

Member Training

1 – 3 October 2013

London

The Standard



MLC 2006 and P&I cover

Iain Cassell
Syndicate Claims Director

Summary

- introduction to the MLC 2006
- key issues
- club cover

What is the MLC 2006

- the “Fourth Pillar” of international maritime regulation, along with SOLAS, STCW and MARPOL, albeit an ILO and not IMO design
- provides comprehensive rights and protection at work for the world's seafarers
- supports fair competition for quality ship owners (a “level playing field”)

Who has signed up so far

- the aim was >30 Flag States and >33% of the world fleet by GT for the convention to come into force
- as at 20/08/2012 there were 31 Flag States representing 60% GT
- as at 06/09/2013 there were 51 Flag States representing 76% GT

Key issues

- a “level playing field”
- who is the “Shipowner” and who is a “Seafarer”
- financial security
- compliance/enforcement

A “level playing field”

- minimum standards
- global enforcement by a “Recognised Organisation” (RO) of Flag States and/or Port State Control
- “no more favourable treatment”

“Shipowner” and “Seafarer”

- “shipowner” = person obliged to comply with convention
- who has operational control
- “seafarer” = any person employed/engaged/works on board a ship
- any person on board

Financial security

- liabilities to seafarers
 - repatriation, including after insolvency
 - compensation of 2 months wages following loss of ship
 - compensation for death, illness, injury
- unpaid wages

Compliance / enforcement.

- flag state approval = compliance
- flag state inspection (or RO) and/or PSC = enforcement

- liabilities arising under MLC 2006 are covered according to the rules
- club certificate of entry = financial security

- MLC 2006 is a bill of rights for your seafarers
- flag states determine the application of the requirements under MLC 2006 and variations will occur
- PSC inspection regimes also likely to vary, at least initially
- P&I clubs extended cover to meet MLC 2006 obligations, including obtaining flag state approval of CoE as acceptable financial security

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Personal Injury

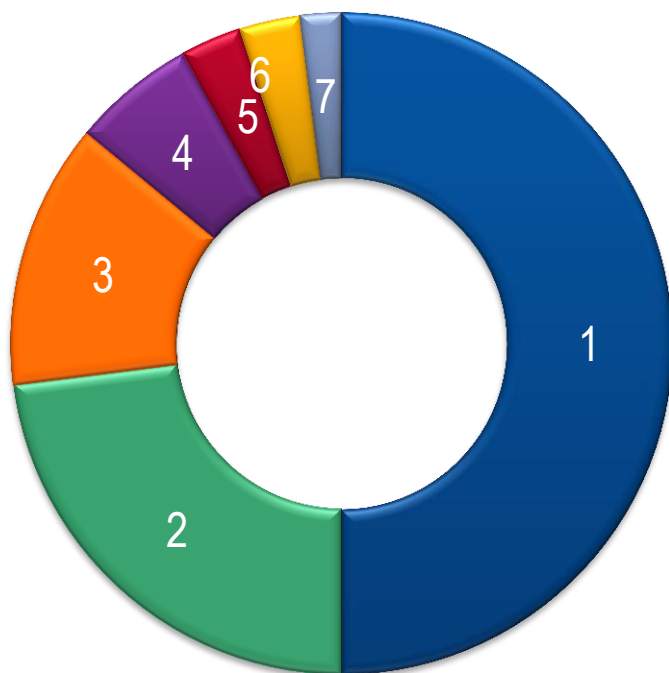
Richard Stevens
Claims Executive

Introduction

- club statistics
- demographics and analysis
- club cover
- Filipino crew claims – 120/240 day rule

