

Canada Forum

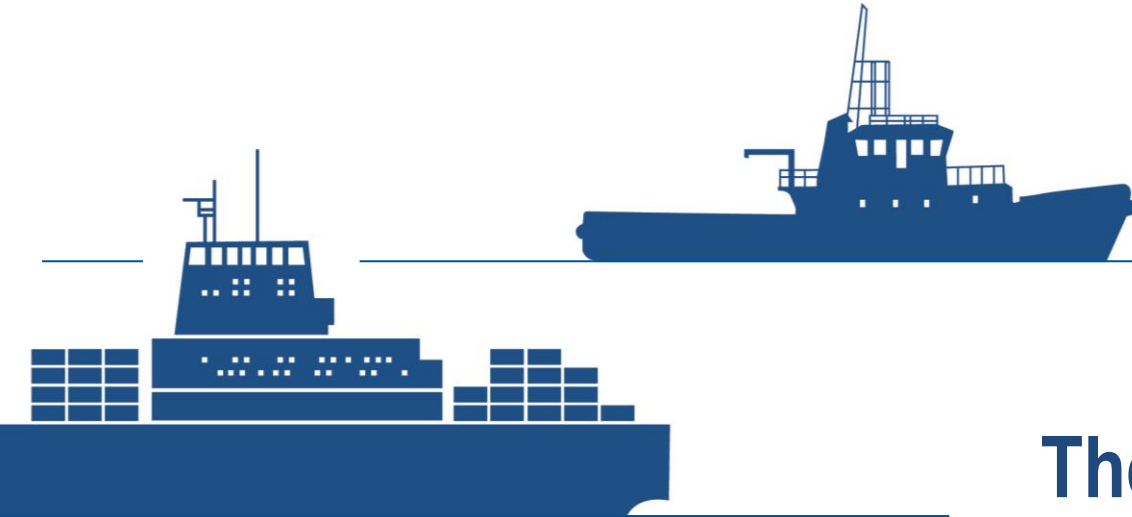
25 & 27 April 2017



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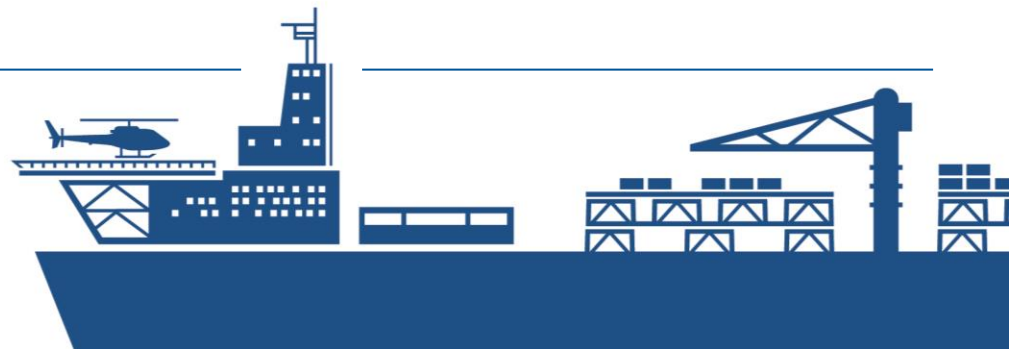
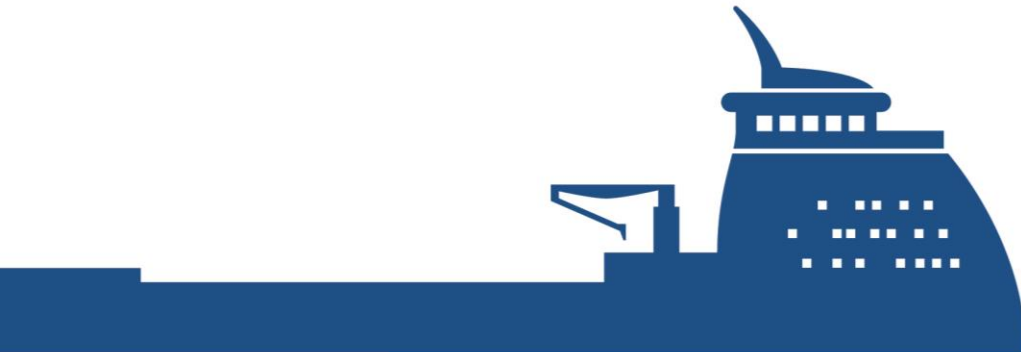
The Standard



The Standard Club Update

Sam Kendall-Marsden

Head of Division, UK & Americas



Introduction

- A leading International Group P&I club, established in 1884 and now insuring over 10% of global shipping across all major markets
- Industry-leading service, a track record of financial security, and a selective, conservative approach to growth
- 2017: overall underwriting surplus for the financial year, continued growth of The Standard Syndicate and the Singapore War Risks Mutual
- A broad range of P&I and other marine and energy covers, offering sustained excellent value to high-quality operators

Ambition

01

To provide first-class financial security

02

To be recognised for providing excellent service through solving members' problems

03

To provide a broad range of P&I insurance and related covers that represent excellent and sustainable value

04

To pursue selective growth, consistent with the other objectives

Enabled by a culture of flexibility and innovation

Overview of the club: key financials

Selective growth; breakeven underwriting; strong balance sheet

Total tonnage

150m gt

20 February 2017

+8.5%

20 Feb 2016 – 20 Feb 2017

Owned tonnage

126m gt

20 February 2017

+8.5%

20 Feb 2016 – 20 Feb 2017

Premium income

\$316m

Projected 2017/18

\$322m

2016/17

Combined ratio

~90%

2016/17

95%

2015/16

Investment return

3.1%

2016/17 financial year

-0.9%

2015/16 financial year

Surplus

2016/17 financial year

\$40-45m

\$10m

2015/16 financial year

Free reserves

\$430-435m

20 Feb 2017

\$390m

20 Feb 2016

S&P rating

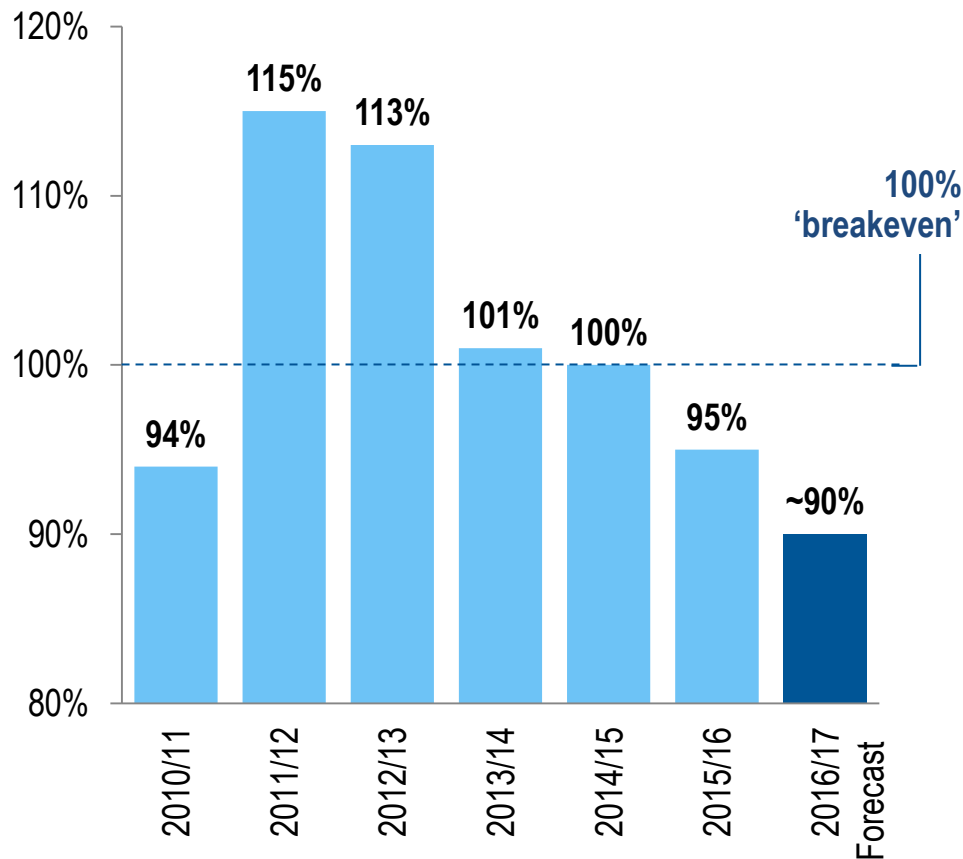
A (strong)

AAA capital strength

Affirmed June 2016

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
- Selection and management of risk based on a sound understanding of operating quality
- Continuous improvement in efficiency to minimise rate rises required
- Minimise vulnerability to loss or fluctuations by ensuring that our business is broadly dispersed, avoiding a concentration of tonnage from any market or member
- Diversification into profitable non-P&I lines to support P&I business

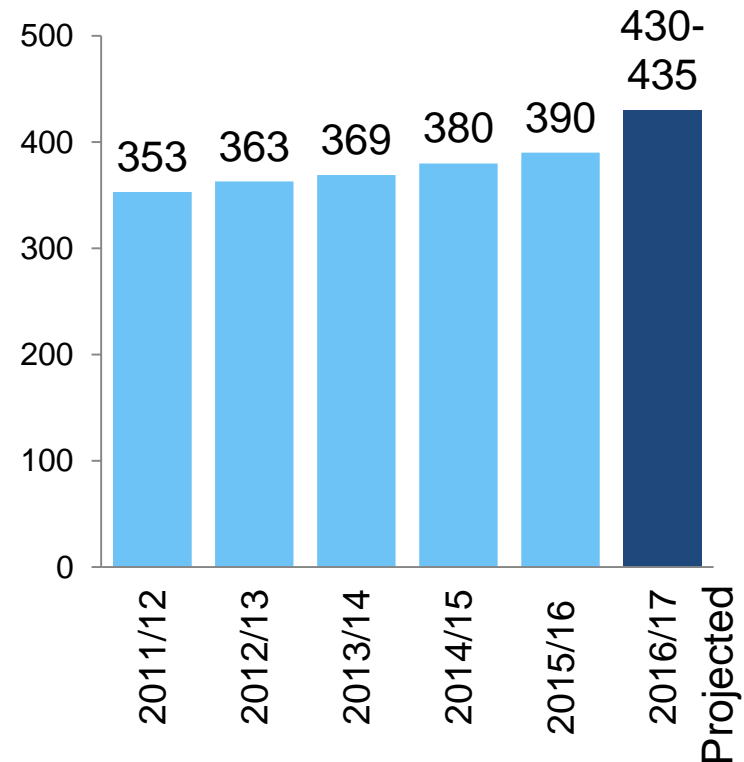
Financial security

Leading capital strength; steady growth in reserves

S&P ratings of IG clubs

| CLUB | RATING | S&P CAPITAL STRENGTH |
|------------------|----------|----------------------|
| GARD | A+ | AA |
| STANDARD | A | AAA |
| UK CLUB | A | AAA |
| BRITANNIA | A | AAA |
| STEAMSHIP MUTUAL | A | AAA |
| SKULD | A | AA |
| NORTH OF ENGLAND | A | AA |
| SHIPOWNERS | A | AAA |
| JAPAN | BBB+ | AA |
| WEST OF ENGLAND | A- | AAA |
| SWEDISH | BBB+ | AAA |
| LONDON | BBB | AA |
| AMERICAN | BBB- | BBB- |

Free reserves, \$m



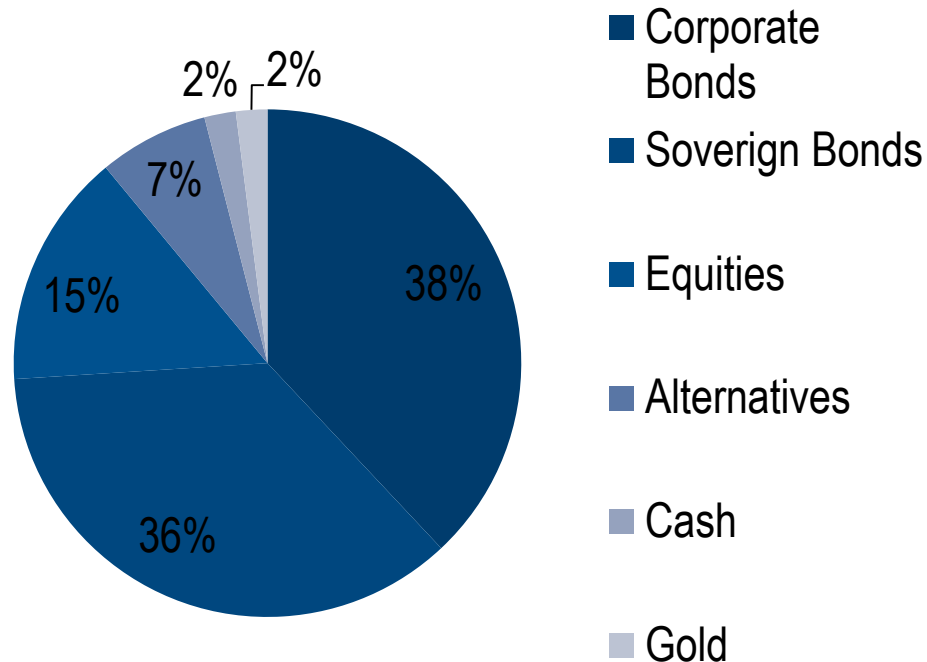
No unbudgeted supplementary calls for over 20 years
Release calls among the lowest in the IG

