

Good afternoon,

First I would like to thank the Nautical Institute for giving the insurers the opportunity to participate in this conference.

Thank you all for coming as I am sure many of you have other things on your mind other than insurance. However I am the last on and I hope I will not impede your way to the bar too much.

I am the hull and war underwriter of Brit Insurance plc in London. I am Chair of the London Joint Hull Committee and also on the Joint War Committee.

I am going to talk to you today about insurance of piracy and terrorism risks and respond to some of the issues highlighted in the flyer of this conference.

The London Insurance market dominates the marine war insurance. This is partially historical but also outside London very few insurance organisations are prepared to insure war risk or retain it. By this I mean local insurers may insure war but they get back to back insurance which is called reinsurance in the London Market.

The Lloyd's insurance market is made up of many syndicates, Brit for whom I work is one of them. In theory we compete against each other. However London is what is called a subscription market which means that underwriters do not usually write a 100% of the risk. Therefore the risk is spread around a number of syndicates each underwriter making his or her own decision.

However although we compete there are two committees which comprise of underwriters who decide where the vessels can trade or cargo without additional premium and areas which are excluded from the annual war policy and if the vessel trades or cargo passes through that area then underwriters must be advised and an additional premium is charged if the underwriter is prepared to take on the risk.

What are the risks covered by a typical marine policy in piracy and terrorism incidents?

The Joint War committee exclusions are shown in this slide. The Gulf of Aden was included early last year and Venezuela was recently added.

I will briefly give you some background as to how an area is put on the war exclusion list. However I must say that the war exclusion list is only advisory and each underwriter must make his own independent decision.

In the event of a situation, normally recurring, the committee will meet to discuss the merits of putting the area on the excluded zone. If it is decided that it is worth pursuing then the committee will then consult with outside consultants to compile a report. In the case of the Hull war committee that is AEGIS and Joint War is Exclusive Analysis but of which are based in London. The consultant will research the area analysis the potential risk to underwriters, for this they use internal analysts as well as researching. This is a quote from a report about the Gulf of Aden.

“According to open source information released by the US Office of Naval Intelligence, there were four incidents in February 2008 (as opposed to one in 02/07), seven in March 2008 (two in 03/07), and 16 in April 2008 (three in 04/07). The motive for the attacks appears to be hijacking the vessel and kidnapping the crew for ransom.”

When the report is received by the committee then it is decided whether or not to put the particular on the exclusion list taking very much into account the report for the consultants.

War policies have a 7 day notice period. Therefore once the war committee has decided that an area should become an exclusion zone then they give notice to that effect and 7 days later that area is excluded. The importance of London is reinforced because all of the other insurance markets tend to follow the JWC Excluded List.

You may recall a few years ago the war committee decided to put the Malacca Strait as an excluded area because of what was considered to an enhance risk. After that the littoral states then started co-operating with each other and gradually the risk improved. The committee considers that it action prompted this co-operation because of the effect on trade.

There are two commonly accepted definitions set out by the International Maritime Bureau (IMB) and the United Nations Convention on the Law of the Sea (UNCLOS).

The common criteria are:

- Another vessel must be boarded, other than that of the pirates
- Pirates must have criminal intent
- This criminal intent must be for private not political purposes which distinguishes it from terrorism.
- The act must be in International Waters, which distinguishes it from armed robbery.

These distinctions are important when determining coverage under insurance policies.

There are complications from a legal view point with this. If in International Waters, a country can act to protect its interests and apply its own remedies, subject to the "reasonable force" rules of the state of the flag of registry. This is complicated by the fact that few vessels are flagged by the UK or USA anymore; shipowners generally prefer the cheaper options of flags of convenience from countries like Liberia Panama and even the Marshall Islands. Some strange places are setting the rules of the waves. The United Nations Convention does however allow any state to seize pirates and their property in International waters and that state may also determine what action to take, the measure being "reasonable force".

Because legal prosecution is expensive and nobody really wants the pirates either in their jails or seeking asylum if the legal process fails, they have been given to Kenya. This is probably illegal if the offence is committed outside Kenyan waters. There are also question marks over the Kenyan judicial system. Many pirates are simply released as a result. You might be forgiven for thinking if this is the case, why are we going to all the trouble of Operation Atlanta? Consequently, International funding is now being considered to prosecute, via an International Tribunal; this is not supported by the US who still wish to reserve the right to deal with any pirate threatening their interests themselves. However, it does allow Navies to hold pirates and be more effective. Unfortunately, there is no evidence that imprisonment will act as a deterrent, so the law will only help manage the problem.

