

# Massachusetts Reinsurance Bar Association

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# **“Back to the Future: The Insurance & Reinsurance of Maritime Claims”**

***Panelists:***

Frank J. Gonynor, Gard (North America), Inc.  
Chester Hooper, Holland & Knight LLP

***Moderator:***

Alexander G. Henlin, Lewis Brisbois Bisgaard & Smith LLP



## 'Back to the Future'

Marine Insurance and Reinsurance – Summary and Issues  
Massachusetts Reinsurance Bar Assn – Boston, 13 October 2016

- **Frank J. Gonynor**  
Senior Claims Adviser, Lawyer  
Gard (North America), Inc.
- **Chester D. Hooper**  
Of Counsel  
Holland & Knight LLP  
Lecturer in Admiralty Law, Boston University School of Law





Holland & Knight

## What this presentation will cover

- A primer of marine insurance, to understand what is the primary insurance that is the basis of reinsurance.
- The 'IG Contract' – the largest reinsurance contract in the world.
- The 'Pool'/Self-insurance/Reinsurance Scheme
- Implications of remaining U.S. Iran sanctions for U.S. reinsurers
- Application of marine insurance to 2 examples: a large marine casualty and incidents of inland transportation accidents that involve marine insurance coverage.
- Questions and answers

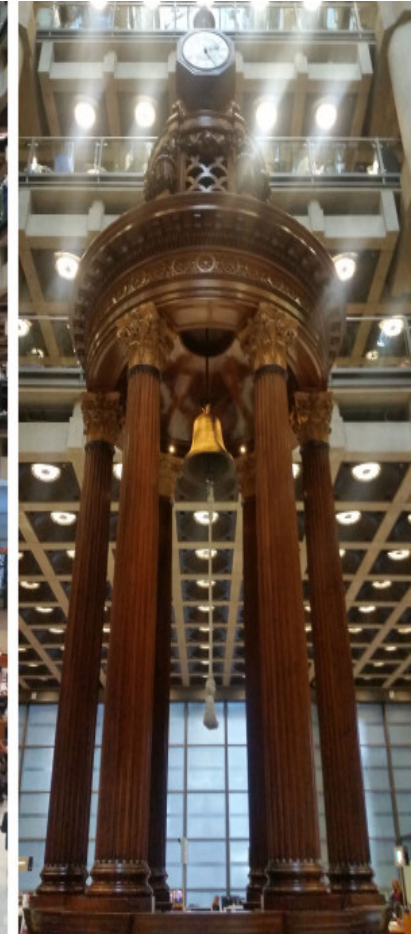
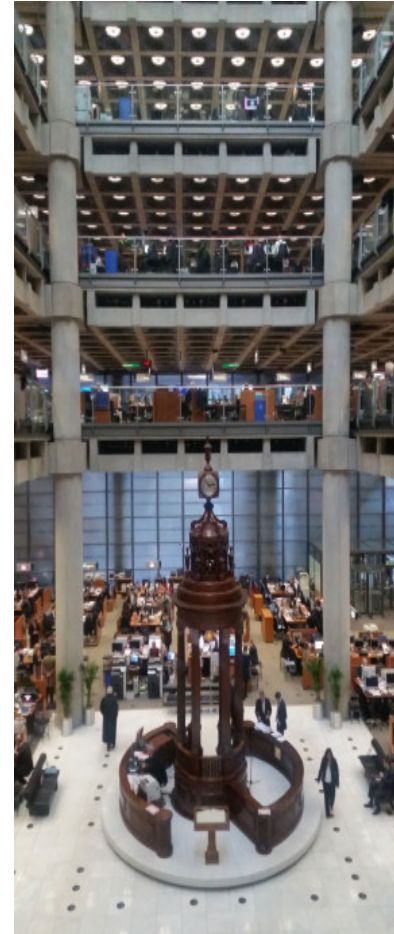
# Lloyd's Coffee House

*'ye olde local Starbucks'*





# Lloyd's of London Today



# Policy Year

February <input type="text"/>						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 <small>Groundhog Day</small>	3	4	5	6	7
8	9	10	11	12	13	14 <small>Valentine's Day</small>
15	16 <small>Presidents' Day</small>	17	18	19	20 <input checked="" type="checkbox"/>	21
22	23	24	25 <small>Ash Wednesday</small>	26	27	28



# Mutuality





## Mutuality

- As insurers, members' premiums (and sometimes additional amounts or "supplementary calls") allow Club to pay for all claims, reinsurance and administrative expenses. If there is a surplus, it can be returned in whole or in part to the members or transferred to the Club's Reserve
- As insureds, members have right to be indemnified for losses/liabilities incurred in connection with specific vessel entered.