Number of claims

2008 - 2012



1	Cargo	50%
2	Personal Injury	23%
3	Other	13%
4	FFO	6%
5	Fines	3%
6	Collision	3%
7	Pollution	2%

US\$ value of claims

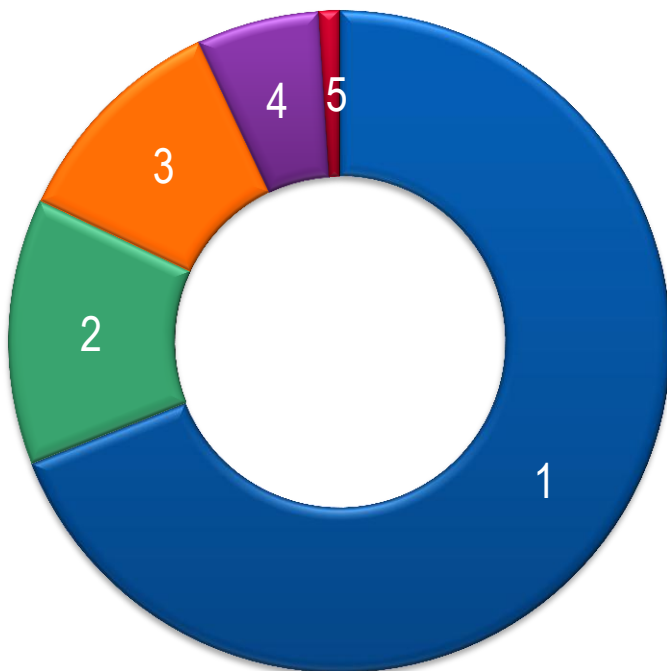
2008 - 2012



1	Other	39%
2	Cargo	18%
3	Personal injury	18%
4	FFO	9%
5	Collision	8%
6	Pollution	6%
7	Fines	2%

Personal injury claims by number

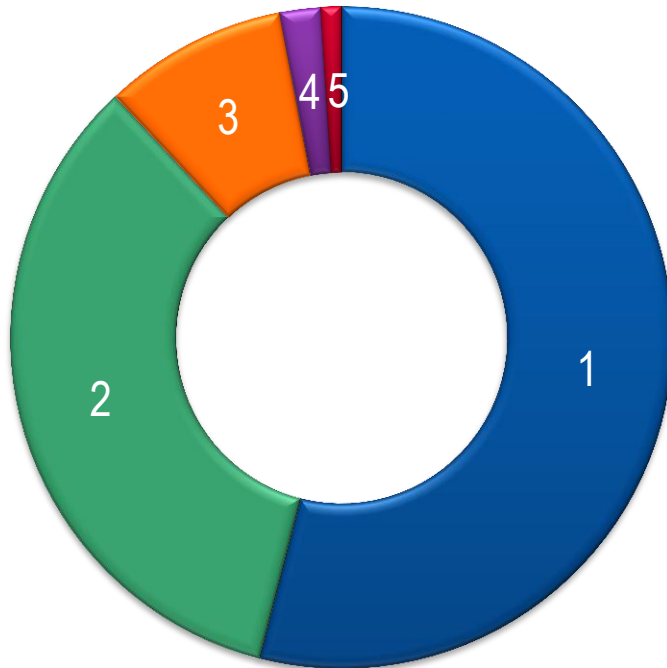
2008 - 2012



1	Crew	69%
2	Passenger	13%
3	Third parties	11%
4	Other	6%
5	Stevedores	1%

US\$ value of personal injury claims

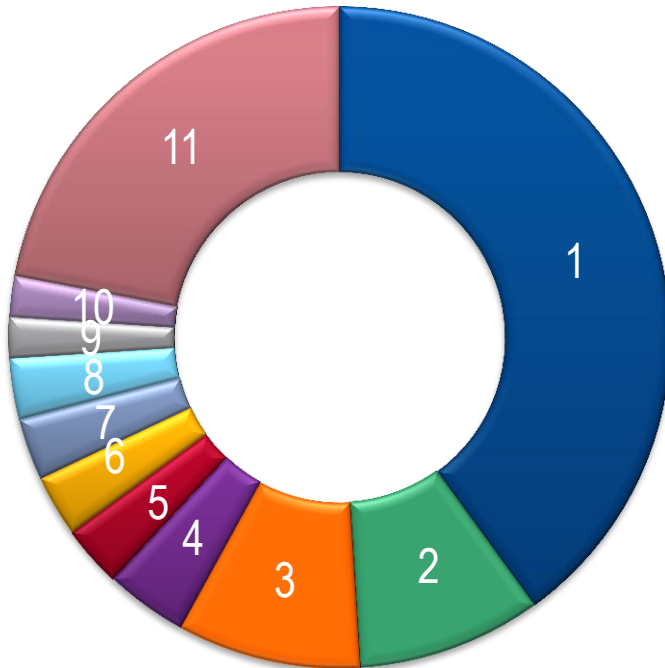
2008 - 2012



1	Crew	54%
2	Passenger	34%
3	Third parties	9%
4	Other	2%
5	Stevedores	1%

Personal injury claims by nationality

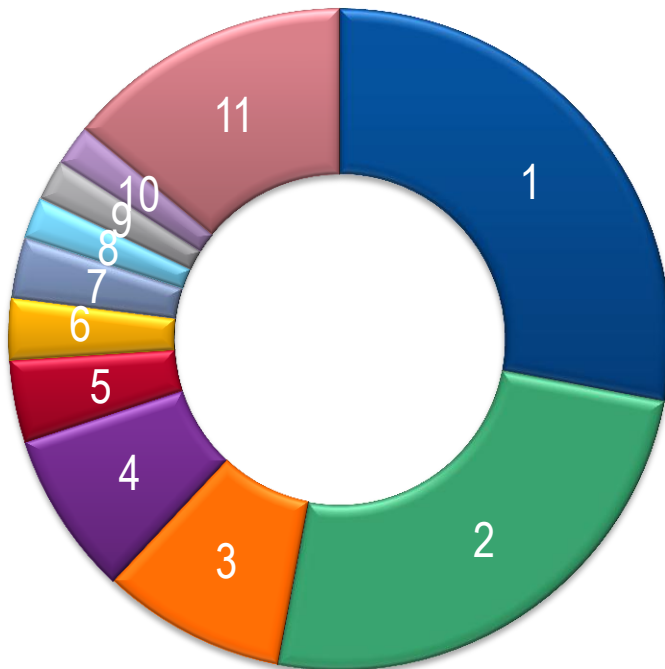
2008 - 2012



1	Filipino	40%
2	Italian	9%
3	Indian	9%
4	Chinese	4%
5	German	3%
6	Ukrainian	3%
7	Turkish	3%
8	American	3%
9	Korean	2%
10	Polish	2%
11	Others	22%

US\$ value of claims by nationality

2008 - 2012



1	American	28%
2	Filipino	25%
3	Indian	9%
4	Italian	8%
5	Korean	4%
6	Greek	3%
7	Turkish	3%
8	British	2%
9	Polish	2%
10	Ukrainian	2%
11	Others	14%

- overall total of claims for 2008 – 2012:
 - 6.5% Filipino
 - 1.5% Italian
 - 1.5% Indian
- overall US\$ spend per year for 2008 – 2012 (not including US crew):
 - 2.5% Filipino (US\$5.5m)
 - 1% Italian (US\$1.7m)
 - 1% Indian (US\$1.7m)

- member's liability in respect of:
 - injury
 - illness
 - death
- arising out of:
 - negligence
 - statutory obligation
 - approved crew contract (and collective bargaining agreements)

Filipino crew claims

- largest supplier of seafarers in the world
 - 250,000 worldwide
- compensation under POEA
 - work related illness
 - disputable presumption
- tribunals often pro-claimant

Filipino crew claims

- the 120/240 day rule
- introduced via two Supreme Court decisions in 2005 and 2006
- modified in 2008: introduced a 240 day rule
- varying degree of consistency since

Filipino Crew Claims

- 2010 POEA contract of employment
 - a change to the 120/240 rule
 - disability not to be determined by days of treatment
 - determined by the disability grading given
 - no decision yet on this point

Filipino crew claims

- positive steps forward:
 - two recent Supreme Court decisions
 - clarifying the three-day reporting rule
 - favouring members again?
- conclusions
 - a move away from Filipino crew?

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Electronic bills of lading

James Bean
Syndicate Director

- what are electronic bills of lading?
- how do they work?
- what are the advantages of electronic bills?
- what is the club's position on cover?
- approved systems vs. unapproved systems
- non-P&I liabilities
- what next?

What are electronic bills of lading?

- an electronic trading system is any system which replaces or is intended to replace paper documents used for the sale of goods and/or their carriage by sea or partly by sea and other means of transport and which:
 - are documents of title; or
 - entitle the holder to delivery or possession of the goods referred to in such documents; or
 - evidence a contract of carriage under which the rights and obligations of either of the contracting parties may be transferred to a third party

How do they work?

- requirements for a genuine electronic bill of lading platform:
 - legal framework
 - IT framework
 - functional framework

What are the advantages of e-bills?

- paper bills are notorious for getting lost or delayed, or arriving after the goods, especially over short sea-routes and particularly so when the bill passes through multiple holders
- electronic bills reduce the need for letters of indemnity helping to reduce a carriers' risk and operational disruption
- increasingly popular with major exporters and charterers

What is the club's position on cover?

- cover is available for typical P&I liabilities arising under any electronic bills of lading to the extent these liabilities would also have arisen under paper bills
- to the extent these liabilities would have arisen because an electronic bill of lading has been used instead of a paper, cover is discretionary unless the electronic trading system has been approved by the International Group

- the two systems approved by the IG are:
 - Electronic Shipping Solutions DSUA 2009.3 and DSUA 2013.1 (“ESS”); and
 - Bolero International Ltd Rulebook/Operating Procedure 1999 (“Bolero”)

Why have approved systems?

- some systems which use electronic bills may not be universally recognised as satisfactorily performing the three functions of a bill of lading which customarily underpin P&I cover, namely:
 - as a receipt;
 - as a document of title; and
 - as a contract of carriage which incorporates the Hague or Hague-Visby Rules

- electronic systems are based on specific contractual terms rather than statutes and treaties
- what is the risk of an electronic bill not being subject to the Hague or Hague-Visby rules?
 - contractual terms for both approved systems make it clear that any convention, treaty or national law that would have been applicable to carriage under a paper bill will equally apply
 - therefore, so long as the terms of carriage are subject to Hague or Hague-Visby rules and/or by application of convention or national law, as if a paper bill had been issued, there will be no problem with club cover
- if carriage is compulsorily subject to another liability regime like the Hamburg Rules, then again club cover will remain in place as it would if the carriage were under a paper bill

Cover position using approved systems

- all normal P&I liabilities arising out of the use of electronic bills
- however, important to note that all exceptions and exclusions under the rules continue to apply (as they would with a paper bill)
- this includes the traditional exclusions of cover relating to the carriage of goods, such as:
 - misdescription of cargo, condition or quantity;
 - discharge at a port other than that named in the bill of lading;
 - the issue or creation of an ante or post-dated electronic bill; and
 - delivery of the cargo without production of a negotiable electronic bill

Risks of using an unapproved system

- where the electronic system is not recognised as performing all the functions that a paper bill of lading would have performed, for example:
 - the unapproved system is found, when challenged legally, not to transfer rights in goods in the manner that the creators of the system intended giving rise to a dispute about ownership and/or mis-delivery of the cargo; or
 - the Hague or Hague-Visby Rules have not been effectively incorporated into the electronic bill
- if it is found that liabilities have arisen because of the use of an unapproved electronic system, then cover will be at the discretion of the board

- liabilities a member may face when using an electronic system or interface, either in the office or on board a ship, for example:
 - risk of viruses;
 - hacking; or
 - accidental release or theft of data
- in this context, such liabilities may include, for example, those which arise under contractual arrangements made directly with the system operator
- separate cover required for “cyber-risks” or business risks

What next?

