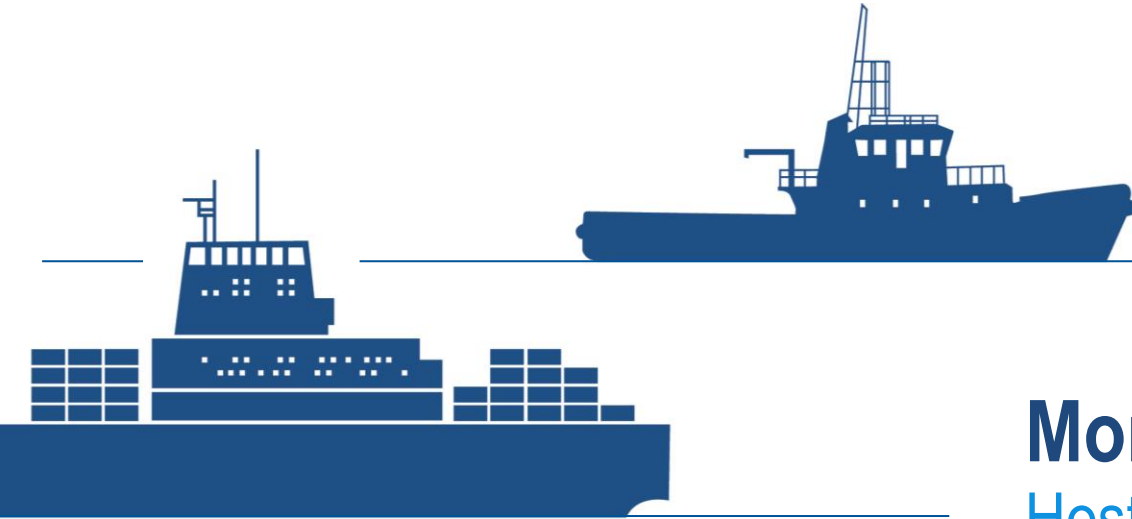


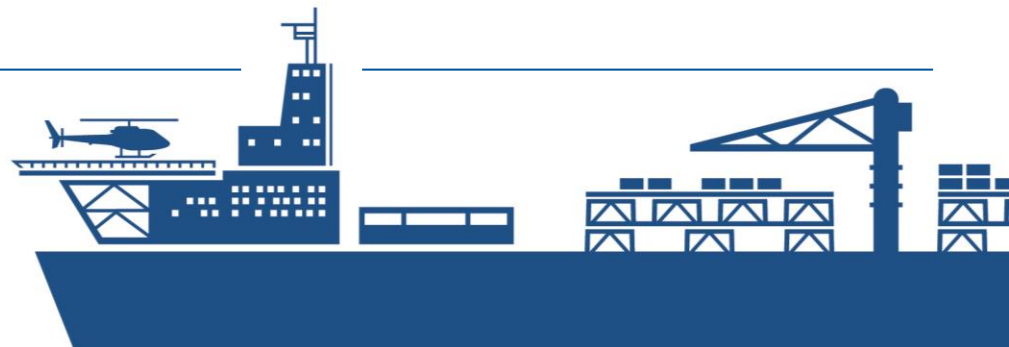
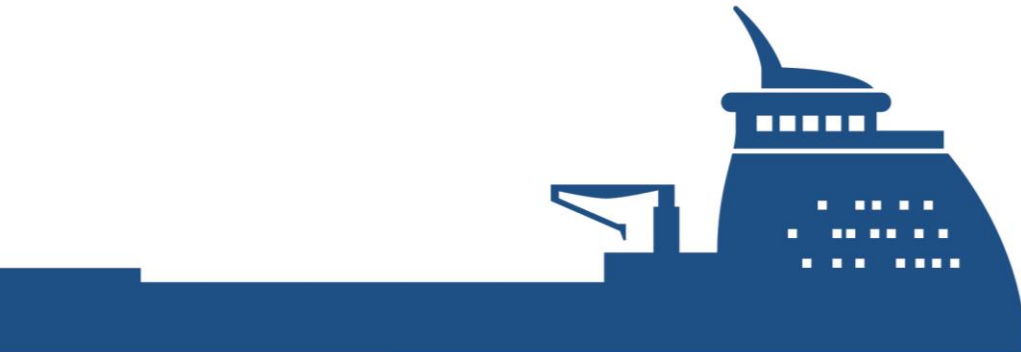
The Standard



Monaco seminar 2015

Hosted by Standard Club & Ince & Co,
Monaco SARL

9 July 2015

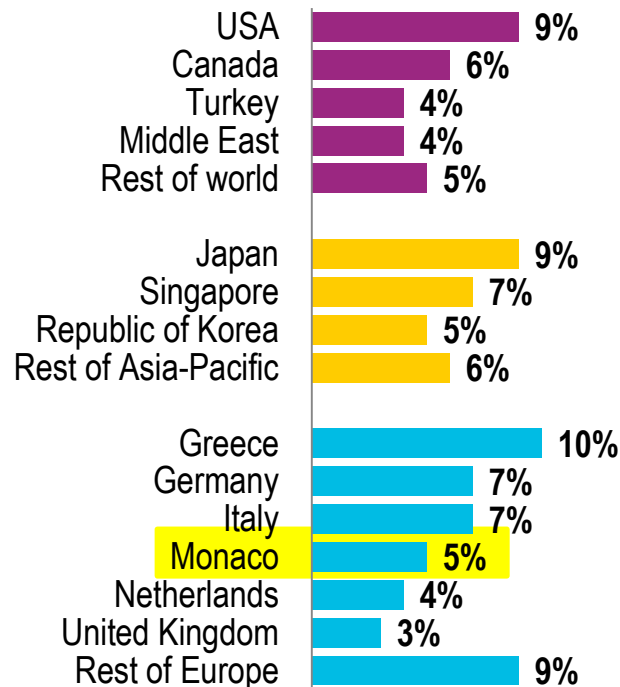
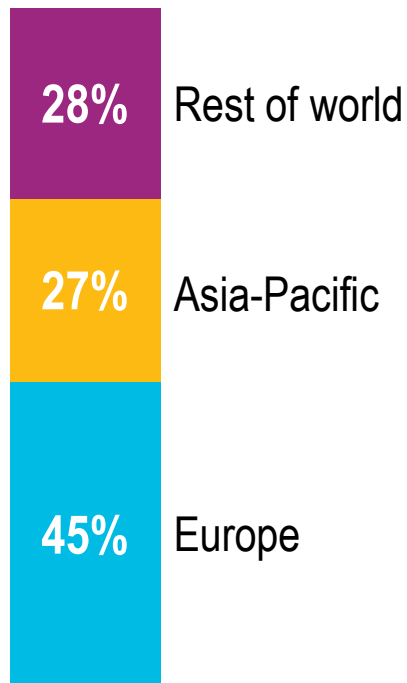


