

Marine Insurance and Legal Issues of the Oceanographic Research Vessel Fleet

Dean Dennis Nixon
University of Rhode Island

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Outline of Presentation

- I. Overview of World Insurance Market
- II. Review of Legal Issues Pertaining to Oceanographic Research Vehicle (ORV) Operation
- III. ORV Issues of Concern/Under Consideration
- IV. Conclusions

Overview of World Insurance Market



Global Marine Insurance Report 2006

Facts & Figures Committee

Astrid Seltmann

Analyst/Actuary

The Central Union of Marine Underwriters, Oslo, Norway



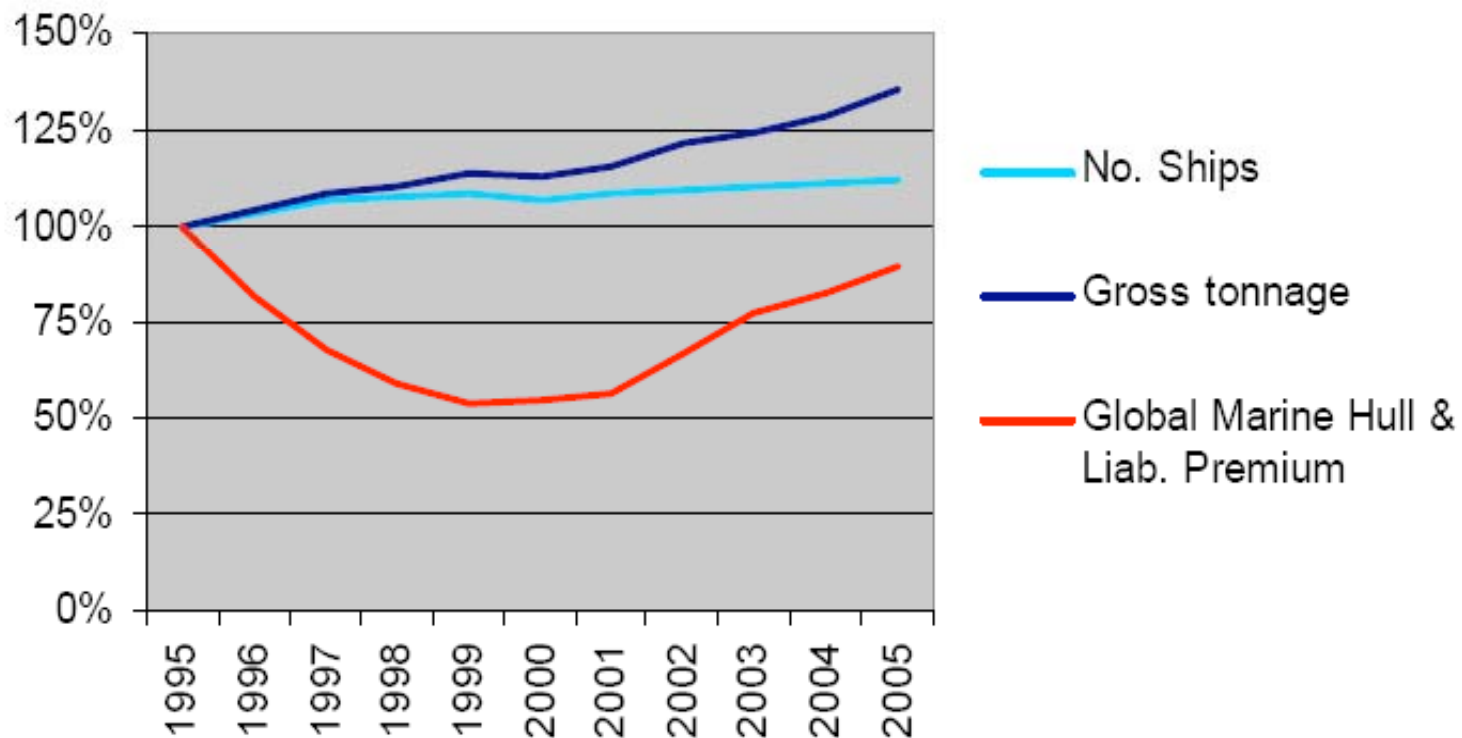
Thanks also to