# Mutual Hull Clubs

- **1719: Act of Parliament**
  - **Royal Exchange Assurance**
  - **London Assurance**
- **“Clubs” or Mutual Hull Underwriter Associations formed on a mutual non-profit basis**
- **1745: Marine Insurance Act – prohibited insurance of vessels in excess of their value**
- **1824: Act of Parliament repealed**
- **Noon GMT on 20 February became the Mutual Hull Clubs’ policy year**

## The Development of P&I Clubs

- The Protecting Clubs
  - **1836: *De Vaux v. Salvador***, (1836) 4 A. & E. 420
    - Held that damage caused to another vessel in a collision was not recoverable under the standard policy of marine insurance in use in the London market
  - **1846: Fatal Accident Act**
    - Better known as *Lord Campbell's Act*. Ship owners may be liable for loss of life and personal injury

## The Development of P&I Clubs

- 1854: Merchant Shipping Act
  - Shipowner's right to limit liability to cover death and personal injury claims to value of ship + freight (value deemed to be not less than L15 per ton)
- 1855: First Protection Association, the Shipowners' Mutual Protection Society, was formed
  - Now known as Britannia Steamship Insurance Association Ltd.



## The Development of P&I Clubs

- The Indemnity Clubs
  - **1870: *Westenhope***
    - Vessel carrying cargo bound for Cape Town
    - Diverted to Port Elizabeth; ship sank and cargo lost en route to Cape Town
    - Court held that ship owner could not rely on exclusion clauses in contract because of deviation
  - **1874: First Indemnity Club formed**
    - Steamship Owners' Mutual Indemnity Association
  - **1886: First P&I Club**
    - North of England Protection Association merged with Steamship Owners' Mutual Indemnity Association

## History of International Group (IG)

- As P&I Clubs were developing in England, similar Clubs forming in Scandinavia, particularly after passage of Harter Act (many Norwegian ships regularly traded to U.S.)
- 1897: Assuranceforeningen Skuld formed in Oslo
- 1907: Assuranceforeningen Gard formed in Arendal
- 1899: London Group of P&I Clubs formed by 6 Clubs for claims-sharing arrangement
- 1951: London Group expanded cooperation regarding purchase of market reinsurance
- 1981: International Group established