Use the Dutch example

Perhaps I digress but it is an important factor to consider.

Now Insurance!

The Marine Insurance Act provides under Section 55 the following:

Subject to the provisions of this act, and unless the policy otherwise provides the insurer is liable for any loss proximately caused by a peril insured against but he is not liable for any loss which is not proximately caused by a peril insured against.

The insurer is not liable for any loss attributable to the wilful misconduct of the insured.

The marine insurance act is the back bone of UK insurance law not purely marine insurance.

The coverage provided by insurers come under four main types of insurance:

- Hull and machinery
- War Insurance
- Kidnap and Ransom
- Protection and indemnity

Hull and machinery

The main London hull policy traditionally loss or damage caused by the pirate. You ask why the drafters included piracy on the hull policy but it goes back to 1983 when the government were concerned that the IRA were not considered terrorists but criminals and pirates in the event they hijacked a ship. Including piracy in the hull policy has caused me loads of problems recently with eh GOA situation.

This is unique to the London insurance market as other major markets such as Japan and Norway include the piracy in the War policy.

However there has been a move by underwriters in London over the past 12 months to move the piracy from the hull policy to the war policy. The war underwriters accept the piracy. You must also bear in mind that most vessels do not transit the GOA during the course of the year and the transfer of coverage is purely cosmetic. Moving the piracy from the hull to the war means that the war underwriters can charge an additional premium for the transit. You ask why would the shipowner be prepared to accept this as under the hull policy the transit

would be free. The reason why owners accept this is that there is seamless coverage. Therefore as soon as a piracy event is defined a terrorism, which covered under the war policy, there would be no cover in the event the owner had not advised the war underwriters. The seamless coverage means that the owner caught in an argument between the war and hull underwriters in the event of an incident. Believe me it is the owner best interests.

War Policy

Does not include piracy unless it is included as described above.

The policy covers

- War civil war, revolution , **riots and civil commotions**
- Capture Seizure
- Derelict mines
- Strikers Terrorism
- Confiscation & expropriation

I am not giving you the full version as you will be asleep!

Notice riots and civil commotions. There is some argument that that if a ship is boarded by up to 12 people that constitute piracy. However if more than 13 than that constitute a riot under the Public Order Act. Hence you can now see where the grey area can arise.

Protection and Indemnity Insurance

I am not really qualified to talk about P+I however a few observations. The clubs cover liability of the shipowner in the event a crew member is injured during a piracy incident or during the time he or she is being held hostage. Alongside this the club could be liable for:-

- Cargo claims theft/damage to cargo
- Crew liabilities, death, personal injury, loss of personal effects
- Pollution and wreck removal.

However there is a get out clause in as much as no claim shall be recoverable if the loss is consequent on **performing any voyage or being employed in any trade which in the opinion of the Directors is imprudent, unsafe, unduly hazardous or improper....**

Clearly a voyage through the Gulf could be considered as much which result in discretionary payments by the club.

Kidnap and Ransom

This is a separate coverage for crew or life salvage. The standard K+R policy covers

- Injury / loss of life
- Payment of ransom
- Emergency team expenses

This insurance is primary to the hull or the war policy. However when the war underwriters consider the additional premium for a breach voyage through the Gulf he will take this into consideration. For obvious reasons the purchase of such insurance is strictly private and confidential.

Therefore to recap for piracy and terrorism coverage is provided as follow:-

- Cargo by the cargo policy which includes war
- Hull damage by the hull policy or the war policy
- Liabilities by the protection and indemnity clubs
- K+R by a separate K+R policy

Ransoms

Are they legal? Under English law they have been allowed since 1860 when the Ransom Act of 1782 was repealed. There is one major caveat. That is if there is any suspicion that the ransom is heading towards a terrorist organisation then it becomes illegal from an English law perspective and I think by international law. London being the centre for marine insurance most marine policies are written with English Law and Jurisdiction. However the law is subject to another country which ransom payments are illegal then the ransom payment would become illegal from an English perspective even though the policy was written in England

The ransoms are often paid as general average. General average for those of you who are unaware means that a sacrifice or expenditure between interested parties to the voyage or maritime adventure incurred for the common good. The ransom payments can legally be paid as general average and there is case law backing this up.

Alongside this there is sue and labour which means that underwriters will pay for measure to avert or minimise a loss which is covered under the policy. Ransoms are paid under sue and labour when there is no cargo or any other interested party.

The hull and the hull war policy include general average and sue and labour clauses as a matter of course. Owners must ensure that piracy is covered by either the hull or the war policy. In some cases the underwriters could argue that there is no cover the defence being the vessel was unseaworthy in as much as the owner did not take adequate precautions before entering a piracy zone.

