

# Marine Insurance and Legal Update



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2011



# Outline

- Overview of the World Insurance Market
- Noteworthy Policy Changes
- Relevant Vessel Casualties
- Legal Cases and News
- Relevant Scientific Developments for R/V
- Conclusions



# Overview of the World Insurance Market

# Global Marine Insurance Report 2010

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Astrid Seltmann

Facts and Figures Committee, Vice Chairman

Analyst/Actuary @ Cefor, The Nordic Association of Marine Insurers

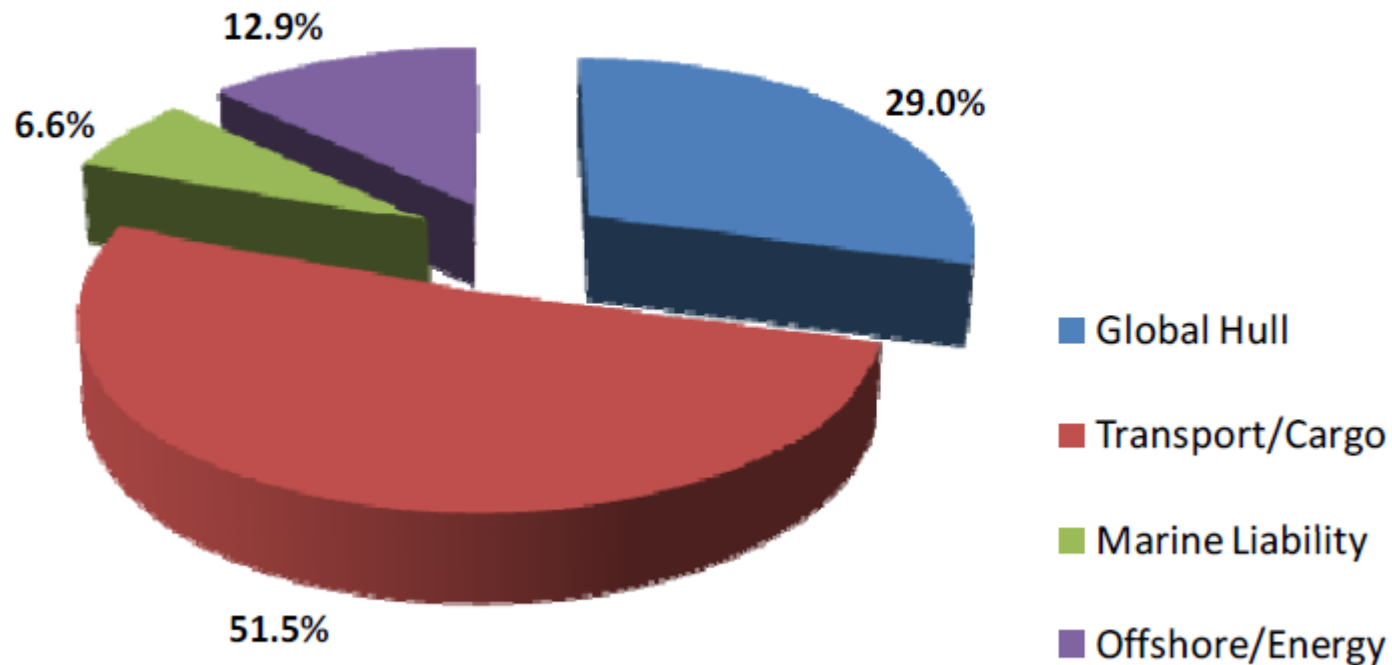


12 TO 15 SEPTEMBER

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## Global Marine Premium 2009, by line of business