Investment policy

The portfolio is low risk, consistent with AAA capital strength

Portfolio breakdown

% of portfolio
20 February 2017 unaudited



Approach

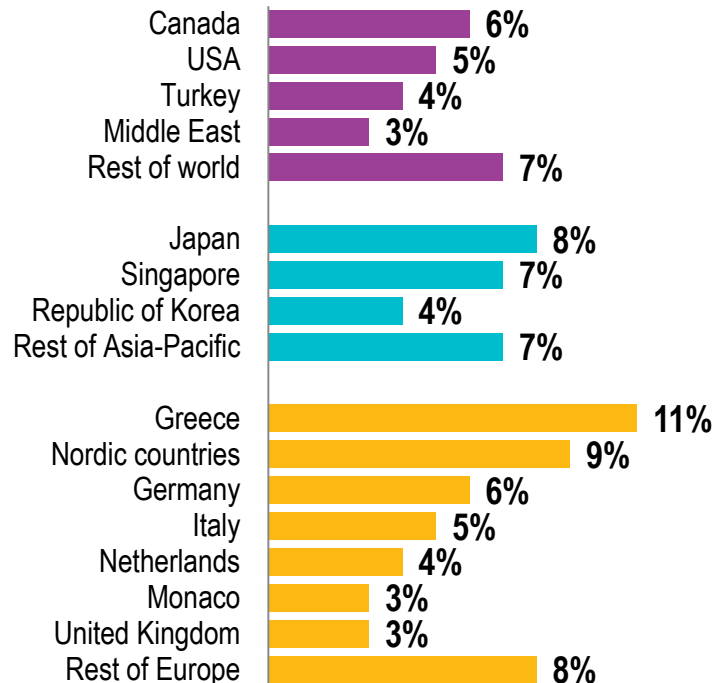
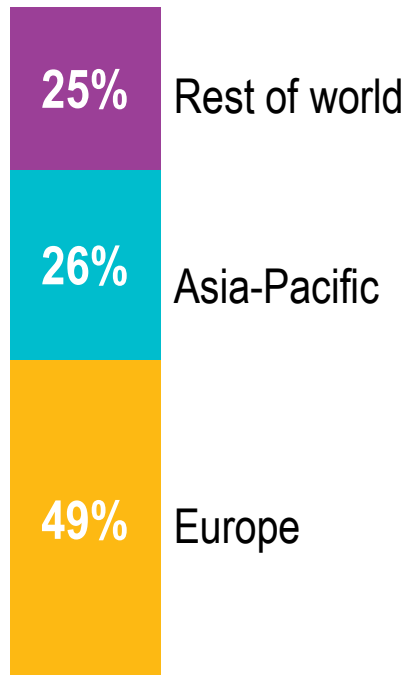
- Aim to **'break even'** on underwriting; investment returns as a 'buffer'
- **Prioritising capital preservation**; risk profile has reduced over past three years to combat market volatility
- Asset allocation criteria established by the board
- Managers seek to maximise returns while operating within criteria and maintaining AAA capital strength
- Performance monitored actively by the board using agreed benchmarks

Membership

Diverse spread of business by country of management and ship type

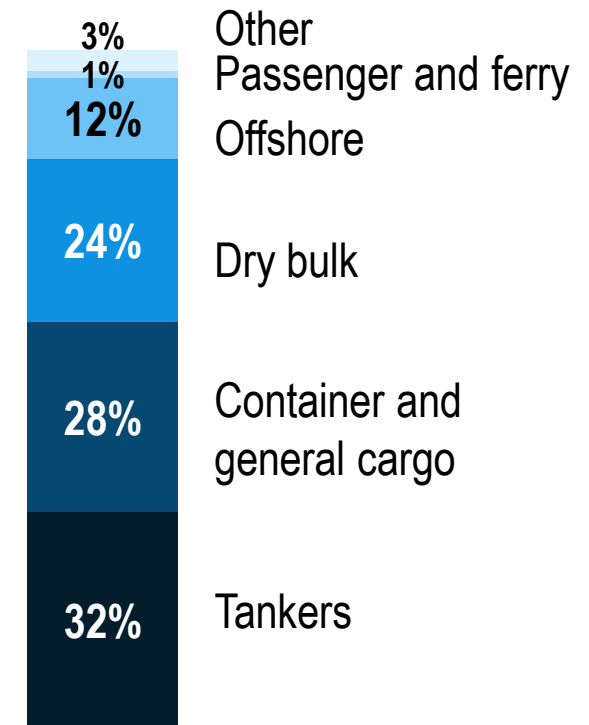
Owned tonnage by region

120mgt



Owned tonnage by ship type

120mgt



Flexible and responsive claims handling

- A **flexible approach** to paying claims - our cover is broad and inclusive, and our board takes a sympathetic view to discretionary claims, always aiming to be fair and consistent
- Our claims handlers have **high authority levels** and are **highly trained** – we have more than 40 qualified lawyers, and exceptionally high levels of take-up for the P&I Q industry qualification, all supported by an in-house team of technical experts and access to the full resources of Charles Taylor plc
- Our claims handlers go the extra mile, taking **personal ownership** of claims – this means that our members receive a consistent level of service, even when issues arise outside normal office hours
- We are **reducing the cost of claims** – we have service level agreements with trusted law firms who really understand our industry and how to successfully manage a claim, driving cost savings at every stage

96% of members expressed a likelihood to recommend the club to another shipowner (August 2016)

“The Standard Club provides the strongest claims service out of our 4 clubs...We see the current claims team ahead of the game”

“The Standard Club has an edge because it looks at issues from a commercial perspective as well as a purely legal one”

Tailor-made underwriting solutions

- We take pride in **our ability to always find a solution**
- We create **tailor-made solutions** for members by combining poolable and non-poolable P&I and other covers
- Our **experienced underwriters** have an in-depth knowledge across trades, risk types and regions
- We are **entrepreneurial and consistently innovate** to meet our member needs, e.g.
 - Seeking efficiencies within the club’s operations and in third-party spend in order to minimise rate increases
 - Expanding the club’s range of products and services in order to serve members better (e.g. The Standard Syndicate)

*“The Standard Club is the best in the Group in terms of approaching underwriting from a 'how can we help?' perspective“
“Always willing to find a solution” ... “Open transparent and practical”*

Club service teams in key hubs

Supported by Charles Taylor's global network



Meeting members' insurance needs

| P&I | War & defence | Non-P&I liabilities* | Assets* | Specialist risks* |
|---|---|---|--|--|
| <ul style="list-style-type: none"> • Mutual owned pooled • Fixed premium owned • Fixed premium charterers • Tailored extensions | <ul style="list-style-type: none"> • War risks • Defence (FD&D) | <ul style="list-style-type: none"> • Liability • D&O • E&O | <ul style="list-style-type: none"> • Hull & machinery • Cargo • Fine Art & Specie • Property | <ul style="list-style-type: none"> • Energy • Political Violence • Political Risk |



Focus on quality of operations

- Focus on operating quality supported by ‘Loss Prevention’ technical experts
- Assessment of member/ship risk profile – to support members and the club:
 - ‘Desktop’ assessment pre-attachment
 - ‘Member Risk Review’ carried out by the club’s own technical experts
 - ‘Ship Risk Review’ with ~20% carried out by the club’s own technical experts
 - Efforts at each renewal to improve operating quality via non-renewal of some members
- Unique Safety and Loss Advisory Committee:
 - Technical and operational experts from the membership
 - Informs the club’s stance and advice on safety and operational issues
- Communication of ‘best practice’ via publications, seminars, member dialogue

Approach to growth

- High-quality growth viewed as positive for the membership as a whole as it increases the financial strength and efficiency of the club over time
- In pursuing new business, the club will ensure the operating quality of members and ships and an appropriate spread of risk
- Preference is to grow with existing members – in P&I and in non-P&I covers
- The club welcomes new members that are quality operators seeking a long-term partnership with their marine and energy insurer
- The club aims to build in all major trades and markets, but has particular specialisms in offshore energy, LPG/LNG and small craft (coastal and inland)

Aiming to drive growth, as long as this is consistent with the club's focus on operating quality, financial stability and service

Conclusion

- Financial Security – leading capital strength
- Breakeven underwriting
- Flexible and responsive claims service
- Tailor-made underwriting solutions
- Broad range of covers that represent excellent and sustainable value

Scenario: major casualty





Standard Club Canada Forum

25th & 27th April 2017

Collision between a Ferry and a Bulk Carrier

Duncan Ingram

Braemar Montreal

Collision Scenario

Chain of events

- The scenario is fabricated, but based on events which have occurred.
- Incidents are generally a caused by long chain of events.
- The scenario may seem unlikely, but in most cases the events leading to an incident are implausible.
- Most incidents are caused by human error rather than mechanical failures.



Collision Scenario

Setting of the incident

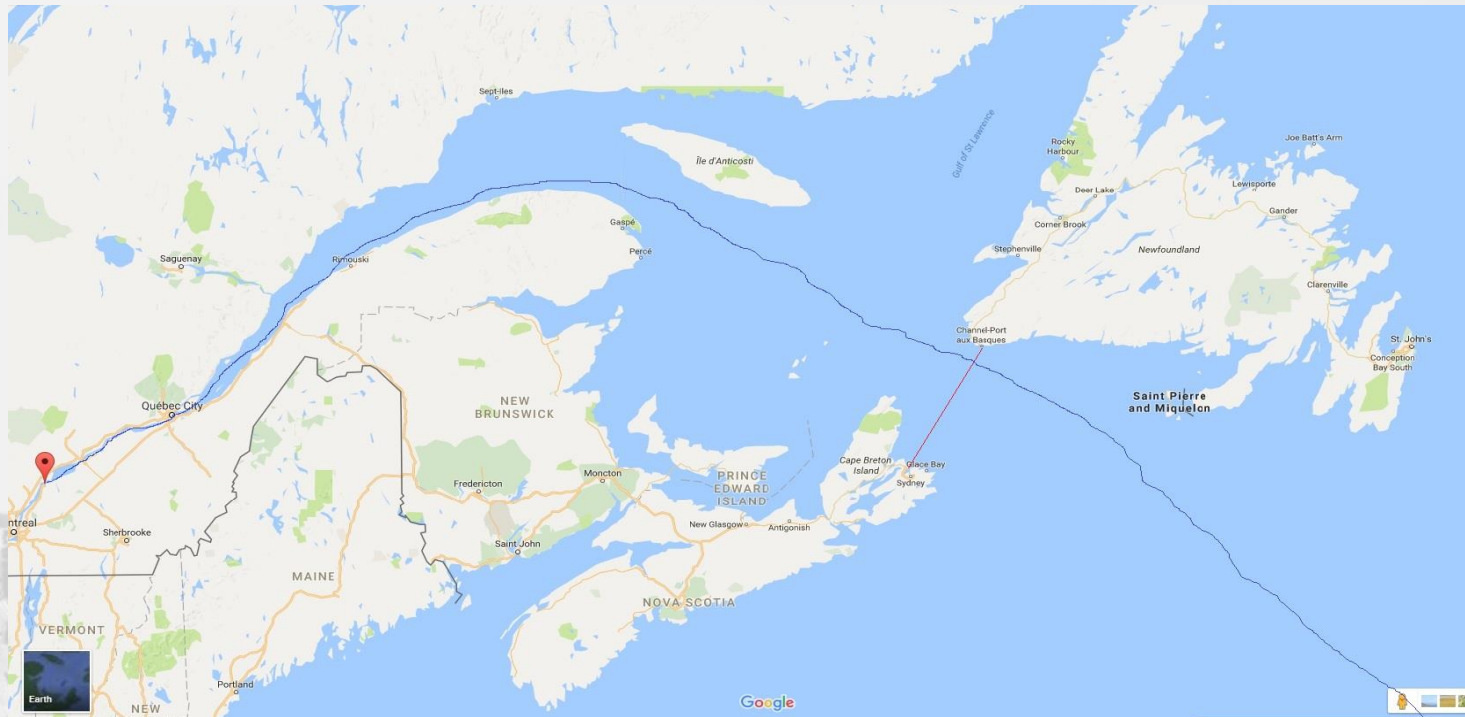
- The incident and its response are set in the present day, off the south west coast of Newfoundland close to Port aux Basques.
- Current regulatory minimum requirements for Shipborne Navigating Equipment would mean that this type of incident significantly less likely than it would have been thirty years ago.
- There is shore based Vessel Traffic Services (VTS) which covers an area extending approximately 12 nautical miles off the coast and 15 nautical miles either side of the Port aux Basques, NL.
- Vessels must report on entering and leaving the VTS have to report. They receive instructions on Navigation if necessary to prevent the development of dangerous maritime traffic situations.
- To make this collision more likely we assume there is no VTS and not all the currently required Bridge Equipment.