F&F Committee Members Pamela Frood and Cédric Charpentier

World Merchant Fleet and Global Marine Hull & Liability Premium



Index of evolution, vessels > 100 GT, 1995 = 100%

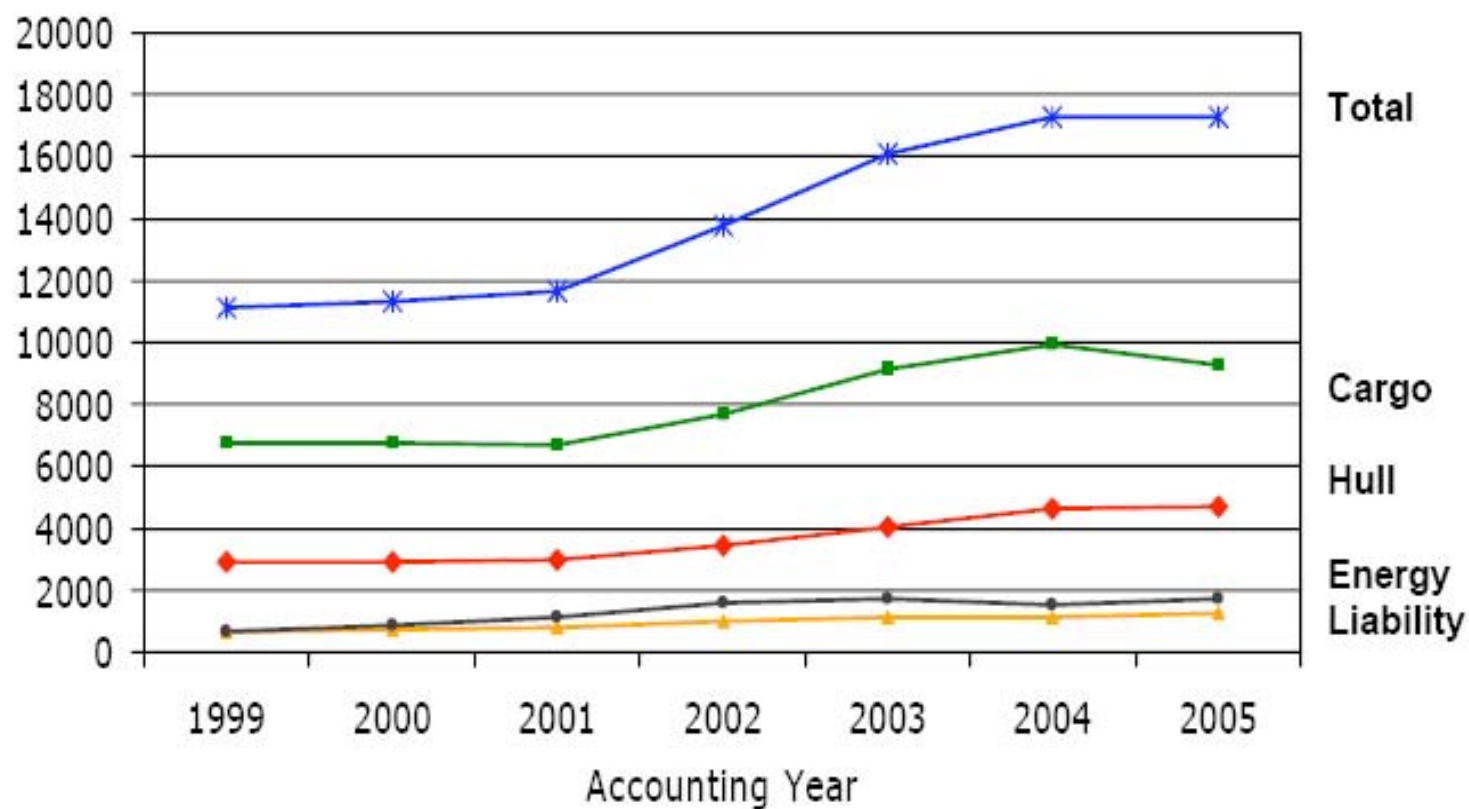


Source: Indicators for World Fleet from ISL Bremen



Global Marine Premium 1999 - 2005

(USD Million), as reported