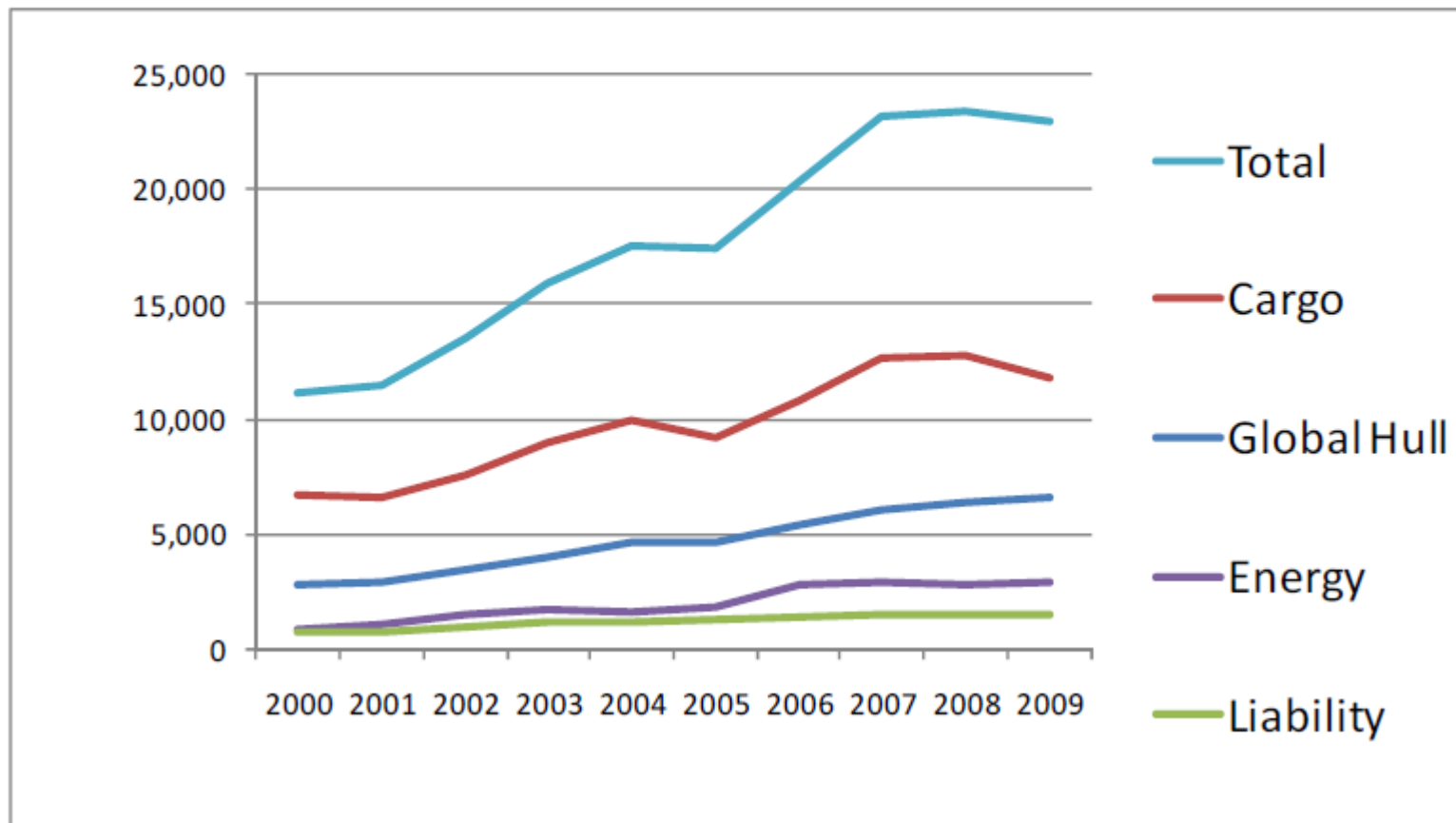
**Total reported: 22.9 USD billion**



**Total estimated including not reported: 23.6 USD