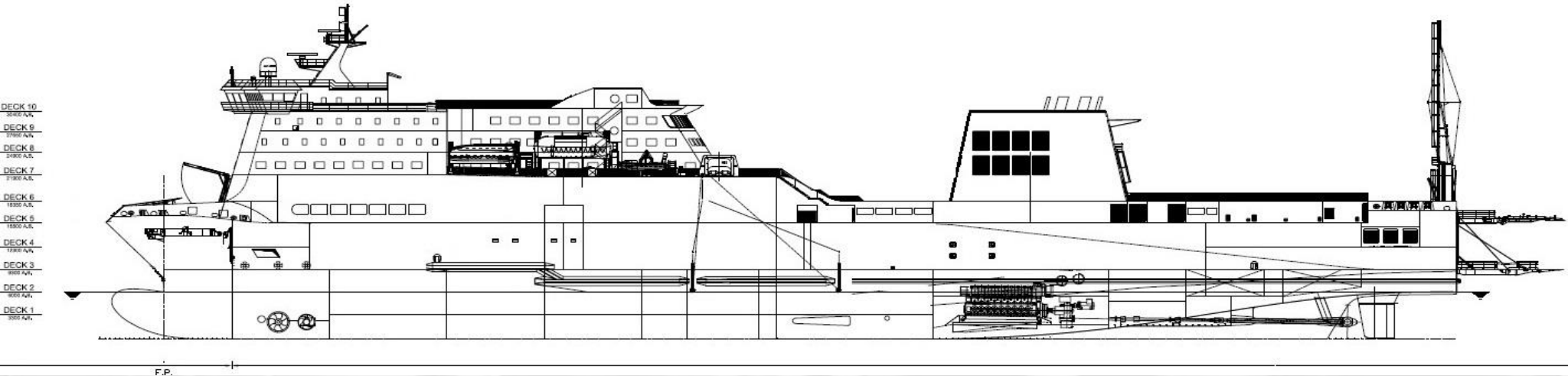
Collision Scenario

The Two Vessels Involved

- Handy Sized Bulk Carrier departing from Sorel in ballast having discharged steel coils
- Ferry operates between Port aux Basques on the south west tip of Newfoundland, to North Sydney, Nova Scotia

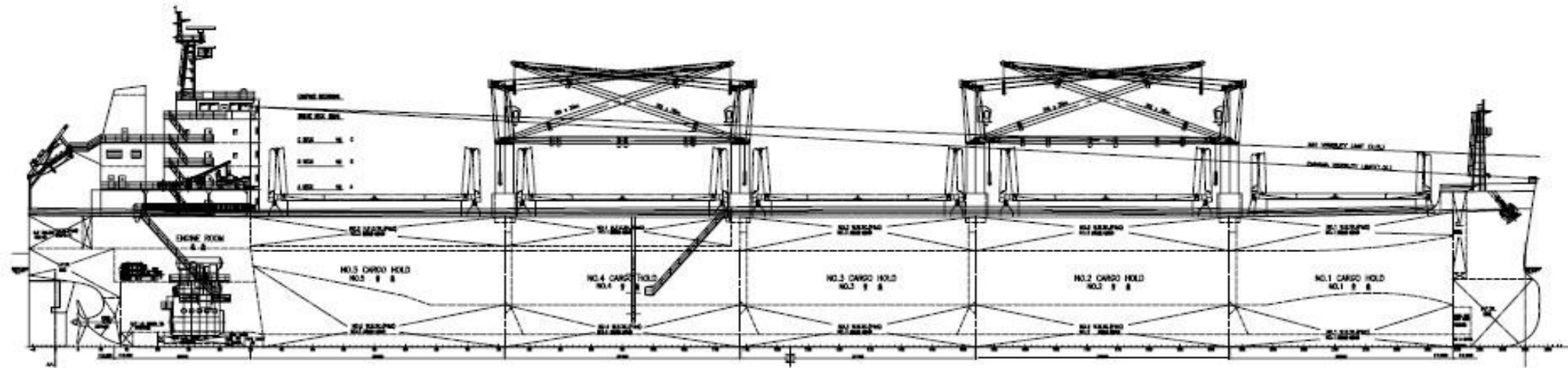


MV FERRY ONE



- The ferry is a stern loading ro-ro ferry
- It operates year round in a Port-aux-Basques where there are no tugs stationed
- Vessel is a twin engine with twin screw controllable pitch propeller
- Service speed of 22 knots

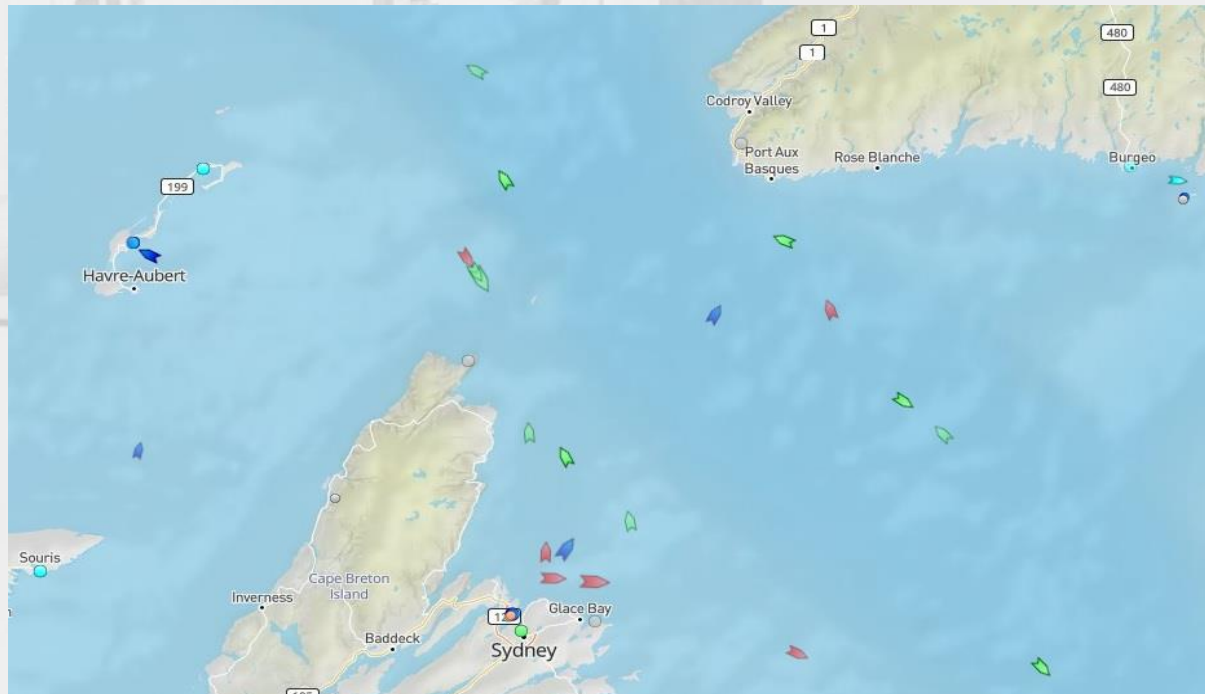
MV BULKER TWO



- The bulk carrier is a handy sized geared bulk carrier
- Single screw fixed pitch propulsion
- Vessel has an service speed of 14 knots

Night of the Incident

- Ferry late leaving port
- Unusually high level of traffic close to the shore of Newfoundland passing in both directions
- Junior officer on watch shortly after the vessel leaves Port-aux-Basques, NL



Night of the Incident - Ferry

- Ferry One leaving Port aux Basques realises the traffic high close to shore means the ferry will either have to take a large detour, slow down or request a vessel to give way
- He realises that there is a course passing the bow of Bulker Two where he will not have to adjust his planned route
- However it would mean that he would pass very close to bow of Bulker Two
- He makes radio contact with Bulker Two Officer and asks them to slow down



Night of the Incident - Bulker

- On the Bulker Two the officer on duty is coming to the end of his watch
- He has not managed to get enough sleep, even though he has respected his hours of rest
- The vessel is in compliance with the minimum safe manning, but he is alone on the Bridge
- The officer receives the radio request from Ferry One, but decides he will wait a few minutes before slowing down
- Prior to slowing down the officer on Bulker Two falls asleep
- Current SOLAS Regulations require that cargo vessels over 150GT and all passenger vessels be fitted with a Bridge Navigational Watch Alarm System (BNWAS). BNWAS provides a visual alarm on the bridge after a 3 to 12 minute period, followed by an audible alarm.
- No BNWAS on Bulker Two

Night of the Incident - Ferry

- The navigating officer on Ferry One notices that Bulker Two has not immediately slowed down but is not initially concerned as Ferry One should pass the bow of Bulker Two and there is time for the bulker to slow down.
- In the engine room of Ferry One, during maintenance to a cooling water pump whilst during last port call additional Lube Oil piping had to be removed because of interference.
- Lube oil was dripping onto the motor.
- A rag was placed in the main engine lube oil piping to temporarily stop the leaking,



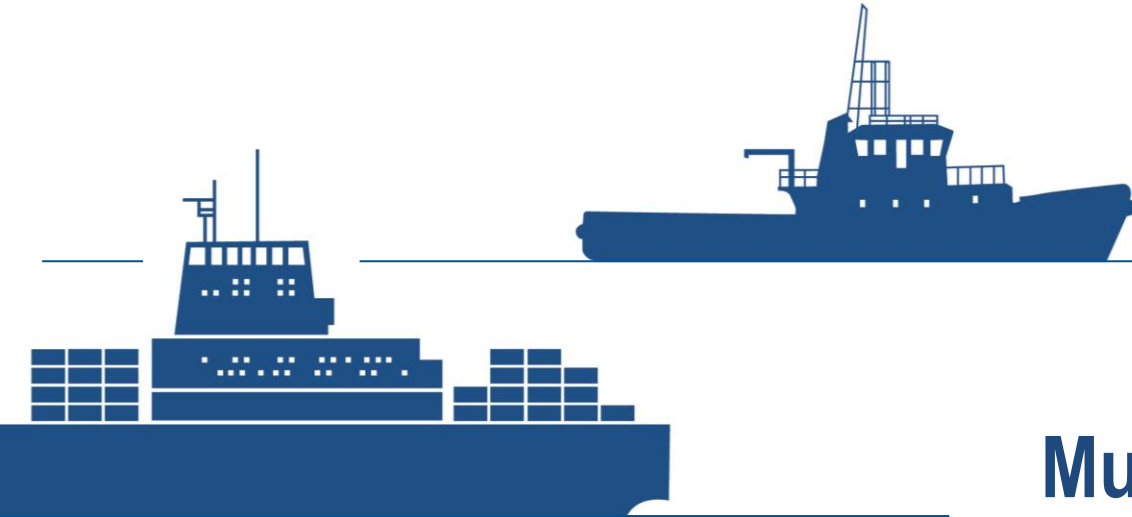
Night of the Incident

- Officer on Watch on Ferry One is concerned that Bulker Two has not slowed down, but their speed of 22 knots will ensure they will pass the bow of the ferry.
- The Closest Point of Approach 500m
- The rag temporarily placed in the lube oil line was not removed and has started to work its way through the Lube oil system of the port main engine.
- The rag gets stuck in the port main engine lube oil supply line at the temperature regulating valve
- Upon losing oil pressure, the port main engine shuts down.



Collision

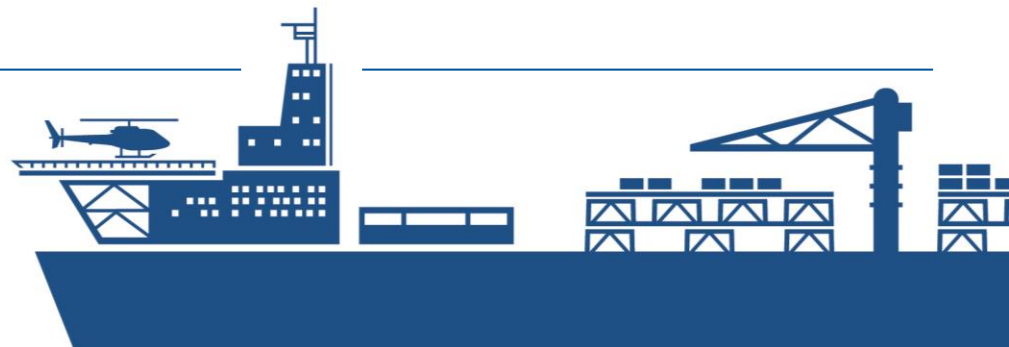
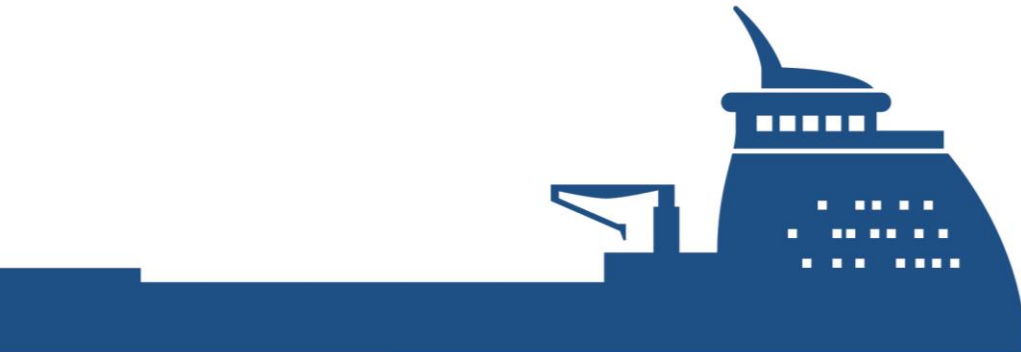
- Ferry One begins to reduce speed to 14 knots
- Officer on Ferry One sees the reduction in speed and sees the CPA reducing to zero, which means they are on a collision course
- Ferry sounds whistle and attempts to contact Bulker Two.
- Officer on Bulker Two wakes up.
- Ferry one turns hard to starboard and in an attempt to pass the stern of Bulker Two.
- Ferry One makes hard contact with Bulker Two, its bow and bulbous bow piercing the shell plating of the engine room and a fuel oil bunker tank, causing water and heavy fuel to begin to pour into the engine room.



