

Member Forum, Vancouver

Pan Pacific Vancouver

4 June 2015

The Standard



Contents

- Welcome
- Club update
- Poolable and non-poolable cover
- Recurring issues
 - Safe berth/port warranties
 - Contracts of carriage
 - Deviation
 - Letters of indemnity
 - Towage
 - ‘Best endeavours’

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The Standard Club key facts

\$360M
gross premium

\$380M
free reserves

135M
total gt insured
Canada 6%

Over 400
members

Underwriting
improvement
strategy

100%
(projected)
combined ratio
policy year

100%
combined ratio
financial year

S&P A rated
(strong)

Leading range
of marine
covers

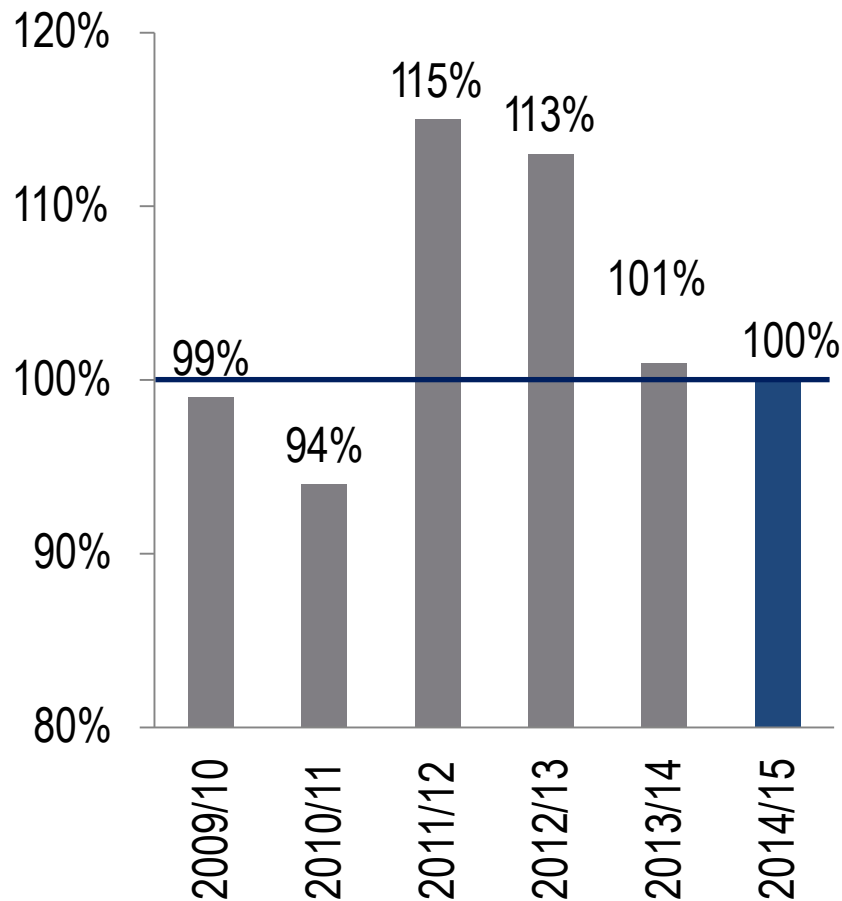
The Standard
Syndicate 1884

New York
Office

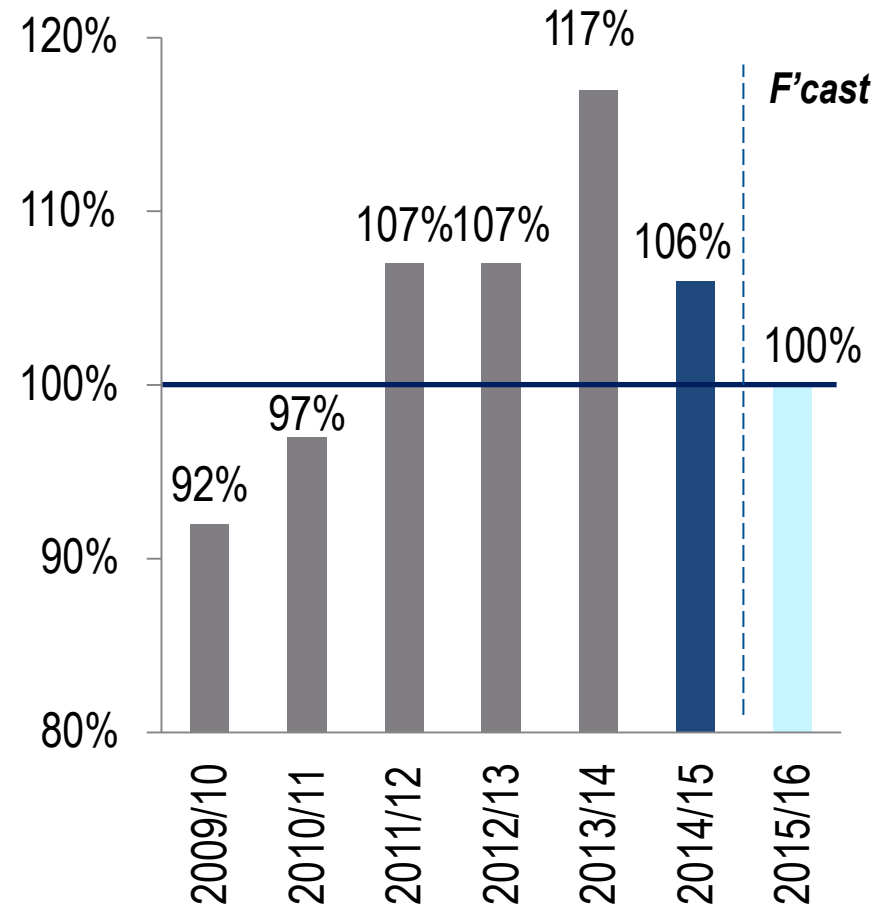
London Class

Context: combined ratio development

Combined Ratio: Financial Year



Combined Ratio: Policy Year



What are we aiming to achieve?

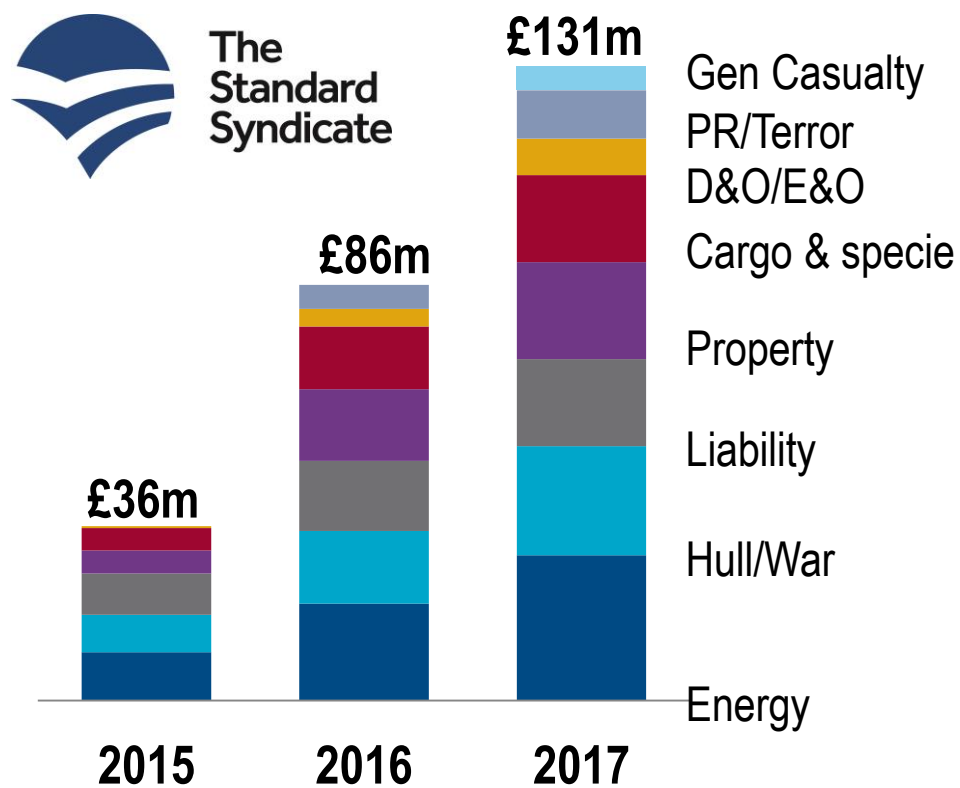
- Selective growth in membership and tonnage
- Improving operating quality of insured fleet
- Expansion of marine product range and increased spread
- Increasing expertise in chosen markets