Membership

Diverse spread of business by country of management and ship type

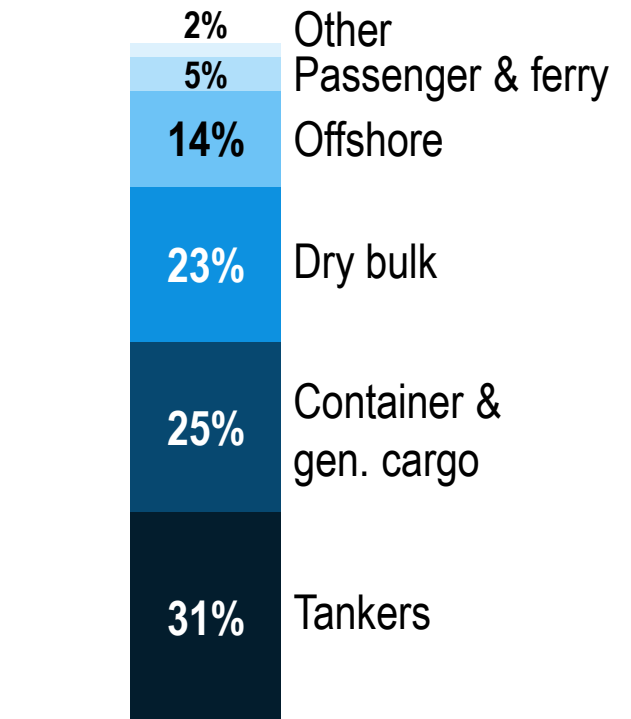
Owned tonnage by region

114m GT

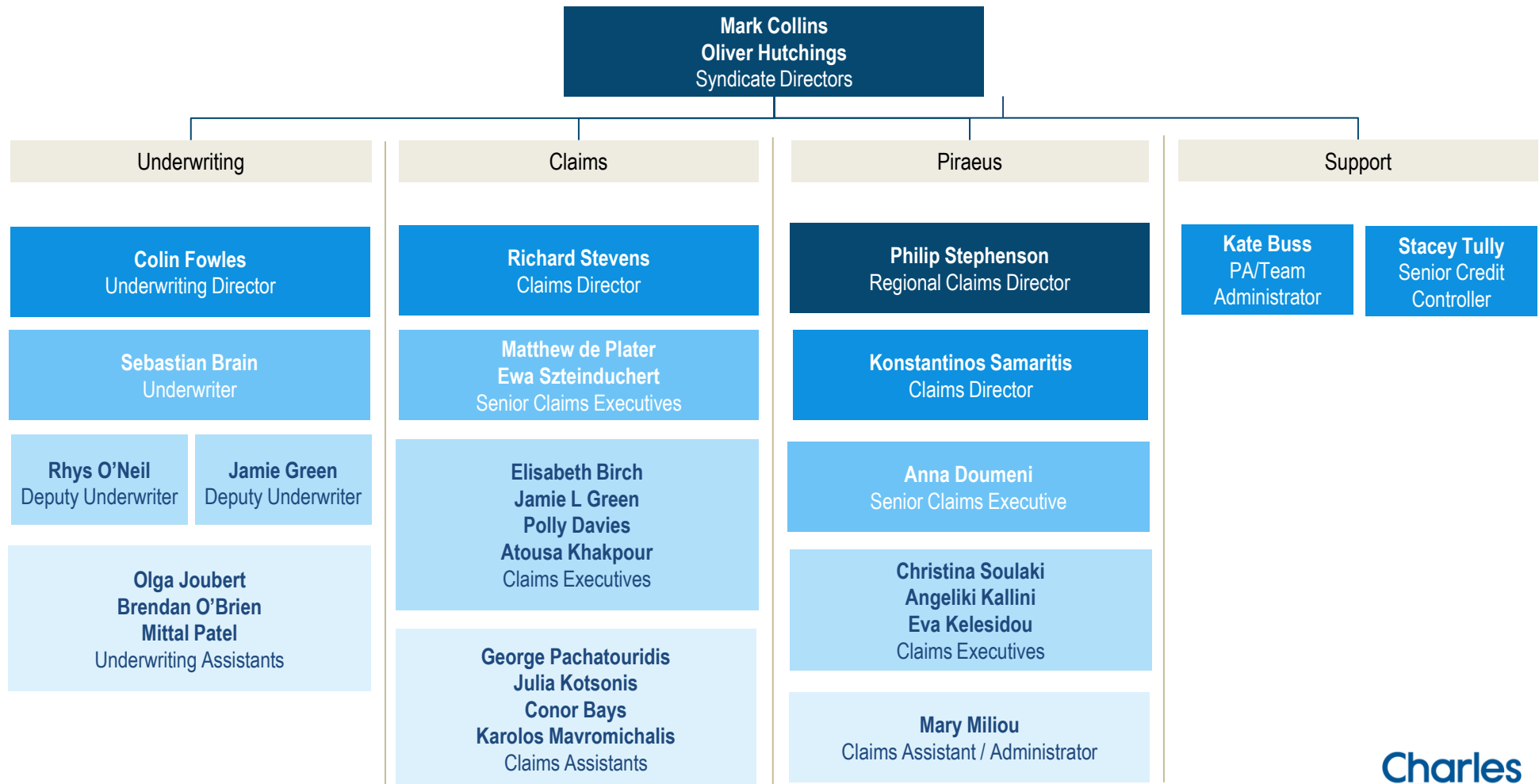


Owned tonnage by ship type

114m GT



Mediterranean Syndicate



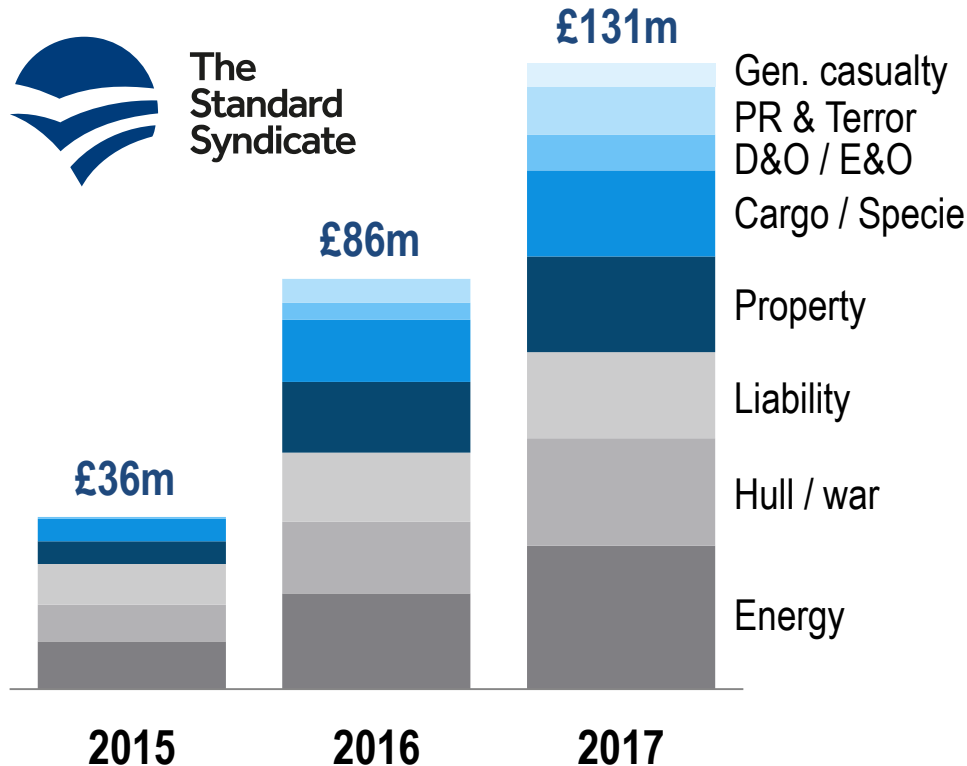
New products



The
Standard
Syndicate

The Standard Syndicate

Premium income – per business plan approved by Lloyd’s

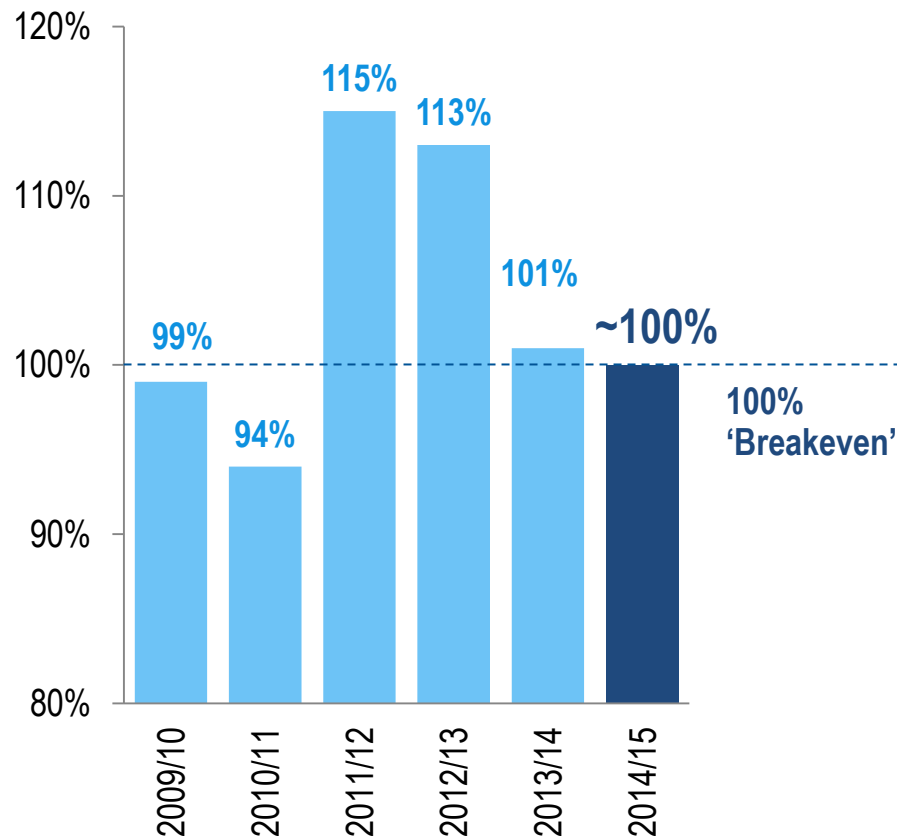


Rationale and approach

- 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
- 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 needs

Sustainable 'breakeven' underwriting

Financial year combined ratio



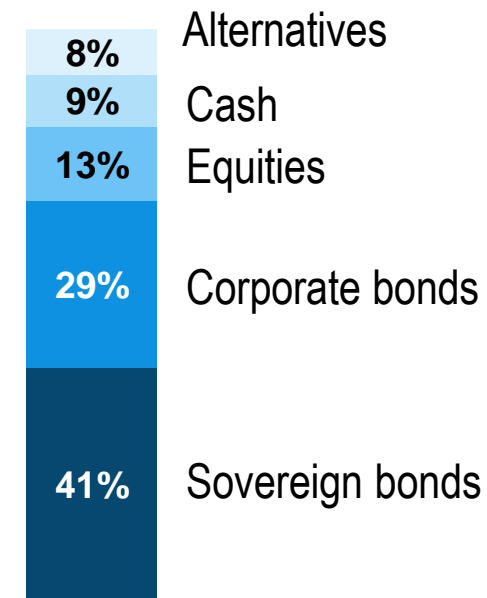
Key principles

- Disciplined underwriting to align member premiums with claims and risk
 - Assessment of risk profile
 - Proprietary pricing tools
- Focus on operating quality of current and potential members
- Continuous improvement in efficiency to minimise rate rises required – e.g.,