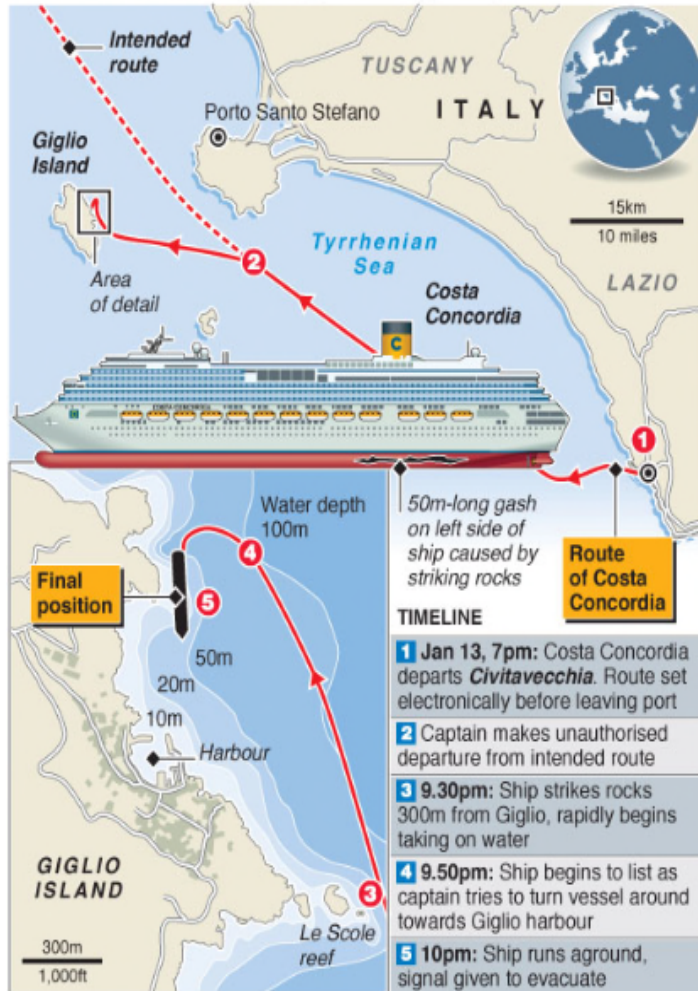
- Maritime Disaster





## Death toll rises in Italian cruise ship disaster

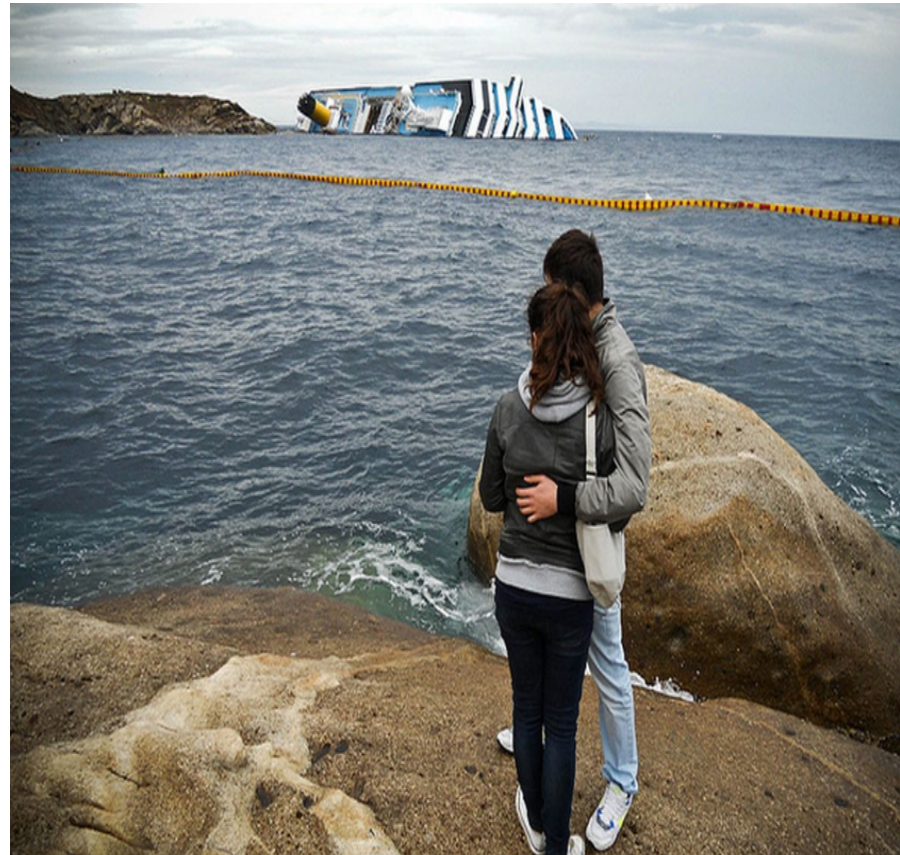
Five more bodies have been recovered from the Costa Concordia, raising the death toll to 11. The captain stands accused of causing the wreck and abandoning his ship before all passengers were evacuated