billion**

# Global Marine Premiums

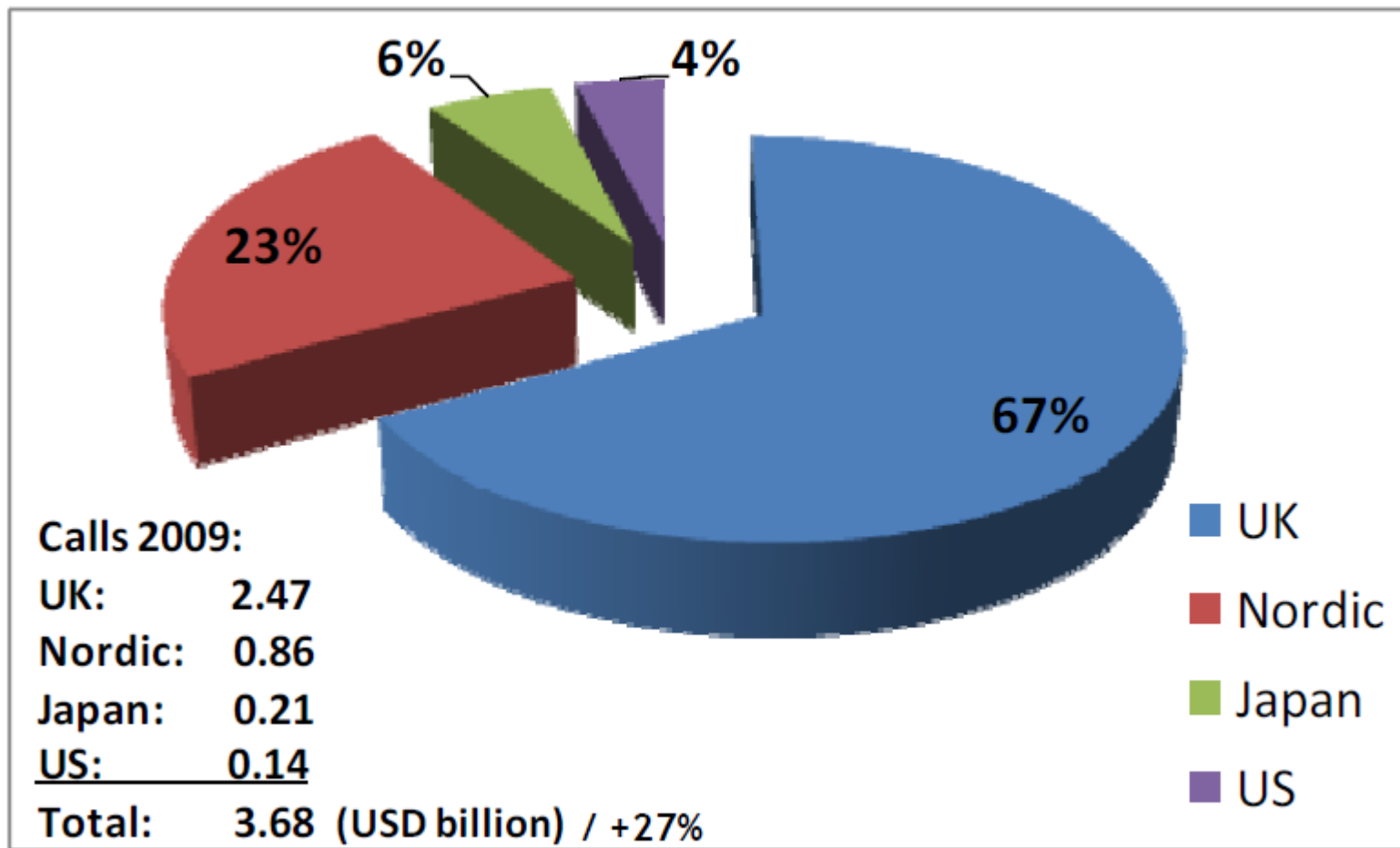
by line of business, 2000 - 2009  
(USD Million), as reported