 - Agreed rate reductions with lawyers and other 3rd-party suppliers
 - Centralisation of operational activity

Lower-risk investment portfolio

Portfolio breakdown

% of portfolio
20th Feb 2015



Rationale and approach

- Aim to ‘break even’ on underwriting; investment returns as a ‘buffer’
- Prioritising capital preservation
- Reduction in risk profile over past 3 years
 - By asset class
 - Within fixed income
 - By currency
- Capital strength rated AAA by S&P

Key financials

Steady, selective growth; breakeven underwriting; strong balance sheet

Total tonnage

136m gt

20 May 2015

+3.0%

20 May 2014 – 20 May 2015

Owned tonnage

114m gt

20 May 2015

+ 3.6%

20 May 2014 – 20 May 2015

Premium income

\$357m

Projected 2015/16

\$354m

2014/15

Combined ratio

100%

2014/15

101%

2013/14

Investment return

1.8%

2014/15 financial year

0.6%

2013/14 financial year

Surplus

\$11.8m

2014/15 financial year

\$5.9m

2013/14 financial year

Free reserves

\$380m

20 Feb 2015

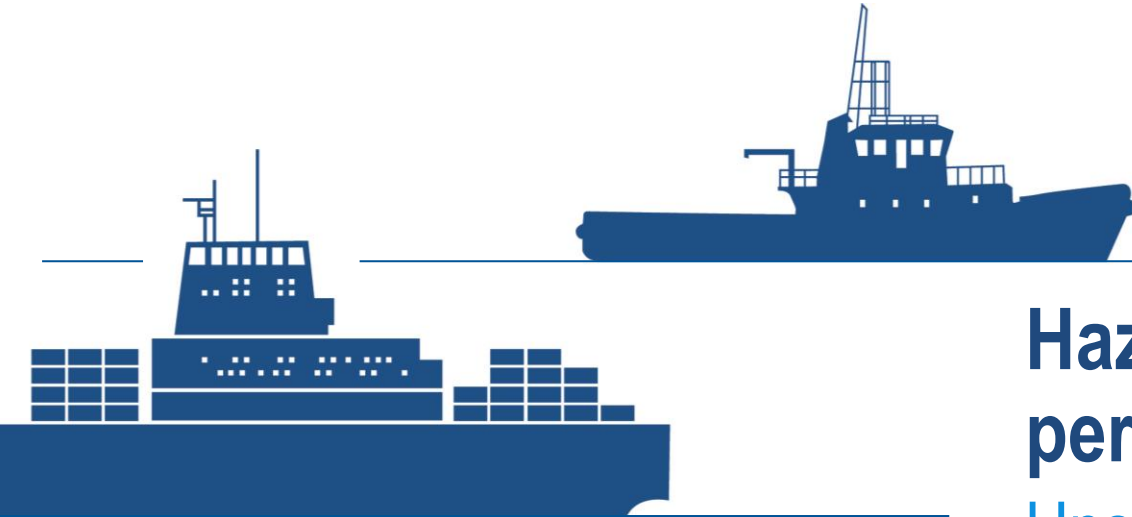
\$369m

2013/14

S&P rating

A (strong)