- if you are considering using one of the approved systems, provided the rule book or user agreement is unamended and match the titles set out in the club's 2013 circular, there is no need to seek approval prior to using
- if you are considering using an unapproved system, it is for you to satisfy yourself as to the manner in which the system operates
 - only mechanism for approving systems is via the IG
 - unapproved systems can of course approach the IG for approval

Member Training

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How to improve ship's safety systems

Eric Murdoch
Chief Surveyor

Contents

- the human element
- safety systems and why they fail
- how to improve safety systems
- how the club can help
- what members can consider and do

P&I claims by claim type

2008-2012 capped at \$8m per claim



1	Cargo	31%
2	Personal Injury	26%
3	Collision	11%
4	Fixed and floating objects	11%
5	Damage to hull	5%
6	Fines	5%
7	Pollution	5%
8	Wreck	4%
9	Other	2%

People do not adhere to safety systems

Each year club receives notification of 2000 -2500 incidents giving rise to claims against the club.

- approx. one incident for every two ships on risk
- annual net cost around \$ 90 to \$ 140 million

All occurred on ships with certified safety management systems



Typical claims

Examples

- collisions entering or leaving a traffic separation scheme
- crew lost overboard
- cargo lost overboard



The Human Element

Human nature is to:

- make sense of things
- take risks
- make decisions
- make mistakes
- get tired and stressed
- learn from mistakes
- work with others
- communicate with others



Our safety objective is

- to reduce risk taking
- to enable others to learn from other peoples mistakes
- to create a safety net which will stop a single error from becoming an incident
- to reduce the risk of making the wrong decision
- to control fatigue



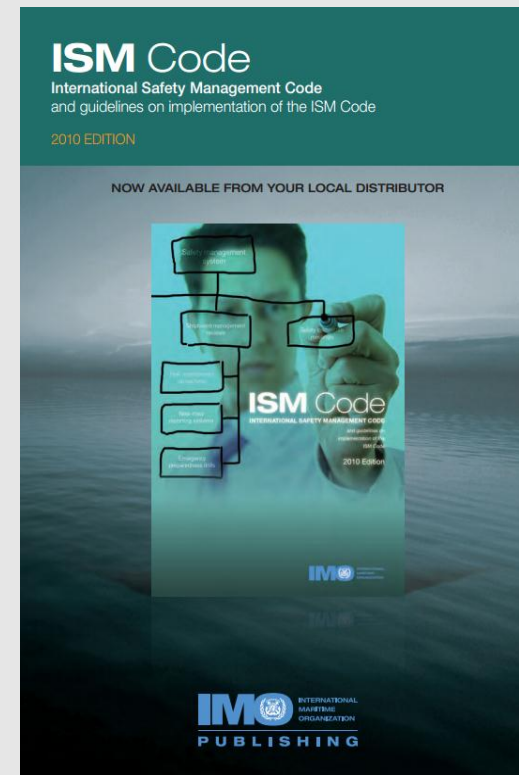
International Safety Management Code

The Standard 

- ship safety committee
- safety training
- risk assessment
- permit-to-work
- near-miss reporting
- root-cause-analysis
- auditing

Other

- compulsory rest periods
- lost time accidents



What we find

- the ship safety committee **can be a formality**
- safety training **is not structured**
- risk assessment **is not understood**
- permit-to-work **is completed after the job**
- near-miss reporting **is never made**
- root-cause-analysis **is only by the DPA**
- compulsory rest periods **are not taken but recorded**
- lost time accidents **are fudged**

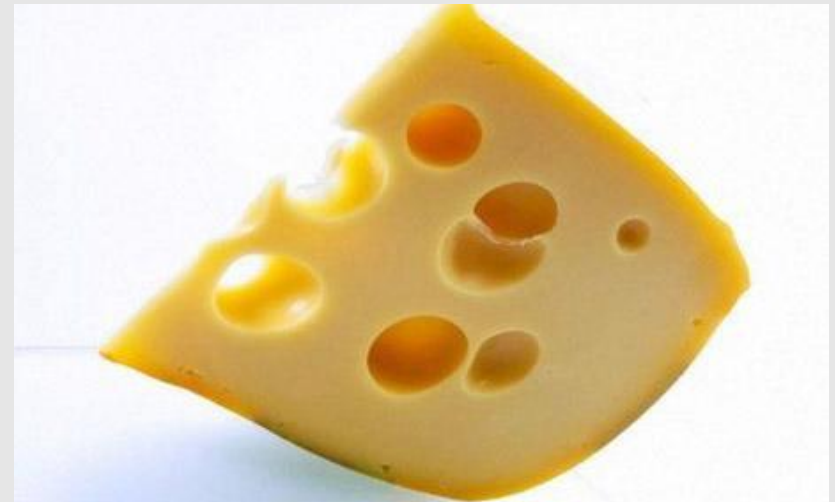


Causes of claims

- Claims caused by small errors and mistakes,
- could have been prevented had someone acted differently

Examples

- collisions : failure to keep a proper lookout
- injuries : failure to work safely
- cargo damage : leaking hatch covers
- pollution : leaking valves



Why ship's safety systems fail

- ships are dangerous places to live and work
- crew become familiar with risk/danger
- crew complacent when applying systems designed to protect them

...but there are underlying reasons.



Underlying causes

- confusion (experience, hierarchy, cost-driven, regulations)
- crew behaviour (short-cuts, ignoring root cause, waiting to be told)
- circumstances (commercial pressure, ship design problems, assertive behaviour, 'it's all right')

Few industries and operators have been successful in fully implementing compliance culture and deviations from best practice are common.

We need:

- easy to understand and effective safety schemes
- compliance culture and crew who follow safety systems
- commitment to safety and to empower crew to take ownership
- disciplined approach, effective auditing and safety targets
- and finally to train, lead, mentor and check



The Standard Club can help

An important part of the club's work is to assist members with loss prevention

- ship condition surveys
- member risk reviews
- advice on cargo safety
- safety publications
- training and seminars for members



It is far better to use resources on good safety and prevent claims than to use them on mopping up.

Key message members

Better safety will only be achieved when there is better compliance with safety systems but the systems have to be good.

We may not be experts in ship operation but we do know what can go wrong and the consequence of failure and can help.

If you need assistance simply contact us.

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The business of relationships.™

Legal Update

Andrew Taylor, Reed Smith LLP

THE ASTRA

Kuwait Rocks Co v AMN Bulkcarriers Inc (The Astra) [2013] EWHC 865 (Comm)

- NYPE Clause 5 (the obligation to pay hire) is a condition of the contract. Breach entitles Owners to recover unpaid hire as at the date of withdrawal and damages for future loss of earnings.

The Position before *The Astra*

- Non payment of hire may allow owners to withdraw and claim for unpaid hire.
- To recover additional damages, owners would have to show a repudiatory breach of contract.
- Very few previous cases considered whether payment of hire is a condition. None considered whether breach entitles owners to damages for future loss of earnings.
- The issue will only arise in a market where owners are likely to suffer loss as a result of early withdrawal.

The Astra: Facts

- NYPE 46 charter.
- Clause 5: hire to be paid punctually and regularly in advance, failing which Owners could elect to withdraw the vessel and terminate the charter.
- Clause 31: anti-technicality provision.
- Charterers failed to pay hire and Owners served an anti-technicality notice.
- Payment was not received. Owners withdrew and held Charterers in repudiatory breach.
- Owners claimed damages for lost earnings for the period from the date of withdrawal to the earliest contractual redelivery date.

Tribunal's Findings and Appeal

- The Tribunal found that:
 - Owners were entitled to damages because, *inter alia*, Charterers had by their conduct repudiated the charter.
 - The obligation to pay hire under clause 5 was not a condition, breach of which entitled Owners to those damages.
- Charterers appealed.
- Owners contended, in their Respondents' Notice, that the Tribunal had erred in finding that clause 5 was not a condition.
- Charterers' appeal was dismissed on other grounds, but Flaux J decided this point at the parties' request.

What is a condition?

An essential contract term, breach of which entitles the innocent party to treat himself as discharged from further performance of the contract, even if he has suffered no prejudice as a result of the breach.