# MARINE MUTUAL MARKET

P&I Clubs **International Group**

Gross Calls 2009 (Premium) - Operational location



Source: Standard & Poors P&I Highlights 2010

# MARINE MUTUAL MARKET

## Gross Calls (Premium) - Operational location

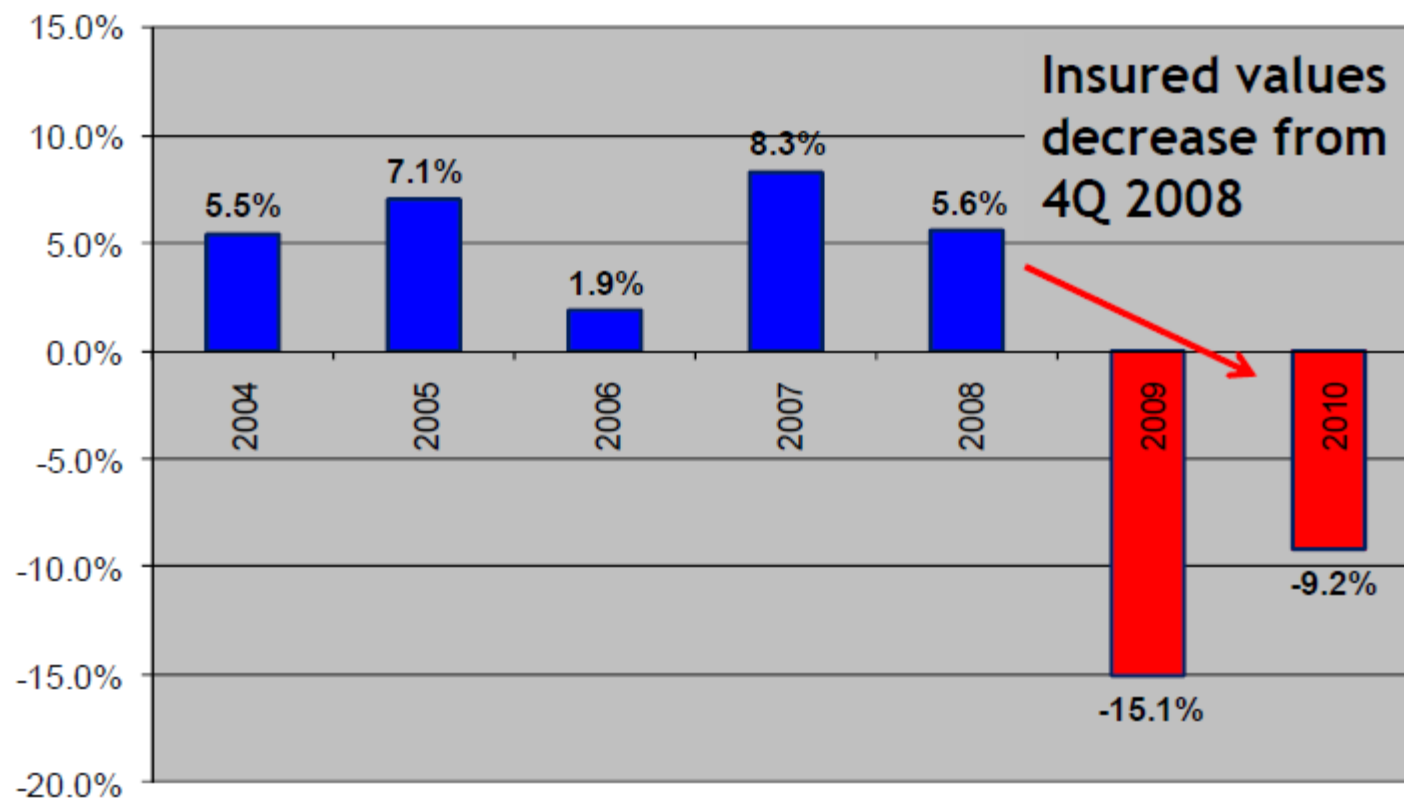
Per accounting year - USD 1000

							US\$000's	
Operational	2009	2008	2007	2006	2005	Difference 09-05	Average Annual variation over period 05-09	Ranking 2009
UK	2,467,608	1,793,071	1,771,700	1,614,769	1,562,123	905,485	11.59%	1
Nordic	862,665	741,123	523,652	561,935	542,986	319,679	11.77%	2
Japan	206,810	231,015	165,019	135,362	136,432	70,378	10.32%	3
US	144,726	144,239	163,793	162,257	139,602	5,124	0.73%	4
<b>Total</b>	<b>3,681,809</b>	<b>2,909,448</b>	<b>2,624,164</b>	<b>2,474,323</b>	<b>2,381,143</b>	<b>1,300,666</b>	<b>10.92%</b>	