Affirmed June 2015

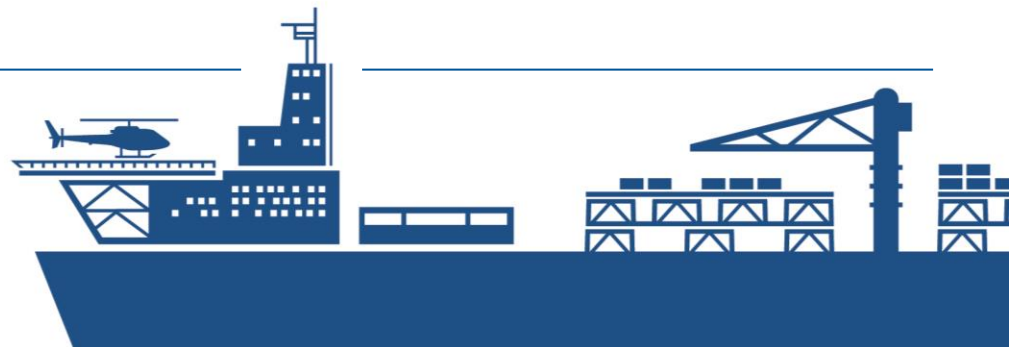
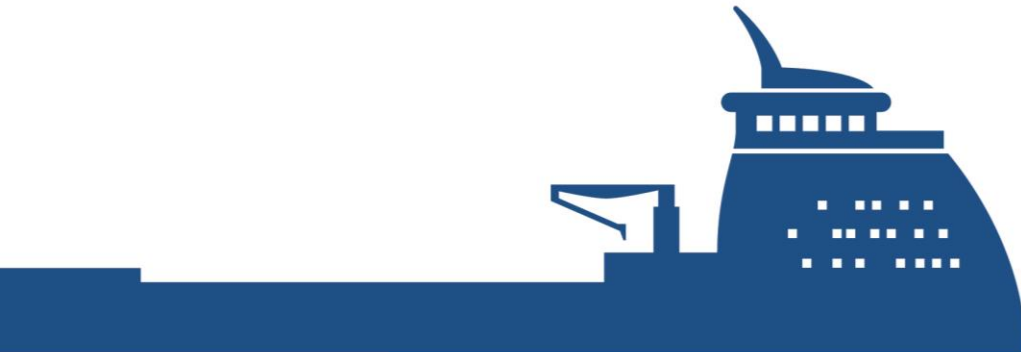


Hazardous harbours and perilous ports

Unsafe port claims

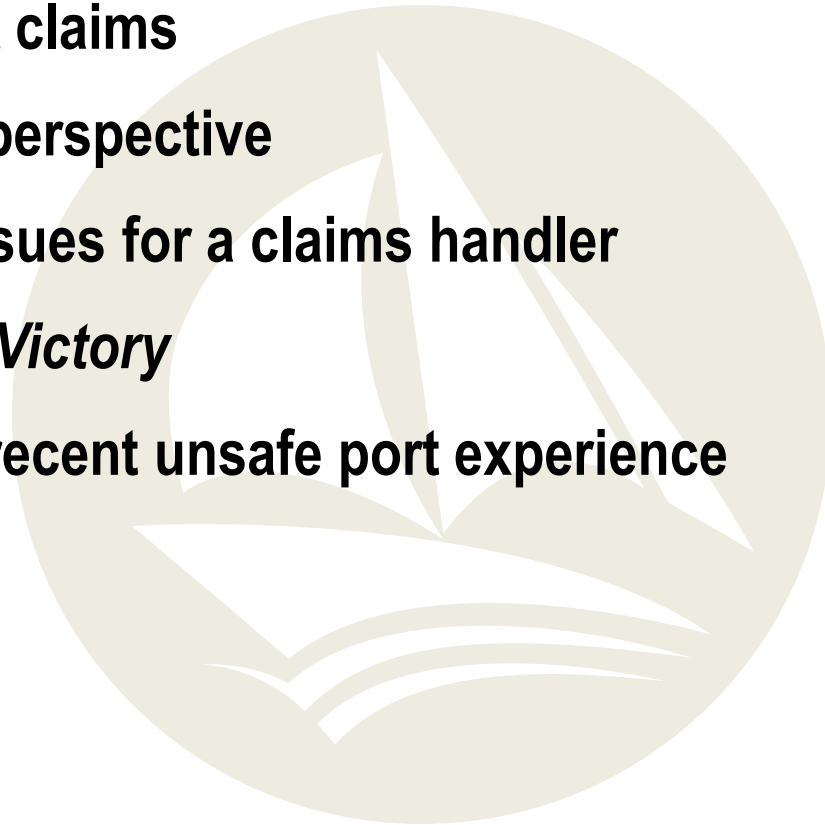
Jamie Green, Claims Executive

Ewa Szteinduchert, Senior Claims Executive



Introduction

1. **Unsafe port claims**
2. **The club's perspective**
3. **Practical issues for a claims handler**
4. ***The Ocean Victory***
5. **The club's recent unsafe port experience**



01 Unsafe port claims



The obligation to nominate a safe port

Why is this important for **you**?

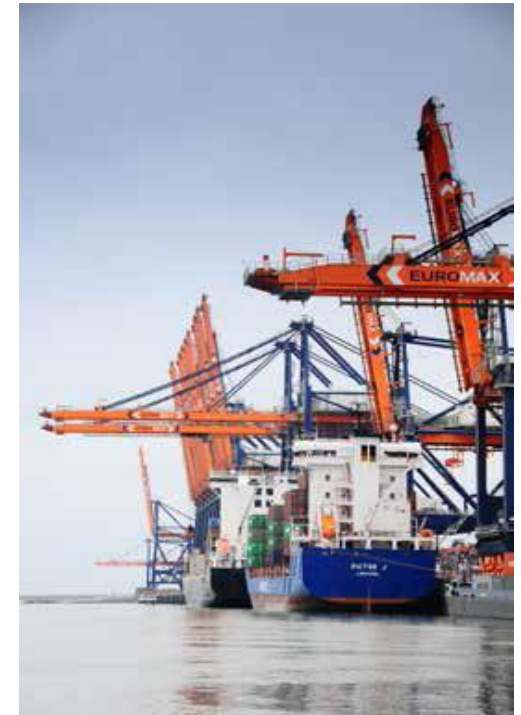
- Owners want control over where the vessel can trade
- Port can be inherently unsafe or can become unsafe during voyage

The risk to the ship

- Physical Damage (e.g. damage to hull)
- Delay / loss of time
- Liabilities to third parties

Can these losses be claimed back from charterers?

