New York Marine Insurance Day
September 30th 2011

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Piracy, War Risk & General Average
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www.simsl.com/Loss-Prevention-and-Safety-Training/PiracyDVD.htm

Piracy, War Risk & General Average
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).
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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

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The commercial response:

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

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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.

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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
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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
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Development of new insurance products:

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

Premium reduced if vessel carries security team

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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
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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

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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
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

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