

New York Marine Insurance Day September 30th 2011

**Jonathan S. Spencer, Full Member
Association of Average Adjusters of the United States**

Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

www.simsl.com/Loss-Prevention-and-Safety-Training/PiracyDVD.htm

www.simsl.com/Loss-Prevention-and-Safety-Training/PiracyDVDPressMats.htm

Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

(UNCLOS 101)

Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship . . . , and directed: on the high seas, against another ship . . .

(b) any act of voluntary participation in the operation of a ship . . . with knowledge of facts making it a pirate ship . . .

(c) any act of inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).

Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

The governmental response:

- **UN Resolutions**
- **European Union – Operation Atalanta**
- **NATO – Operation Allied Protector and Operation Ocean Shield**
- **US – Task Force 151**
- **Russia, Japan, Singapore, Malaysia, India, China and Iran have launched independent missions**
- **Jurisdictional problems**

Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

The commercial response:

- Reportedly increasing use of armed guards
- Implementation of Best Management Practices

BMP4

Best Management Practices for
Protection against Somalia Based Piracy



Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

The Three Fundamental Requirements of BMP:

- 1. Submit “Vessel Movement Registration Form” to Maritime Security Centre Horn of Africa (MSCHOA)**
- 2. Report to United Kingdom Maritime Trade Operations office in Dubai (UKMTO) on entering the Voluntary Reporting Area and thereafter on a daily basis. UKMTO is the primary point of contact during an attack**
- 3. Implement Ship Protection Measures. If pirates are unable to board a ship they cannot hijack it.**

Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

Allocation of risk in the insurance market:

- Market has had to react to an evolving problem**
- Risk of piracy has increased in recent years**
- Piracy historically has been treated as a war peril but began to be treated as a marine peril in UK forms, commencing in the early 1980's – has now reverted to the war market**
- War is a separate class of business, responding to exclusions in marine forms**

Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

Salient characteristics of war policies:

- **Exclusion zones can be modified to respond to prevailing conditions**
- **Premium for each breach is per transit so that pricing is adjusted to respond to prevailing conditions**
- **Typically no deductible**
- **Underwriters have the option to not insure at all**

Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

Development of new insurance products:

- **K&R policies**
- **Loss of hire / earnings – available to Owners and charterers**

Premium reduced if vessel carries security team

Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

K&R policies typically reimburse:

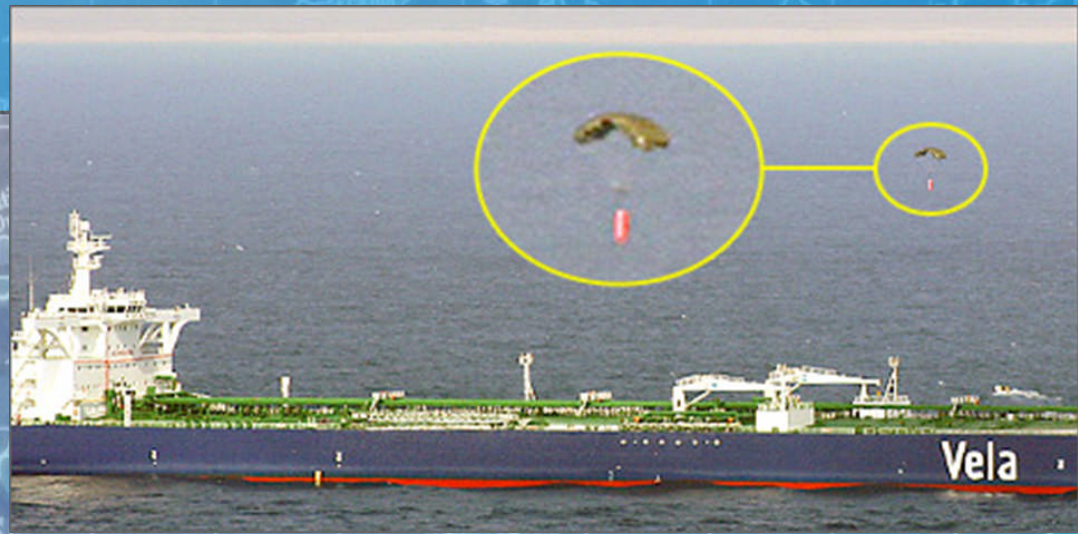
- **Ransom – paid in respect of the property as well as the seafarers' lives on indemnity basis**
- **Ransom lost in transit**
- **Hostage negotiators**
- **Public relations consultants**
- **Medical and psychiatric fees – crew and families**
- **Additional expenses including the cost of transporting the ransom**

Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

Ransom is General Average if it results in success:

- **Hijacked vessel is in peril**
- **Extraordinary expenditure, reasonably incurred**
- **Payment of ransom benefits all the property**



Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

Informal settlement embracing General Average principles without formal adjustment is preferable because it saves expense.

- 2% advancing commission under 1994 York-Antwerp Rules is \$200,000 on a \$10,000,000 ransom**
- Under 1994 York-Antwerp Rules, interest accumulates at the rate of 7% per annum – equivalent to almost \$13,500 / week on a \$10,000,000 ransom**

Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

Areas of difficulty:

- **OFAC and equivalent foreign regulations**
- **Insurance companies are subject to Bank Secrecy Act therefore must comply with reporting requirements**
- **Cargo defenses**
- **Reconciliation with 'other insurance' conditions of most K&R policies**

Piracy, War Risk & General Average

New York Marine Insurance Day September 30th 2011

jss@jssusa.com

www.simsl.com/Loss-Prevention-and-Safety-Training/PiracyDVD.htm

www.simsl.com/Loss-Prevention-and-Safety-Training/PiracyDVDPressMats.htm

Piracy, War Risk & General Average