

Ship Happens  
INSURANCE ISSUES  
AND  
SCIENTISTS' SEAMEN STATUS



# P&I Insurance

- Insures against liability to third parties.
- Up. Most estimates are of a 12-15% next year. Lloyd's List reports predictions of up to 50% by 2024



Mark Lennihan/AP

# Hull Insurance

- Insures against damage to vessel itself.
- Up. Lloyds list reports increases of up to 20% for the next year.



Bill Townsend

# Cyber Insurance

- Insurance for damages and other loss caused by cyber attacks, malware, etc.
  - Generally excluded specifically in hull policies.
  - Available as separate insurance or additional cover under hull policies.
- Up. Estimates up to 50% by 2025.



The screenshot shows a ransomware payment screen with a red background and white text. At the top left is a white padlock icon on a red square. Below it, the text reads: "Payment will be raised on 5/15/2017 16:32:52" followed by a green progress bar and "Time Left 02:23:59:49". Below that, it says: "Your files will be lost on 5/19/2017 16:32:52" followed by a green progress bar and "Time Left 06:23:59:49". To the right, there is a white text area with the following sections:

**What Happened to My Computer?**  
Your important files are encrypted. Many of your documents, photos, videos, databases and other files are no longer accessible because they have been encrypted. Maybe you are busy looking for a way to recover your files, but do not waste your time. Nobody can recover your files without our decryption service.

**Can I Recover My Files?**  
Sure. We guarantee that you can recover all your files safely and easily. But you have not so enough time. You can decrypt some of your files for free. Try now by clicking <Decrypt>. But if you want to decrypt all your files, you need to pay. You only have 3 days to submit the payment. After that the price will be doubled. Also, if you don't pay in 7 days, you won't be able to recover your files forever. We will have free events for users who are so poor that they couldn't pay in 6 months.

**How Do I Pay?**  
Payment is accepted in Bitcoin only. For more information, click <About bitcoin>. Please check the current price of Bitcoin and buy some bitcoins. For more information, click <How to buy bitcoins>. And send the correct amount to the address specified in this window. After your payment, click <Check Payment>. Best time to check: 9:00am - 11:00am



# Insurance Rates: Reasons and Responses

- Reasons
  - Casualties
  - Inflations
  - Market Uncertainties
  - International Relations
- Response
  - Shop
  - Bargain
  - Lock-In Prices



# Potential for Increased Risk

- Some possibility that scientists may be able to impose liability for breach of the warranty of seaworthiness.
- A revival of the doctrine of seaman *pro hac vice* or “this time around” might allow those helping fulfill the mission of the ship to claim seaman status while they’re doing that work.



# Maritime Workers' Remedies

- Seamen
  - Jones Act (1920) – Negligence of Employer and Fellow Employees
    - Right to trial by jury.
  - Warranty of Seaworthiness – Failure of vessel, crew, equipment to be fit for intended voyage.
    - No need to show negligence.
  - Maintenance and Cure – sickness or injury while in service of the vessel.
    - Possibility of attorney's fees and punitive damages.
- Longshore and Harbor Workers:
  - The Longshore and Harbor Workers Compensation Act (1927) -- Maritime workers employed in a maritime location, but not “the master and member of a crew of any vessel.”
    - Liability fixed by federal agency, the OWCP

## Rise of "Sieracki Seamen," Seas Shipping Company v. Sieracki (1946)

- Joseph Sieracki was working as a stevedore loading cargo on the S.S. Robin Sherwood, built by Bethlehem Steel and owned and operated by Seas Shipping Co.
- While lowering a freight car into the hold a cargo boom snapped and Sieracki was hurt.
- Bethlehem had been negligent for not testing the boom.
- Seas Shipping wasn't negligent.
- While lading the vessel Sieracki was doing work of a seaman
- As a seaman *pro hac vice*, Sieracki was entitled to the warranty of seaworthiness.





# The “End Run” Around The Recovery Limits

- LHWCA provides strict liability in return for limited recovery from the employer.
- The contract between the stevedoring company and a vessel generally included an indemnity clause for injuries to workers.
- A longshore worker could sue the vessel owner for breach of the warranty of seaworthiness.
- The vessel owner pays and passes the liability on to the employer.
- The employer is stuck with liabilities under both the LHWCA and the warranty of seaworthiness.



# What About Scientists?

## The Ocean Research Vessels Act of 1965

- Scientists excluded from the coverage of the Jones Act by Section 4: “Scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of title 53 of the Revised Statutes and Act amendatory thereof or supplementary thereto.”
- “title 52 of the Revised Statutes and Act Amendatory thereof or supplementary thereto” is an obscure reference to the Jones Act.
- Could scientists be *Sieracki* Seamen?
  - Some courts have said yes.



# An End to *Sieracki* Seamen? LHWCA Amendments of 1972

In the event of injury to a ***person covered*** [by the LHWCA} caused by the negligence of a vessel, then such person ... may bring an action against such vessel and ***the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. ... The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness*** or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel ....



# *Sieracki* Lives? For Scientists?

- Some courts have concluded that *Sieracki* seaman status available for persons who are not members of the crew and not covered by the LHWCA but who are helping the ship to accomplish its mission.
  - U.S. Court of Appeals for the Fifth Circuit
    - Louisiana
    - Mississippi
    - Texas
  - U.S. Court of Appeals for the Eleventh Circuit
    - Alabama
    - Florida
    - Georgia
  - U.S. District Court for the Southern District of West Virginia
  - U.S. District Court of the District of Maryland