## Change in insured values on renewed vessels, by year of renewal

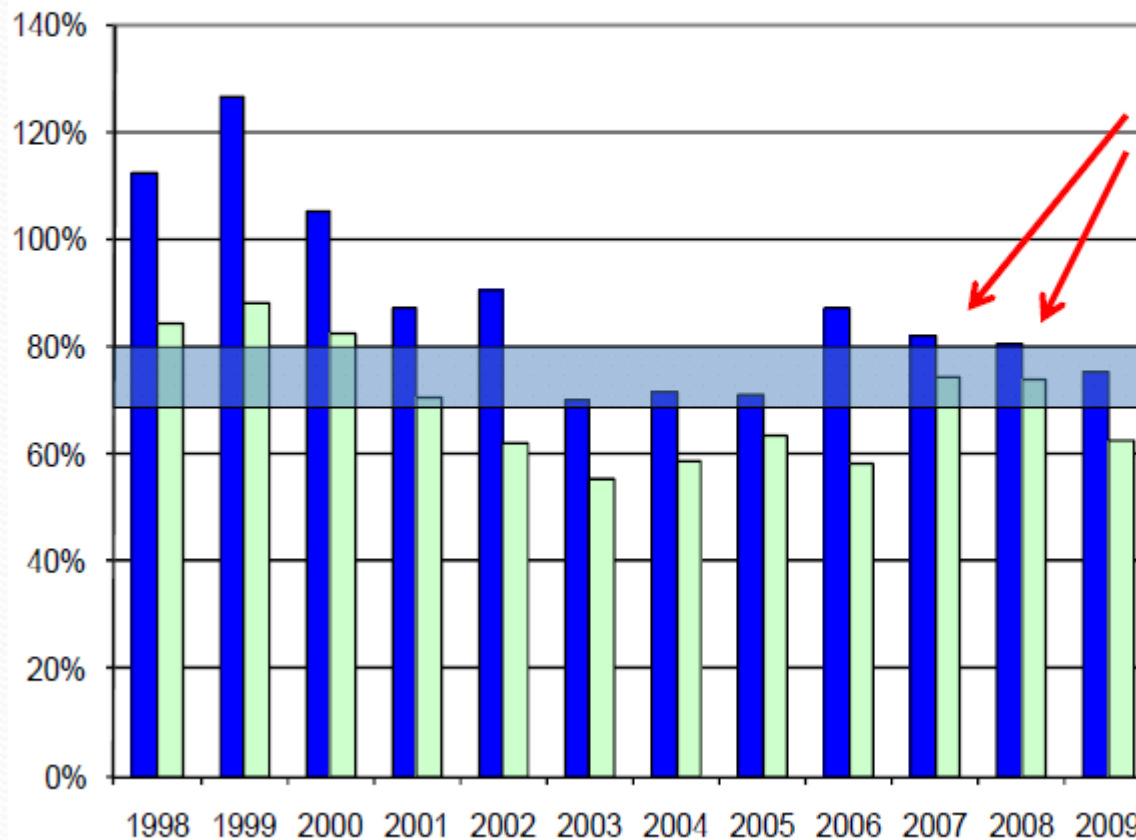
(= insured value on renewal / insured value previous year)



Source: Cefor, The Nordic Association of Marine Insurers, figures as of 30. June 2010

## Marine Hull ■ and Cargo/Transport □

**Gross\* Ultimate Loss Ratio, U/W Years 1998 to 2009**



2007 / 2008:  
Changing frame and market conditions provoke **increase in claims reserves** for both cargo and hull.

2009: signs of improvement, but **uncertainty** as to effect of unstable environment on ultimate results.

\* Technical break even: gross loss ratio does not exceed 100% minus the expense ratio (usually 20%-30% acquisition cost, capital cost, management expenses)

# Insurance News

- Excess capacity
  - Too many insurers, too few ships
  - Ships that are poor risks aren't paying correspondingly high premiums
- Future changes to the market
  - Bigger vessels
    - What's the "right" premium?
    - How would the industry deal with a loss?