Source: Wire agencies

© GRAPHIC NEWS

## • Wrongful Death



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- Personal Injury



- Lost and Damaged Property



- Loss of Ship

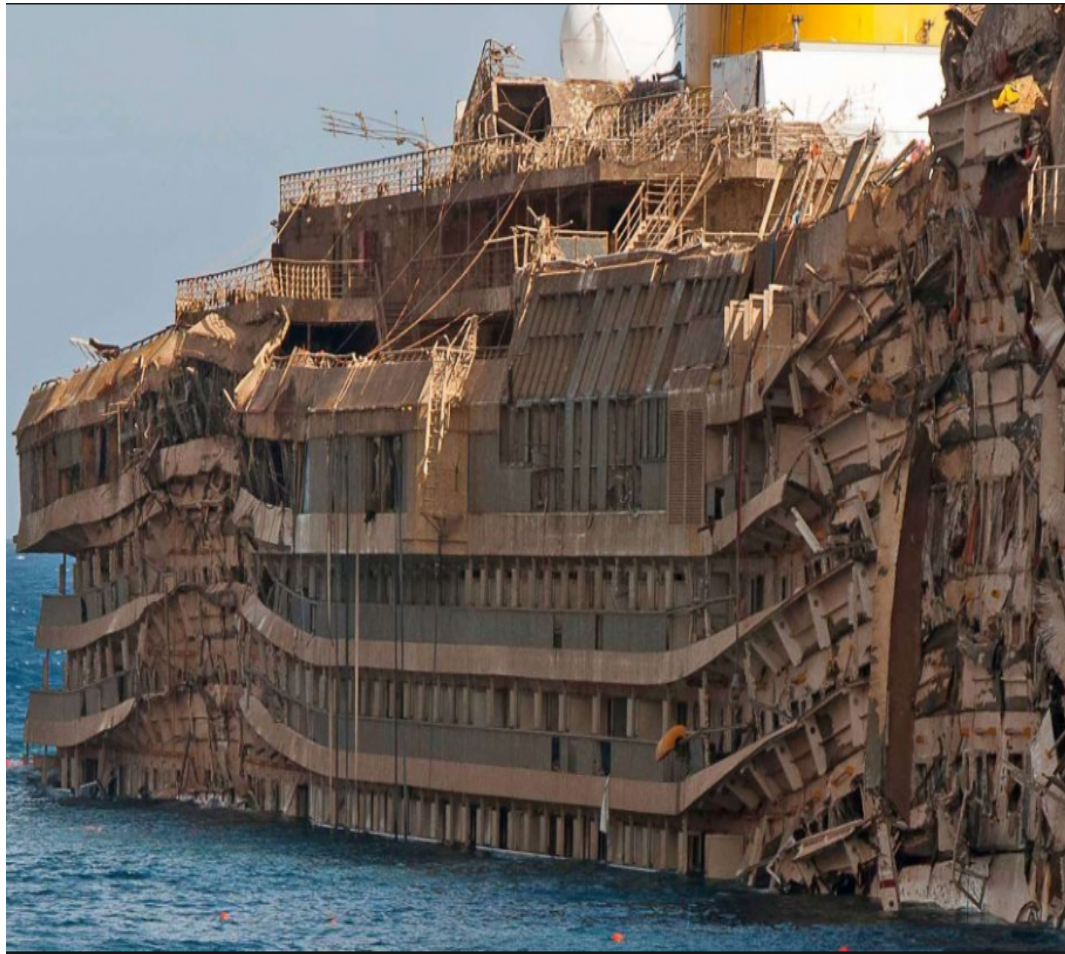


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- Pollution



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- Wreck Removal

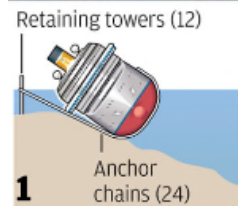
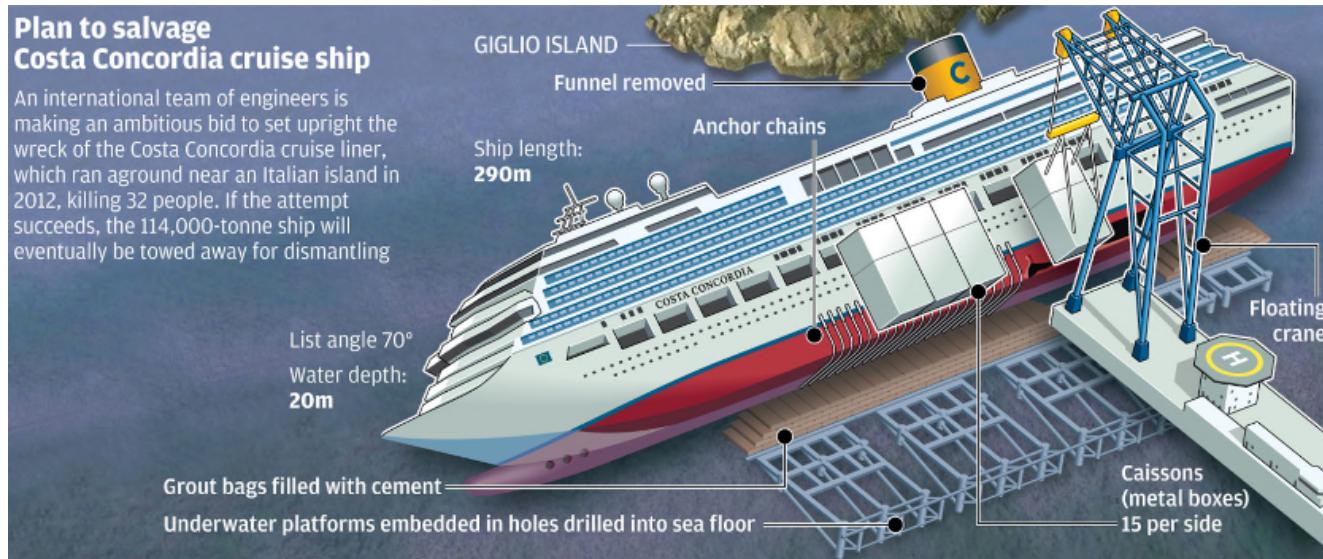


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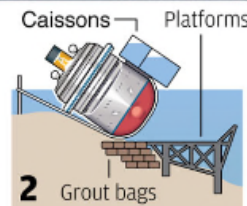
## Plan to salvage Costa Concordia cruise ship

An international team of engineers is making an ambitious bid to set upright the wreck of the Costa Concordia cruise liner, which ran aground near an Italian island in 2012, killing 32 people. If the attempt succeeds, the 114,000-tonne ship will eventually be towed away for dismantling

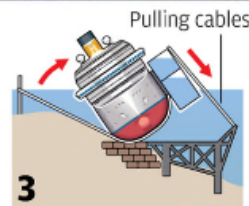


**1**  
**Stabilisation**  
Anchor chains fixed to port side of ship. Chains pass underneath hull and attach to retaining towers installed on shore side

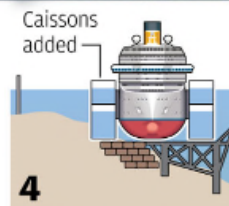
Sources: Titan Salvage, Micoperi, wire agencies



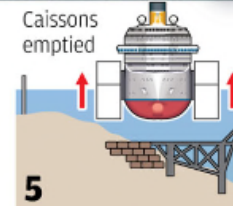
**2**  
**Underwater support and port caissons**  
Grout bags and steel platforms positioned to create stable base. Caissons welded to port side of hull and filled with water



**3**  
**Parbuckling**  
Cables installed, running from top of caissons to underwater platforms. Hydraulic jacks slowly pull ship into upright position



**4**  
**Starboard caissons**  
Hull now rests on stable base. More caissons welded to starboard side to provide extra assistance in refloating wreck



**5**  
**Refloating**  
Water gradually pumped out of caissons. Air inside caissons gives ship sufficient buoyancy to float and be towed away

SCMP / Graphic News

- Salvage of the Wreck

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- Investigations



- Charges Against Captain and Others



Schettino was sentenced in February 2015 to 16 years and one month in prison after a judge ruled that his recklessness was to blame for the fate of the giant ship, which struck underwater rocks off the Tuscan island of Giglio.