1. Is the obligation express or implied?
2. When does the obligation arise?
3. What is the definition of an unsafe port?
4. What defences are available to a charterer?



Is the obligation express or implied?

Look at the wording of your charterparty

NYPE 93 Clause 5:

The vessel shall be employed in such lawful trades between safe ports and safe places within...excluding...as the Charterers shall direct.

Can the obligation be implied?

Time charter – Yes - Owners want their vessel to trade between safe ports

Voyage charter – Maybe - it will depend on the specific terms of the charterparty

When does the obligation arise?

The port must be safe at the time charterers give their orders

Some ports will be inherently unsafe for a particular vessel:

- Consider the vessel / port draft and infrastructure

Some ports can become unsafe during the voyage:

- Political reasons: War and local strike
- Weather: Storms and ice

Time charter - Charterers must nominate another safe port

Voyage charter - Owners could repudiate the contract, unless:

- Charterers can expressly nominate another safe port; or
- the term '*or as near as she can safely get*' has been included.



Unsafe port definition

What makes a port legally unsafe?

The common law definition:

*'the...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 abnormal occurrence**, being exposed to danger which cannot be avoided by the exercise of good navigation and seamanship.'*

Sellers LJ – *The Eastern City* [1958]

Whether a port is safe will be a question of **fact**

- A port may be safe for one type of vessel, but not another
- Physically unsafe
- Politically unsafe



Unsafe ports: common factors

A port must be safe for the vessel to **APPROACH**, USE and DEPART from

Approach

- Ice
- Has to lighten cargo
- Inadequate system to monitor channels
- Political factors: e.g. a risk of hostile seizure or attack en route.



Unsafe ports: common factors

A port must be safe for the vessel to APPROACH, **USE** and DEPART from

Use

- Prevailing weather conditions (storms, wind and swell)
- Port must have adequate warning systems in place
- Berthing and mooring facilities may be inadequate
- Inadequate navigational aids
- Strikes at the port leading to delay / closure



Unsafe ports: common factors

A port must be safe for the vessel to APPROACH, USE and **DEPART** from

Departure

- Problems with decreased draught after discharge
- Ice in the same context as when entering the port
- Inadequate systems for monitoring channels leading from the port



Defences to an unsafe port claim

1. Charterer may only have to exercise *due diligence*
 - e.g. contacting local agents
2. The damage could have been avoided through '*the exercise of good navigation and seamanship*' of the master
 - Fact specific and will depend on expert evidence
3. The damage was caused by '*an abnormal occurrence*'
 - *The Ocean Victory* – a victory for charterers.



02

The club's perspective



The club's perspective

- The club is currently dealing with a number of unsafe port enquiries and claims
- Cases being driven by drop in rates since 2008
- But The Ocean Victory clarified the defences available
- Club sees claims from both sides:
 - Owners want protection from damage at an unsafe port
 - Charterers do not want to be turned into the ship's insurer for all damage
- Attributing liability correctly can be difficult to predict – leads to legal uncertainty

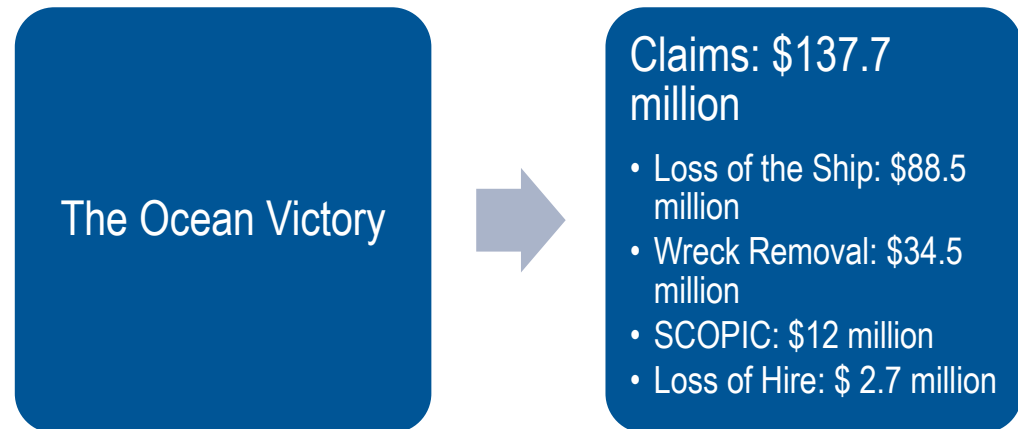
High value claims

Unlimited potential for high liabilities and legal costs

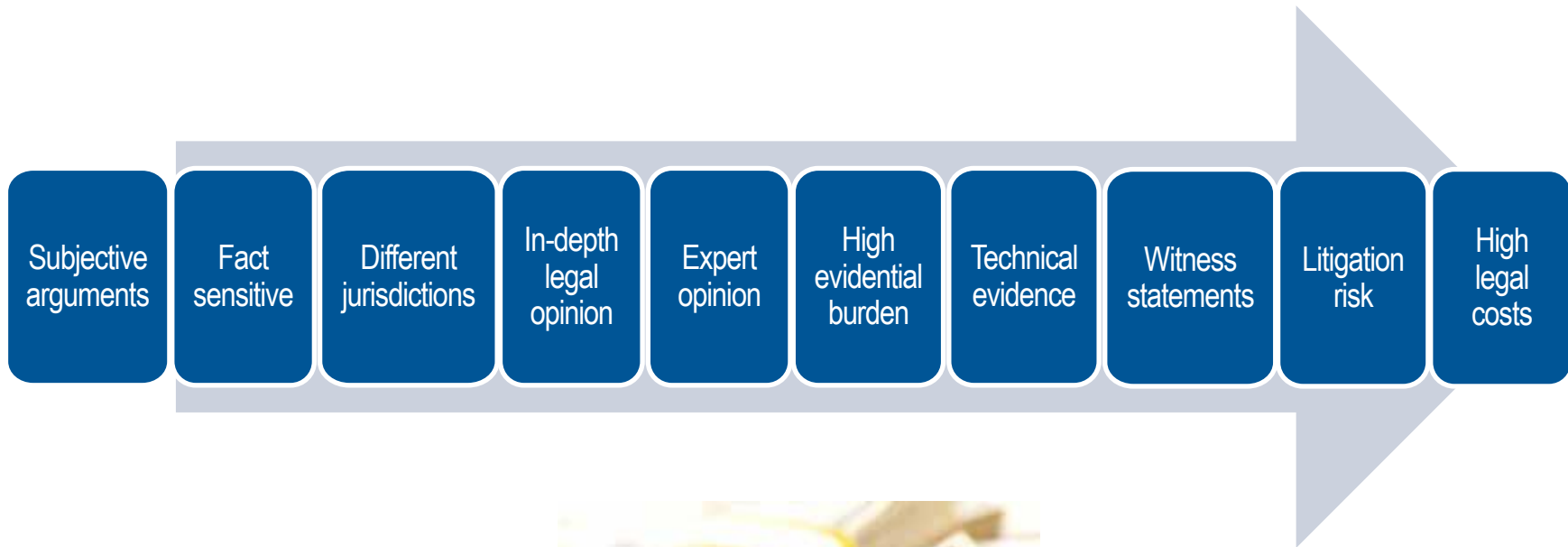
The Aegean Sea [1988] – A charterer is not entitled to limit their liability under the Limitations Convention 1976