Mutual Cover

David Rees, Underwriting Director

Oli Wassell, Deputy Underwriter



Mutual/Poolable Cover

International Group P&I Clubs cover shipowners' legal liabilities to third parties such as:

- Loss of life/personal injury to passengers and crew up to USD 3 billion
- Damage to fixed/floating objects
- Wreck removal
- Pollution up to USD 1 billion and SCOPIC
- Cargo loss/damage
- Collisions



The Scenario: P&I or Hull

P&I

- 1/4th or 4/4th, property and cargo
- Liabilities
 - Wreck removal (ship and cargo)
 - Property (excl ship)
 - Cargo
 - Personal injury
 - Pollution
 - Excess collision liabilities

Hull and Machinery (not covered)

- 3/4th collision or no collision liability
- Damage repairs to the ship
- Voyage and expenses at repair
- Ship's proportion of salvage and General Average



Collision liabilities

- Irrespective of 1/4th or 4/4th P&I will always cover:
 - the raising, removing, destroying, lighting or marking of wrecks, cargo or other property
 - damage done by such other ship to any property not being another ship or any cargo or other property therein
 - loss of or damage to cargo or other property being carried in the ship
 - the injury, illness or death of any person on board such other ship
 - pollution liabilities as may be covered under rule 3.8

MV Ferry One P&I cover

- Cover
 - P&I: 1/4th collision liability
- Heads of cover
 - Damage to MV Bulker Two (1/4th)
 - Removal of wreck
 - Third party property
 - Cargo loss
 - Personal injury on board MV Ferry One
 - Personal injury on board MV Bulker Two
 - Pollution from the entered ship
- Cover
 - Hull: 3/4th collision liability
- Head of cover
 - Damage to MV Bulker Two (3/4th)

MV Bulker Two P&I cover

- Cover
 - P&I: 4/4th collision liability
- Heads of cover
 - Damage to MV Ferry One (4/4th)
 - Removal of wreck
 - Third party property
 - Cargo loss
 - Personal injury on board the MV Ferry One
 - Personal injury on board MV Bulker Two
 - Pollution from the entered ship
- Cover
 - Hull: No collision liability

Interaction between Hull and P&I

- Hull and P&I
 - Close interaction
 - Covers dovetail
- P&I control the day-to-day conduct
- Security
 - P&I will often advance 100%
 - Counter security sought from Hull
- **Four-fourths solely in control of the Club and the owner**

Liability between P&I and Hull Insurers

Following investigation by appointed surveyors/lawyers, an apportionment of 95%-5% in favour of Bulker Two is agreed.

Claim amounts are agreed as:

| |
|---------------------|
| Ferry One - \$ 5m |
| Bulker Two - \$ 15m |

Therefore,

| | |
|--|--|
| Ferry One pays Bulker Two 95% of \$15m | \$14.25m (split 1/4 th -3/4 th) |
| Bulker Two pays Ferry One 5% of \$5m | <u>\$ 0.25m</u> |
| Net payment by Ferry One | \$14m (subject to limitation) |

Scenario: major casualty – cont'd





Response on the Bulk Carrier

Romen Cross
Braemar Seattle

Emergency Signals

- **Fire and Emergency:** Continuous blast of whistle, supplemented by continuous sounding of general alarm
- Not less than 10 seconds
- **Abandon Ship:** More than 6 short blasts, followed by one long blast
- **Dismissal:** 3 short blasts (ship's whistle)



Life jackets

Personal Floatation Devices (PFD)

Type I pfd's designed to turn most unconscious persons in the water from facedown position to vertical or slightly backward

Provide greatest buoyancy (+24 #)



Immersion suits

Required when sailing north or south of 32° in Atlantic and 35° in other oceans

No life-jacket required

Thermal Protective Aids (TPA)

Fits over lifejacket

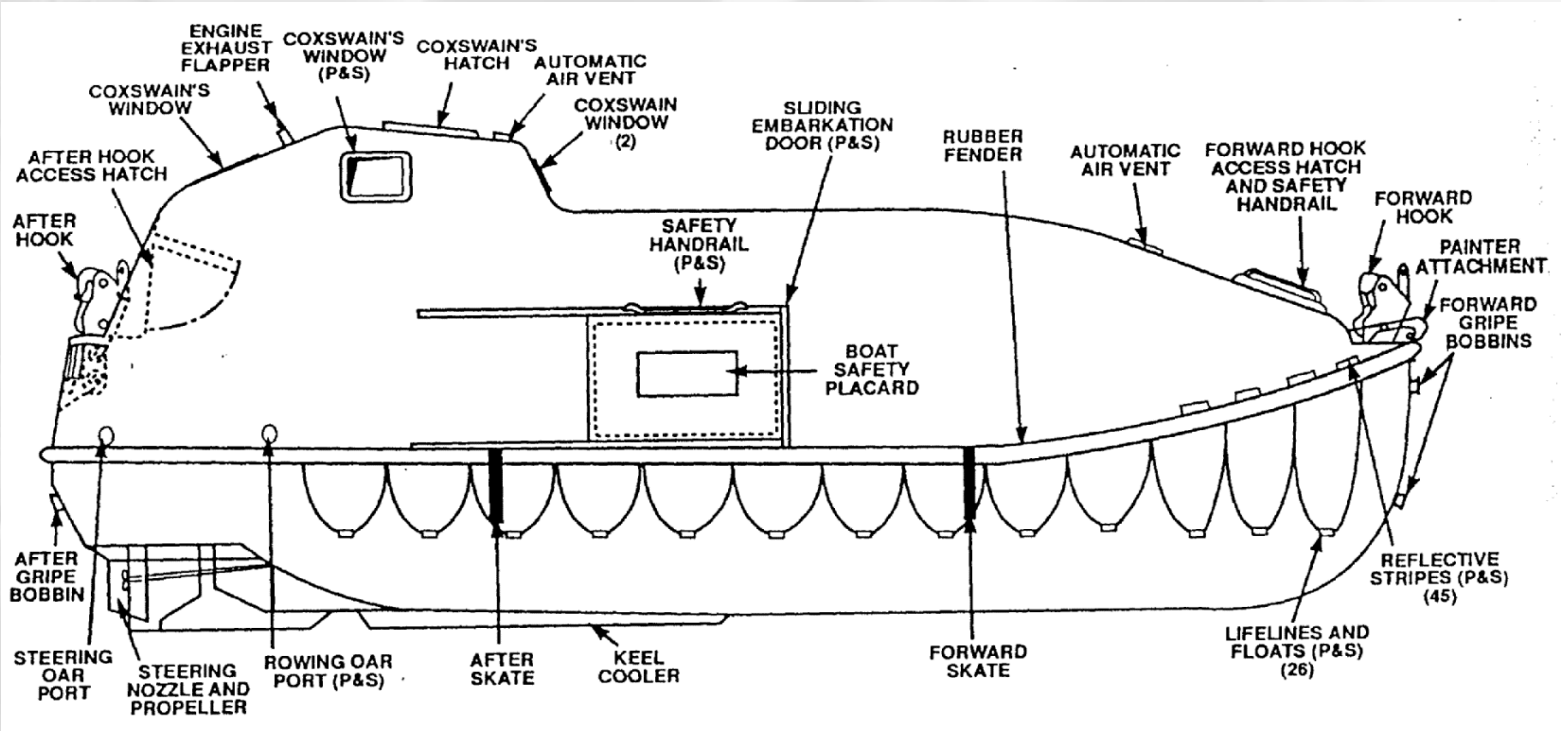


Bulk Carrier

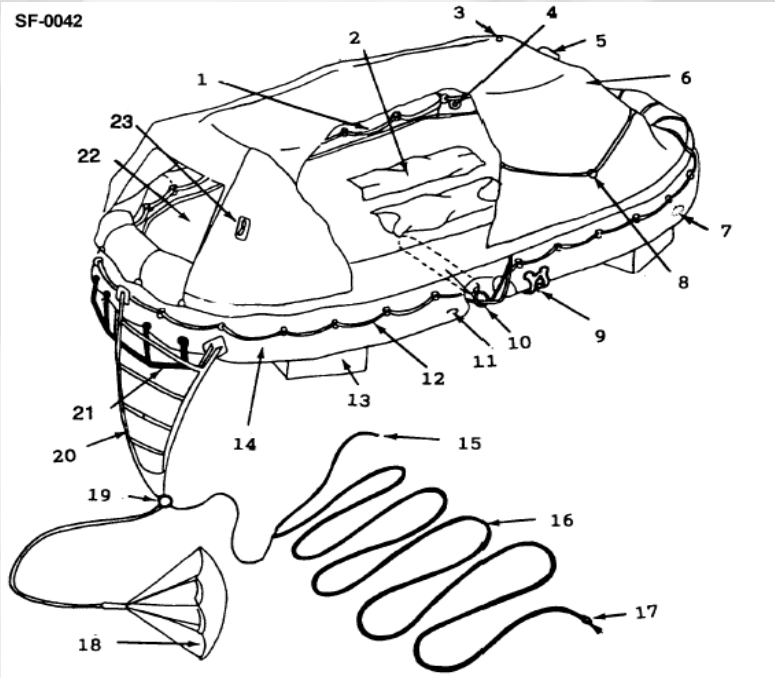
- Upon noting the collision, the general alarm is sounded and the crew members begin assembling at their muster stations.
- Non essential personnel are preparing to abandon ship
- The master of the vessel is in contact with the home office via the DPA



Enclosed Life-boat

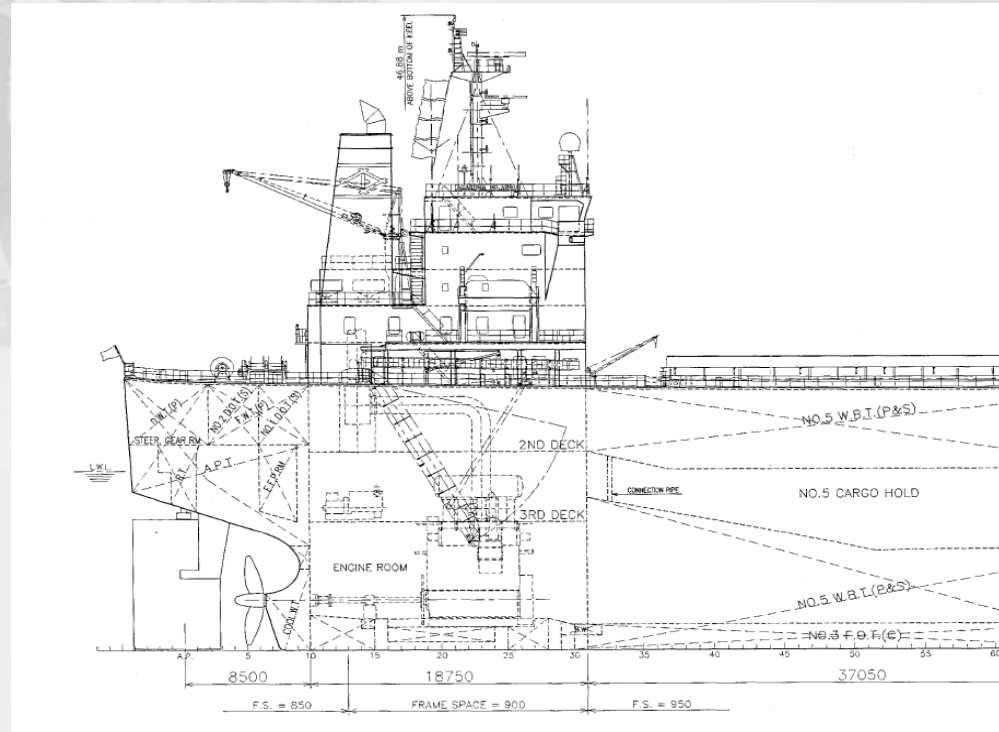


Liferaft Storage



Crew assesses the vessel

- The engine room of the bulk carrier has been compromised
- The sideshell is penetrated in the lower level and third deck, allowing water to flow into the engine spaces
- The fuel purifier room, and a fuel tank on the third deck has been damaged, allowing fuel to flow out of the vessel
- The anchor is deployed, to attempt to prevent the vessel from freely floating



Condition of the vessel

- Due to fuel line ruptures, and flooding in the engine room, the main engines and auxiliary engines shut down
- The bulker is without propulsion or power
- The emergency generator is running, supplying power for some ship's lighting, radios, and other essential items.



Flooded Engine Room



Flooded Engine Room



Abandon Ship

GMDSS

- Prior to abandoning ship, a message is sent to inform potential rescuers of the vessel's position
- Uses VHF, MFHF, and satellite with digital selective calling



Decision to Abandon Ship

- The Master of the vessel has the ultimate say on whether the vessel is safe for his / her crew
- In this instance, with the vessel flooded, power extremely reduced, and fear of capsizing, the Master decides to abandon ship
- The crew has concerns about the **significant amount of oil in the water**
- With the enclosed lifeboat, they are protected from the environment; however, liferafts do not enjoy the same protections

Lifeboat Launch



Decision to Abandon Ship

- The Master of the vessel has the ultimate say on whether the vessel is safe for his / her crew
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Lifeboat Launch



Pollution in Canada



Pollution issues in Canada

Peter G. Pamel
Partner

The Standard P&I Club Canadian Forum

April 25, 2017 – Montreal
April 27, 2017 – Vancouver

Outline

1. Player scorecard - who are you and what do you do ?
2. What do you do and who do you call ?
3. Who is in charge here ?
4. Why me ? – who is liable, and for what
5. Paying the piper – fines, penalties, clean-up costs and limitation



Player scorecard - who are you and what do you do ?