The innocent party can claim damages for any loss suffered.

Clause 5 is a condition

Three key reasons:

1. Owners had a clear right to terminate. Failure to pay went to the root of the contract.
2. Time is generally of the essence where payment has to be made by a certain time. Where time is of the essence, a provision is a condition.
3. Certainty is essential. Owners must know when they can claim damages, and charterers must know when they will be liable for damages.

The obligation to pay hire, both on its own and in conjunction with an anti-technicality clause, is a condition of a time charter.

Breach entitles owners to terminate and claim damages.

Where does *The Astra* leave us?

- Clarification has been required for some time.
- A key issue for owners in the current market – the ability to claim damages may be central to a decision as to whether to withdraw.
- Can owners withdraw and claim damages after a single hire default?
 - On a strict analysis, yes.
 - But, consider each case on its own facts. Wrongful withdrawal will mean owners may face a damages claim.

Where does *The Astra* leave us?

- What is the effect on charterers' right to deduct from hire?
 - If charterers make a deduction prior to payment, on a strict analysis owners can withdraw and claim damages.
 - But, is the deduction valid? If so, and owners withdraw, that withdrawal will be a repudiatory breach and charterers will be entitled to claim damages.
 - Owners have some leverage, but in reality are likely to be cautious.
- Remember: *The Astra* may not be the final word, and may only be seen as persuasive.

THE BULK CHILE

Dry Bulk Handy Holding Inc and Another v Fayette International Holdings Ltd and Another (The “Bulk Chile”)

Charter chain:

DBHH --*NYPE time charter*-- **CSAV** --*NYPE time charter*-- **KLC** --*trip time charter*-- **Fayette** --*voyage charter*-- **Metinvest**

- KLC failed to pay hire.
- DBHH sent a notice of lien to Fayette and Metinvest requesting direct payment of freight/hire.
- DBHH sent a second notice, extending the lien to the cargo.
- B/l's were issued identifying Metinvest as the shippers, freight to be paid as per the Fayette-Metinvest voyage charter.
- Metinvest paid freight to Fayette.
- DBHH claimed for the freight due under the bills of lading.

Were DBHH entitled to intercept the freight?

- In more general terms:

Is an owner entitled to demand payment to himself of freight under his bill of lading, when that contract provided for payment to another party?

- Yes, provided the owner makes his demand before the freight has been paid to the other party.

Why?

- As owners' bills, the b/l's evidenced contracts between DBHH and Metinvest.
- DBHH were entitled to freight even though the bills were issued pursuant to, and stated that freight was payable as per, the voyage charter.
- Fayette were DBHH's agent, who would collect freight on their behalf.

The right of lien under NYPE clause 18

“Owners shall have a lien upon all cargos and all sub-freights for any amounts due under this charter...”

- As drafted, this does not extend to sub-hire.
- Resolving the contradiction between *The Cebu No.1* and *The Cebu No.2* in favour of the latter.
- Owners have security over all sub-freights due to the charterers, which takes the form of an assignment by way of a charge.
- The charge may need to be registered in order to be effective against the charterer's liquidator, administrator and/or creditors.

THE AQUAFAITH

Isabella Shipowner SA v Shagang Shipping Co Ltd (The “Aquafaith”)

Where Charterers repudiated the charter by early redelivery, were Owners entitled to reject the repudiation, affirm the charter and hold Charterers liable for the balance of hire?

- Amended NYPE form time charter for 59-61 months.
- Warranty that the vessel would not be redelivered before the minimum period of 59 months (10 November 2011).
- 6 July 2011: Charterers said they would redeliver after discharge on the current voyage. Agreed to be an anticipatory repudiatory breach.
- Owners did not accept the repudiation and sought to affirm.
- Owners sought a declaration that they were entitled to refuse redelivery, affirm the charter and hold Charterers liable for hire for the balance of the minimum period.

Tribunal: Owners not entitled to affirm

- The rule in *White and Carter (Councils) Limited v McGregor* [1962] AC 413: an innocent party faced with a repudiatory breach can insist on keeping the contract alive.
- Tribunal agreed with Charterers: this case fell outside the rule.
- A time charter is not a contract that can be performed without Charterers' cooperation.
- There is a limitation on the principle of freedom to elect to hold a party to performance of its obligations – where there is no legitimate interest on the part of the innocent party to do so.
- Owners had no legitimate interest in insisting that the charter remained alive.
- Owners should have taken redelivery, traded on the spot market in mitigation and claimed damages.

Appeal

- The Tribunal was wrong: the rule in *White and Carter* does apply to a time charter.
- Key question: could Owners have claimed hire from Charterers without Charterers having to do anything under the charter? Answer: yes.
- Owners did not need Charterers to do anything, e.g. give orders and stem bunkers, in order for them to earn hire.
- Did Owners have a legitimate interest in keeping the charter alive?
 - No legitimate interest where damages are an adequate remedy and the insistence on keeping the contract alive is “wholly” or “extremely” unreasonable.
- The Tribunal should have considered the degree of unreasonableness of Owners’ conduct.
 - Not unreasonable in the circumstances: 94 days left of a 5 year time charter in a difficult market.

What is the effect of this decision?

- The judge took a hard line: Owners' decision to affirm might need to be "perverse" before they are found to have no legitimate interest in keeping the contract alive.
- Will this increase the burden on a party trying to get out of a contract?
- Will the scope of the principle in *White and Carter* be widened?
- NB: clear distinction drawn between time charters and demise charters.
 - Time charters: no co-operation required so as to allow them to fall outside the rule in *White and Carter*. Owners' entitlement to hire not conditional on charterers' performance.
 - Demise charters: Owners' entitlement to hire is dependent on charterers' possession of the vessel, provision of crew and payment of outgoings.

THE ATHENA

Minerva Navigation Inc v Oceana Shipping AG (The “Athena”)

Two time charters, both NYPE, with an amended off-hire clause:

*“... in the event of loss of time from ... **default of master** ... or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost...”*

Both charters also provided:

- Clause 8: the Captain to prosecute voyages with utmost despatch.
- Clause 62: Charterers could change the destination, and have the original bills of lading reissued and signed by their agents, on certain conditions.

THE ATHENA: Facts

- Cargo rejected at the discharge port in Syria.
- Changing the destination required the original b/l's to be reissued, which was delayed.
- The vessel drifted in international waters off Libya.
- After 11 days, the problem with returning the original bills was resolved. The vessel proceeded to berth and discharge at Benghazi.
- Held in arbitration: the vessel was off-hire under clause 15 for the 11 days spent drifting.

Why?

- All Charterers needed to show was:
 1. a default on the part of the Master; and
 2. an immediate loss of time as a result.
- The consequence of the Master's failure to proceed direct to Benghazi was a loss of time by the vessel's delayed arrival.
- Whether the same time would have been lost for other reasons had she proceeded directly to Benghazi was irrelevant.
- Time was lost in relation to the service immediately required. That was sufficient.

Off-Hire Clauses

“Net loss of time” clauses

- Charterers must show a “loss of a period of service” and a “delay to the progress of the adventure”.
- NYPE clause 15: *“payment of hire shall cease for the time thereby lost”*.

“Period loss of time” clauses

- Charterers only need to show the loss of a period of service.
- Shelltime 3: *“hire shall cease to be due or payable from the commencement of such loss of time until the vessel is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which such loss of time commenced.”*

THE ATHENA: Owners' Appeal

- The Tribunal's findings directly contradicted the two key requirements for off-hire under NYPE clause 15.
- The Tribunal failed to take account of:
 - a. ascertaining the period of time during which the vessel was not fully performing; and
 - b. ascertaining as regards that period whether any of it constituted a net loss of time in performance of the chartered service.
- Charterers: in determining whether there was a net loss of time in relation to the service immediately required, the question as to whether there had been a net loss of time was restricted to the period of inefficiency.