A leading global marine insurer

The Standard Syndicate

Premium Income – Per Business Plan
approved by Lloyd's



60% to be from members

Rationale and approach

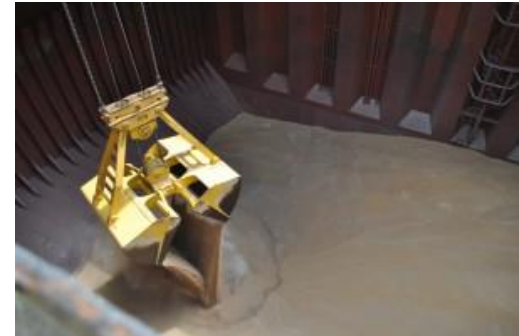
- New Lloyd's syndicate established by the club
 - to offer members (and others) a broader range of covers, with club-style service
 - to diversify and strengthen the club
- Underwriting approach leverages club's relationships and knowledge
- Commenced underwriting 1 April, after Lloyd's & regulatory approvals
- Board hopes that many members & their brokers will consider The Standard Syndicate to meet their non-P&I insurance needs

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- P&I cover is premised on members sharing a common interest and bearing similar risks
- Traditionally this means liabilities to third parties that arise during the carriage of people or cargo to or from locations
- IG P&I clubs pool claims - Pooling Agreement
- Pooling Agreement:
 - all members of the International Group are full members of the “Pool”
 - principal reinsurance mechanism for P&I risks through which the Clubs agree to share, on an equitable basis, their P&I risks in excess of a certain amount
 - pooling Agreement mirrored in the individual P&I club rules to ensure uniformity

Mutuality – vanilla P&I



Which cover – mutual or non mutual?

- Pooling Agreement and club rules – determine extent of mutuality
 - Type of contract
 - Type of activity
 - Type of ship

“In general, an Insured Owner should not assume responsibility, under contract or otherwise, for liability arising or loss resulting from any act or omission for which, under applicable law, the Insured Owner would not otherwise be liable, or in respect of which, under applicable law, the insured Owner would otherwise be entitled to exclude or limit liability.”

Pooling Agreement Appendix V Clause 11

At law or fault based

“An Association may approve and shall be entitled to pool liabilities arising under a Knock for Knock agreement provided the Insured Owner does not, under any such agreement, waive any rights of Limitation otherwise available to him under applicable law.”

Pooling Agreement Appendix V Clause 11

Knock for Knock

“The Insured Owner shall exercise best endeavours to ensure that the terms of any contract under which services, goods or facilities are obtained for, supplied or made available to the Insured, comply with the principles set out under paragraphs 1 (at law) and 2 (knock for knock) above.”