1. Coast Guard (DFO) – takes lead in oil spill response
2. Transport Canada – lead investigator and lays charges
3. Environment Canada – land based pollution
4. Response Organizations – terms and conditions
5. Transportation Safety Board – just the facts, ma`am
6. Owners / P&I Clubs
7. All the others (USCCCG, First Nations, Environmental Groups, Media)



What do you do and who are you going to call

Spill Response Plan

- Report incident
 - Coast Guard (Pollution Response Officer) as Federal Monitoring Officers where polluter known
 - Coast Guard (Pollution Response Officer) as On-Scene Commander where polluter unknown or unwilling/ unable to respond
- Ships must have on board Shipboard Oil Pollution Emergency Plans (SOPEPS) which must contain provisions for:
 - Measures to be taken in response to oil spill, taking into account environmentally sensitive areas
 - Employee training
 - Oil spill exercise programs
 - Response equipment
 - Details of insurers
 - Confirms that arrangement with an RO is in place
 - Person authorized to implement arrangement with RO

What do you do and who are you going to call

Response Organizations

Vessel must have an arrangement with an RO – (Part 8 CSA)

Response Organizations

Atlantic Emergency Response Team (ALERT)

Point Tupper Marine Services (PTMS)

Eastern Canada Response Corporation (ECRC)

Western Canada Marine Response Corporation (WCMRC)

Who is in charge here

- Person or vessel must respond as directed
 - Implementation of SOPEP including engaging of RO
- where polluter known - CCG (Pollution Response Officer) act as Federal Monitoring Officers
- where polluter unknown or unwilling/ unable to respond - CCG (Pollution Response Officer) act as On-Scene Commander
- Compensation available for costs and expenses incurred by CCG or those directed by CCG to act

Why me ? – who is liable, and for what

Polluter-pays principle

Canada Shipping Act – person and vessel that discharged

Canada Environment Protection Act - persons who own or in charge of substance or who cause spill, masters, officers, corporate directors and officers, and vessel

Migratory Birds Convention Act - persons and vessel that discharge

Fisheries Act - persons and directors, officers and license holders

Limitation Convention – owner, charterer, manager and operator of seagoing vessel

Civil Liability Convention - owner or registered owner

Bunker Convention – owner, bareboat charterers, managers and operator of vessel

Why me ? – who is liable, and for what

Exemptions from liability:

Responder Immunity under the CSA

Limitation Convention – excludes oil pollution damage covered under the CLC Convention

CLC Convention – exempts from liability the crew, pilots, bareboat charterers, managers and operators

Paying the piper

Penal and statutory fines and penalties

Canada Shipping Act

Agency - Transport Canada and Coast Guard

Parties liable – persons and vessel

Offence – discharge of a prescribed pollutant

Sanctions – AMP up to \$25,000 // per day of the offence and fines up to \$1 million – plus possible imprisonment up to 18 months

Canada Environment Protection Act

Agency - Environment Canada

Parties liable – persons who own or in charge of substance or who cause spill, masters, officers, corporate directors and officers, and vessel

Offence – disposal of unauthorized substances in the sea

Sanctions – depends on offender (individual, small or large corporation) and whether Crown is proceeding under Summary Conviction or Indictable offence – plus possible imprisonment for up to 3 years. (between \$5,000 and \$6 million)

Paying the piper

Penal and statutory fines and penalties

Migratory Birds Convention Act

Agency – Environment Canada

Parties liable – persons and vessel

Offence – unauthorized deposit of substances harmful to migratory birds

Sanctions – depends on offender (individual, small or large corporation) and whether Crown is proceeding under Summary Conviction or Indictable offence – plus possible imprisonment for up to 3 years (between \$5,000 and \$ 6 million)

Fisheries Act

Agency - DFO

Parties liable – persons and directors, officers and license holders

Offence –unauthorized deposit of substances harmful to fish

Sanctions – depends on whether Crown is proceeding under Summary Conviction or Indictable offence

Paying the piper

Civil Liability and Limitation of Liability

Marine Liability Act

Part 6 – Division 1 - persistent oil from seagoing vessels

Implements the various International Conventions

Provides for compensation to CCG and RO

Civil Liability Convention (1992 Protocol)

Applies to seagoing vessels constructed to carry oil

Strict liability for discharge of oil carried in bulk as cargo or bunkers

Defences – Act of War; act of third party with intent to cause damage; neglect of Authorities in relation to lights and navigational aids

Includes compensation for costs and expenses of CCG and RO

IOPC Fund Convention (1992 Protocol)

Establishes IOPC Fund for compensation to persons unable to obtain compensation under CLC Convention

Paying the piper

Civil Liability and Limitation of Liability

Supplementary Fund Protocol (2003)

Compensation above Fund Convention limits

Canada's Ship-Source Oil Pollution Fund

Levies on oil companies and importers

Acts as supplemental compensation fund

Current reserves about \$400 million

Bunker Convention 2001

Discharge of bunkers (includes lube oil) from non-oil carrying vessels

Pollution damage means clean-up costs and preventive measures

Polluter-pays principle

Limitation of liability – Limitation Convention 1976 with 96 Protocol

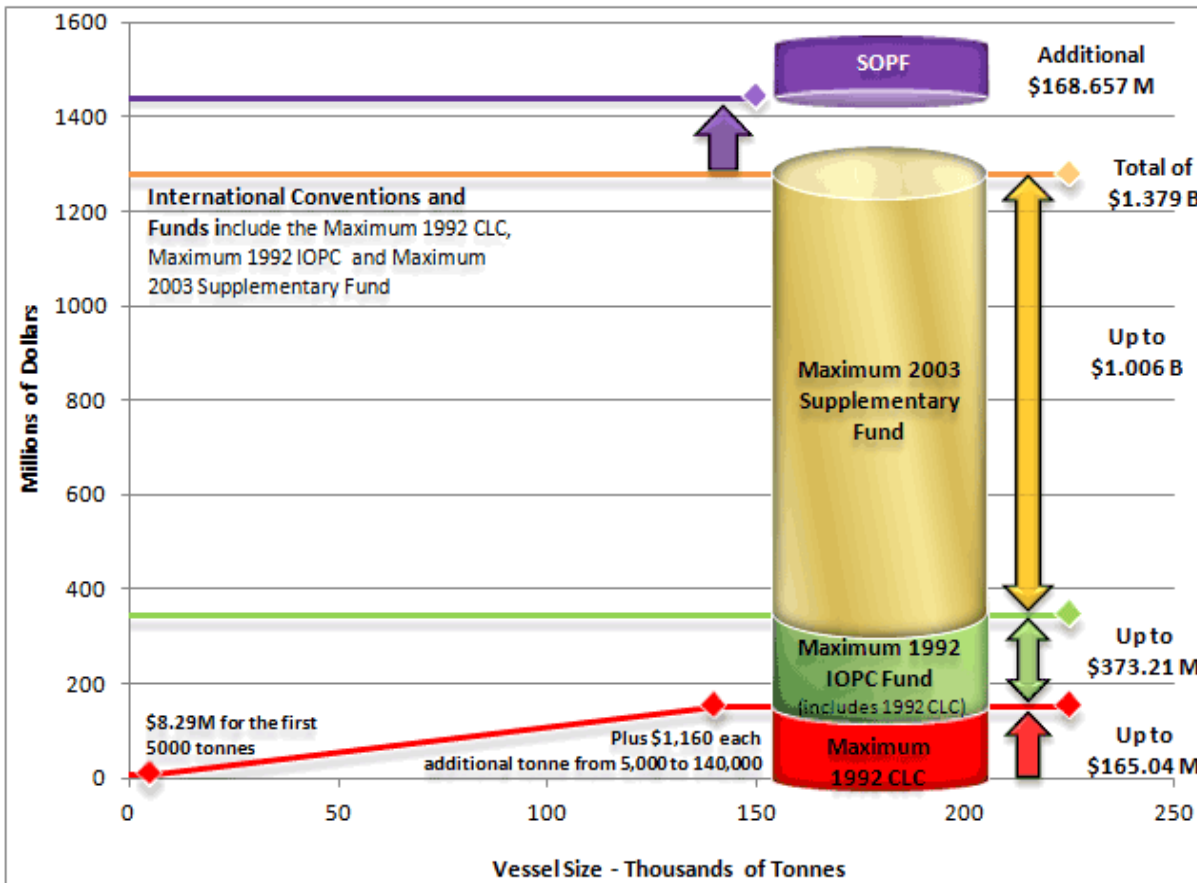
Compulsory insurance for ships over 1000 tons

Paying the piper

Civil Liability and Limitation of Liability

Limits of Liability and Compensation Per Incident for Oil Tanker Spills in Canada

Based on the value of the SDR (\$1,83849) on April 1, 2016



| | |
|-------------------------------------|------------------------|
| International Conventions and Funds | \$1,378,867,500 |
| Total Domestic Fund (SOPF) | \$ 168,656,700 |
| Total Available to Canada | \$1,547,524,200 |

Paying the piper

Civil Liability and Limitation of Liability

Marine Liability Act

Part 6 – Division 2 - non persistent oil and/ or non seagoing vessels

Owner – person who has the right of possession and use

Pollutant – any substance if added to water renders the water detrimental to humans and animals

Ship – tracks definition of ship as per the CSA

Limitation is under the Limitation Convention 1976 with 96 Protocol

Under 2000 tons – 1.51 million SDR or CA\$ 2,776,120 - based on the value of the SDR (\$1,83849) on April 1, 2016

- additional 604 units per ton up to 30,000 tons
- additional 453 units up to 70,000 tons
- additional 302 units for each ton thereafter

Questions

Peter G. Pamel

Tel: 514 954 3169

e-mail: ppamel@blg.com

Scenario: major casualty – cont'd

Ferry One Onboard Response





Ferry One Onboard Response

Duncan Ingram

Braemar Montreal

Assessing the Damage

- The general alarm is sounded.
- The captain advises the passengers over the public address system that there has been a collision and orders the passengers to go to their muster stations.
- Captain asks the chief mate to assess the damage forward.
- Captain is advised by other crew that there are injured passengers



Assessing the Damage

- The Chief Mate reports that the Fore Peak tank is holed and a large part of the forecastle is badly crumpled.
- The damage has not extended aft of the collision bulkhead
- The ferry has come apart from the bulk carrier
- Captain advised that there are four passengers with suspected broken bones and approximately 30 passengers with minor injuries.

Assessing the Damage

- Chief engineer confirms that starboard the engines is functioning fully, the port engine suffered a low lube oil shut down.
- Captain contacts his shore office and the Canadian Coast Guard to report the incident
- On realizing the ferry is stable he explains the situation to the passengers and allows them to go back into the accommodation
Captain contacts Bulker Two

Assisting the Bulk Carrier

- Captain contacts the bulker to find out their situation.
- Captain advised they can take the crew from the bulker if they abandon ship.
- Ferry One crew begin treating the injured passengers.
- Pilot ladder lowered to allow the crew from Bulker Two to board the vessel.
- Captain realizes there is nothing further that can be done with Bulker Two by his vessel and crew.
- Ferry One returns to Port aux Basques.



Liability for Passenger Claims

Leanne O'Loughlin
Claims Director, UK & Americas
Charles Taylor P&I Management (Americas), Inc

W. Gary Wharton
Partner, Bernard LLP
Vancouver, B.C.



Passenger claims in Canada





Claims Against The Ferry

Individual claims and a possible class action for physical injuries and psychological harm

Claims for loss of vehicles and cabin luggage

Claims for punitive and/or exemplary damages



Liability Regime

- **Liability for Passenger claims in Canada is governed by the *Marine Liability Act*.**
- **Canada incorporated the Athens Convention and the 1990 Protocol into the *Marine Liability Act*.**





MLA - Application

Force of law

37 (1) articles 1 to 22 of the convention have the force of law in Canada.

Extended application

37(2) articles 1 to 22 of the convention also apply in respect of

(A) the carriage by water, under a contract of carriage, of passengers or of passengers and their luggage from one place in Canada to the same or another place in Canada, either directly or by way of a place outside Canada; and

(B) the carriage by water, otherwise than under a contract of carriage, of persons or of persons and their luggage, excluding

(I) the master of a ship, a member of a ship's crew or any other person employed or engaged in any capacity on board a ship on the business of the ship,

(Ii) a person carried on board a ship other than a ship operated for a commercial or public purpose,

(Iii) a person carried on board a ship in pursuance of the obligation on the master to carry shipwrecked, distressed or other persons or by reason of any circumstances that neither the master nor the owner could have prevented, and

(Iv) a stowaway, a trespasser or any other person who boards a ship without the consent or knowledge of the master or the owner.

Athens Convention

Key features:

- Limits freedom of contract;
- Provides carrier with a right to limit liability;
- Sets the limitation amounts;
- Assumes liability in certain cases;
- Establishes the burden of proof;
- Fixes place of suit; and
- Fixes time for suit.





Athens Convention

Article 3 – Liability of Carrier

1. The carrier shall be liable for ... the death of or personal injury to a passenger ... if the incident ... occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.
2. The burden of proving that the incident ... occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant.
3. Fault or neglect of the carrier ... shall be presumed, unless the contrary is proved, if the death of or personal injury ... arose from or in connexion with the shipwreck, collision, stranding, explosion or fire, or defect in the ship. ...