THE ATHENA: Not Off-Hire

- The Tribunal's "crucial proposition": all Charterers needed to do was demonstrate that in consequence of the Master's default, there was an immediate loss of time.

This was incorrect.

- To engage clause 15: a cause falling within the clause prevents the full working of the vessel.
- Once engaged: Charterers can deduct hire but only to the extent that there is a net loss of time to the chartered service.
- Net loss of time to the service immediately required is not sufficient.

THE KYLA

Bunge SA v Kyla Shipping Co Ltd (The “Kyla”) [2012] EWHC 3522 (Comm)

Time charter contained the following clause 41:

“Owners warrant that throughout the currency of this Charterparty the vessel shall be fully covered by leading insurance companies / International P&I Clubs acceptable to the Charterers against Hull and Machinery, War and Protection and Indemnity Risk...

Insurance full style and value

Hull and machinery: US\$16,000,000 London, Norway and USA Markets”

- Vessel struck and damaged whilst berthing.
- Probable cost of repairs: around US\$9m.
- Sound market value: US\$5,750,000.

Was the charter frustrated?

- Owners: Yes.
 - The likely cost of repair exceeded the sound market value.
 - The vessel was a commercial total loss.
 - General charterparty principle: a charter will usually be frustrated where a vessel is damaged such that the cost of repair exceeds the value of the vessel.
- Charterers: No.
 - Clause 41 was part of a scheme which obliged Owners to repair the vessel up to the insured value of US\$16m.
 - Even if the general principle asserted by Owners existed, clause 41 prevented its application here.
- Tribunal: agreed with Owners.
 - The general principle applied.
 - Very clear words were required to oblige an owner to repair in these circumstances. Clause 41 was not sufficient.

Frustration: General Principles

- Frustration occurs whenever the law recognises that without the default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance was called for would render it a thing “radically different” from that which was undertaken by the contract.
- Other ways of formulating the test:
 - A “ruinous expense”
 - A break in the identity between the contract as provided for and contemplated and its performance in the prevailing circumstances.

The charter was not frustrated

- Clause 41: a comprehensive insurance provision.
 - Owners were warranting that full H&M cover would be in place throughout the charter.
 - The purpose was that H&M insurance would be available to cover the cost of repairs up to the insured value.
- Nothing “radically different” had occurred. There was no “ruinous expense” or “break in identity of the contract”.
 - Whatever test for frustration was applied, clause 41 covered the given contingency.
- Owners bore the risk that if a casualty occurred, the vessel required repair, where the cost was within the insured value.
 - No injustice in holding Owners to this bargain.
- An element of self-induced frustration: the charter was terminated because Owners elected not to repair the vessel.

Kairos Shipping Limited v Enka & Co LLC

- Convention on Limitation of Liability for Maritime Claims 1976 (as amended by the 1996 Protocol): Owners may limit their liability for all claims arising out of a single maritime incident.
- How would a party go about doing so?
 - Constitute a Limitation Fund by paying funds into court.
 - But: in *The Rena* a P&I Club was permitted to constitute a Limitation Fund by lodging a LOU with the court.
- Does the English Court have jurisdiction to permit this?
 - No: “*without a specific statutory provision that a guarantee is acceptable the rule remains that a Fund may only be constituted by making a payment into court.*”

Reasoning

- Article 11(2) LLMC 1976: a *“Fund may be constituted either by depositing a sum or producing a guarantee acceptable under the legislation of the State party where the Fund is constituted.”*
 - Force of law: s.185 Merchant Shipping Act 1985
 - But: no further national legislation under which a guarantee is acceptable.
- Article 14 LLMC 1976: rules relating to constitution of a Fund shall be governed by the law of the State party.
 - CPR 61.11: *“the claimant may constitute a limitation fund by making a payment into court.”*
 - A guarantee is not a cash payment into court.

Reasoning (2)

- Statute of Frauds: a guarantee must be in writing and signed to be enforceable.
 - LLMC 1976 deals with *acceptability* not *enforceability*. These are different concepts.
 - The Statute of Frauds is insufficient to satisfy Article 11(2) LLMC 1976 and allow a Limitation Fund to be constituted by lodging a LOU at court.
- The decision reflects the current position under English law.

Is the current position satisfactory?

- LOUs are common forms of security. No party argued that a suitable LOU would not be effective security.
- Article 13 LLMC 1976 allows vessels to be released from arrest on provision of a LOU.
- Legislation of other States party to the LLMC 1976 allows Limitation Funds to be established by P&I Club LOU.
 - Will Owners seek to litigate elsewhere?
 - Would this affect England's position as a primary jurisdiction for maritime disputes?
- Leave to appeal has been granted.
 - If the appeal fails, will steps be taken to change the legislation?

Member Training

1 – 3 October 2013

London

The Standard



Introduction to hull insurance and general average



Contents

- Introduction to hull insurance
- Introduction to particular average
- Introduction to general average
- Why we still need general average

Hull and machinery insurance

- Distinction between hull and machinery insurance and P&I
- Global hull insurance markets
- Reinsurance

Particular average claims



Particular average claims

- Is the claim valid?
 - Peril insured against
 - Proximate cause of damage
 - Conditions: ITC, Norwegian Plan, American Hull Clauses
- Adjusting
 - What adjusters do
 - Allowances
 - Deductibles

General average



What is general average?

- York Antwerp Rules – Rule A

“There is a general average act when, and only when, any

extraordinary sacrifice or expenditure

*is **intentionally and reasonably** made or incurred*

*for the **common safety***

*for the purpose of **preserving from peril** the*

*property involved in a **common maritime adventure**.”*

When does general average occur?

- groundings
 - fires
 - collisions
 - machinery breakdowns
-
- Loaded passages
-
- Ballast GA clause





How does general average work?

- general average declaration – usually by vessel owner, but often not compulsory
- general average adjuster appointed by vessel owner to handle case and collect security as soon as possible

How does general average work?

- general average security – put up by cargo interests in order to release cargo
 - a) general average guarantee by cargo insurers
 - b) general average bond by cargo “owners”
 - c) general average deposit if cargo uninsured
- general average surveyor appointed to assess general average sacrificial damage, if required

How does general average work?

- contracts of carriage - charter parties and bills of lading - outline rights and responsibilities of parties
- general average clause - York Antwerp Rules, govern adjustment of general average - 7 lettered rules, 22 numbered rules
- Rule of Interpretation and Rule Paramount

How does general average work?

- Does it take long to carry out adjustment?
 - multiple cargo interests
 - delay in carrying out vessel repairs
 - document collection from multiple interests

How does general average work?

— Enforcement

- general average adjustment not binding (UK)
- breach of contract of affreightment (e.g. unseaworthiness) is a defence to contribution
- cargo's proportion picked up by P&I club if irrecoverable
- GA absorption clauses

Why we still need general average

- Not popular
- Avoids paralysis during a crisis
- Framework for allocation of costs that leaves the door open for legal redress

Member Training

1 – 3 October 2013

London

Presentation for The Standard P&I Club

2 October 2013

Mark Clark

Navigate Response

Global provider of crisis communications response & reputation management for the maritime & offshore industries

- 24/7 x 365 emergency advice, counsel & response
- Hands on support at the client's office or the scene
- Full media handling & reputation management services
- Social media monitoring & engagement
- Internal communications support
- Drills, training, exercises & planning

Global Network





Mark Clark

BBC news journalist/editor

Crisis desks

National Health Service
Number 10

Maritime and Coastguard Agency

Head of Communications

Navigate Response

Many marine casualties
MSC Napoli / MV Prince / MT Atlantic
Prosperity / MV Dole America ...



Picture the scene

- It's 0300 on Friday morning and your emergency phone rings...an emergency mid English Channel..





Citizen journalism takes over

Images and comment are immediately sent across the world. YOU CAN'T HIDE



YouTube
Flickr
Twitter

Changing pace

2 years ago

Incident → Live News 2 hours

Today

Incident → Live News 30 minutes



Yesterday's news....