He was convicted of multiple manslaughter, causing a maritime accident and abandoning ship before all passengers and crew had been evacuated, earning himself the nickname “Captain Coward” in the press.

theguardian

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- Fines

## One million euro fine for 32 lives: Costa Concordia owners escape criminal trial by accepting fine that values each victim at just £26,000

- Prosecution sources said one million euros was close to maximum fine in law
- Costa Cruises still faces lawsuits brought Costa Concordia passengers
- Captain Francesco Schettino accused of manslaughter over ship's sinking

By EMILY DAVIES

PUBLISHED: 10:50 EST, 10 April 2013 | UPDATED: 01:44 EST, 11 April 2013



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View comments

Costa Cruises has accepted a one million-euro (\$1.31million) fine to settle potential criminal charges for the sinking of the Costa Concordia last year.

The firm had been under investigation as the employer of the crew of the Concordia when it hit a rock off Tuscany in January last year, killing 32 people.

The prosecution is satisfied with the ruling by the preliminary court judge, Valeria Montesarchio, and will not appeal, prosecution sources said, adding that the fine was close to the maximum allowed by law.

Daily Mail  
.com



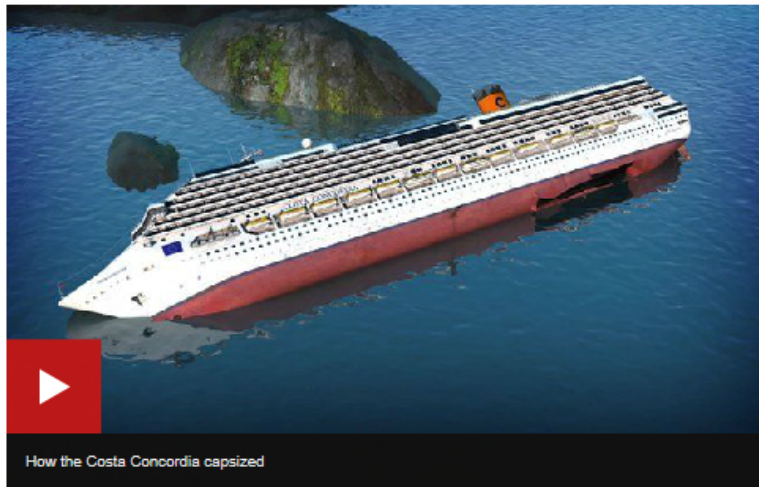
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## Five guilty in Costa Concordia trial

🕒 20 July 2013 | Europe

🔗 Share



A court in Italy has convicted five people of manslaughter over the Costa Concordia shipwreck off Giglio island which killed 32 people in January 2012.

Two officers, the helmsman, the head of cabin service and the head of the crisis team were given up to two years and 10 months in jail for multiple manslaughter, negligence and shipwreck.

They had agreed plea bargains and may avoid custodial sentences.

Capt Francesco Schettino is being tried separately.

He is charged with multiple manslaughter for causing the shipwreck and abandoning the vessel with thousands still aboard. His case will resume on 23 September, and his request for a plea bargain has been rejected by the prosecution.

### Costa Concordia crash

Italy's shipwreck Captain Schettino

Carnival sees big fall in profits

Concordia disaster: Coastguard call

'I never saw the captain'

- Guilty!

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# *Maritime Claims Involving Trains*



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- *Norfolk Southern Railway Company v. James N. Kirby, Pty Ltd., et al.*, 543 U.S. 14, 2004 AMC 2705 (2004)
  - *Kawasaki Kisen Kaisha Ltd., et al. v. Regal-Beloit Corp., et al.*, 561 U.S. 89, 2010 AMC 1521 (2010)
- Door-to-door multimodal carriage pursuant to a through contract of carriage evidenced by:
- ❖ one or more bills of lading or sea waybills for the entire carriage and a railroad and/or trucking waybill for the land portion of the carriage

- **BY TRUCK**





- **BY SEA**



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## BY RAIL



Holland & Knight

- Damage during the railroad or to truck leg of the carriage



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- Who may be sued?
- Where will the suit be filed?
- What law will apply?