Pooling Agreement Appendix V Clause 11

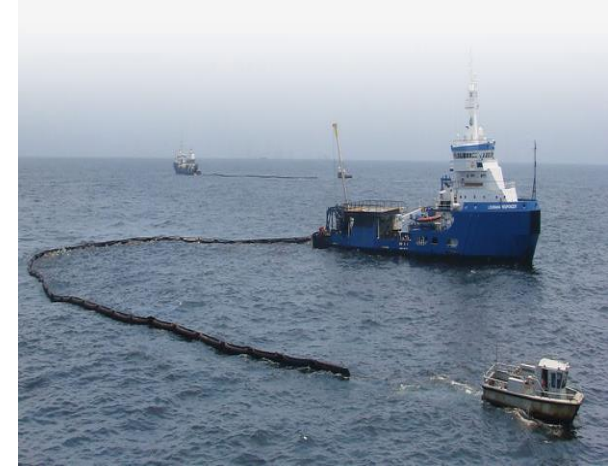
Services to the entered ship

Type of contract

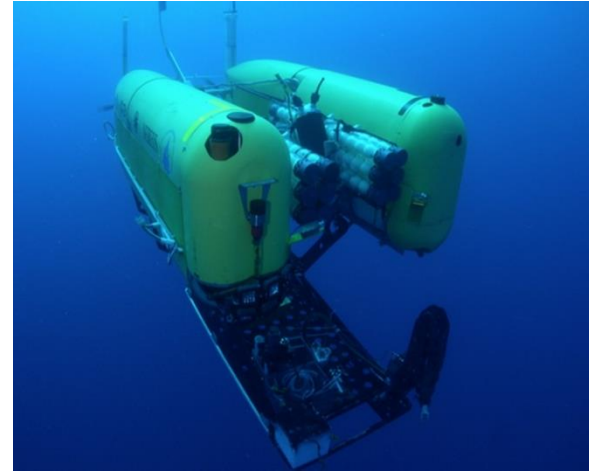
- Specifically referenced:
 - Helicopter contracts
 - Panama Canal indemnities
 - STOPIA/TOPIA
 - Indemnities to doctors
 - OSRO
 - LNG COUs
 - Contracts of carriage
 - Towage



Type of activity: Specialist operations etc



Offshore extension clauses 2015



Type of activity: Salvage



Salvors' extension clauses 2015

Type of ship

FPSO & MODU in connection with oil and gas exploration and production



FPSO



MODU

Standard Offshore Rules 2015

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Safe berth/port warranties

- Primary obligation on the charterer to order the ship only to ports which, at the time the order is given, are prospectively safe.
- **Examples:**
 - *“The Vessel shall be employed in such lawful trades between safe ports and safe places ...as the Charterers shall direct.”* **Clause 5, NYPE 93**
 - *“The Vessel shall be employed in lawful trades for the carriage of lawful merchandise only between safe ports or places where the Vessel can safely lie always afloat...”* **Clause 4, Baltimore 1939**

Safe berth/port warranties

- *“A port will not be safe unless, in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship.”*

Leeds Shipping v. Société Française Bunge (The Eastern City) [1958] 2 Lloyd's Rep. 127

Erosion of charterer's obligations

- *“Charterers shall use due diligence to ensure that the vessel is only employed between and at safe places...”* **Clause 4 (c) Shelltime 4**
- Warranty vs. “due diligence”
- Consequences for owners
- Deletion?
- Rating issue; club cover is not prejudiced

- 5 April 2010, at Guayaquil, CCNI Antartico (container)
- Time charter contained an safe berth / port warranty
- Ship struck and damaged:
 - the berth
 - Terminal container gantry crane
 - a container ship at the adjacent berth
- Owners claimed the berth / port was unsafe for this particular ship

Safe berth/port warranties



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Contracts of carriage: Club Rules

“Liabilities for loss or shortage of, or damage to, or other responsibility in respect of, cargo or other property intended to be, or being, or having been carried in, on or by the ship arising out of any breach by the Member, or by any person for whose acts, neglect or default he may be legally liable, of his obligation properly to load, handle, stow, carry, keep, care for, discharge and deliver such cargo or property, or out of unseaworthiness or unfitness of the ship”

Rule 3.13.1

Exclusion to Rule 3.13

“Unless the Board otherwise determines, there shall be no recovery in respect of liabilities of:

...

(1) the carriage of cargo on contractual terms more onerous to the carrier than those of the Hague or Hague-Visby Rules, or equally wide exemptions of the carrier from liability, save where it is on such terms solely by reason of the incorporation by law of the Hamburg Rules or parts thereof, to the extent that the liabilities exceed those which would have been incurred had the contract been on Hague, Hague Visby or Hamburg terms as applicable, unless the contract has been approved in advance by the managers.”

Example: Exxonvoy 2012 (Clause 27)

- What is it?
 - Default incorporation of the Rotterdam Rules
- Why is this important?
 - Two year time bar versus One year
 - Not 'rail to rail'
 - On going warranty of seaworthiness
 - No error of navigation or fire defences
 - Increased package limitation
- Solution?
 - Contractual extension clause 2015
 - Limits?

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What is deviation?

- Deviation – where a carrier “deviates” from the contractual voyage agreed by the parties
- Poolable cover *may* be excluded in respect of liabilities relating to a deviation “...which may deprive the Member of the right to rely on defences or rights of limitation which would otherwise have been available to him...”
Rule 3.13.3(2)
- Examples of actions which might be deviations
 - Departure from usual route without agreement
 - Unreasonable delay
 - Calls for bunkering or repairs, particularly if not necessary for the particular voyage concerned
 - Taking property on tow

Why is deviation important?