Tomorrow's newspapers...

What's happening in the newsroom?

The News Editor will want to know:

- What's happened?
- Who's involved?
- Why has it happened?
- Who's to blame?
- Where and when?
- How fast can we get there?
- Where are the pictures?
- Who can we talk to?



That sinking feeling

**In the newsroom and in
the boardroom**

0-1 hrs:	Crisis
1-3 hrs:	Chaos
3+ hrs:	Witch Hunt
24hrs:	Siege
7 days:	Salvage



News team mobilisation

- Kit – TV trucks, radio cars, helicopters
- People – editors, journalists, cameramen
- Comms – videophones, radios



naVigate
response



Multiple locations



At the scene



At the hospital



At your office

Meantime....

Local news agencies:

- They maintain local contacts
- They have locally based photographers
- They will use eye witnesses /neighbours;
source “experts”
- Buy up amateur video
- Maintain library pictures / maps

Local agencies

- They'll write up 1200 words and be ready to hit the 'send' button as you're waking up!



Big Brother

On scene journalists will watch, record and report your every move



Feeding the media beast

- Key/corporate messages
- Public reassurance
- Facts (not opinion)
- 30mins – first statement
- 90mins – talking head
- Hourly updates
- Pooled facilities
- Media rendezvous point
- Sharing information



Written statement

- Issued within 30 minutes
- Give the facts
- Pity, praise, promise
- Regular updates
- Company factsheet/background
- Company safety record
- Pictures, video
- Vessel specifics
- Internal briefing note

Initial statement

A Liberian flagged vessel, Blue Peter, grounded on Varne Bank in English Channel nine miles south of Dover at 0535 local in extreme high winds. The Coastguard are in attendance.

We are doing all we can to ensure the safety of the crew and to prevent any pollution.

This incident is being treated by the ship owner as a matter of extreme urgency and more information will be given as soon as it becomes available.

Website

- Should we publish a statement on our site?
 - Immediate and global response
 - But airs dirty laundry in public
 - Depends on incident and level of media interest
- Consider developing a “dark site”
- Can we get a statement uploaded immediately – what is the process?

Media interviews

- What are my key messages?
- Have I got all the facts?
- Have I sufficient knowledge of the people involved?
- Have I useful soundbite and do I know when to use it?
- What will be my style – serious, concerned, friendly, corporate?
- Have I written down points that require accuracy (emergency contact details)?

Take control

- Ask who the reporter/media outlet is?
- Understand his/her shipping knowledge
- Are you being recorded, are you live or will it be used in print?
- Is it for a soundbite or something bigger?
- Can it be put-off for 30mins to give you chance to prepare?

The blame game

Costa Concordia cruise captain 'override computer' - Worldnews.com - Mozilla Firefox

File Edit View History Bookmarks Yahoo! Tools Help

Tankers still have a futuretransportin... x The Queen Elizabeth II Diamond Jubil... x Costa Concordia cruise captain 'overr... x Costa Concordia cruise liner's compa... x +

article.wn.com/view/2012/01/16/Costa_Concordia_cruise_captain_override_computer/

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The Guardian 2012-01-22

Italy's most hated man: Facebook anger at skipper of doomed
The Daily Mail 2012-01-16

Costa Concordia's captain Francesco Schettino was 'showing off'
The Australian 2012-01-16

Cruise liner fuel leak fears
Independent online (SA) 2012-01-17

'Cruising is safe' travellers told, as industry is criticised for 'putting
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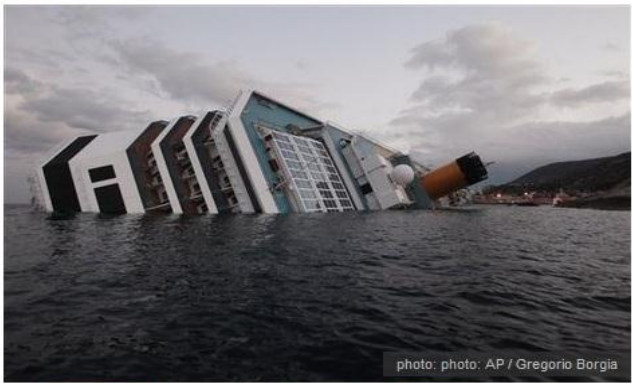
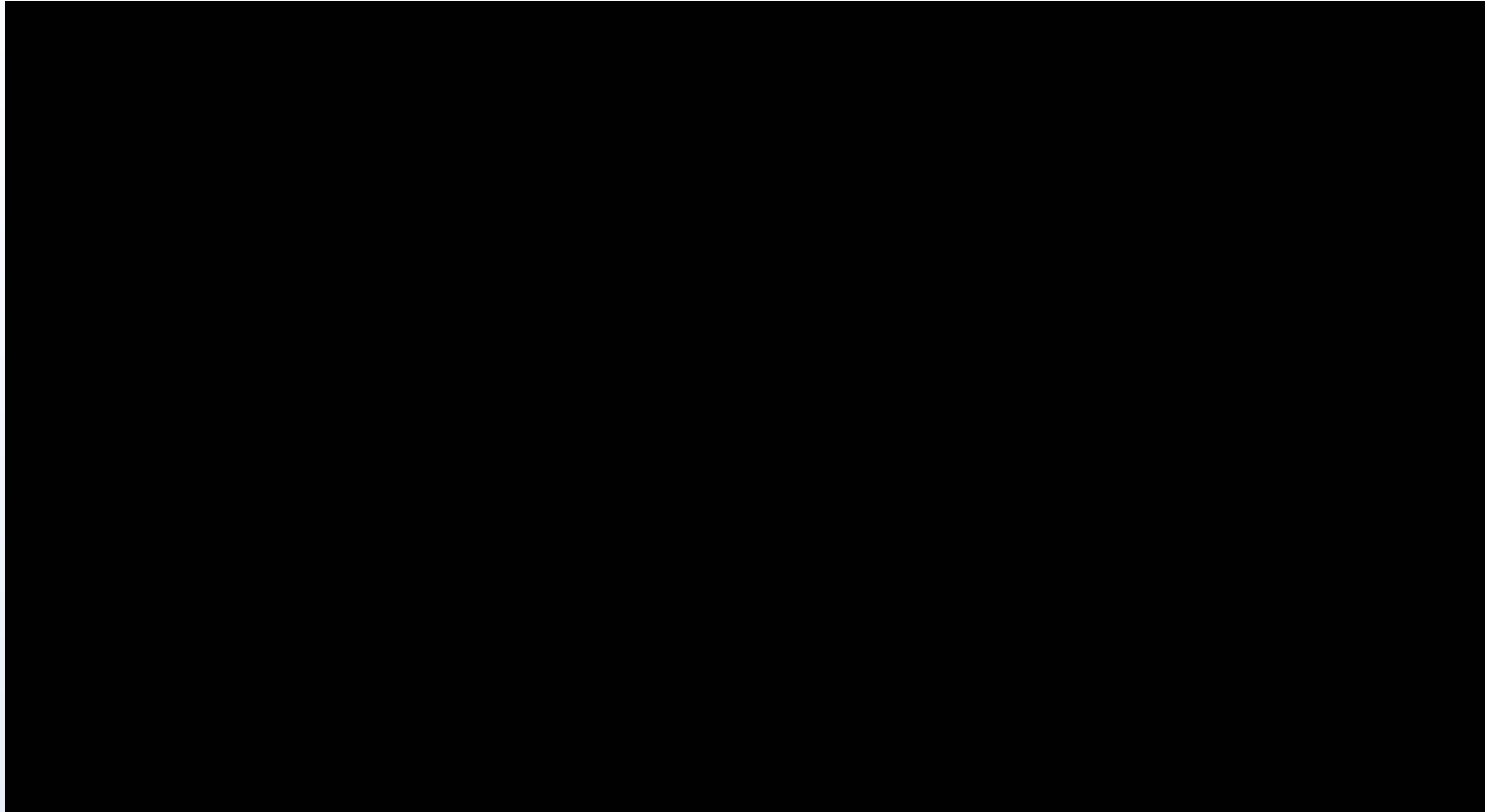


photo: photo: AP / Gregorio Borgia


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Windows taskbar: Navigat... Crisis Co... MacAnd... Costa C... Microso... Skype... Untitled... Navigat... 11:11 09/11/2012



The future...