# Insurance News Continued

- Japan
  - Contamination from nuclear fallout excluded from P&I and hull policies
  - Other implications of tsunami
- Unrest in the Middle East



# Noteworthy Policy Changes

# Changes to the STCW

- Revised requirements on *hours of work and rest* and new requirements for the *prevention of drug and alcohol abuse*, as well as updated standards relating to *medical fitness standards* for seafarers;
  - All persons whose duties involve designated safety, pollution prevention, and securities duties as well as officers-in-charge of a watch shall be provided with a rest period of not less than:
    - A minimum of ten hours of rest in any 24 hour period and
    - 77 hours for any seven day period. Some exceptions may be made
    - Some exceptions allowed with a specified rest schedule
  - New software available to monitor

# Coast Guard Rules- NVIC

- Provides guidance for evaluating the physical and medical conditions of applicants for merchant mariner's documents, licenses, certificates of registry and STCW endorsements.
- Lists 201 medical conditions that can cause a delay or denial of a certification
- Physical agility standards
  - Based on BMI, may be asked to drag a 50 ft fire hose, or lift and carry a 40 lb weight
- Review/approval by medical evaluators at the National Maritime center is required



# NVIC continued

- Creates more consistency, eliminating past ambiguities and inconsistencies
- Went into effect in 2008
- What experiences have you had with these guidelines?



# Future Policy Changes?

- IMO debate over lifeboat hooks
  - Necessity of new standards
  - Timetable for replacing hooks that don't meet standards
  - Broad consensus that on-load release hooks have failed
  - Subject was discussed in February by an IMO subcommittee, but no agreement was reached
- Mariner medical issues
  - Congress has asked the Merchant Mariner Medical Advisory Committee to look into the issue of medical evaluation for merchant mariners

## US Oil Pollution Act 1990

- *Proposals for revision in the wake of “Deepwater Horizon”*
- *Draft legislation pending H.R. 3534 and Senate Reid Bill*
- *Main focus on liability provisions for offshore facilities but possible impact for some maritime transportation sectors*
- *“Knock-on” impact on other legislation- DOHSA/Jones Act / Limitation of Liability Act 1851*



# Relevant Vessel Casualties



# LESSONS FROM MARINE ACCIDENT INVESTIGATIONS

STEVE CLINCH  
CHIEF INSPECTOR  
MARINE ACCIDENT  
INVESTIGATION BRANCH

“When anyone asks me how I can best describe my experience of nearly forty years at sea, I merely say uneventful.

Of course there have been winter gales and storms and fog and the like, but in all my experience, I have never been in an accident of any sort worth speaking about.

I have seen but one vessel in distress in all my years at sea... I never saw a wreck and have never been wrecked, nor was I ever in any predicament that threatened to end in disaster of any sort.”

*from a paper presented by E J Smith 1907*

The Greatest Risk Is...

...Complacency

On April 14th 1912, RMS Titanic sank with the loss of 1,500 lives...

One of which was its Captain...

E J Smith

RISK THINKING

miss the **icebergs**...not the **opportunities**

# EMSA Study

- A study by the European Maritime Safety Agency suggests that there is a clear link between the economy and accidents at sea.
- Can an economic recession be good for safety at sea?
- Future outlooks?

# What Causes Casualties?

- Mooring dangers
  - UK P&I Club highlights dangers of using untrained or poorly supervised crews
- International Safety Management Code implementation failures
  - Standard P&I Club says internal audits ineffective, masters' reviews ineffective.
  - Due to poor understanding and staff training?



# What Causes Casualties?

- Misuse of ECDIS
  - Container ship ran aground after failing to adjust the contrast on monitor
- Failure to adequately assess risk
  - Crew member on the Cape Darnley died after an explosion that occurred when he was trying to cut the top off of a steel drum filled with oily waste water

# Duck Boat

- 250- foot-long empty sludge barge *The Resource* collided with the anchored amphibious small passenger vehicle the *DUKW 34* in the Delaware River, near Philadelphia.
- Two passengers on the Duck Boat died.



