

# **SIGCo MARINE POLLUTION SEMINAR**

**Bermuda**

**July 23 and 24, 2015**

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## **The LIMBURG and questions of terrorism** *Insurance aspects*

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# SIGCo MARINE POLLUTION SEMINAR – Bermuda, July 2015

## *Overview . . . .*

### **Part One (Day One): Marine/War & Terrorism/P&I risks**

- **The insurance claim arising from the LIMBURG**
- **Marine/War & Terrorism/P&I risks: paradigms of cover**
- **The P&I club position**

### **Part Two (Day Two): Piracy risks**

- **Piracy risks: general observations**
- **Piracy risks: paradigms of cover**
- **Piracy risks: the development of specialist insurance**
- **Piracy risks: emerging exposures and recent trends**
- **Conclusion: the future landscape: risks both old and new**

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## *Part One*

*(Day One)*

## *Marine/War & Terrorism/P&I Risks*



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## *The insurance claim arising from the LIMBURG . . . .*

- **Hull insured chiefly at Lloyd's of London**
- **\$45 million compromised total loss hull claim paid by war and terrorism risk underwriters**
- **Vessel later repaired and acquired by Singaporean interests**
- **Yemeni demand for pollution damage initially about \$19 million, but settled for about \$5 million**
- **One crew death, twelve injuries and some cargo loss (c. 90,000 barrels)**
- **Claims paid by war and terrorism risk insurers under P&I extension to hull cover**
- **Pollution claims settled as a *"donation to the people of Yemen"* absent definitive legal regime**
- **Pollution and other P&I claims handled by the LIMBURG's club – West of England – with ITOPF providing technical assistance in respect of pollution**

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## *Marine/War & Terrorism/P&I risks: paradigms of cover (i) . . . .*

- **Standard marine hull/P&I covers exclude war & terrorism (e.g. ITC-H 95)**
- **Hull war & terrorism risks covered separately (e.g. IWSC-H 95)**
- **P&I war and terrorism risks typically covered as extension to war & terrorism hull cover**
- **War & terrorism P&I cover usually limited to sum insured under hull policy**
- **International Group clubs provide \$500 million cover excess of hull war & terrorism limit or \$100 million, whichever is less**
- **War & terrorism underwriters usually content to leave practical claims handling to clubs/ITOPF**

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## *Marine/War & Terrorism/P&I risks: paradigms of cover (ii) . . . .*

### **Standard war & terrorism hull/P&I cover (e.g. IWSC-H 95)**

- **Automatically terminates in the event of war between any of the five permanent members of the UN Security Council, or vessel requisition**
- **Excludes various losses including those arising from nuclear/cyber/biochem risks**
- **Excludes cover in regard to listed areas of high risk as defined e.g. by Joint War Committee, but allows for buy-back**
- **Allows for CTL claims arising from detainment (see slide 16)**
- **Has provisions for cancellation and reinstatement subject a.p. where areas become particularly hazardous**
- **International Group club excess war & terrorism cover has no listed/excluded areas, but such may be invoked subject to notice**

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## *Marine/War & Terrorism/P&I risks: paradigms of cover (iii) . . . .*

### **The P&I club position (reflecting International Group PA)**

**Class I, Rule 3, Section 1.1 of the American Club's 2015 Rules excludes claims arising from . . . .**

**1 i War, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power or any act of terrorism;**

**ii Capture, seizure, arrest, restraint or detainment (*barratry and piracy excepted*) and the consequences thereof or any attempt thereat;**

**iii Mines, torpedoes, bombs, rockets, shells, explosives or similar weapons or devices, provided that this exclusion shall not apply to any liabilities, costs or expenses which arise solely by reason of**

***a the transport of any such weapons whether on board the insured vessel or not, or***

***b the use of any such weapons, either as a result of government order or through compliance with a written direction given by the Association where the reason for such use was the avoidance or mitigation of liabilities, costs or expenses which would otherwise have fallen within the cover given by the Association.***

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## *Marine/War & Terrorism/P&I risks: paradigms of cover (iv) . . . .*

### **The P&I club position (reflecting International Group PA)**

#### **There are exceptions to the general exclusion:**

***AND PROVIDED ALWAYS that the exclusions in this Section 1, Sub-Section 1 shall not apply to any liabilities, costs or expenses insofar only as they are discharged by the Association on behalf of a Member pursuant to a demand made under:***

- a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777, or***
- a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereto, or***
- a certificate issued by the Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 or any amendments thereto, or***
- an undertaking given by the Association to the International Oil Pollution Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA 2006),***

***to the extent that such liabilities, costs and expenses are not recovered by the Member under any other policy of insurance or extension to the cover provided by the Association.***



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## *Marine/War & Terrorism/P&I risks: paradigms of cover (v) . . . .*