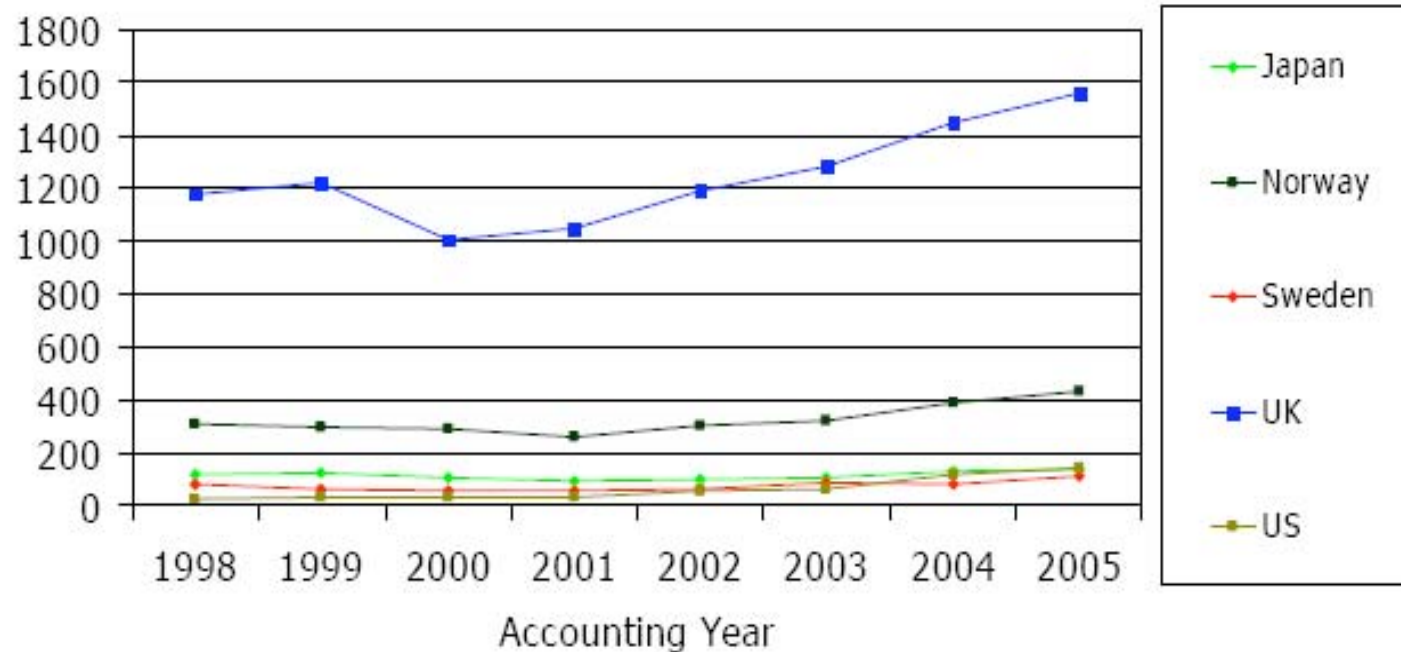




MARINE MUTUAL MARKET SECTOR

Gross Calls (Premium) – Operational location

Per accounting year – USD Million

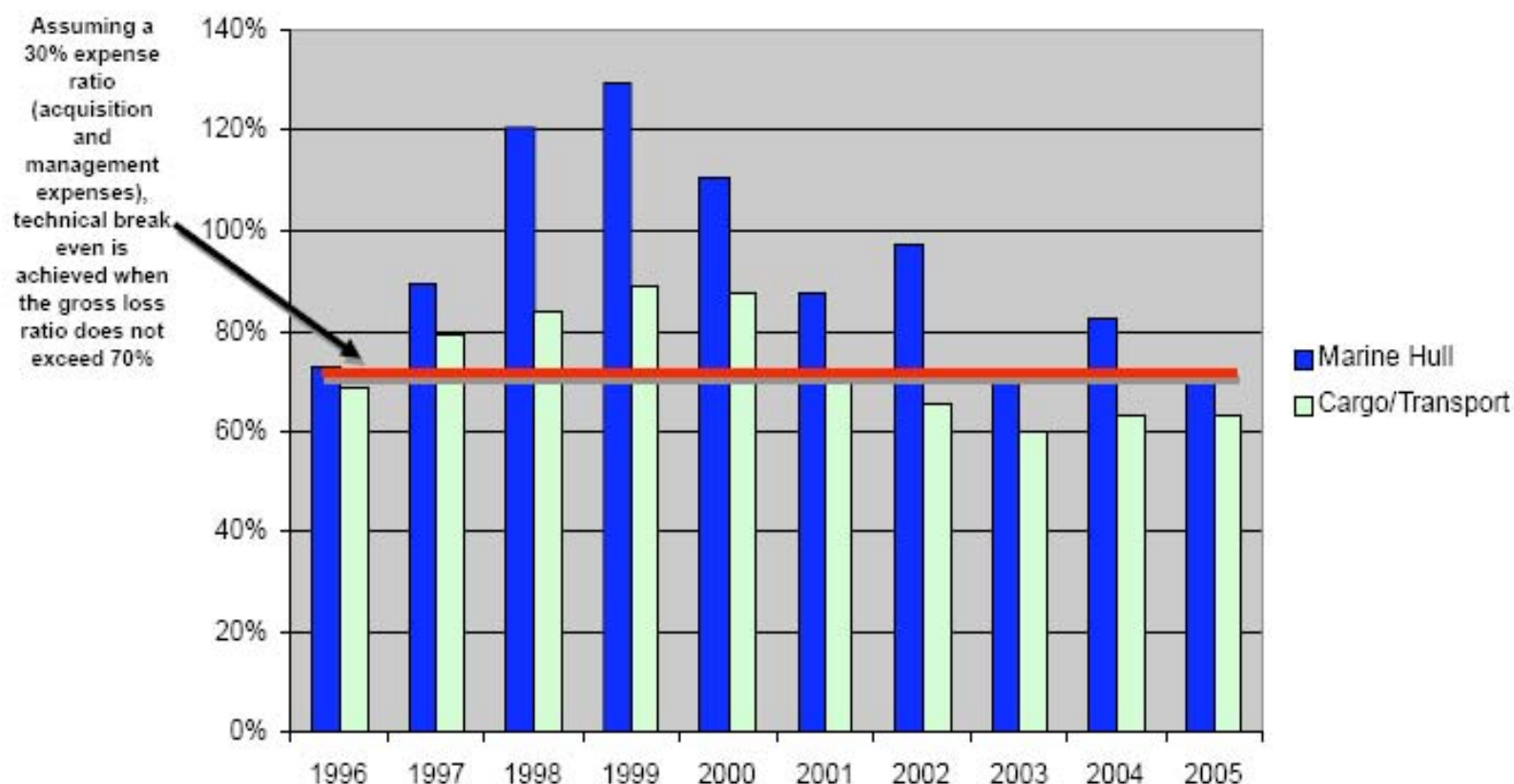


Source: Standard & Poors Marine Mutual Report 2006

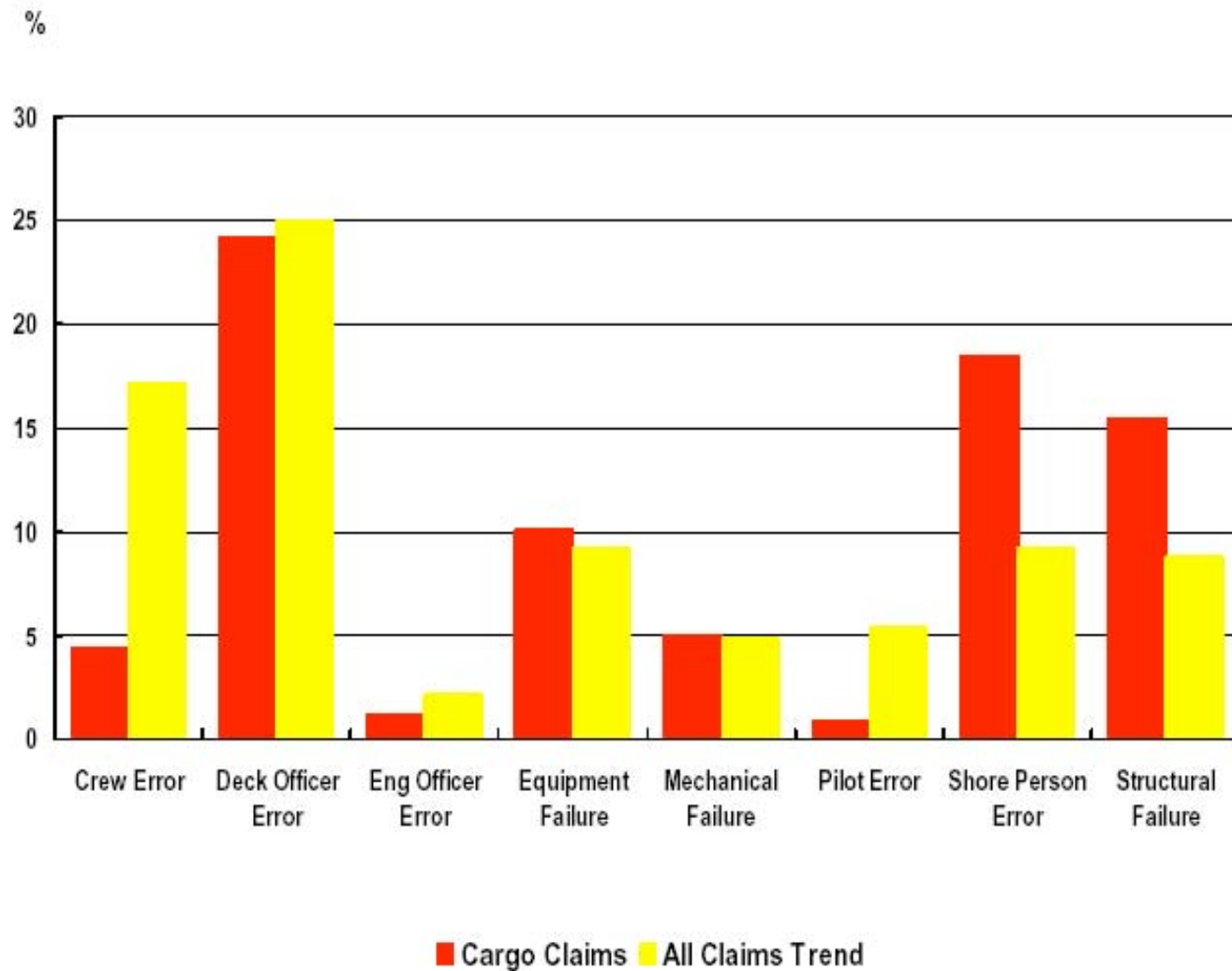
Marine Hull and Cargo/Transport Gross Ultimate Loss Ratio