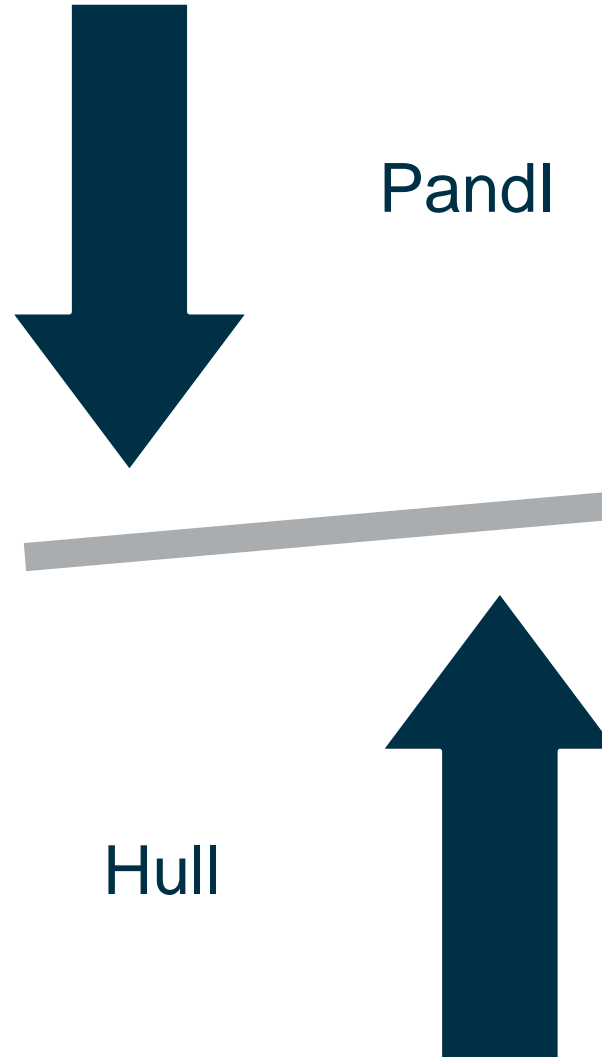
- What insurance is involved?





## Introductory Background

- 2 primary types of vessel insurance – Hull & Machinery ('H&M' or 'Hull') and Protection and Indemnity ('Pandi' or 'Liability').
- developed separately over 200+ years.
- while Pandi coverage is fairly consistent in policy terms, Hull can vary significantly (e.g. 'English', 'German', 'Norwegian', etc).



# Comparison of P&I and H&M

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- P&I (Protection and Indemnity)
  - Provide by mutual associations ('Clubs').
  - International Group – 13 Clubs, who pool big risks/losses and communicate jointly about issues in common, but otherwise are competitors.
  - Located throughout the world, with network of correspondents.
- H&M (Hull and Machinery)
  - Provide primarily by fixed premium underwriters/syndicates.
  - Located primarily in Europe, with many small entities.
  - Much more limited in correspondent networks, with use of independent surveyors.

# Comparison of Coverage (cont.)

---

- P&I

- Damage to 3<sup>rd</sup> parties – cargo, people, the environment, others.
- Damage to pier with ship ramp or gangway, oil pollution and other environmental damage, moorings, damages made by anchors when deployed in normal operations.
- Will cover costs of wreck removal, when compulsory by law or contract.

- H&M

- Damage/loss to the ship and its machinery.
- Damage to piers, dolphins, buoys, fixed and floating navigational aids, assisting tugs, subsea items (pipelines, cables) when anchor deployed in emergency.
- Will pay for salvage of vessel.

# Comparison of Coverage (cont.)

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# Product areas

## What do we cover?

### P&I

Third party liability (P&I) and FD&D insurance to owners, operators and charterers of ships and mobile offshore units, and various insurance covers related hereto.

### Marine

Hull and machinery insurance, loss of hire, disbursements, marine war and other specialist covers for owners and operators of ships.

### Energy

Cover for the oil and gas industry's insurable interests in connection with the construction and operation of plants and installations offshore and onshore.

## Owner's P&I – Additional Covers



# International Group of P&I Clubs



## What?

Comprises **13** mutual P&I Insurance Associations (Clubs)

Provides cover to approx. **90%** of the world's ocean-going tonnage

Provides **third party liability cover** relating to the use and operation of ships