**Small active team operating unmanned aerial services
under contract to news desks..**



**Awareness of Facebook
is close to 100%**

**More than 1 billion people
(>70% of internet population)
use social networks.**



37 minutes is
the average time
members spend
each time they log
in to Facebook





Boost in adoption of smart phones:

51% of internet users
have a smartphone,
most have a data
subscription on it.







On average, people install **22 apps** on their smartphone, **9** of which are **used at least weekly**. Social network apps are the most popular ones.

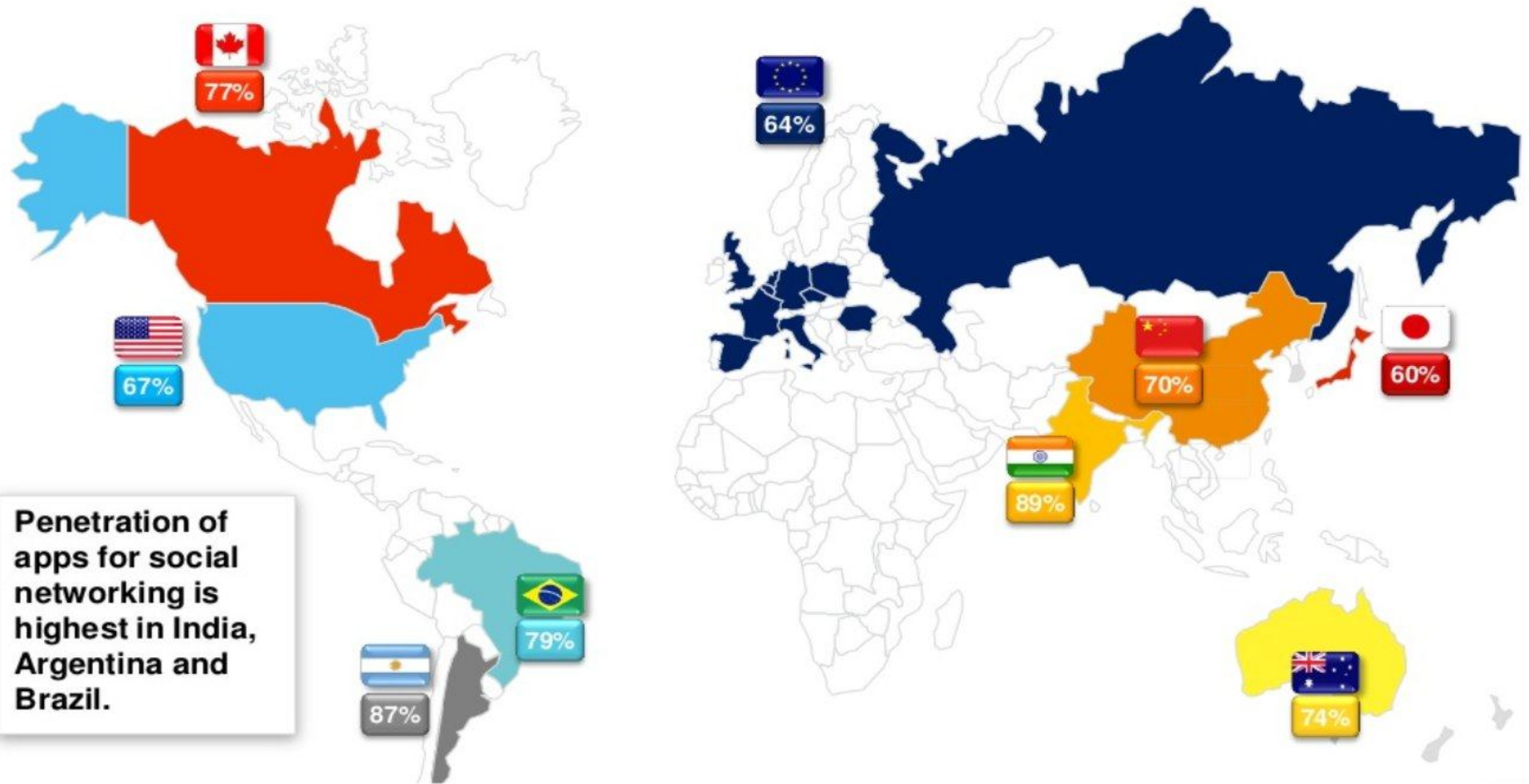
EVERY
60

seconds,
something
is shared.



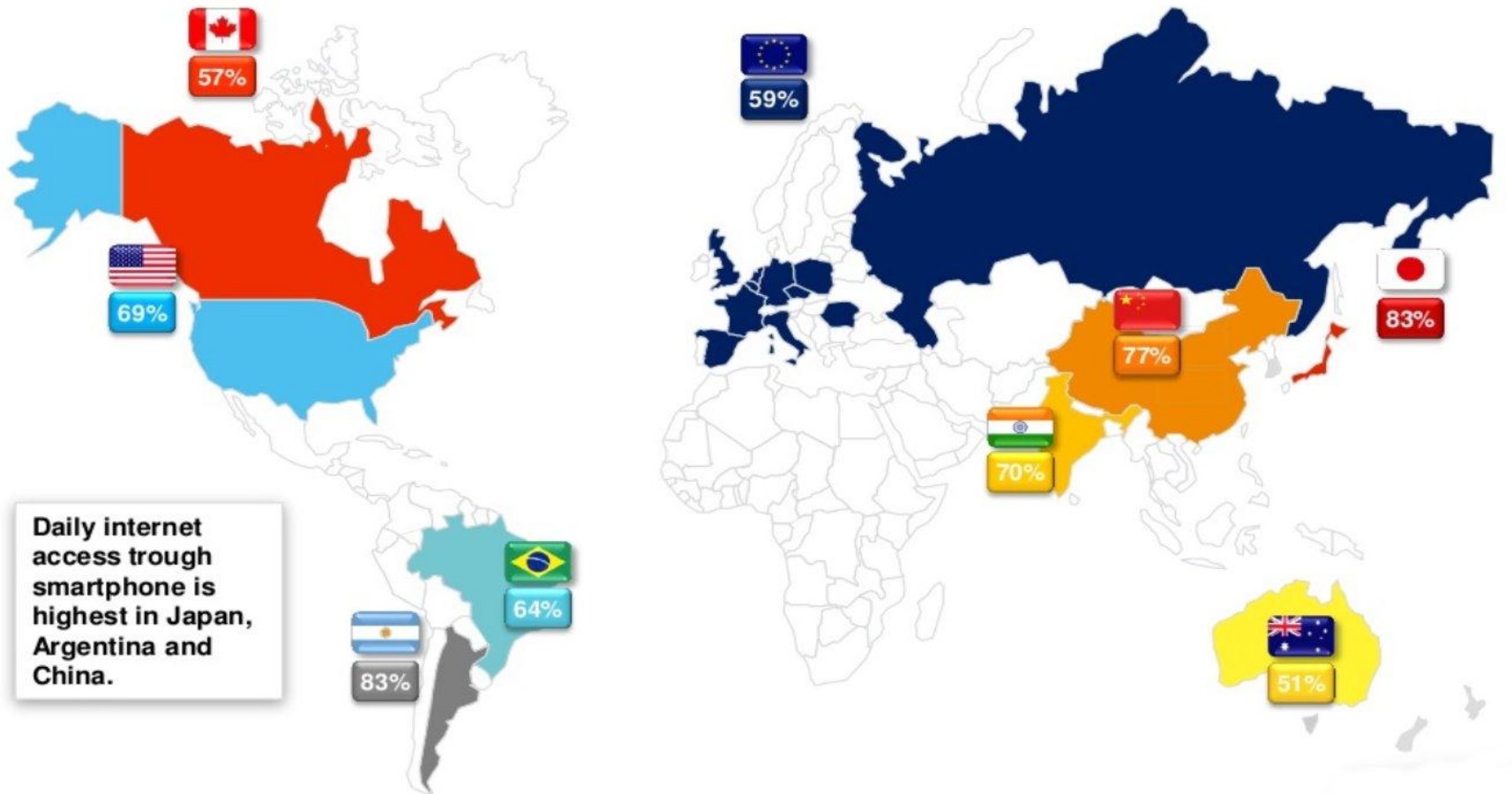
	60
	625
	2,000
flickr	6,600
in	7,610
	66,000
f	695,000
You	2,000,000