U/W Year 1996 to 2005



Principal Cause of Major Claims



Designated Persons Insurance

- Developed by British Marine in February 2007; see www.its-insurance.com
- Available for DPs mentioned in the ISM Code
- Covers the unfortunate circumstance when the company and DP disagree or when the DP faces criminal charges
- No word yet on rate structure

Breaking News...

- LLOYD'S PROFITS SOAR TO 3.7 BILLION POUNDS IN 2006
- Global Insurance.com reported on April 3, 2007 these record profits
- Its combined ratio of 83.1%, down from 111.8% in 2005, compares favorably with the 86% for Bermudian re/insurers and 95% for US re/insurers



"Laying Down On The Job"







"A Day Week Month-2 Months At The Beach"











“A little bondo & paint -- she'll be fine!”







2005.10.03

*Review of Legal Issues
Pertaining to
Oceanographic Research
Vessel Operation*

Review of legal issues affecting ORV Operations

- Case Studies:
 - Injury to cook aboard motor vessel
 - Scuba accident aboard diving vessel
 - David Andrews and the R/V C-Searcher
 - Training dive accident aboard the US Coast Guard Cutter Healy
 - Salvage
 - Overloaded Yiannis Dolphin

Glenda Churchwell v. Bluegrass Marine, Inc., et.al.

Court: United States Court of Appeals for the 6th Circuit, April 21st 2006

Facts: Plaintiff cook dropped a coffee can she had filled with grease, then slipped on the spilled grease on deck

- Defendants argue the existence of safer alternatives does not render the existing conditions unsafe
- Churchwell sought compensations under the doctrine of unseaworthiness and the Jones Act

Churchwell v. Bluegrass (continued)

Issue: Were defendants protected by the **primary duty doctrine** which states an employee responsible for maintaining safe conditions may not sue his employer for his own failure to maintain safe conditions?

Holding: There is no primary duty issue here and that safer alternatives - a can with handles and a grease mat for the deck - could have been provided.

Christopher MacDonald v. Kahikolu

Court: United States Court of Appeals for the 9th Circuit, March 31st, 2006

Facts: Mr. MacDonald was employed as a deckhand on Kahikolu's diving vessel

- During a free dive to retrieve a mooring line, MacDonald sustained injury to his left ear when he attempted to equalize on descent
- MacDonald alleges three causes of action:
 - Under the Jones Act
 - On grounds the vessel was not seaworthy
 - Negligence - Kahikolu's failure to provide a vessel that was fit for her intended purpose

Christopher MacDonald v. Kahikolu
(continued)

Issue: Did trial court err in finding no negligence against MacDonald's employer?

Holding: Coast guard regulations require a vessel carrying scuba divers to provide a scuba divers' manual to the person in charge of the dive. Its absence on the boat should have been considered as to whether it played any part in causing the injury, regardless of negligence.

