

A large white ship hull section is under construction in a dark industrial shipyard. The hull is the central focus, with various openings and structural details visible. The shipyard is filled with dark steel beams, walkways, and scaffolding. A yellow crane or lift is visible at the top, and a sign for 'Fincantieri' is partially visible. The lighting is dramatic, with bright spots on the hull and deep shadows in the surrounding structure.

Admiralty Law and Insurance Update

Dennis Nixon

University of Rhode Island

2012 RVOC Meeting

Marinette Shipyard, Marinette, Wisconsin

April 23, 2012

Outline

- World Insurance Market & Claims
- UNOLS Fleet Insurance Statistics
- Relevant Vessel Casualties
- Relevant Legal Decisions
- Safety Issues
- Conclusions



Overview of the World Insurance Market & Claims



2011 Global Marine Insurance Report

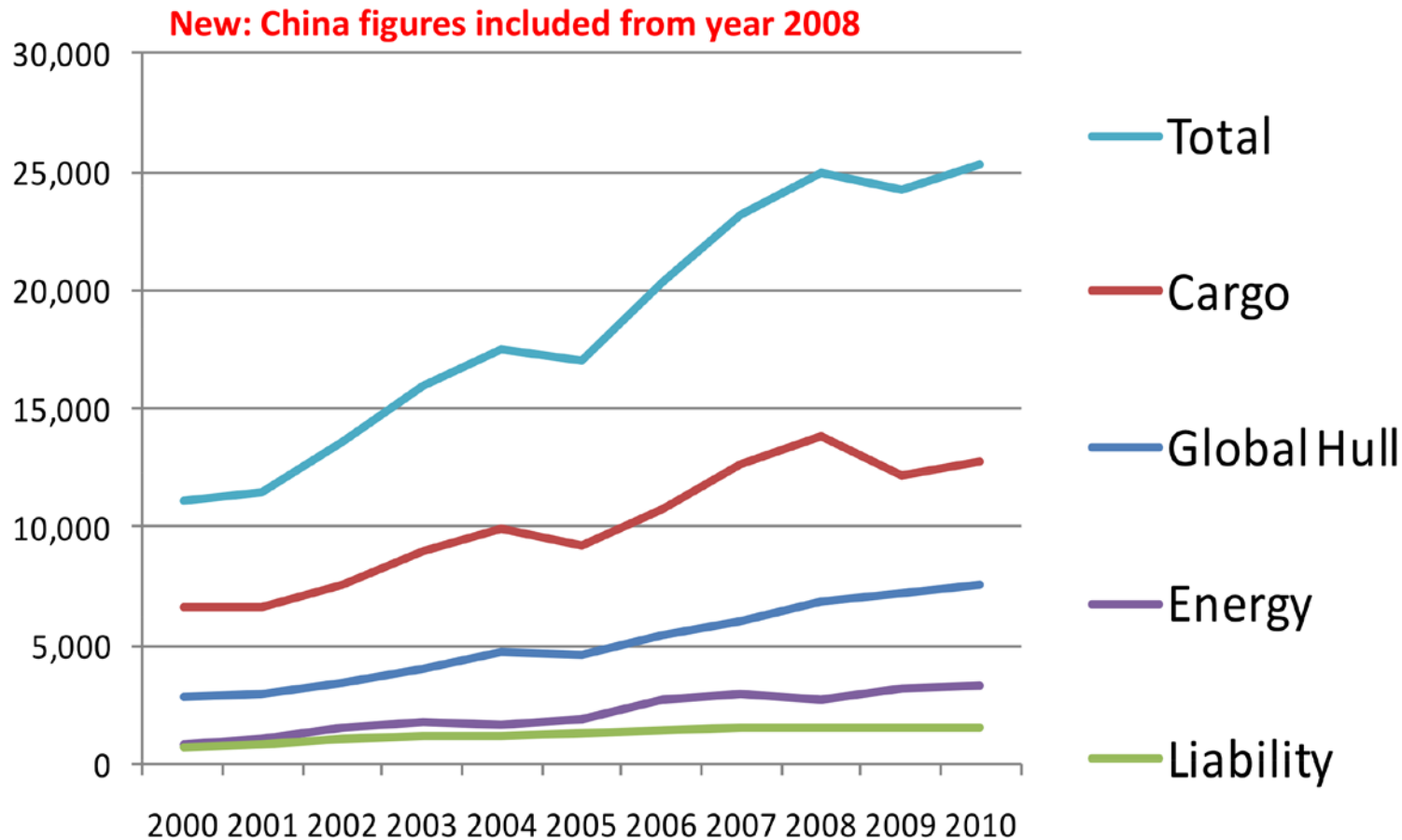
Astrid Seltmann



Vice chairman IUMI Facts and Figures Committee
Analyst/Actuary @ Cefor, The Nordic Association of Marine Insurers