Athens Convention: Limitations

- Article 7 - The liability of the carrier for the death of or personal injury to a passenger shall not exceed 175,000 SDR (CDN \$320,000 approx.) per carriage.
- Article 8 - The liability of the carrier for cabin luggage shall not exceed 1,800 SDR (CDN \$3,300 approx.) per passenger, per carriage.
Luggage, including vehicle 10,000 SDR (CDN \$18,000 approx.), per carriage.



Article 13 – Loss of Right to Limit Liability

1. The carrier shall not be entitled to the benefit of the limits of liability ... if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2. The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.



Peracomo Inc. v. Telus Communications

Canada has incorporated the *Convention on Limitation of Liability for Maritime Claims, 1976* as amended by the **Protocol 1996. The bar to limitation at **Article 4** provides:**

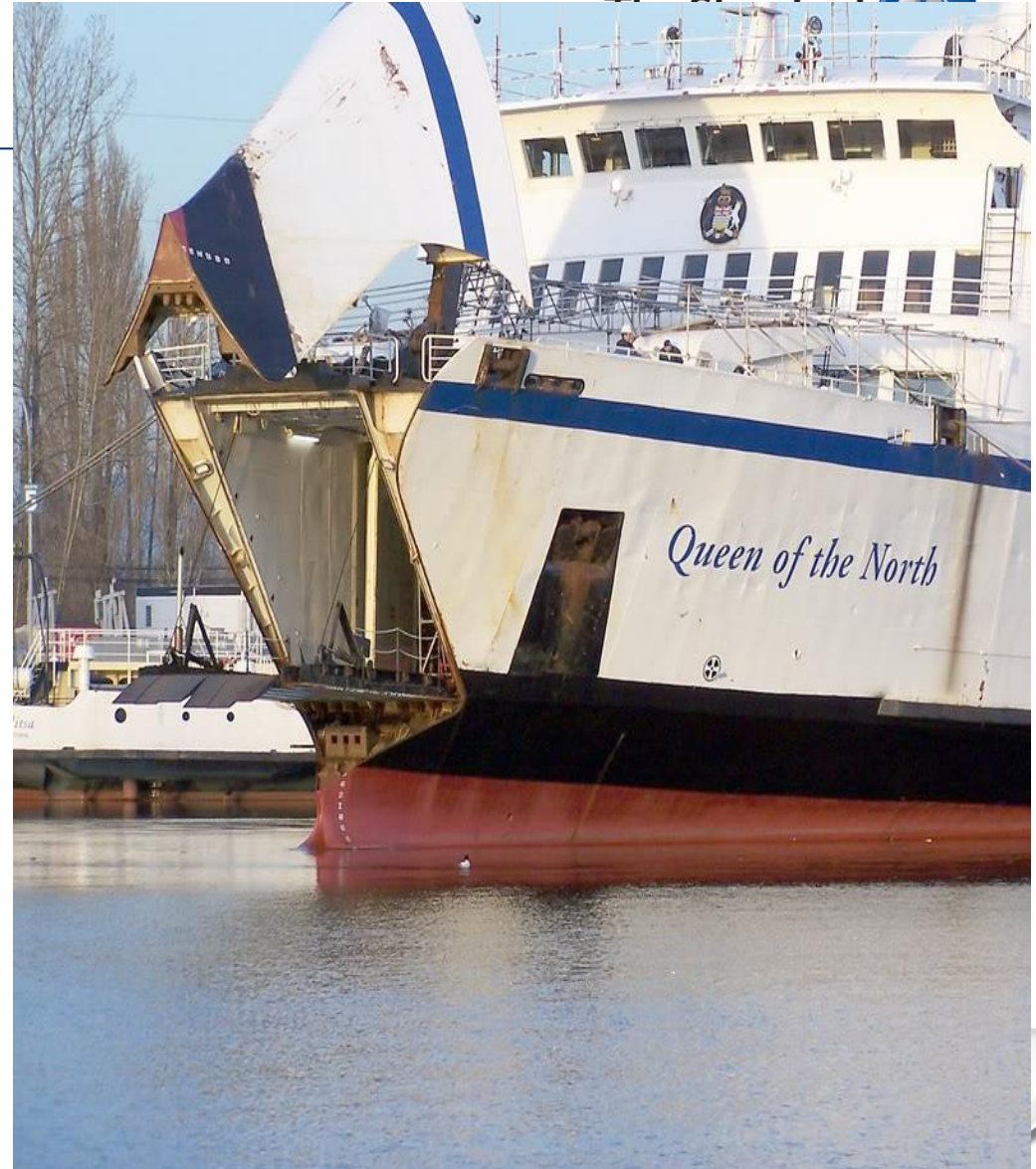
A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, **or recklessly and with knowledge that such loss would probably result.**

Canada's *Marine Insurance Act* limits recoverability from an insurer at s. 53(2) as follows:

Without limiting the generality of subsection (1), an insurer is not liable for any loss attributable to the **wilful misconduct of the insured.....**

Punitive Damages

Bernard LLP. acted for owners in *Foisy Estate v. Queen of the North (the)*, 2008 BCSC 1777 and *Kotai v. Queen of the North (the)*, 2009 BCSC 1405 and 2010 BCSC 1180 following the sinking of a passenger ferry in Northern British Columbia. In those cases, the court agreed that the MLA and the Athens Convention did not allow for the recovery of punitive or aggravated damages.





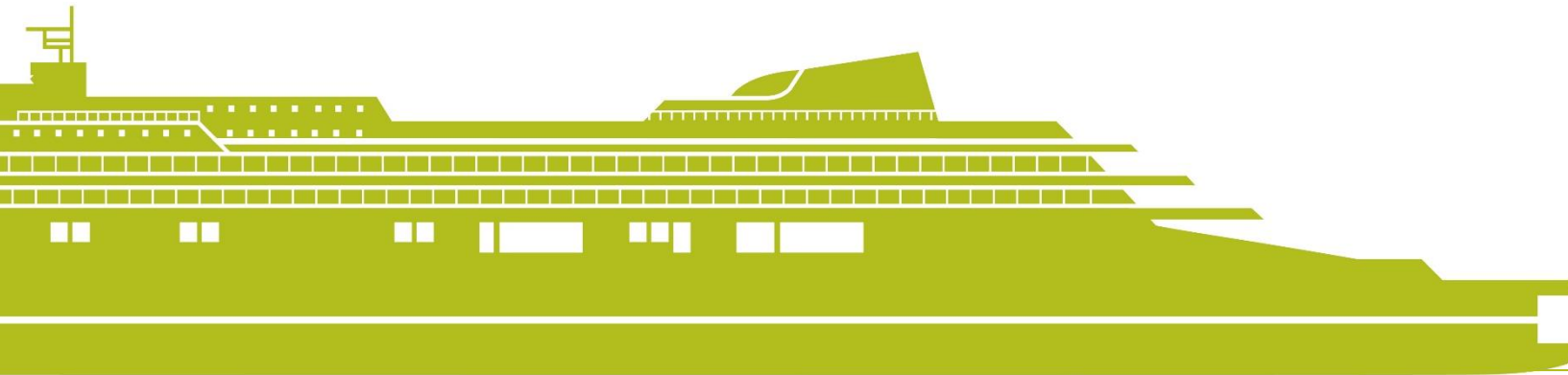
Psychological claims

Queen of the North

Various claims for psychological injuries arising out of the sinking were ruled unrecoverable or greatly reduced with the court holding that a claimant has to prove that the conduct caused a recognized psychological illness not just mere upset. This remains a leading case in Canada on Athens Convention and on psychological loss generally.



Passenger claims in the U.S.



U.S. Passengers: Choice of Law

- ***Lauritzen v Larsen***, 345 U.S. 571, 583-91 (1953) – Leading US Sup. Ct. decision
 1. Place of wrongful act
 2. Law of Flag
 3. Allegiance of domicile of injured
 4. Allegiance of defendant shipowner
 5. Place where contract was made
 6. Inaccessibility of foreign forum
 7. Law of the forum
 8. Shipowner's base of operations

U.S. Passengers: Limitation of Liability

- ***Limitation of Liability Act (Limitation Act), 46 U.S.C. § 30501 et seq.***
- Limitation Act allows vessel owners to limit liability to the value of the vessel at the end of the voyage plus "pending freight," as long as the owner can prove it lacked knowledge of the problem beforehand
- A limitation proceeding consolidates claims into a single federal forum
- "the owner of any vessel, whether American or foreign" can limit its liability. 46 U.S.C. App. §183(a)

U.S. Passengers: case study

- Ticket
 - US law will enforce a foreign law and forum selection clause in a passenger ticket if the ticket “reasonably communicates” the terms to a passenger and sufficient notice is given prior to departure
 - Ticket stated Canadian law
 - Purchased by phone
 - Handed to claimant as he was driving onto ferry at point of departure in US.
- Canadian Owners/Operators; Bahamian flag
- Incident occurred at port in Canadian waters
- Claimant commenced and pursued Canadian proceedings; commenced US litigation just before expiration of the time bar

U.S. Passengers: case study

- US judge held that member was subject to personal jurisdiction in Massachusetts (even though passenger boarded in Maine, the ferry's only port of call in the US) and declined to stay the US action pending the outcome of the prior-filed Canadian action
- Denied application to apply Canadian law
- US attorney: grounds to appeal to U.S. supreme court
- Case settled at mediation



Dealing with the media



Dealing with the media

David Hahn's survival tips



Surviving the Incident

Lesson 1: credibility is easy to lose and hard to recover. Establish credibility through honesty, straightforwardness, consistency, and accessibility.

Lesson 2: how you behave as an organization during times of crisis defines who you are. A crisis is an excellent time to evaluate the people around you. Who demonstrates strength? Who buckles under pressure?

Lesson 3: it is critical how you behave from the outset of a crisis. Own the story, be completely accessible, and communicate honestly and frequently with all stakeholders. For David Hahn, during the Queen of the North crisis, this meant frequent and qualified messages to employees, media, and the public. Qualified in this situation meant saying “based on what we know right now...”

Lesson 4: communication is key. As the president and CEO, David Hahn was the face of BC ferries. By leading the response and the messaging, he prevented or at least minimized third party commentary.

Lesson 5: clearly and quickly communicate to all concerned. Take control and assume responsibility. Verify all facts. Again, qualify your response. Access to the media—yes; harassment by the media—no.

Lesson 6: show you care. Always think of the people involved.

Lastly, you can never plan enough, nor can you ever prepare enough for a crisis. Make sure all involved know their roles.



Women and Children First?

Sir Winston Churchill in retirement, while cruising the Mediterranean on an Italian cruise liner, was asked by an Italian journalists why an ex British Prime Minister should chose an Italian ship. He is reported to have said:

There are three things I like about being on an Italian cruise ship. First their cuisine is unsurpassed. Second their service is superb. And then, in time of emergency, there is none of this nonsense about women and children first.

But see: Canada Shipping Act, 2001 s. 109 which provides:

(1) the master of a vessel shall take all reasonable steps to ensure the safety of the vessel and of persons who are on board or are loading or unloading it while using equipment on it.



Scenario: major casualty – cont'd





Emergency Response

Romen Cross
Braemar Seattle

Incident response

- Incident is reported to the Canadian Coast Guard station (800) 563 – 9089
- The oil pollution emergency plan or shipboard oil pollution plan would be utilized to determine who to call for the on-scene commander – in this case the ECRC is called from St. Johns (709) 364 – 6600
- On the west coast, it is WCMRC in Burnaby, BC



Salvage Operations

- The bulker has not sunk, but remains stable, with a slight list to the starboard side
- The crew attempted to release the anchor, however, the water is too deep and the vessel is adrift but there is an onshore wind.
- A US based salvage team has been appointed for the bulker, by the vessel owners.
- Salvage team mobilized



Rescue Operation

- There are no tugs stationed on the south west coast of Newfoundland
- Nearest tugs are Port Hawkesbury on Cape Breton, NS, or St. John's, NL
- Tugs depart Port Hawkesbury and St. John's, to rescue the bulker
- First tug is expected to arrive in approximately 15 hours
- Canadian Coast Guard Advise that their vessel the Earl Grey will be dispatched from St. John's
- Vessel would be towed to Argentia, NL. Where its condition would be assessed



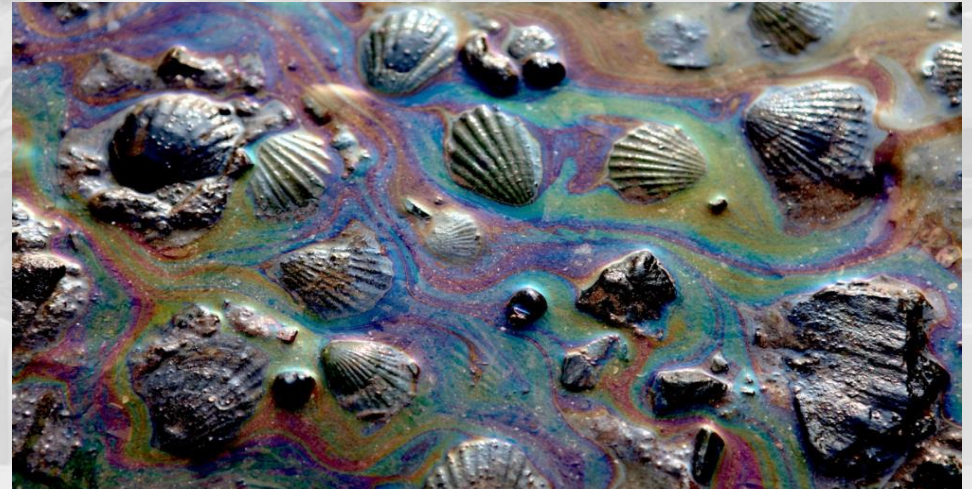
Oil spill response

- Southerly wind is blowing oil spill towards the shore
- ECRC based mobilize their equipment.
- During the initial stages, the reaction is to have all manpower available arrive and try and contain the spill.
- Boom will be deployed to attempt to prevent oil from reaching the shore.
- Coast Guard begin to monitor oil spill from the air.