## Why?

**Claims pooling and reinsurance** – claim-sharing agreement underpinned by an extensive market reinsurance program

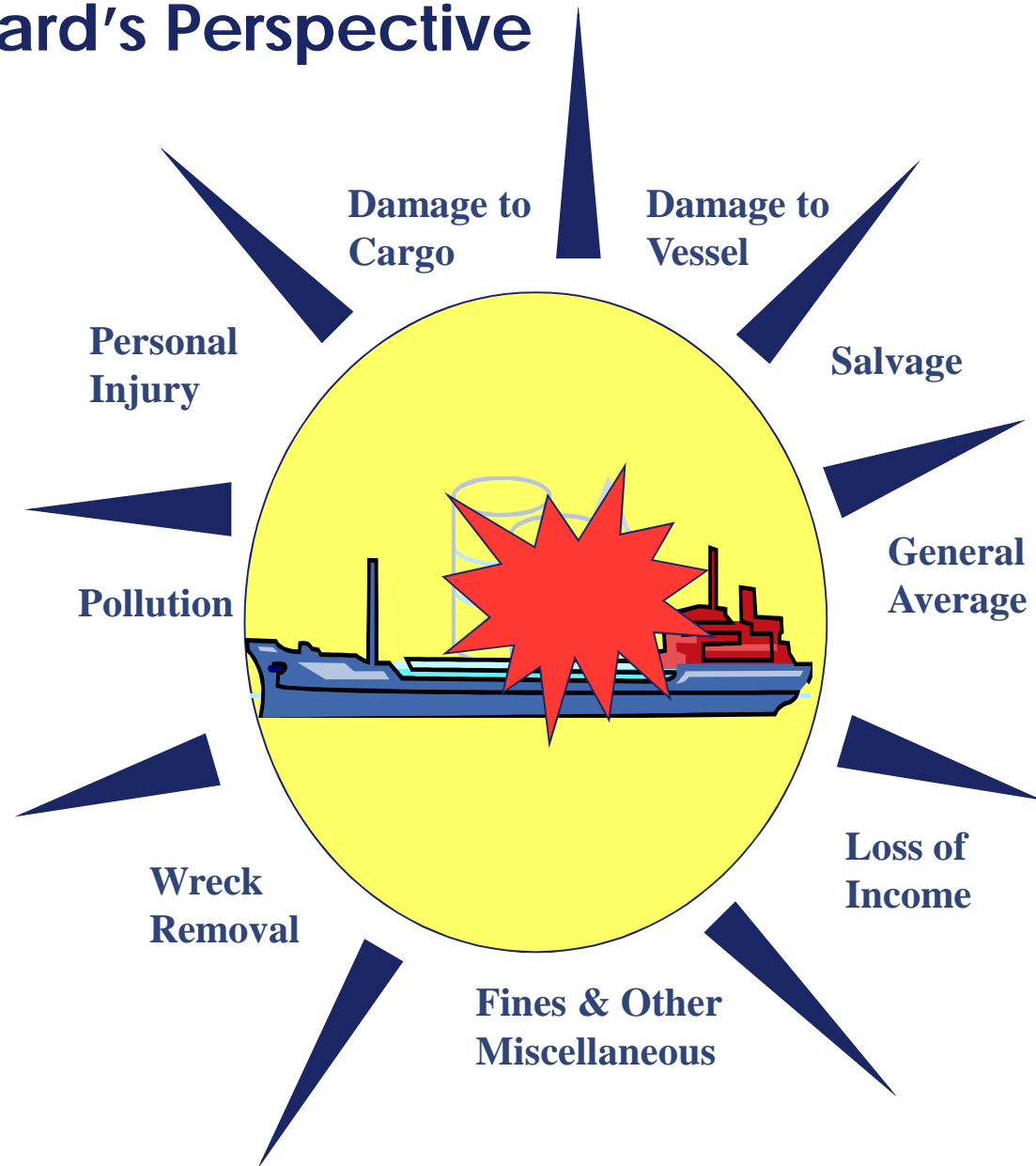
**Exchange of information** – explore and develop solutions for shipowners' insurance needs and requirements

**Representation** – provides an effective voice to speak collectively on important industry issues

## Who?



## Consequences of a Marine Casualty – Gard's Perspective





## Some of the participants



## What is Protection & Indemnity (P&I)?



## International Group of P&I Clubs

- American Steamship Owners Mutual Protection and Indemnity Association, Inc.
- Assuranceforeningen Skuld
- Gard P&I Bermuda Ltd.
- The Britannia Steam Ship Insurance Association Limited
- The Japan Ship Owners' Mutual Protection & Indemnity Association
- The London Steam-Ship Owners' Mutual Insurance Association Limited
- The North of England Protecting & Indemnity Association Limited
- The Shipowners' Mutual Protection & Indemnity Association (Luxembourg)
- The Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Limited
- The Steamship Mutual Underwriting Association (Bermuda) Limited
- The Swedish Club
- United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited
- The West of England Ship Owners Mutual Insurance Association (Luxembourg)

## P&I Insurance Cover : Named Risk Insurance

- Liabilities covered:
- Liability arising from carriage of cargo
- Pollution liability arising from accidental discharges
- Liability for death or injury to crew members (including contractual liabilities), passengers, stevedores, other third parties (e.g. pilots, surveyors)
- Liability for damage to fixed and floating objects/property (unless covered by terms of hull policy)
- Liability for collision damage not covered under hull policy (e.g. personal injury/loss of life, pollution, wreck removal of own ship, damage to cargo on own ship) or in excess of limit of hull policy
- Liability for Wreck/Obstruction removal
- Liability for Fines: customs, immigration, contraband, pollution (arising from accidental discharges)