The Case of David Andrews and the R/V C-Searcher

Facts:

- David Andrews was one of six seismic employees of Petroleum Gas Services (PGS) on a regularly-scheduled crew change on May 7th 1998
- While in transit to the airport, their employer-provided van, was struck by a dump truck which veered into them from an oncoming lane
- One crewman was killed; all others with varying degrees of injury
- Andrews suffered injuries rendering him a ventilator-dependent quadriplegic

The Case of David Andrews

(continued)



The Case of David Andrews

(continued)

Case included 4 phases over 7 years

Phase 1: Mediation, June 1999

- USD 20 million needed over Mr. Andrews lifetime

Phase 2: Product Liability Case, March 2001

- Against dump truck company

Phase 3: Mediation, November 2003

Phase 4: Andrews/PGS v. United States, January 2004

- Care costs now under Medicare

*David Andrews v. Petroleum Gas Services (PGS),
et al.
(continued)*

- Even though miles and miles from any water, when the employer is not negligent or at fault, the maintenance and cure obligations in the US remain indefinite until Maximum Medical Improvement is reached under admiralty law

Diving accident aboard *USCGC Healy*

- August 17th, 2006
- Lt. Jessica Hill & Boatswain's Mate Steven Duque



US Coast Guard Diving Accident *(continued)*

Facts:

- The USCGC Healy was on a research mission 500 miles north of Alaska
- Hill and Duque partook in a training dive entering in an open patch of water near the Healy's bow.
- A team on board held ropes attached to the divers, lest they become disoriented under the ice
- The pair had been underwater for approx. 10 minutes when they were pulled up by the ropes
- Efforts to revive the divers by CPR failed

US Coast Guard Diving Accident

(continued)

Current Status:

- The Coast Guard has:
 - Conducted two investigations
 - 1. Focusing on the root cause
 - 2. Looking for findings of responsibility
 - Relieved the ship's captain
 - Pulled all diving equipment off the ship
 - Suspended all polar operations

Results of Healy Investigation

1/12/07

- Dive was not conducted according to Navy and Coast Guard manuals
- Overall management of the dive program aboard Healy was inadequate
- Overall structure of current Coast Guard dive plan not on par with other high risk operations
- Punitive letters issued to Captain, Executive Officer, and Operations Officer

Reiss v. One Schat Harding

Court: United States District Court, South Carolina, May 30th 2006

Facts:

- Fishing boat came upon another ship's lifeboat while out at sea
- Fishing boat then decided to forsake her fishing duties, towing the abandoned lifeboat 100 miles to port

Reiss v. One Schat Harding
(continued)

Issue: Did Reiss have standing to recover value of lifeboat under the law of salvage?

Holding: Fishing boat was awarded 45% of the value (\$110,000) of the lifeboat to be divided amongst the master and crew

Yiannnis Dolphin overloaded

- April 7, 2007, Coast Guard terminated voyage of 45 foot sightseeing vessel
- There were 75 passengers aboard, with the maximum allowable 49 (computed BEFORE new weight guidelines issued!)
- Penalties will likely be severe after the capsizes in Baltimore and Lake George

*ORV Issues of
Concern/Under
Consideration*

Lifeboats

- Another lifeboat drill; another death
- A deck officer recently killed when the lifeboat fell from the embarkation level after the hooks disengaged from the falls
- Extensive advice recently published by UK Maritime and Coastguard Agency in a draft marine guidance note on measures to prevent accidents with lifeboats

Lifeboats

(continued)

- May 2006 - the Maritime Safety Committee approved a draft amendment to SOLAS regulation III to be adopted in Dec. '06
 - For free-fall launching, the crew shall board the lifeboat, properly secure themselves, and commence simulated launch procedure up to, *but not including*, the actual release of the boat
 - The rest of the drill (actual launching or lowering) will only see the required operating crew on board the lifeboat
 - Singapore accepts early implementation of the amendment, as recommended by the IMO

An International Marine Scientific Research Code of Conduct

Why?

- To avoid environmental impacts
- To increase communication
- To enhance availability & sharing of samples

An International Marine Scientific Research Code of Conduct

Purpose:

- Confidence building
 - Need for environmental assessment in MSR
 - Transparency factor
-
- No legal sanctions anticipated, but access, and conceivably funding, could become more difficult
 - Strong support at ISOM/Galway with Nixon, Geraint West of UK and John Breslin of Ireland charged with developing a draft text

Conclusions

- Expect further instability in insurance markets because of natural disasters and depleted financial reserves
- Legal issues remain complex because of new technology and human factors
- Be prepared to participate in the development of a Code of Conduct for marine scientific research

IACS

Perfection is Not Possible

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Thank You
Any Questions?