Pollution reaches the shore

- The Canadian Coast Guard is monitoring the response, as the official Federal Monitoring Officer
- If the owners of the vessel were unwilling or unable to respond to the situation, the Coast guard would assume the On-scene commander role

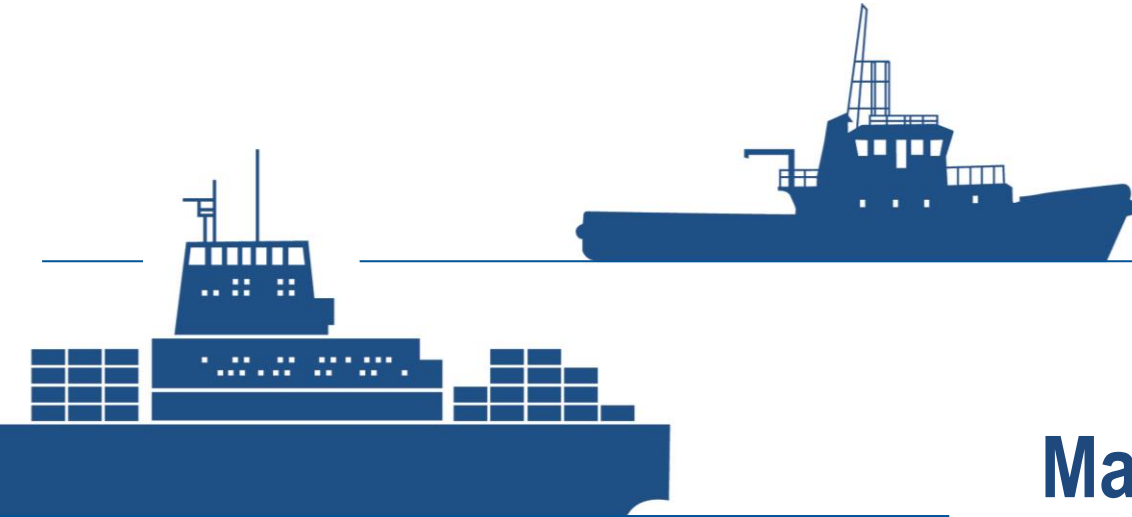


Clean - up



Surveyor's Role

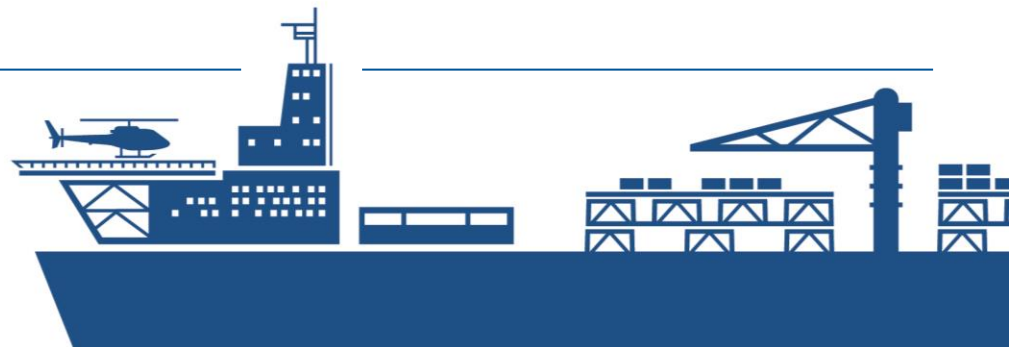
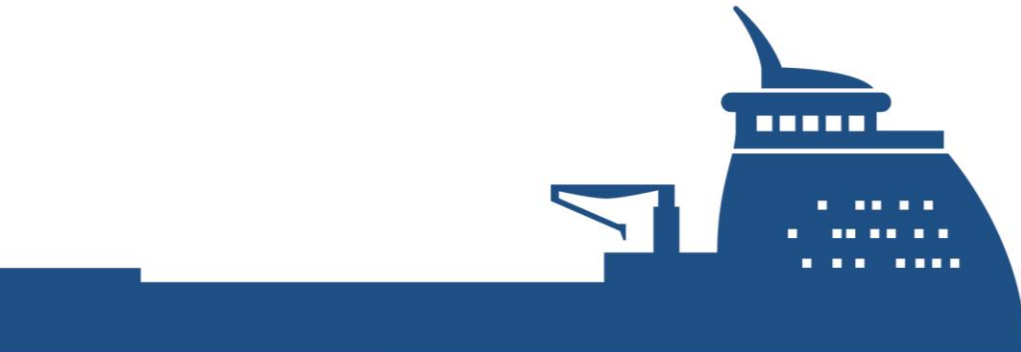
- Throughout this incident, the Surveyor has to become the “eyes and ears” of the insurers.
- All costs for salvage, oil clean-up, repairs are filtered through the surveyor.
- The surveyor will liaise with the Salvors and will be involved with the Salvage operation to limit further damage to the vessel.
- The surveyor will assist in determining the cause, nature, and extent of damages to the vessels, and will likely take a trip out to the vessels for survey.
- This will be done as a joint survey with representatives from both vessel owners, law firms, surveyors, governmental agencies, etc.



Major Casualty Response

Sam Kendall-Marsden

Head of Division, UK & Americas



Contents

1 Initial notification

2 Building a team

3 Liabilities

4 Planning

5 Questions

I
Initial notification



Initial notification



Who makes contact?

- Emergency telephone
- Insured/member/broker
- Salvors
- Correspondents and others
- Social media?

What information might you receive?

Initial notification - MV Rena

- “ At 0220 the 236-metre ship Rena struck the Astrolabe Reef, which is 22km off the Tauranga Coast, North of Motiti Island”
- “The vessel is reported to be on a 12 degree list and two of its cargo holds are flooded, but it's believed the tanks containing the ship's heavy fuel oil are undamaged”

From this...



...to this!



Establish the facts

- Ship name
- Insured/member
- Circumstances of casualty
- Time and date
- Location

Location – Amadeo I





Facts – cont'd

- Current position on site
- Crew/passenger number and nationalities
- Injuries/deaths
- Pollution
- Cargo

Facts – cont'd

- Bunkers
- Authorities?
- Who else is in attendance?
- Gather facts for future planning

II Building a team



Building a team



Building a team

- Major casualty response plans – yours and theirs
- Get to know your insured/member – drills
- Key contacts
- Lines of communication

Who will be in the team?

- Insured/member
- Insurer/club
- Correspondent(s)
- Local/foreign lawyers
- Technical experts

Who will be in the team – cont'd?

- Salvors
- ITOFF
- Subject matter experts – for example, fire, hazardous cargo
- Public relations

The glare of the media spotlight!



But also keeping people informed...

Friday, August 29th, 2014, 3:09:30 PM

The Parbuckling Project
Concordia wreck removal project informative website

EN IT

email

 lost password?

the project ~ companies and professionals ~ environmental care and monitoring ~ Press releases multimedia support ~

MULTIMEDIA

ENVIRONMENT
 THE PROJECT
 EQUIPMENT

MEDIA

Media requests form photos/video

Useful links:

DIPARTIMENTO DELLA PROTEZIONE CIVILE
 MINISTERO DELL'AMBIENTE
 MINISTERO DEI TRASPORTI
 MINISTERO DELLA SALUTE
 ISPRA
 COMUNE ISOLA DEL GIGLIO
 REGIONE TOSCANA
 PROVINCIA DI GROSSETO
 PRO LOCO ISOLA DEL GIGLIO

PROJECT PHASES


On April, 21st, 2012, Costa Crociere and the Costa Concordia Emergency Commissioner's Office announced that the tender for the removal of the ship from Giglio Island has been awarded to Titan Salvage in partnership with the Italian firm Micoperi. The work begun in early May after final approval from the Italian authorities.

Titan Salvage is an American-owned specialist marine salvage and wreck removal company, part of the Crowley Group, and is a world leader in its field. Micoperi is a well-known Italian marine contractor with a long history as a specialist in underwater construction and engineering.

The removal plan could be divided in six subsequent phases:

Stabilisation

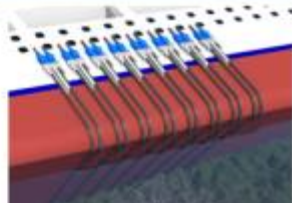
The first phase involves the anchoring and stabilisation of the wreck to prevent any slipping or sinking along the steep seabed. This will make it possible to work safely even in bad weather.



Stabilisation is performed using an anchoring system made up of four submarine anchor blocks fixed to the sea bottom between the center of the wreck and the coast.

At the beginning of November, Costa and the Titan/Micoperi Consortium announced the completion of the wreck stabilisation.

Later, 12 retaining turrets will be installed for use during the parbuckling of the wreck.





Liabilities



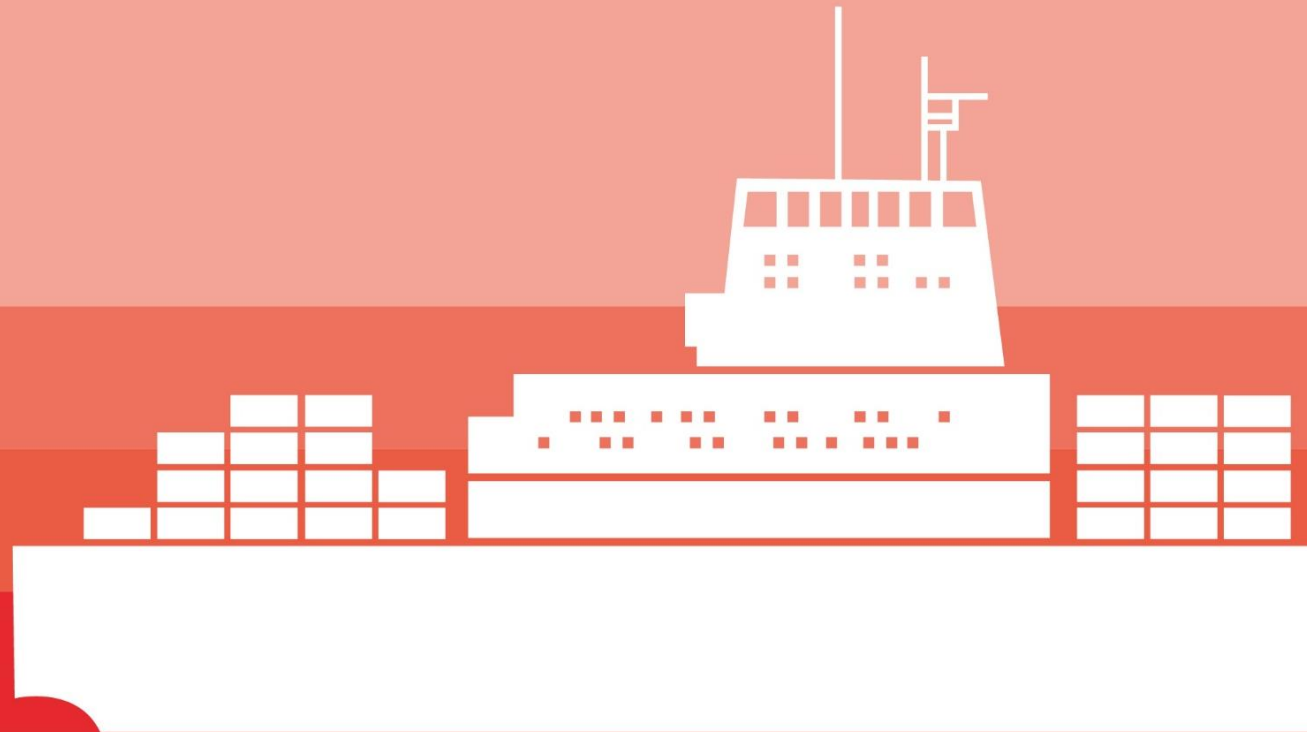
What sorts of claims might you face?