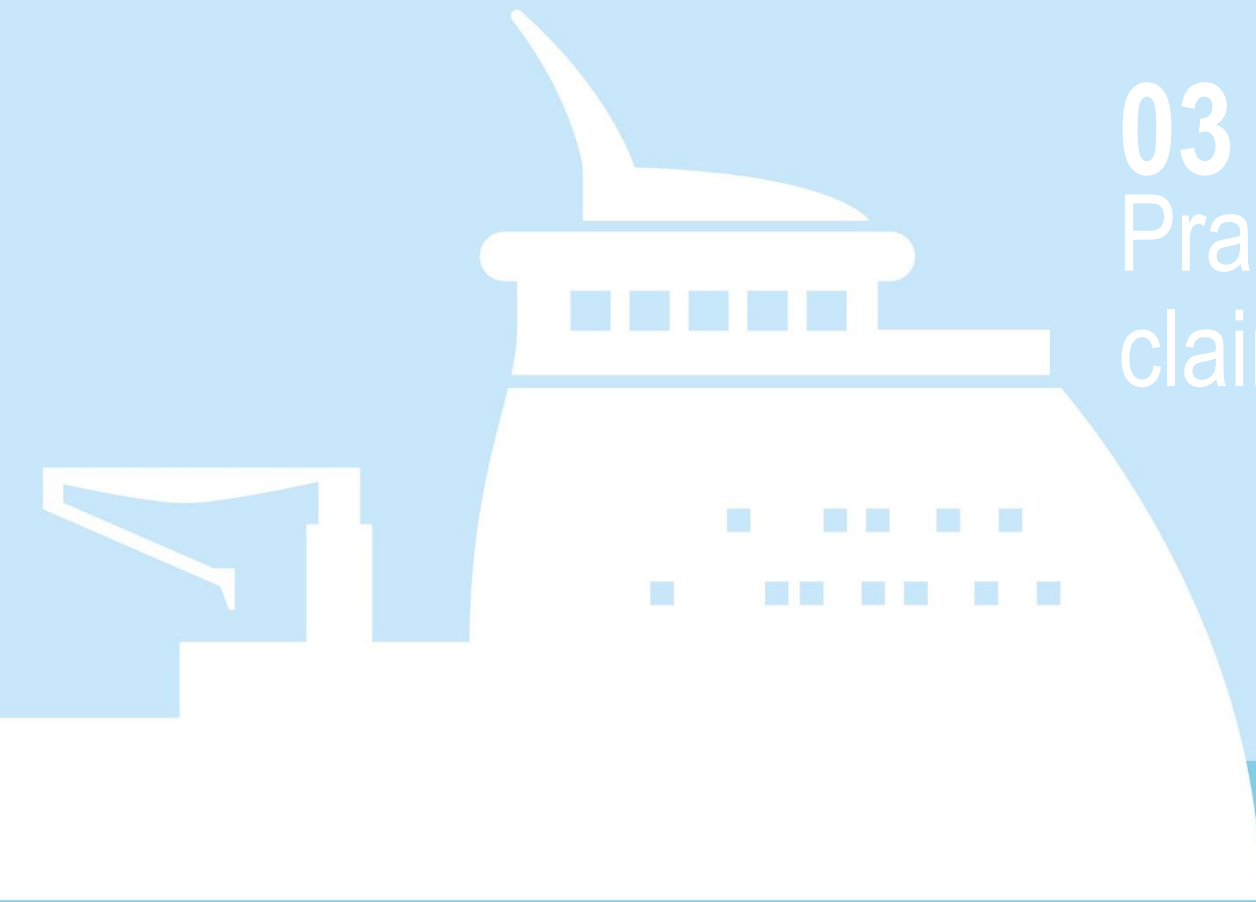
Key examples:

- Repair costs
- Cargo loss or damage
- Detention
- Berth damage
- Loss of hire
- Salvage
- Pollution



High legal costs





03

Practical issues for a claims handler

Case management and evidential issues

Good case management is key to keeping costs under control

- Identify key issues early on
- Appoint a strong team of:
 - Experts
 - Lawyers
 - Correspondents
- Cases will turn on their facts so ensure underlying evidence is as good as it can be
- Onus is on owners to prove that the port is unsafe
- A tribunal will look at two key areas:
 1. Physical safety of the port or berth concerned
 2. Conduct of the master and the pilot – did their actions contribute to the loss?

High value claims

Key examples:

- Repair costs
- Cargo loss or damage
- Business interruption
- Fines
- Berth damage
- Loss of hire
- Salvage
- Pollution

The Ocean
Victory



Claims: \$137.7 million

- Loss of the Ship: \$88.5 million
- Wreck Removal: \$34.5 million
- SCOPIC: \$12 million
- Loss of Hire: \$ 2.7 million

The Eastern City

*‘the...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 abnormal occurrence**, being exposed to danger which cannot be avoided by the exercise of good navigation and seamanship.’*

Sellers LJ



04

The Ocean Victory



The Ocean Victory – First Instance

- Discharged cargo at Kashima, Japan
- Operations stopped due to heavy winds and rain
- Berth affected by large swell caused by long waves and high winds
- Master put to sea but vessel driven onto breakwater
- Total loss

Owners argued that the port was unsafe – Charterers relied on the ‘abnormal occurrence’ defence

Teare J found that Kashima port to be unsafe because:

- a) It did not have a system to make sure that vessels needing to leave the port due to these weather conditions could do so safely;
- b) Weather conditions were not an ‘abnormal occurrence’; and
- c) Safe navigation out of the port required more than good navigation and seamanship.

The Ocean Victory – Court of Appeal

Charterers successfully appealed the decision

The abnormal occurrence relied upon by the charterers was the combination of two factors:

- (i) such severe swell from long waves that it was dangerous for a vessel to remain at her berth; and
- (ii) such severe gale force winds from the northerly/northeasterly direction in the exit fairway so as to make navigation of the fairway dangerous or impossible for Capesize vessels (“the critical combination”)

The question to consider was whether the “*simultaneous coincidence*” of these two critical features was an **abnormal occurrence** or a **normal characteristic** of the port



The Ocean Victory

A clarified approach:

When considering if an event(s) is an abnormal occurrence, look at the facts:

“realistically and having regard to whether the event had occurred sufficiently frequently so as to become a characteristic of the port”.