Global Marine Premiums

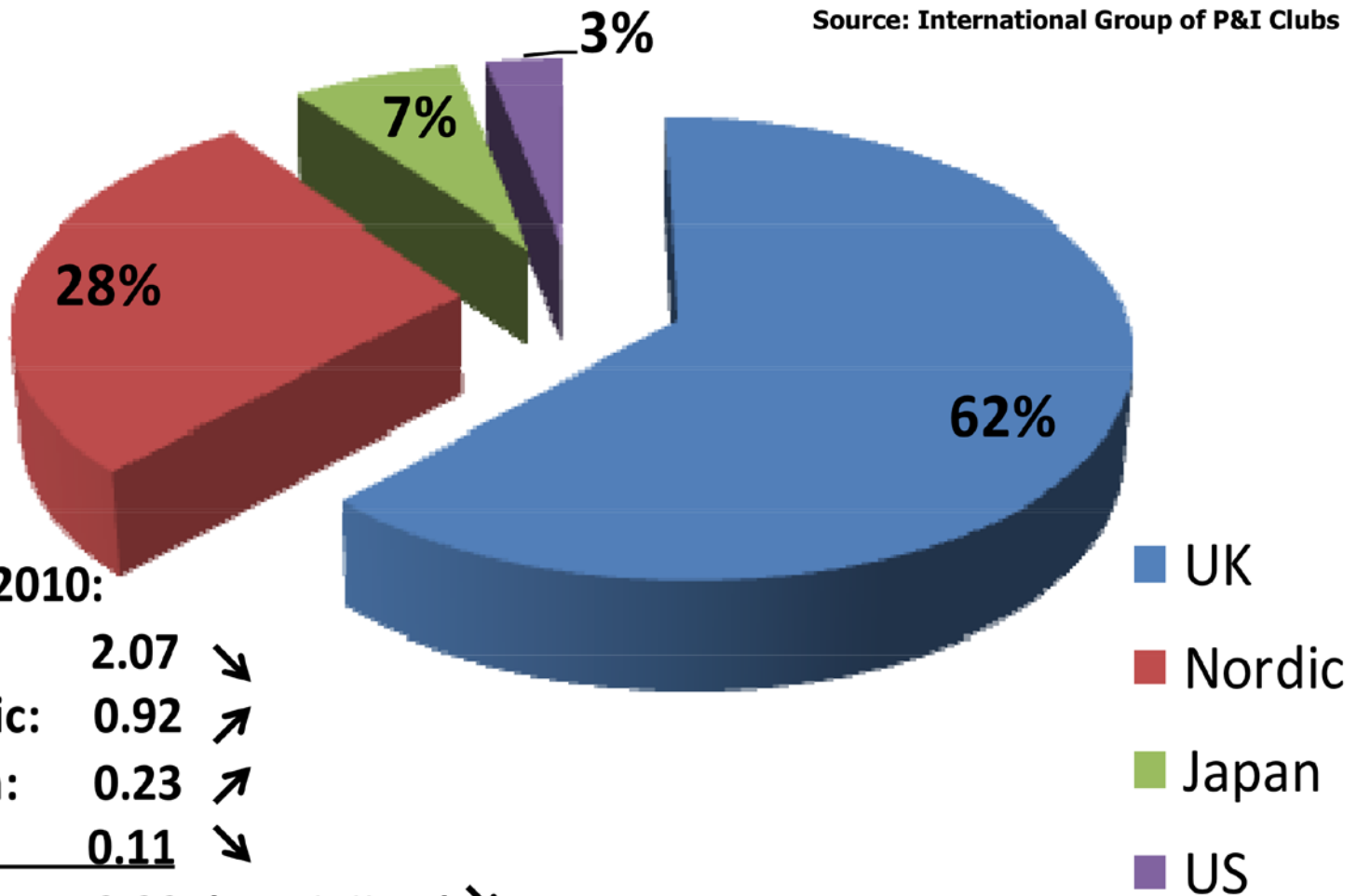
by line of business, 2000 – 2010, (USD Million), as reported