- Pollution
- Collision
- Salvage/wreck removal
- Crew/passengers
- Third-party claims
- Fines

Collision

- 1/4 or 4/4 collision liability?
- Evidence-gathering
- Jurisdiction
- Damage surveys
- Security
- Cross-apportionment

IV Planning



Planning



Sequence of events

- Initial emergency response
- Notification
- Information-gathering
- Formulating a strategy
- Building a team
- Establishing lines of communication

Salvors

- Salvors in attendance
- Liaison with salvors
- Salvors' initial assessment
- Pollution response
- More detailed assessment - surveys

Operational phases

- Pollution response
- Bunker removal
- Salvage
- Wreck removal

First Nations/Aboriginal claims



Maritime Incidents & Indigenous Communities

Dionysios (Dino) Rossi, Partner
BLG Vancouver

The Standard P&I Club Canadian Forum

April 25, 2017 – Montreal

April 27, 2017 – Vancouver



Outline

1. **Aboriginal Law**
2. **Aboriginal Rights and Title**
3. **Duty to Consult**
4. **Private Law Aboriginal Claims**
5. **Practical Considerations**
6. **Recent Incidents**



Aboriginal Rights and Title

Constitution Act, 1982, s. 35:

“The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed”

Note: only limits government conduct (but may have implications for private parties)



Aboriginal Rights and Title

Three concepts:

- **Aboriginal Rights** – the right to engage in certain traditional practices (e.g. hunting, trapping or fishing) without government interference
- **Aboriginal Title** – a form of land ownership established by continuous and exclusive use
 - *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44
- **Treaty Rights** – rights to engage in activity or to occupy certain areas established by treaties negotiated between government and First Nations
 - May be historic (e.g. Treaty 8 in Northeast British Columbia) or modern (e.g. Tsawwassen First Nation Final Agreement)

Duty to Consult



- Arises “when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it”
 - *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para. 31:
- Also applies to treaty rights (*Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69)
- Limitations
 - Effect must be adverse - does not apply to ameliorative actions (in theory)
 - Does not apply to legislative / policy decisions of general application

Private Law Claims

- Indigenous groups can bring lawsuits against private parties for harm to aboriginal rights/title: *Saik'uz First Nation and Stellat'en First Nation v. Rio Tinto Alcan Inc.*, 2015 BCCA 154
 - Aboriginal rights are a form of profit-à-prendre that can ground a private civil claim (e.g. in the event of a spill)
 - Rights/title at issue does not need to be proven to bring such a claim



Considerations if Marine Incident Occurs within Indigenous Territory

1. Remote Location

- Access may be difficult for response organizations, including the responsible party (i.e. the vessel owner)
- Indigenous community members may be some of the first on scene (e.g. Queen of the North; Nathan E Stewart).
- Incident Command Post and responders may be dependant upon Indigenous communities for logistical support and accomodations.



© Destination BC

Considerations if Marine Incident Occurs within Indigenous Territory

2. Indigenous Community Participation in Response

- Even with consent from responsible party for First Nations to participate in the response effort, questions arise regarding:
 - Qualifications
 - Liability Waivers
 - Insurance coverage
 - Vessel safety and certification
 - Disclosure and use of information derived from spill response activities
 - Compensation

Considerations if Marine Incident Occurs within Indigenous Territory

3. Funding Agreements

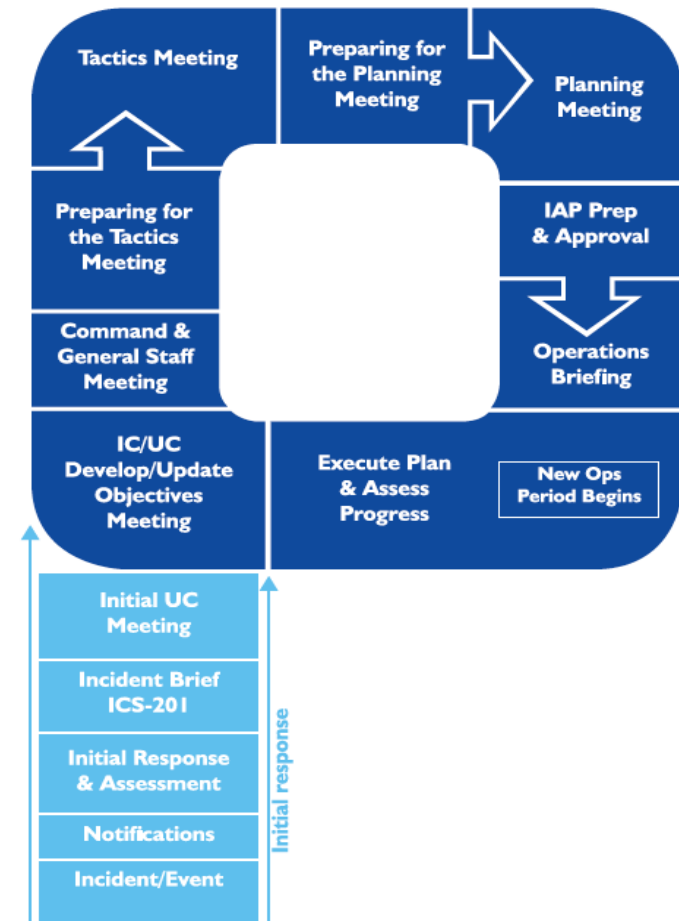
- Responsible parties may need to enter into funding agreement with Indigenous community
- Critical from the outset of a response
- Supporting documentation and invoicing issues
- Dispute resolution mechanism
- Scope
- Community may not be equipped to handle additional administrative requirements



Considerations if Marine Incident Occurs within Indigenous Territory

4. Indigenous Exercise of Authority

- Indigenous community may begin its own parallel “investigation”
- Demand documents
- Demand access to crew interviews
- Demand access to vessel
- Demand to be party in Unified Command
- Demand to be consulted about every decision made by governmental regulators concerning spill response



Considerations if Marine Incident Occurs within Indigenous Territory

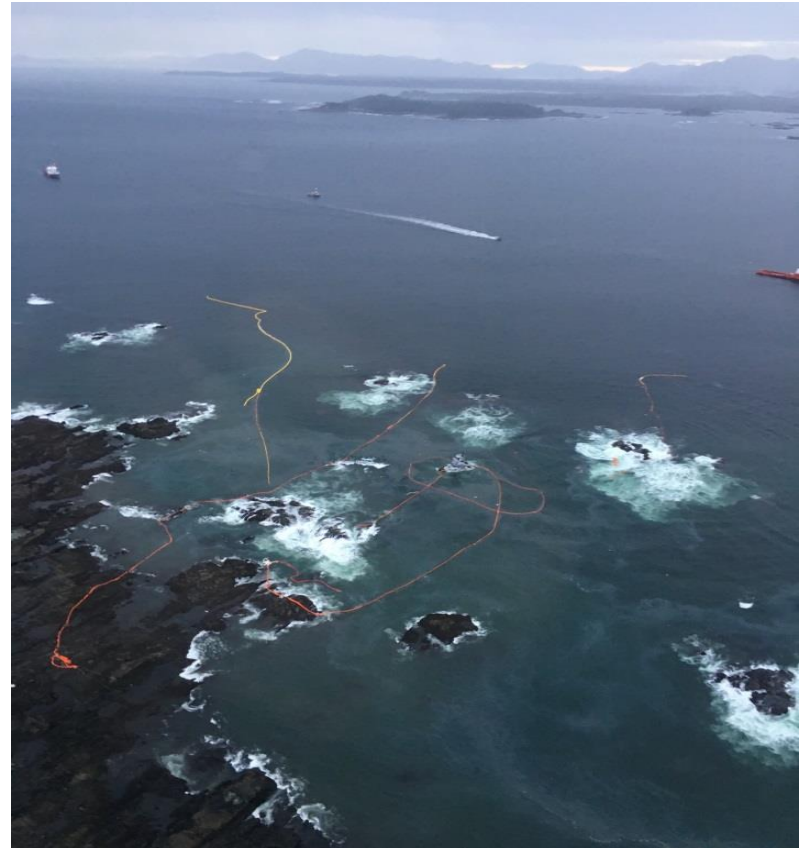
5. Potential Civil Claims

- Section 35 rights:
 - food, social and ceremonial fishing
 - commercial fishing
- Section 35 vs. laws of general application
- Civil claims:
 - From Individual Members
 - From Tribal Council
 - Proof of claims



M/T Nathan E. Stewart

- On October 13, 2016, M/T Nathan E. Stewart ran aground on Edge Reef, near Athlone Island, in the vicinity of Bella Bella, British Columbia
- ATB – but barge was empty
- 100,000 litres of diesel fuel released
- Heiltsuk Nation involvement



Cermaq Canada



(Getty Images/iStockphoto)

- Recent fuel spill at fish farm near Port Hardy, British Columbia
- 600L of biodiesel spilled
- Spill was caused by a diesel pump left unattended
- Kwikwasat'inuxw Haxwa'mis First Nation has been vocal in the media about impacts to local clam fisheries

Port Harvey Marina



© NORMAN FOX / FOR PNG

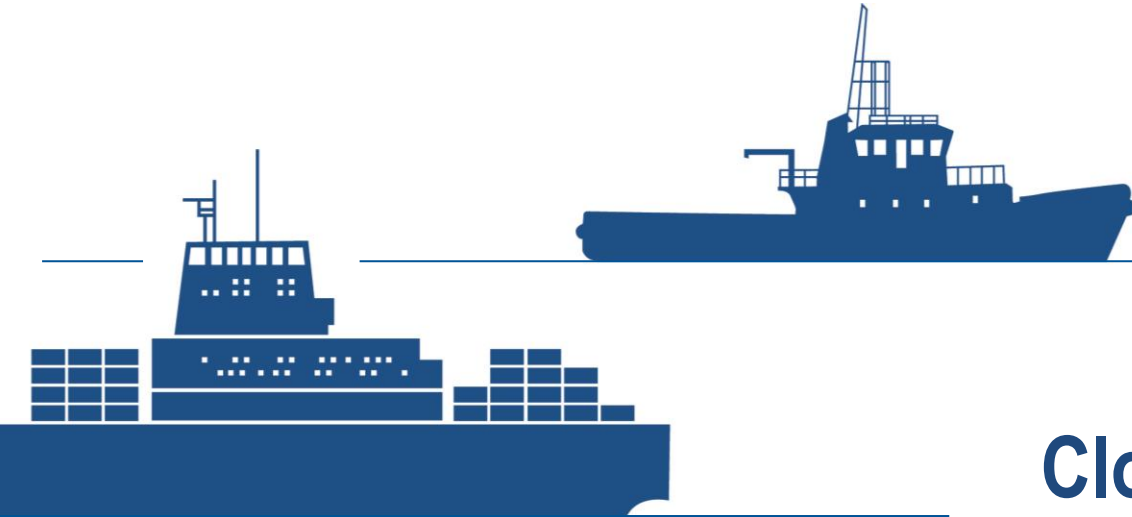
- Recent fuel spill near Port Harvey Marina, British Columbia
- Cause of spill unknown
- 178L of diesel spilled
- Tlowitsis First Nation has also been vocal in the media about impacts to local clam fisheries

Questions

Dionysios (Dino) Rossi

Tel: 604-640-4110

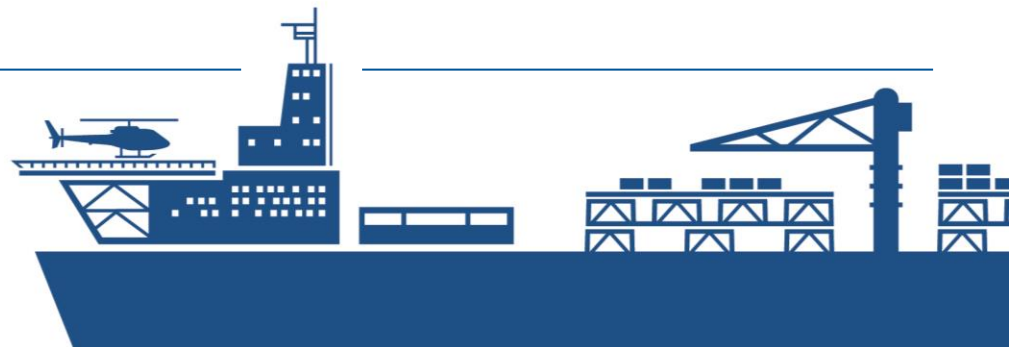
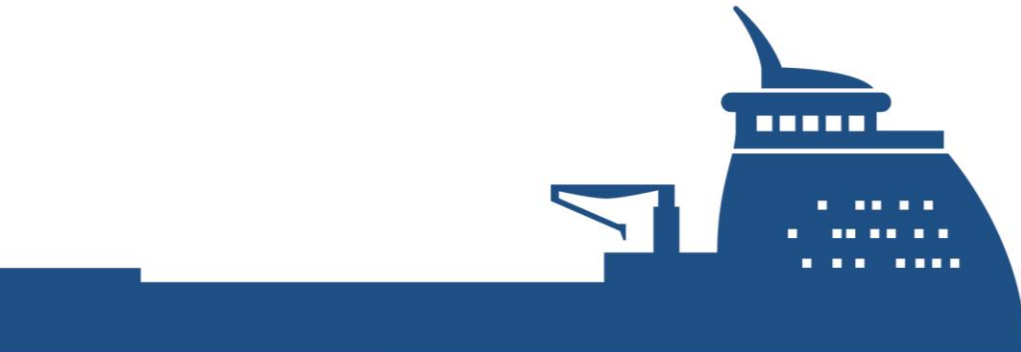
E-mail: Drossi@blg.com



Closing thoughts

Eddy Morland

Underwriting Director, UK & Americas



Regulatory status

The Standard Club



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.

The Standard Syndicate



The Standard Syndicate 1884 is managed by Charles Taylor Managing Agency Ltd, a Lloyd's managing agent, which is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

The Standard Syndicate Services Limited, trading as 1884 Europe, is a service company and a Lloyd's coverholder that is part of the Charles Taylor Plc group of companies. The Standard Syndicate Services Limited is an appointed representative of Charles Taylor Managing Agency Ltd which is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. The Standard Syndicate Services Limited has authority to enter into contracts of insurance on behalf of the Lloyd's underwriting members of The Standard Syndicate 1884 which is managed by Charles Taylor Managing Agency Ltd.

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Thank you!