- COA found that the combination of both long wave swell and northerly gales was not regular or even occasional
- Storm was also exceptional in terms of its rapid development, duration and severity

Welcome decision for charterers and their liability insurers

Merits must be considered carefully before pursuing a claim – was the occurrence truly abnormal?

- Will *a/ways* be fact specific

05

The club's recent unsafe port experience



Overview

- **Introduction**
- **Civil unrest, political instability and war**
- **Piracy**
- **Ebola**
- **Fukushima**
- **Deepwater Horizon**
- **Lessons for owners and charterers**
- **Conclusion**

Introduction

*‘the...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 abnormal occurrence**, being exposed to danger which can be avoided by the exercise of good navigation and seamanship.’*

“Eastern City” - Sellers LJ



Civil unrest, political instability and war

- Yemen
- Crimea
- Libya
- Iran/Iraq war
- Use of bespoke war clauses



Piracy

- Gulf of Aden
- West Africa
- Will be a question of fact
- Use of piracy clause or war risks clause



Ebola

- Liberty clauses
- Bespoke clause introduced by BIMCO
- SARS (Severe Acute Respiratory Syndrome)
- MERS (Middle East Respiratory Syndrome)
- Port is not considered unsafe on the basis of fear



Fukushima

- Risk of radiation making port unsafe?
- Exclusion zone established
- If risks exaggerated or unjustified, owner could be in breach for refusing orders



Deepwater Horizon

- Shipping lanes towards ports in Mississippi River and New Orleans unsafe?
- USCG measures in place
- BIMCO Gulf of Mexico Oil Spill Clause for Voyage Charter Parties



Lessons for owners and charterers

- Charterers:
 - Audit trail to demonstrate exercise of due diligence
 - Prompt, pre-emptive and thorough investigation
- Note: differences in safe port obligations in standard charterparty forms
- Owners:
 - Quash allegations of bad seamanship
 - Passage planning and procedures
 - Negligent pilotage – pilot as agent of owner
- Quality of evidence is key

Conclusion

- Incidents involving ships in port can be extremely expensive
- Safe port - a question of fact
- Quality of evidence is key
- Need more clarity and certainty



Regulatory status

The Standard Club Ltd is regulated by the Bermuda Monetary Authority. The Standard Club Ltd is the holding company of the Standard Club Europe Ltd and the Standard Club Asia Ltd. The Standard Club Europe Ltd is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. The Standard Club Asia Ltd is regulated by the Monetary Authority of Singapore.

Charles Taylor Services Limited (CTS) is authorised and regulated by the Financial Conduct Authority to carry out general insurance mediation activities for commercial clients. For more details please see www.fsa.gov.uk/register/home.do or call the FCA on 0845 606 1234. CTS is a wholly owned subsidiary of Charles Taylor Holdings Limited. The ultimate parent and controlling company is Charles Taylor plc.




The Standard



 **@StandardPandi**
 **The Standard P&I Club**
www.standard-club.com

Charles
Taylor

 **@ctaylorplc**
 **Charles Taylor plc**
www.ctplc.com

HAZARDOUS HARBOURS AND PERILOUS PORTS
SHIP ARREST – AN OVERVIEW

RUTH MONAHAN
MARCO CRUSAFIO



What is Ship Arrest?



What is Ship Arrest?



What is Ship Arrest?

Technically: The detention of a ship by judicial process to secure a claim

What does that mean, practically?



The ship is not going anywhere!!

1952 Arrest Convention

- It was created to unify the rules relating to arrest of ships
- It sets out a code of claims upon which ships could be arrested
- It sets out the manner in which they could be arrested



Maritime Claims are claims arising out of:

- a) Collisions or otherwise;
- b) Loss of life or personal injury;
- c) Salvage;
- d) Charterparties;
- e) Bills of Lading;
- f) Loss of or damage to goods ;
- g) General average;
- h) Bottomry;
- i) Towage;
- j) Pilotage;
- k) Goods or materials wherever supplied to a ship for her operation or maintenance;
- l) Construction, repair or equipment of any ship or dock charges and dues;
- m) Wages of Masters, Officers, or crew;
- n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
- o) disputes as to the title to or ownership of any ship;
- p) disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
- q) the mortgage or hypothecation of any ship.

Arrest Convention 1999

Six new categories of maritime liens:

1. "insurance premiums (including mutual insurance calls) ...";
2. "any commissions, brokerages or agency fees payable in respect of the ship ...";
3. "damage or threat of damage caused by the ship to the environment ...; measures taken to prevent, minimise or remove such damage...; costs of reasonable measures of reinstatement of the environment generally...";
4. "costs or expenses relating to the raising, removal, recovery, destruction or rendering harmless of a ship which is sunk, wrecked, stranded or abandoned...";
5. "goods materials, provisions, bunkers, equipment ... supplied or services rendered to the ship for its operations management, presentation or maintenance...".

But not in force in any major shipping nation yet...

Health warning!

The fact that these conventions are out there does not mean that they apply everywhere!

The applicability of these conventions will depend on whether the country where you want to arrest has ratified them.



Why arrest...?

- Security
- Enforcement
- Strategy



To arrest or not to arrest...

So you want to arrest...but CAN you arrest...?

Do you have a legal claim?

Where is the ship?

What type of ship is this?

Who owns her?



How to arrest?



Local Lawyers

P&I Clubs/Correspondents

Knowledge is Power

How much will it cost?

Advice from the local lawyers at the outset

Possible expenses:

- Port charges
- Sheriff / Admiralty marshall
- CVE fees
- Counter-security



Arrested ship – what now?

Successfully arresting the vessel is not the end of the road...
circumstances may affect what will happen!

Factors including:

- Is the ship trading?
- Is she already loaded?
- Is she an old lady?
- Are the owners in financial trouble?

Depending on the above:

1. Replacement security
OR
2. Judicial sale



Replacement security



Replacement security

Traditionally a Club Letter of Undertaking (LOU)



Replacement security

Also common - Bank providers)

But beware...