# Duck Boat Continued

- Records imply that the mate of the larger ship was on his cell phone at the time of the collision



# Cabo de Hornos

- RV was being built in Chile
- Feb. 27, 2010 - Large earthquake caused an accidental premature launch
- Tsunami pushed the ship back onto land
- Successfully refloated in January



# Cabo de Hornos

- Mammoet Salvage drove the vessel onto a flattop deck barge with Self Propelled Modular Trailers.
- Barge submerged in dry-dock and the vessel was floated off





# Legal Cases and News

# M/V Louisa

- Arrested for violating laws and regulations in Spain's EEZ in 2006
- Ship remains in port, held without bond
- Case before the International Tribunal for the Law of the Sea, brought by flag state
- Issue of prompt release

# USNS Impeccable

- Incident in Chinese EEZ
- 5 Chinese ships harassed the USNS Impeccable
- What are the boundary lines for scientific research under the Law of the Seas?





# China and Philippines Conflict

- Incident off Reed Bank islets, in the South China Sea east of the Spratly Islands
- Several claims of ownership of the area
- Two Chinese patrol boats threatened to ram a Philippine Dept. of Energy Vessel, the M/V Venture
- The Philippines filed a diplomatic protest
- Implications?

# Orient Explorer

- Singapore-based oil survey ship conducting as seismic study off of New Zealand's East Cape
- Searching for liquefied natural gas
- New Zealand government has sent out the air force and navy in order to deal with environmental protestors from Greenpeace and a local NGO
- Activists have been swimming in front of the vessel, forcing the Orient Explorer to stop its research

# RV Polarstern

- Seismic research in Baffin Bay
- Inuit complaints – injury to whales?
- August 8, Nunavut Court of Justice issues a temporary court injunction



# R/V Gould

- Knowingly discharged oily wastewater from the bilge tank overboard, violating the Act to Prevent Pollution from Ships
- Pleaded guilty. Criminal fine of \$1.75 million, \$350,000 as community service to the National Marine Sanctuary Foundation.
- The Chief Engineer on the ship was sentenced to two years probation and a criminal fine of \$5,000 after being found guilty of falsifying records.

# Koo's Shipping Company

- Taiwanese shipping company convicted for dumping oily waste into waters of American Samoa
- Pleaded guilty in federal court to charges of making false statements, misreporting in oil record book, and knowingly discharging oily bilge waste
- Sentenced to pay \$750,000 in criminal fines and \$250,000 towards community service projects in American Samoa

# *Stacy v. Rederiet Otto Danielsen*

- Eva Danielson collided with a fishing vessel, killing its captain
- US Appeals Court ruled that the captain of a nearby fishing boat can sue for compensation for emotional distress, even though he was not directly involved in the collision
- Court used the “zone of danger” test. Plaintiff must prove:
  - that he or she witnessed the peril or harm to another;
  - that he or she was threatened with physical harm due to the negligence of the defendant.
- Loose interpretation. What does it mean?

# *Juliussen v Buchanan Marine*

- Plaintiff filed under the Jones Act after falling and injuring his knee. Negligence, unseaworthiness.
- Previous concern that Buchanan Marine's vessels were unseaworthy: Plaintiff had fallen down the stairs of nearly every Buchanan ship he had worked on
- Poor lighting, worn condition of the diamond treads
- As an officer of the vessel, should Juliussen have mentioned the condition?
  - Primary duty doctrine
- Court denied Buchanan's motion for summary judgment

# *Clark v. Kellogg Brown & Root*

- Plaintiff filed suit under the Jones Act, claiming that he developed acute myelogenous leukemia (AML) after being exposed to benzene on the job
- Lower court found that AML was most likely caused by benzene in this case, and found KBR liable- Circuit court agreed
- District court is not required to make a finding that the plaintiff's injuries were proximately caused by defendant's negligence.
- Witnesses testified to the toxic levels of benzene exposure



## *Lopez v. Pacific Maritime Assoc.*

- Plaintiff applied to be a longshoreman under the employment of the defendant company, but failed a drug test and was not hired. Company has a “one strike” policy
- He applied again after getting clean, but his application was rejected
- Plaintiff sued under ADA and FEHA, arguing that he was discriminated against on the basis of his protected status as a rehabilitated drug addict
- Rules may be unreasonable considering the fact that rehabilitation is possible, but the court held that the ADA and the FEHA were not violated