Usage of apps for social networking



Daily internet access via smartphone

Q : Could you please indicate to what extent you use your smartphone to surf on the Internet? (% at least daily)





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928 TWEETS

188 FOLLOWING

5,958 FOLLOWERS

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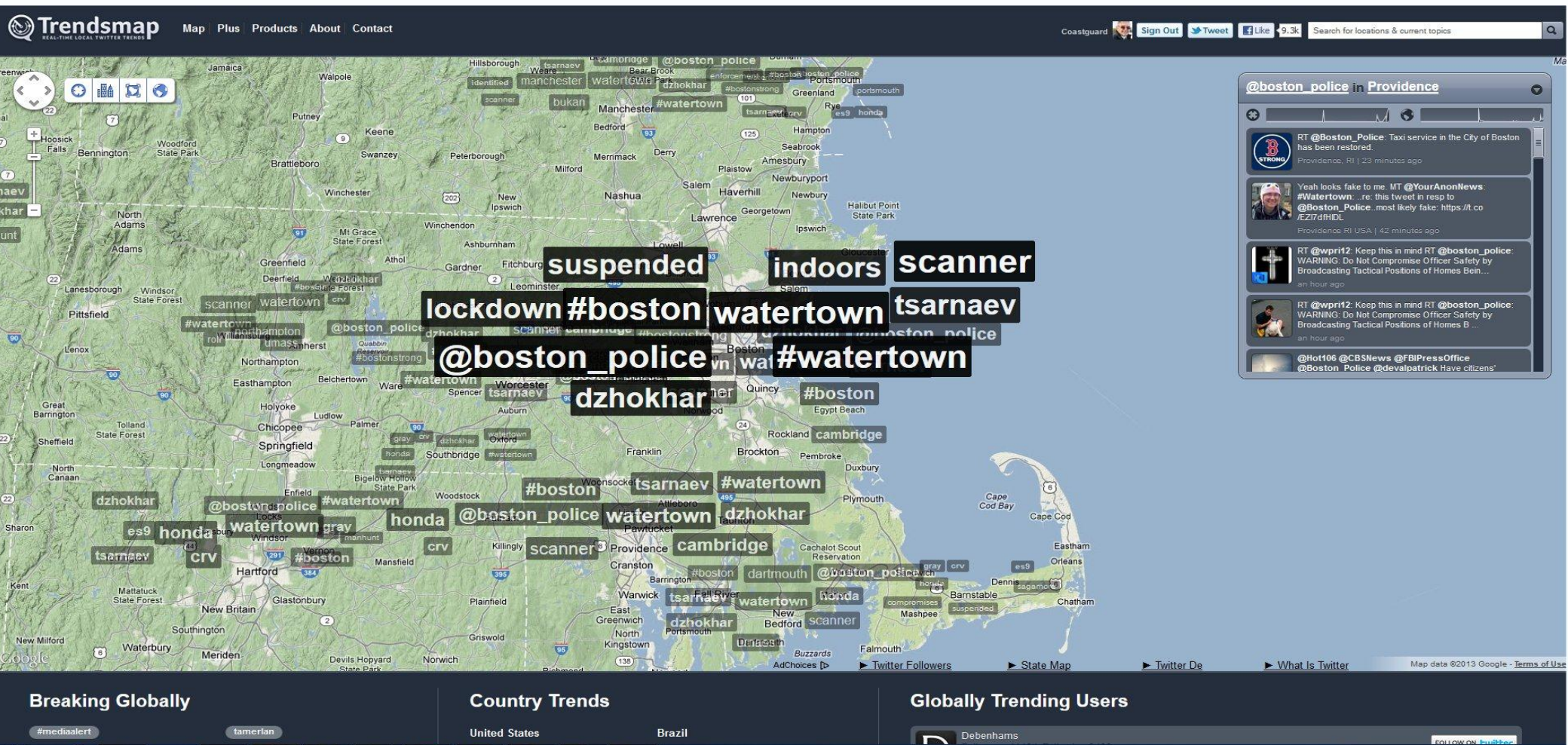
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Trendsmap



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shipping ☒

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Exclusions

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Timeline ☒ 1.25 m

Mentions ☐ 3 mins

Direct Msgs. ☐ 5 mins

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Save searches to Twitter

Load subscribed lists

Save lists to Twitter

Load your lists

Logout

Hide Panels - Clear Page - Resume Tweets - Link here

Empty Queue Paused: 1484 New Tweet

Agnakegeos RT @MaxBlueAntlia: Photo of suspect on the ground: https://t.co/PBy6JPgZU8 #Watertown #BII

Fsta101 RT @YourAnonNews: #Watertown: [PHOTO] Djohar Tsarnaev (Suspect 2) http://t.co/T0mMd3uPSH

Linn_Kreppke RT @TSN(OMOH): The search is focused on a 20-block area in Watertown; officials fear suspect may be wearing explosive vest, reports @bostonsun...

bitterliflinter RT @YourAnonNews: Cop to NBC reporter: "if you knew what was going on, you wouldn't be standing here right now." #watertown #manhunt #Boston ...

meins_black RT @JustinCNew_: To all law enforcement involved in the #manhunt in #Watertown, I wish you the best of luck and pray that you stay safe.

DrewLog RT @DavidMangate: Wow. Wonderful picture of Syrians standing in solidarity with #bin Laden. http://t.co/qkNDQNimaY #watertown
 Reply: [Shorten URLs](#) 131

greggington RT @ShMachM4: @sapt Везде солдаты и SWAT (ОМОН). Ситуация накалена до предела. Пограничники на Канадской границе в состоянии готовности ...

greggsiding Any chance the uncle of the Tsarnaev brothers is simply trying to cover his own ass? #manhunt #watertown #bostonbombing

whitewest RT @SeanJellyNews: The scene on Route 20 eastbound in Watertown, Mass. Almost no traffic in the middle of a weekday. #lockdown http://t.c...

Flawless_wag I seriously didn't sleep last night because of the things in Boston/Watertown so idk what I'm saying shrug shrug

Shine_jewels SHINE TIME.... FREE SHIPPING IN BC http://shinajewels.ca/collections/rings/products/gold-rose-ring-s-7 http://fb.me/2ecXCq7Su

857411 ロイズ (ROYCE) バイトンクッキー ココナッツ40枚入【OK! overseas shipping】[北海道お土産] [楽天] http://a.r10.to/h7yz3w #Rakutenichiba http://t.co/N4kRUmwYqr

N3rdlink Hey @obentashley any news on the new ALWW prints shipping?

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Report

- **Monitor** – listening in to the conversation
- **Command** – broadcasting your story
- **Coordinate** – a conversation
- **Cooperate** – discussion and analysis
- **Collaborate** – achieving a shared goal

And the result? Tomorrow's headline



Don't Be Scared

Be Prepared



Questions



Mark Clark

Navigate Response

The Baltic Exchange

38 St Mary Axe

London EC3A 8BH

T: 44 20 7283 9915

www.navigateresponse.com

enquiries@navigateresponse.com

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