### **The P&I club position (reflecting International Group PA)**

- **Determination of what is a terrorist act subject to the absolute discretion of club boards/committees**
- **Clubs provide \$500 million cover in excess of hull's proper value or \$100 million, whichever is less**
- **Bio-chem/cyber cover in regard to crew covered by Supplemental Pooling Agreement to \$30 million**
- **TRIA/TRIPRA liabilities covered under both arrangements**

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## *Marine/War & Terrorism/P&I risks: paradigms of cover (vi) . . . .*

- Elements of marine/war & terrorism/P&I risks have remained consistently differentiated over recent years
- But rise of Somali-sourced piracy, particularly ship hijacking and ransom demands, have added new dynamic to landscape of risk over last decade
- Challenges to conventional treatment of war & terrorism/P&I insurance in regard to piracy have elicited new responses from market underwriters
- New paradigms of cover and industry-sponsored prophylactic measures to deal with piracy have emerged
- To be continued in Part Two . . . . .

Maritime Jewel (ex-Limburg) IMO 9074640 - Photo by Nicholas Lawton

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## *Part Two*

*(Day Two)*

## *Piracy Risks*

## *Marine/War & Terrorism/P&I risks*

To recapitulate from Part One (Day One)...

- Elements of marine/war & terrorism/P&I risks have remained consistently differentiated over recent years
- But rise of Somali-sourced piracy, particularly ship hijacking and ransom demands, have added new dynamic to landscape of risk over last decade
- Challenges to conventional treatment of war & terrorism/P&I insurance in regard to piracy have elicited new responses from market underwriters
- New paradigms of cover and industry-sponsored prophylactic measures to deal with piracy have emerged

## *Piracy risks: general observations . . . .*

- Piracy as armed robbery at sea has mainly been localized, low-level exposure for years – and continues
- Exposure grew exponentially from 2007 to 2012 in Gulf of Aden/ Horn of Africa/Indian Ocean with hijacking and ransom of ships and crew by Somali pirates
- Insurer response to these new risks evolved over time to engender new products providing tailored insurance coverage
- Shipping industry initiatives, notably BMP4 and armed guards, have largely curtailed Somali piracy, but (different) problems remain in Malacca Strait and Gulf of Guinea

## *Piracy risks: paradigms of cover . . . .*

- Piracy is not traditionally an excluded risk under standard marine hull/P&I policies (e.g. ITC-H 95 and International Group club cover)
- But often these days is added to war & terrorism covers (e.g. piracy extension to IWSC-H 95)
- Acts of piracy as armed robbery at sea generally unproblematical as to cover implications (e.g. damage to ship, crew loss of life, injury, etc.)
- The growth of Somali piracy entailing vessel and crew kidnap and ransom from 2007 onwards exposed ambiguities in traditional approaches to cover
- A new kidnap and ransom (K&R) market flourished as underwriters responded to a demand for dedicated, customized cover

## *Piracy risks: paradigms of cover: the P&I dimension . . .*

- **Not an excluded risk under P&I club rules – an exception to the war & terrorism risk exclusion**
- **“Simple” liabilities arising from acts of piracy covered in ordinary way – key issue is causative nexus between act of piracy and loss, not disqualified by some other restriction on cover**
- **Grey areas remain, e.g.**
  - **weapons used by pirates “weapons of war”? Or might they be terrorists?**
  - **can payment of ransom and related demands be “sue and labor”?**
  - **can club boards pay certain losses under “omnibus” discretion?**
  - **can general average be declared consequent upon an act of piracy, and demand for ransom, and proportion irrecoverable from cargo be a regular P&I risk?**
- **Burgeoning pirate activity in Indian Ocean and shipping industry reaction to it generated uncertainties as to the P&I response to piracy**

## *Piracy risks: paradigms of cover: the hull dimension (i). . .*

- Piracy not an excluded risk under standard marine hull policies (e.g. ITC-H 95)
- But often added as named peril to hull war and terrorism covers (e.g. IWSC-H 95)
- This avoids potential conflict in the event of a loss
- “Simple” ship damage claims arising from piracy insurable under either ITC-H 95 or IWSC-H 95 with piracy inclusion
- The extended detainment of a ship following hijacking by pirates could generate a CTL claim under IWSC-H 95, qualifying period capable of negotiation (see slide 6)



## *Piracy risks: paradigms of cover: the hull dimension (ii)...*

- Piracy cover as addition to war and terrorism policies has advantages:
  - to underwriters because high risk areas can be declared and additional premiums charged
  - to assureds because deductibles do not generally apply, and additional premiums can be passed on to charterers
- Cover under both hull policies, and war and terrorism policies with a piracy inclusion, are predicated upon the insurance of the ship, so a claim in relation to freeing crew alone may be problematical

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## *Piracy risks: the development of specialist insurance (i) . . . .*