- Risk for carriers who deviate from the agreed voyage
 - Breach of the voyage/contract of carriage
 - Lose the right to rely on the exceptions contained in Article IV of the Hague/Hague Visby Rules or contractual exclusion clauses
 - Loss of poolable cover. Deviation *may* enable the club to decline cover unless certain conditions are satisfied.

H/H-V rules

- Saving or attempting to save life or property at sea
- Any reasonable deviation
- What is reasonable? - depends on facts

Pooling Agreement Guidelines

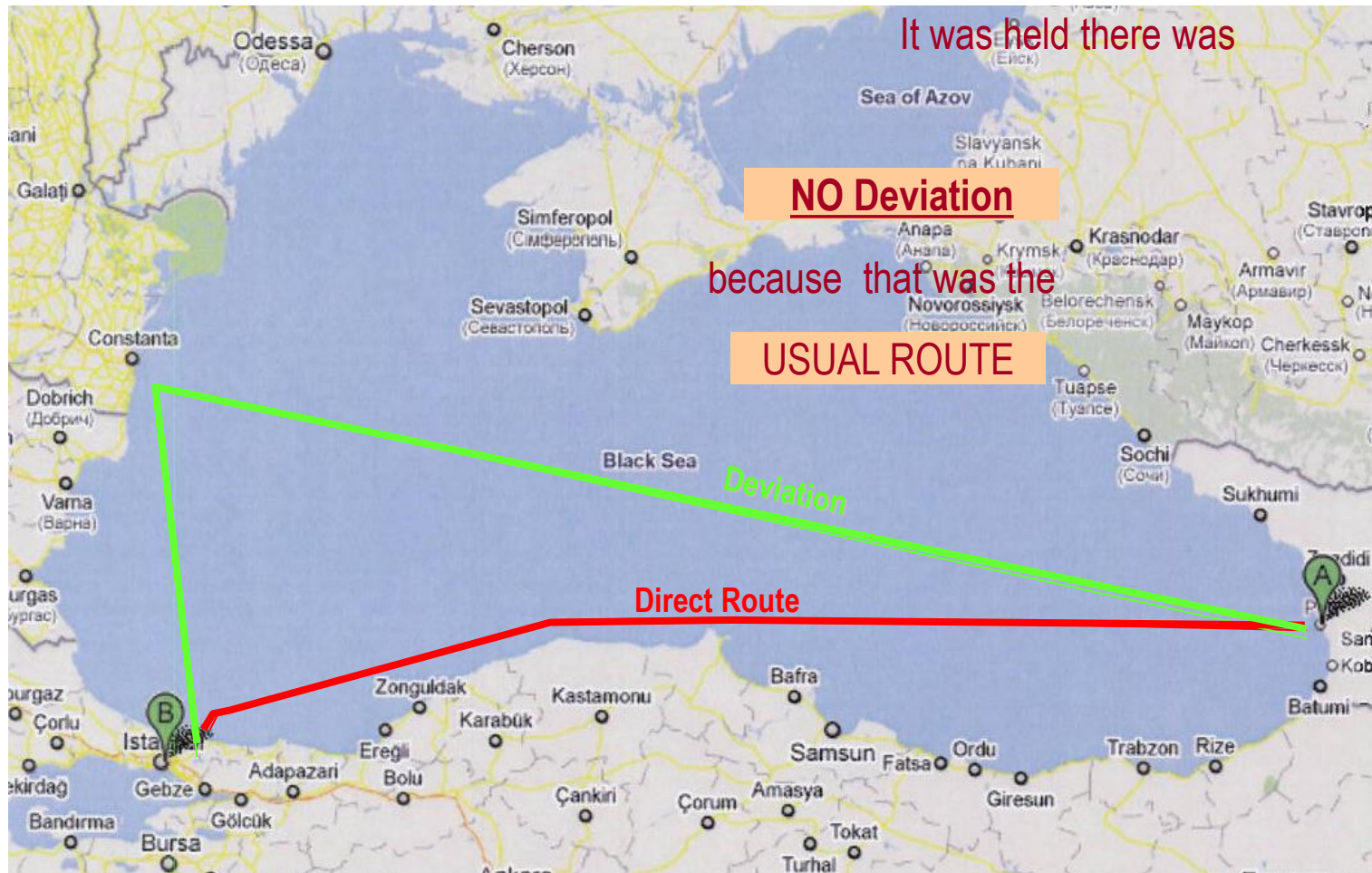
- Minor departures from geographical route...relating to bunkering in whole or in part for the voyage being performed.
- Minor departures from geographical route...relating to crew changes, taking on spares, stores or supplies, minor repair etc.
- Only within club cover if deviation is justified as matter of law, established custom of trade or appropriately drafted liberty clause