In the event that a K+R policy is purchased that that policy would pay first proving it is clear in the policy that is the case. The K+R remember only cover life salvage but if the vessel is released along with the crew the hull underwriters would benefit.

Cargo policies cover general average and have paid a number of ransoms under the general average clause. Yet again un-sea worthiness raises it head as a defence

I think that is enough of insurance!

General issues

Some ship owners are using armed guards but are they legal on the basis that weapons are not allowed on vessels in most ports? Practically, having weapons on board is logistically almost impossible to achieve; in theory, they would have to be dumped overboard before entering port. So the alternative of arming the crew is also viewed by shipowners as unworkable, understandably owners do not wish to put them at risk. Consequently, action such as barbed wire, fire hoses, horns and increased vigilance are replacing the preventative methods of the Elizabethan past, which included greasing decks, as well as scattering dried peas and broken glass. Even newbuildings are now being redesigned with vessel security in mind, at the request of shipowners. As with the law, these measures will help manage but they will not cure the problem.

It is difficult to see how the attacks will ever end without strong remedial action onshore in Somalia. I believe Operation Atlanta is attempting to tackle this with an ink spot approach of identifying pirate nests and trying to disrupt places of refuge. Unless there is a stable government this will be a long and expensive process. A community based security and justice system is required to limit the pirates' freedom of action and push them out of business. Offshore efforts will probably always be something of a blunt instrument in the Indian Ocean, where 30 ships are trying to police 1.5 million square miles. This is also

expensive with the cost of keeping a frigate at sea being \$10,000 per day for fuel alone. Patrolling the Indian Ocean is a completely different proposition to the Gulf of Aden or the Malacca Straits. The Somalis are also different to the Asian pirates. The Somalis capture ships for ransom, not really to keep the vessels, their cargo or crew. They would not know what to do with the ship if someone turned around and said "have it". The Asians on the other hand want the vessel and its cargo; if the crew get in the way they are killed. The Somalis by contrast want the crew alive to navigate. It is important to remember their average age is only 17.

However, this does not make them any less culpable when they are brandishing rocket propelled grenades and AK 47's.

I want to conclude by reflecting on the double standards that appear to be being applied to the pirates, versus the crew they are targeting. The Foreign office has told the Navy not to detain pirates because we may be breaching their human rights. In the UK we are subject to the European community Human Rights Convention which insists on pirates' rights being protected. We never hear about the rights of the crews, whom the world is very quick to imprison, following any kind of oil spill or loss of life, on the high seas. It was these people we were trying to protect, as well as our insurable interests when Lloyd's underwriters recommended the Malacca straits as a high risk area, a few years ago. It had the effect of bringing the three littoral states to the table and there now exists an effective and collaborative preventative solution. The crews off Africa seem to have fewer rights than the pirates. If more of them were American or European, I suspect the approach adopted by the naval force might be different. At the moment, everyone seems more concerned to see pirates tried fairly. However, I do not see the same concern for offending culprits when an aircraft is hijacked or people are taken hostage onshore. They normally end up in the crosshairs of a snipers sights. Perhaps the romanticism of the buccaneer lives on more strongly than we realise, assisted by a legal fog and confused priorities. It is difficult to see how the problem can be solved, while the downside is so small and the upside so remunerative for the pirates, who shrewdly avoid using their weapons and tend not to threaten the crew, to avoid being attacked themselves. However, this has just taken a turn for the worse and I quote part of a Lloyd's Marine Intelligence report dated September 24th, last week: "Somali pirates boarded a Panama flagged ship heading for Mogadishu today and killed its Syrian Captain after he refused to turn the vessel away from the port. Usually we send police when commercial ships draw near the port but the pirates were on board and opened fire injuring one policeman. Three crew members were also injured." In my view, unless the treatment of the crimes committed offshore, is equalised with that meted out to

those who commit the same crime onshore or in the air, the lure of life changing dollars while continue to fuel the frequency of attacks.

Somalia in my opinion can only be sorted by Muslim countries. American does not want another Iraq, the Europeans cannot sort it as the US would get edgy bearing the strategic position on Somalia. Therefore is down to the Muslims. One final thought be under on illusion that on land in Somalia if the US or European tried to intervene it would be become a religious war. Christianity is banned in Somalia and if caught practising the individual faces execution. A few weeks ago a Somali was found to have twenty bibles in this home. He refused to disclose where they came from so in retribution they behead both his sons aged 10 & 11 and then killed him.

I am sorry to the end on a sour note but that is the situation as its stands.

Thank you and good night.