Deutsche Bank



Alternative financial

LETTER OF BANK GUARANTEE

ISSUED BY	DEUTSCHE BANK AG
INSTRUMENT OF GUARANTEE	FRANKFURT - GERMANY
ISIN NUMBER	GUARANTEE BANK - BG.
COMOM CODE	DE000DB555U8
NUMBER B.G	031928664
MATURITY DATE	TIH06.50\
CODE CREATION DATE	AUG 31 2017
ISSUED DATE	AUG 29 2007
CURRENCY	NOV 24 2008
AMOUNT	EURO
ISSUED BY	1.000.000.000.00
	DEUTSCHE BANK AG
	FRANKFURT - GERMANY

WE, THE UNDERSIGNED DEUTSCHE BANK AG, FRANKFURT - GERMANY
HEREBY OPEN OUR IRREVOCABLE, TRANSFERABLE, DIVISIBLE,
ASSIGNABLE AND CONFIRMED BANK GUARANTEE IN FAVOR OF EGM
ECONOMICS PANAMA S.A FOR THE AMOUNT OF EURO 1.000.000.000.00,
(ONE BILLION EURO) DUE, ONE YEAR AND FIFTEEN DAYS FROM THE DATE
OF ISSUE 24TH, DAYS OF NOV 2008

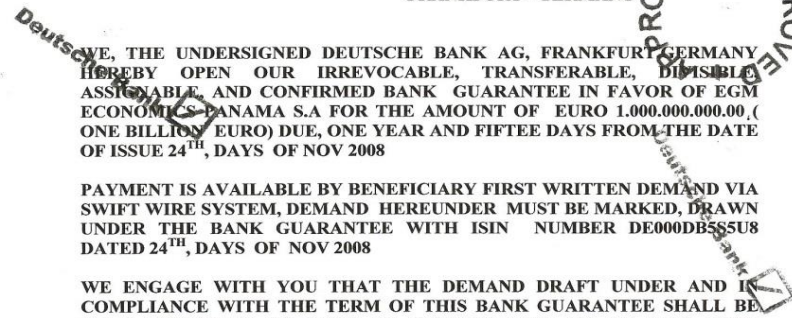
PAYMENT IS AVAILABLE BY BENEFICIARY FIRST WRITTEN DEMAND VIA
SWIFT WIRE SYSTEM, DEMAND HEREUNDER MUST BE MARKED, DRAWN
UNDER THE BANK GUARANTEE WITH ISIN NUMBER DE000DB555U8
DATED 24TH, DAYS OF NOV 2008

WE ENGAGE WITH YOU THAT THE DEMAND DRAFT UNDER AND IN
COMPLIANCE WITH THE TERM OF THIS BANK GUARANTEE SHALL BE
DULY HONORED ON DATE OF PRESENTATION TO US, THIS BANK
GUARANTEE IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE
FOR DOCUMENTARY CREDITS, INTERNATIONAL CHAMBER OF
COMMERCE, PARIS FRANCE, PUBLICATION 500, LATEST REVISION.

THIS DOCUMENT IS AN OPERATIVE INSTRUMENT, ALL CHARGES ARE
FOR THE ACCOUNT OF THIS APPLICANT.

THIS BANK GUARANTEE INSTRUMENT EXPIRES ON AUG 31, 2017

THEODOR - HEUSS-ALLEE 70
FRANKFURT AM MAIN.60262 GERMANY
PHONE: +49-69-91000

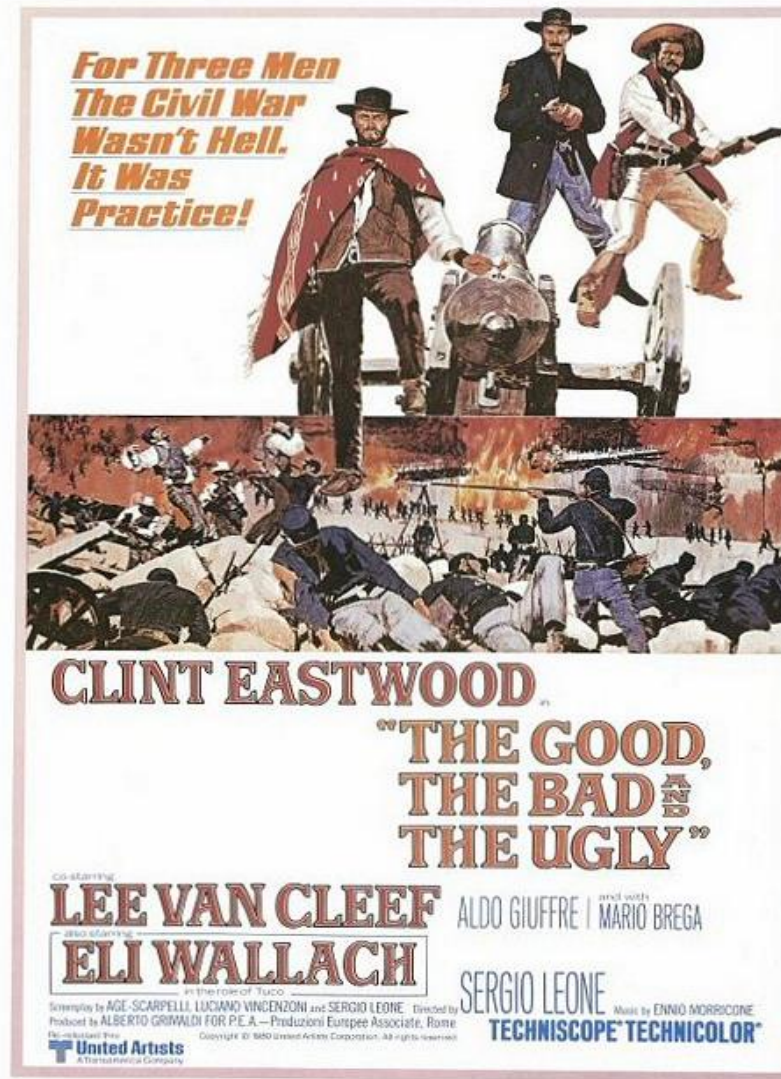


Replacement security

Cash security



Jurisdictions for arrest



The Good

- England & Wales
- Australia
- South Africa



The Bad

- USA
- Brazil
- Chile



The Ugly

- Germany
- China
- Thailand



Arrest in the Dominican Republic

Acting for Owners in conflict against Charterers

Attempted arrest in several countries first

Associated vessel was heading towards the Dominican Republic



Dominican Republic...the problems

- Time
 - Translation of Documents
 - Communication Issues
 - Poor infrastructure
 - Effecting the Arrest Order
 - Release of Arrest
-
- BUT – Security was eventually obtained



Arrest in Gabon

Acting for Charterers

Owners entered into insolvency proceedings, so the vessel relating to the claim was withdrawn from service. Had to arrest a sister vessel.

Problems:

- Finding a local lawyer
- Receiving clear advice
- Handholding local lawyers
- Language and translation problems
- Poor communications and lack of infrastructure
- Slow process



Arrest in Tunisia

We are acting for Owners.

Charterers stemmed bunkers from three traders.

Charterers entered into liquidation.

All three traders arrested the vessel in Tunisia for unpaid bunker invoices.

Owners had never been contacted in relation to these invoices.

Traders have refused a Club LOU and wording of a bank guarantee.



Practical issues

Time Frame

Language / cultural problems

Poor infrastructure / methods of communication

Complicated, unclear or poor legal advice

Complex or corrupt legal systems



ruth.monahan@incelaw.com

marco.crusafio@incelaw.com