- **The mosaic of hull, war & terrorism and P&I covers in regard to claims arising from piracy, particularly ransom payments, and attendant uncertainties, have created a market for separate kidnap and ransom (K&R) cover**
- **This specialized sector provides certain benefits not ordinarily, or at least uncertainly, available from hull, war & terrorism and P&I underwriters, including:**
  - **ransom funds explicitly**
  - **insurance for ransom funds in transit**
  - **public relations consultancy fees**
  - **interpreter and ransom negotiator costs**
  - **medical and psychiatric fees**
  - **travel costs for the insureds and crew hijack victims' families**

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## *Piracy risks: the development of specialist insurance (ii) . . . .*

- **Dovetailing K&R cover with existing hull, war and terrorism and P&I covers is important, especially in regard to potential double insurance, multiple claims and differential limits of liability among underwriters**
- **K&R policies typically have a confidentiality requirement, but can be waived with K&R underwriters' approval where war and terrorism insurers may grant discount to war rates in recognition of special K&R cover**
- **Notwithstanding general market paradigms of cover, most K&R policies and concomitant hull and war & terrorism insurances are arranged on a bespoke basis to cater for individual shipowners' requirements**

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*Piracy risks: the development of specialist insurance (iii) . . .*

**Areas of enhanced K&R exposure, March 2011.**



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## *Piracy risks: the development of specialist insurance (iv) . . .*

- **Underwriting criteria for basic cover and rating considerations include:**
  - **compliance with Best Management Practices (BMP 4 being latest)**
  - **ship speed and freeboard (laden or in ballast)**
  - **on-board prophylactic measures e.g. razor wire, hoses, citadel protection**
  - **expected route through piracy zone**
  - **cargo and crew numbers**
  - **security team onboard or not (armed or unarmed)**
- **Specialist K&R market gained greatest traction from 2008 to 2012**
  - **cover for single transit through Gulf of Aden averaged \$18,000 to \$20,000**
  - **reductions available for presence of security team on board**
  - **reductions increased for armed security teams**
  - **much reduced pirate activity has reduced premium volume**
  - **but in recent years a profitable market sector**

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## *Piracy risks: the development of specialist insurance (v) . . .*

### **Ancillary issues:**

- **Loss of hire following an act of piracy**
  - loss of hire consequent upon damage to a ship by pirates may be covered explicitly by war risks/piracy inclusion wording
  - loss of hire consequent upon detention of ship by pirates may be recoverable subject to charterparty terms (e.g. BIMCO Piracy Clause) and explicit inclusion in K&R policy (including charterers' interests)
- **Armed guards**
  - many flag states (and clubs) originally resistant to use of armed guards
  - position since relaxed, but residual problems in some states remain
  - standardized approach to engagement: GUARDCON etc.
  - legal issues vis-à-vis charterparties, crew contracts etc. need careful consideration

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## *Piracy risks: emerging exposures and recent trends (i) . . .*

**Diminished pirate activity in Gulf of Aden has recently been supplanted by mounting exposure in Gulf of Guinea and Malacca Strait**

- **Gulf of Guinea (activity off Nigeria, Benin, Togo in particular)**
- **Malacca Strait (Indonesia, Malaysia, Singapore)**



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## *Piracy risks: emerging exposures and recent trends (ii) . . .*

- **Gulf of Guinea**

- “traditional” armed robbery at sea: money, crew valuables, ship parts etc.
- hijacking of product tankers and theft of cargo
- mainly Nigeria-sourced, complicity of local authorities?
- confused response from Nigerian Navy and others
- a source of funding for Boko Haram?

- **Malacca Strait**

- “traditional” armed robbery at sea: often highly opportunistic
- some hijackings/cargo theft
- mainly Indonesia-sourced, complicity of local authorities?
- 50,000 vessels in transit through Strait per annum: 40% of world trade
- 18% increase in reported incidents over past 12 months
- a source of funding for Jemaah Islamiyah and others?



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## *Piracy risks: emerging exposures and recent trends (iii) . . .*

### **The insurance response**

- **The Joint War Committee has listed areas within the Gulf of Guinea and the Malacca Strait as attracting additional premium in regard to piracy risks in particular**
- **The current array of market covers, both traditional and bespoke, are able to respond to new excrescences of war & terrorism and piracy risks**
- **Recent developments in North Africa, notably strafing of tankers by warplanes off the coast of Libya may add a new dimension to future risk, compounded by Islamic State activity in region**

## *Conclusion: the future landscape: risks both old and new*

- Traditional marine hull/war and terrorism/P&I covers have largely been sufficient to insure “conventional” war and terrorism exposures e.g. the LIMBURG case
- Piracy risks as they relate to armed robbery at sea have also largely been embraced by traditional approaches to cover
- Rise of “neo-classical” Somali-based piracy involving the hijacking and ransom of ships and crew has led to innovative and flexible responses from insurers
- The covers available to shipowners, carefully coordinated for their particular requirements, have never been better calibrated to the present and future challenges of an increasingly troubled world of growing ungoverned spaces

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## **The LIMBURG and questions of terrorism** *Insurance aspects*

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