# *Doyle v. Graske*

- Plaintiff suffered injuries while he was a passenger on a boat owned and operated by Graske.
- Doyle, Graske and another man went fishing in Graske's inflatable boat. Nylock nut came loose, causing the steering system to malfunction
- Doyle was thrown overboard, then hit by the boat
- Negligence on the part of the boat owner? Do Doyle and his wife deserve compensation?
- Court says the Plaintiff does. Wife does not receive loss of consortium damages

# Rolls Royce and Carnival

- Rolls Royce marketed its Mermaid pod propulsion system to Carnival for operation on the Queen Mary II.
- Jury found that at the time the system was presented to Carnival, Rolls Royce knew that it was defective
- Rolls Royce refused to pay for any of the replacement costs and made money off of the repairs
- Rolls Royce found guilty of fraud

# *Reino de Espana v. The American Bureau of Shipping*

- M.T. Prestige, an oil tanker, sank off the coast of Spain in 2002, spilling millions of gallons of oil into Spain's territorial waters
- Spain seeks compensatory damages in excess of \$1 billion as well as punitive damages
- US company operating on a Bahamian-flagged vessel
- Court determined that the law of the US governs the resolution of Spain's claims and that, under US law, ABS was entitled to judgment.
- In this case, company connections to the US were stronger than those with the ship's flag state

# *Pacific Merchant Shipping Assoc. v. Goldstene*

- Plaintiff challenged state regulations requiring seagoing vessels operating within 24 miles of the state's coast use cleaner marine fuels.
- Plaintiff claims that the regulations were preempted by the Submerged Lands Act which provided for a 3 mile offshore limit to the state's coastal boundary
- Court held that the plaintiff failed to show that the state lacked authority to implement the regulations.
  - Given the state's police power, the SLA did not preempt the state from making these regulations



# Scientific Developments

# Floating Nuclear Power Stations

- Russia launched the first this past summer
- First of seven ordered
- Units reported to be destined for the Russian Arctic to be used for ships undertaking raw mineral extraction
- Also capable of desalination



# Unmanned Naval Systems

- Cross application between research and naval defense
- Law of the Sea developed before these systems existed-how will they fit into our political/legal structure?
- Can they be considered “ships” ,“submarines”, or “aircraft”?
- Look to multilateral treaties
  - The London Dumping Convention defines a “vessel” as a “waterborne or airborne craft of any type whatsoever...self-propelled or not”
  - COLREGs definition – “every description of watercraft, including non-displacement craft, wing-in-ground craft, and seaplanes, used or capable of being used as a means of transportation on water”

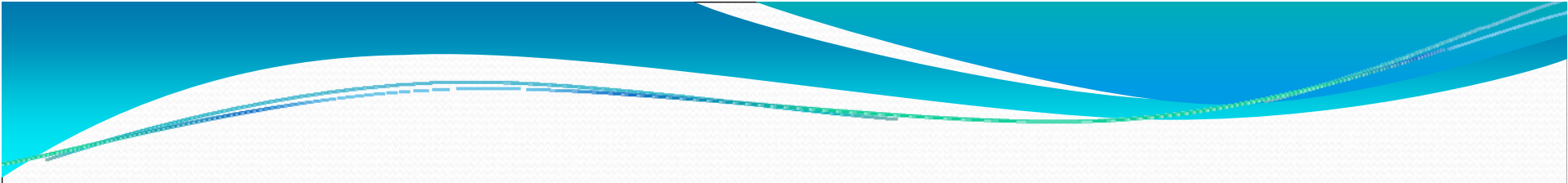


# Unmanned Naval Systems

- Should these systems enjoy the right of innocent passage in territorial seas/transit passage as specified under UNCLOS?
- Beyond the territorial sea, these craft have high seas freedoms of navigation and overflight, with “due regard” for the rights of other nations when in an EEZ. China?
- Floats and gliders are controlled by current. Soft law regulations now.
- Can use marine scientific research provisions under UNCLOS in territorial sea and EEZ, but is a new regime needed?



# Conclusions

- 
- Insurance market will remain relatively stable; fuel costs a much greater uncertainty
  - Deepwater Horizon will dominate discussion of changes to liability laws
  - Unmanned and ROV technology will continue to push the boundaries of law
  - Accidents will continue to occur, many with novel new causes such as cellphone use and failure to adjust the color contrast on an electronic chart



Questions?