Rules, p 63)



Liabilities Covered – Cargo



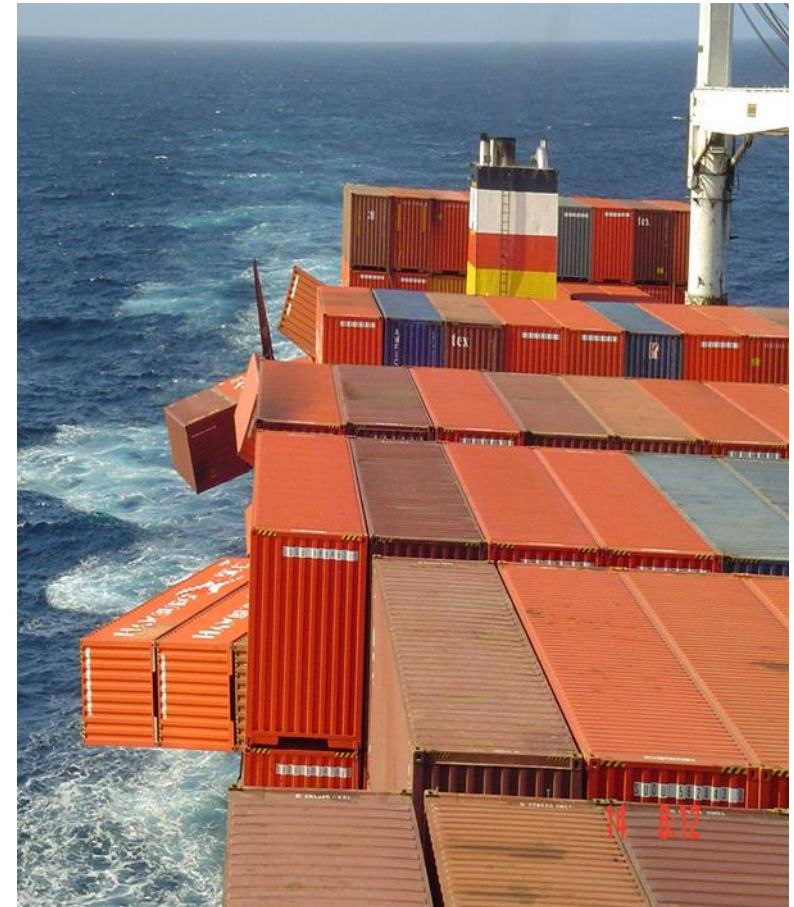
- Club cover assumes that the contract of carriage between carrier and cargo interests incorporates the Hague or Hague-Visby Rules
- Unless the collision can be shown to be caused by unseaworthiness of the carrying vessel, the owner can normally avoid liability to its own cargo due to Article IV, Rule 2(a) of the Hague / Hague-Visby Rules (the “negligent navigation” defence)
- In some cases the defence may not be available (eg. if the Hamburg Rules apply compulsorily) in which case the Club would cover the owners’ liability



Liabilities Covered – Cargo



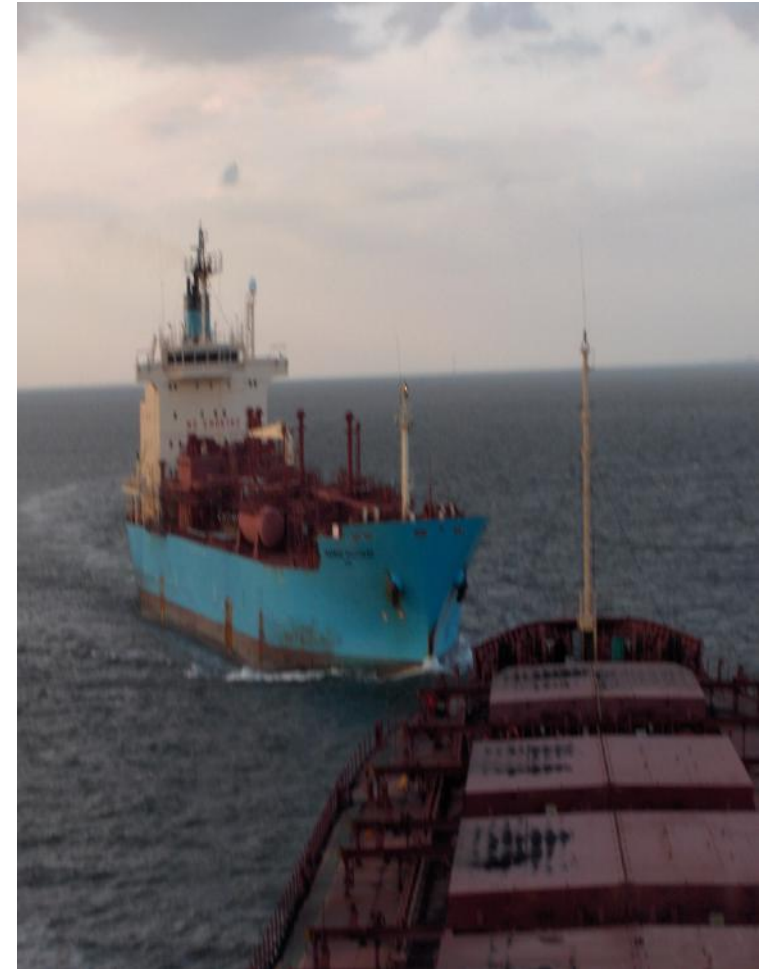
- Jettisoned Cargo? Cargo should be partly compensated in GA. Owner only liable for shortfall if unseaworthiness or negligent navigation defence not available
- Cargo's proportion of general average / salvage. Owners can only recover this from the Club if cargo's non-payment is due to a breach of the contract of carriage.
- Where the negligent navigation defence is available, cargo will be obliged to pay and there would be no claim on the Club