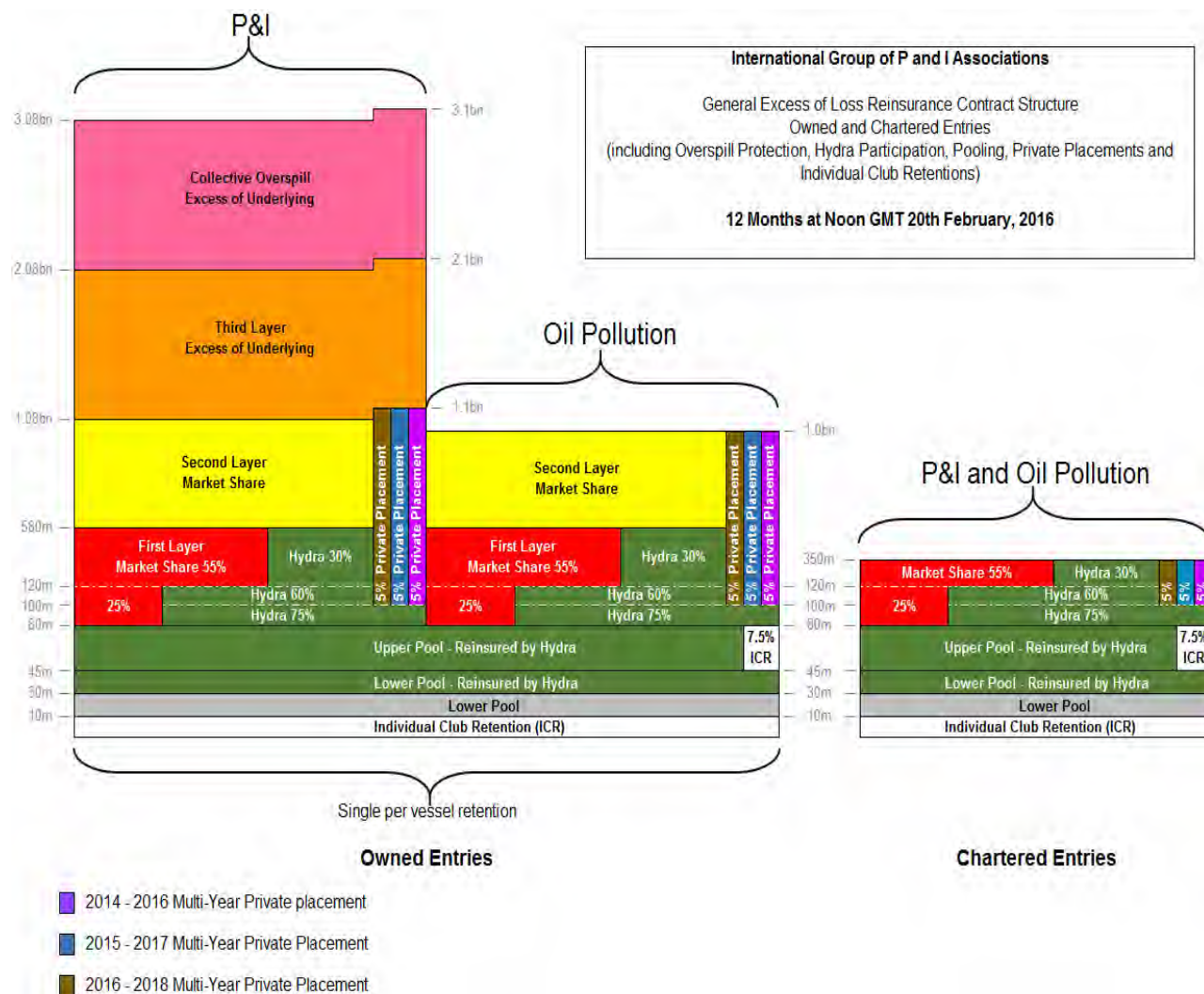


## P&I Insurance Cover

- “Losses, costs and expenses” – incurred by member
- Diversion expenses (for purpose of e.g. securing treatment of sick person, searching for missing person)
- Expenses in dealing with stowaways and refugees
- Unrecoverable general average contributions
- Measures taken to minimize loss (sue and labor)
- Disinfection and quarantine expense

# Pool Reinsurance Programme 2016/17

## International Group of Protection & Indemnity Clubs



# Major issue on the Reinsurance Scheme

Remaining U.S. sanctions versus Iran may exclude U.S. underwriters



- Remaining U.S. sanctions impact U.S. domiciled reinsurers.
- Temporary 'sticky plaster' (translation – 'Band-Aid') arrangement for \$500M in cover.
- Total for vessels in Iranian shipments will be \$580M; fraction of \$3 billion+ in coverage, but may be enough for some nations.
- Still issues of claims handling, bank transfers.

**Thank you for attending and remaining awake. Please let us have your questions.**