Example of reasonable deviation

Voyage from Poti to Sparrows Point

("Reardon Smith v Black Sea Insurance")

Deviation to Constanta for Bunkers



Unreasonable deviations

- Scenario
 - A carrier decides to put into a port for cheap bunkers which it has never called at before - there is no liberty clause - during the bunkering there is a collision causing loss/damage to the cargo.
- Is this a reasonable or unreasonable deviation?
- What is the impact on cover?

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- What is a letter of indemnity?
 - Written document pursuant to which one party agrees to compensate another for the costs and consequences of carrying out a certain act
 - Not enforceable if the underlying transaction is intended to defraud a third party
 - Common uses – charterers LOI: carriers/owners have to deliver goods without receiving an original bill of lading; charterers order a deviation from the route they are obliged to take pursuant to the bill of lading; charterer orders switching of bill of lading; co-mingling during voyage.
 - Other uses: invitees on ship for purposes other than navigation of the ship (ship as a film set, concert venue, party, educational tours)

- Exclusions to rule 3.13.1 cargo cover
 - Discharge of cargo at a place other than that stipulated in the bill of lading
 - Delivery of cargo without production of the bill of lading or where non-negotiable without e.g. identification
 - Issuance of a contract of carriage recording loading/shipment/receipt of cargo for a date other than the date the loading/shipment/receipt in fact occurred
 - Knowingly issuing contract of carriage with incorrect description of the cargo or its quantity or condition
 - Effect of exclusion: no recovery in respect of cargo liabilities flowing from one of the exclusions to cover, subject to club discretion
- Solution?
 - Cargo deviation clause 2015

- LOI does not reinstate P&I cover for uncovered risks;
- Even if the terms of an LOI are beneficial to the carriers and the LOI appears to be enforceable, it is only ever as good as the financial standing of the entity issuing the LOI and its willingness (or otherwise) to honour it;
- LOIs should be counter-signed by a bank. In practice, this seldom happens;
- LOI from charterer to owner, no direct defense to a cargo receiver's claim under a contract of carriage.

IG response: standard forms for LOIs

There is no specific LOI format, rather owners/charterers may negotiate terms. The need for LOIs tends to arise more frequently in certain situations; IG prepared standard form LOIs.

- Form A and AA, applicable when cargo is delivered without surrender of the original bill of lading;
- Form B and BB, applicable in cases of deviation; and
- Form C and CC, applicable in cases of deviation where goods are also delivered without surrender of the original bill of lading

Not perfect, issues identified with the standard wordings

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Towage of the entered ship

- Poolable
 - Entering or leaving port
 - Manoeuvring within port
 - Ordinary course of trading
 - Under LOF
 - Knock for knock



Towage by the entered ship

- Poolable
 - Saving life or property
 - Market forms
 - Knock for knock
 - Knock for Knock unlawful
- Why different?
 - Freedom to negotiate
 - Risk versus Reward
- Non-poolable
 - Contractual extension clause 2015



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‘Best Endeavours’

- When? Services, goods or facilities for the entered ship
- What? ‘At law’ or ‘Knock for Knock’



- What are ‘Best endeavours’?
 - “...all those reasonable steps which a prudent and determined man, acting in his own interests and anxious to obtain [the desired result], would have taken”
IBM United Kingdom Ltd v Rockware Glass Ltd [1980] FSR 335, CA, per Lane LJ
 - What is reasonable will depend on the circumstances
- Eligible for pooling?
 - Approved by the club – poolable – rating issue?
 - Not approved by the club – not poolable – Contractual extension cover 2015

Break

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