Liabilities Covered – Collision



- Cover for one-fourth RDC:
 - Damage and detention of the other vessel;
 - Damage to cargo on the other vessel; and
 - GA or salvage payable by the other vessel or its cargo
- Cover for RDC liabilities which exceed the vessel's insured value on the hull policy
- Cover for other liabilities incurred by the other vessel which are not covered under RDC (eg. wreck removal, pollution, SCOPIC costs).
- SSM Rules, pp 62-64



Liabilities Covered – Collision



Security

- Each vessel will normally want security for the full value of its own claims, prior to settling apportionment
- Where RDC cover is divided between hull and P&I, usually one party will provide 100% security and obtain counter-security for the share it does not cover
- For “MIS BUDDY”, assume the Club provides 100% security to “SEA LORD” and accepts a 75% counter-security from hull underwriters if their credit rating is acceptable, or a bank guarantee in the alternative
- “ASG 2” wording can be used at an early stage where claim values may not have been established



Liabilities Covered – Collision



Intership Payments / Collections

Say 80/20 in MIC BUDDY's favour

MIC BUDDY claims

Repairs:	US\$3,000,000
Salvage:	US\$4,500,000
Loss of profit:	US\$2,000,000
P&I claims:	US\$1,500,000
Total:	US\$11,000,000

SEA LORD claims

Repairs:	US\$500,000
Loss of profit:	US\$250,000
Total:	US\$750,000

Liabilities Covered – Collision



Intership Payments / Collections

MIC BUDDY recovery US\$11.0m @ 80% = US\$8,800,000
less

SEA LORD recovery US\$750,000 @ 20% = US\$150,000

Balance of inter-ship claims to MIC BUDDY = **US\$8,650,000**

- No limitation as the single payment is less than the “SEA LORD”’s limitation fund in Hong Kong (ie. US\$10.7 million)

Liabilities Covered – Collision



Payments / Collections as between P&I and Hull underwriters, and owners of “MIC BUDDY” (Cross-Liability basis)

Interest	Payout / Loss	Expected Recovery (80%)	Less RDC due to “SL” (.2 x 750K)	Actual Recovery
Hull	7,500,000	6,000,000	112,500	5,887,500
Owners	2,000,000	1,600,000	Nil	1,600,000
P&I	1,500,000	1,200,000	37,500	1,162,500
TOTALS	11,000,000	8,800,000	150,000	8,650,000

Liabilities Covered – Collision



Payments / Collections as between P&I and Hull underwriters, and owners of “MIC BUDDY” (Single Liability basis, if “SEA LORD” was a smaller vessel and could limit its liability to US\$6 million)

Interest	Payout / Loss	Expected Recovery (80%)	Less RDC due to “SL” (.2 x 750K)	Actual Recovery
Hull	7,500,000	6,000,000	Nil	4,090,800
Owners	2,000,000	1,600,000	Nil	1,090,800
P&I	1,500,000	1,200,000	Nil	818,400
TOTALS	11,000,000	8,800,000	Nil	6,000,000



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Tel: (44) (0) 20 7247 5490

STEPHEN CHENG



Professionals:

- 1year - MUA Agencies Limited, captive insurance company of Orient Overseas
- Container Line (OOCL), Hong Kong
5 years – Scottish Lion Insurance Company Ltd., London
6 months - Winterthur Swiss Insurance Company, Switzerland
- 6 years - Marine Office of America Corp, Toronto, Canada
7 years - Houlders Insurance Brokers Limited, Hong Kong
20 years (currently) – Director & Gen. Manager, Munich Re Syndicate Hong Kong Limited

Academical:

Associate - Chartered Insurance Institute, U.K.

Associate - Hong Kong Institute of Arbitrator

B.A. (Economics), York University

Licentiate in Accounting Degree, University of British Columbia



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COLLECTED QUESTIONS

- If three-fourths of the “SEA LORD”’s liability exceeded the hull policy limit, how would the liability / security be divided up between hull and P&I?
- What role does the P&I Club have in making decisions about whether to appoint salvors or to declare GA, and on what terms or who to appoint?
- Why does the Club need to approve the towage contracts?



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COLLECTED QUESTIONS

- If the fire were caused by the Salvors, what would have been the position in respect of:
 - (A). Salvage claim
 - (B). General Average
 - (C). Claim on H&M Policy
- Please comment on the role of Underwriters Surveyor where Tenders for Repairs are taken and/or where Underwriters require for further tenders.
- It is most common to see contracts of carriage provide for GA in London. Please suggest the way round to have GA adjusting in HK
- If LOF incorporates SCOPIC and Salvors invokes same, in what circumstances can P&I/shipowners terminate SCOPIC.



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COLLECTED QUESTIONS

- The sound value of the vessel is US\$7,500,000 yet she is insured for US\$12,000,000 H&M plus US\$3,000,000 IV. So where there is a TL the assured will get US\$15,000,000. It does not seem to sound right. Please advise.
- I believe that salvage security in respect of cargo (under multi Bs/L) would not have been put up by the time arrangements had been made to transship. Also believe Salvors would not allow cargo to leave before security was put up. What can be done in the circumstances?
- What would be the position of H&M Underwriters where the 4/4ths collision liability is covered by P&I?



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Thank you
for your attention



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Our Appreciation to

- All panel speakers for their generous contribution
- China Taiping Insurance (HK) Company Ltd. for allowing us to use their well equipped venue for the Workshop.
- Hong Kong Maritime and Port Board for their support



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