P&I Clubs International Group – Gross Calls 2010 (Premium) – Operational location



Source: International Group of P&I Clubs



Calls 2010:

UK: 2.07 ↘

Nordic: 0.92 ↗

Japan: 0.23 ↗

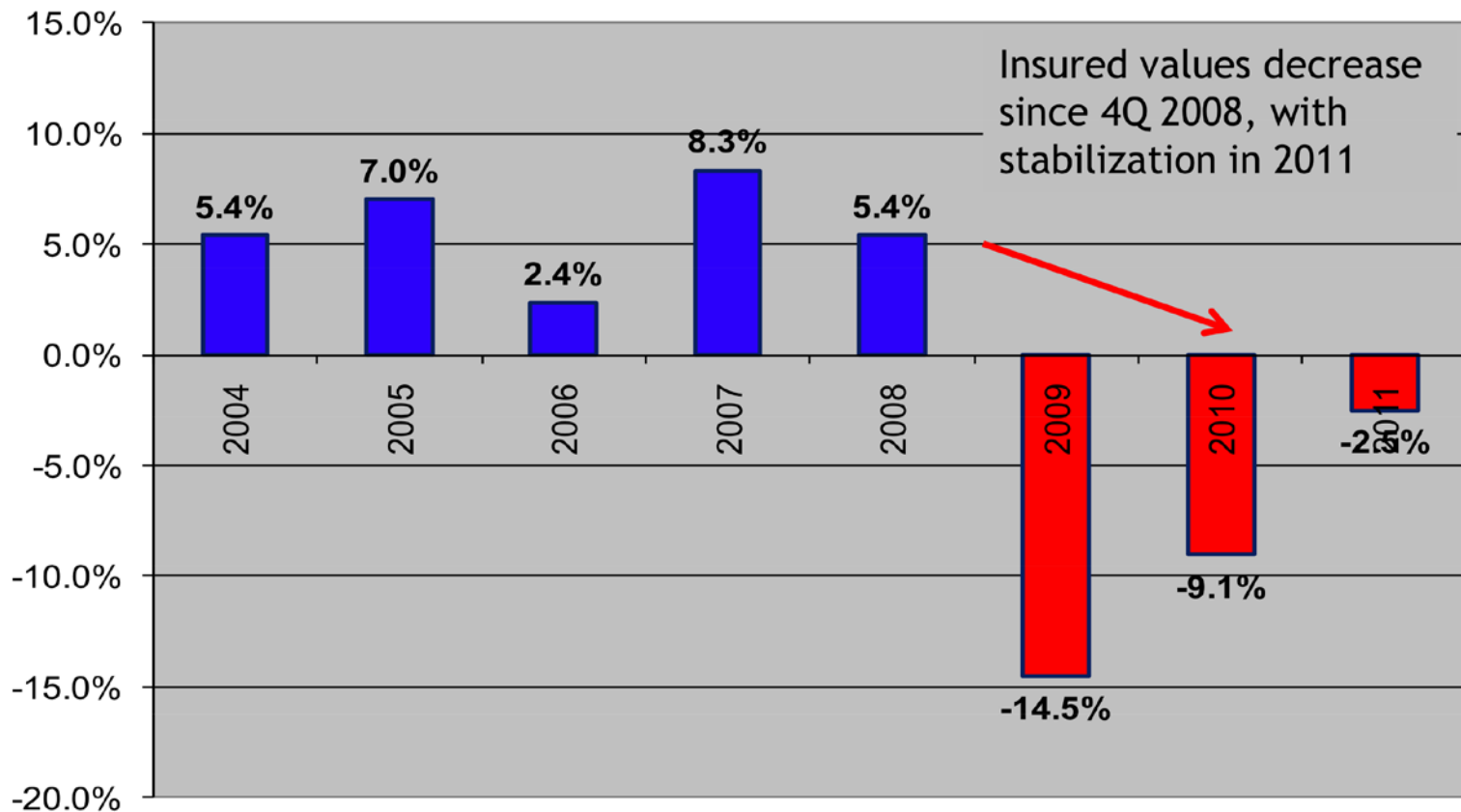
US: 0.11 ↘

Total: 3.33 (USD billion) ↘

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 2011





IUMI 2012 St Petersburg

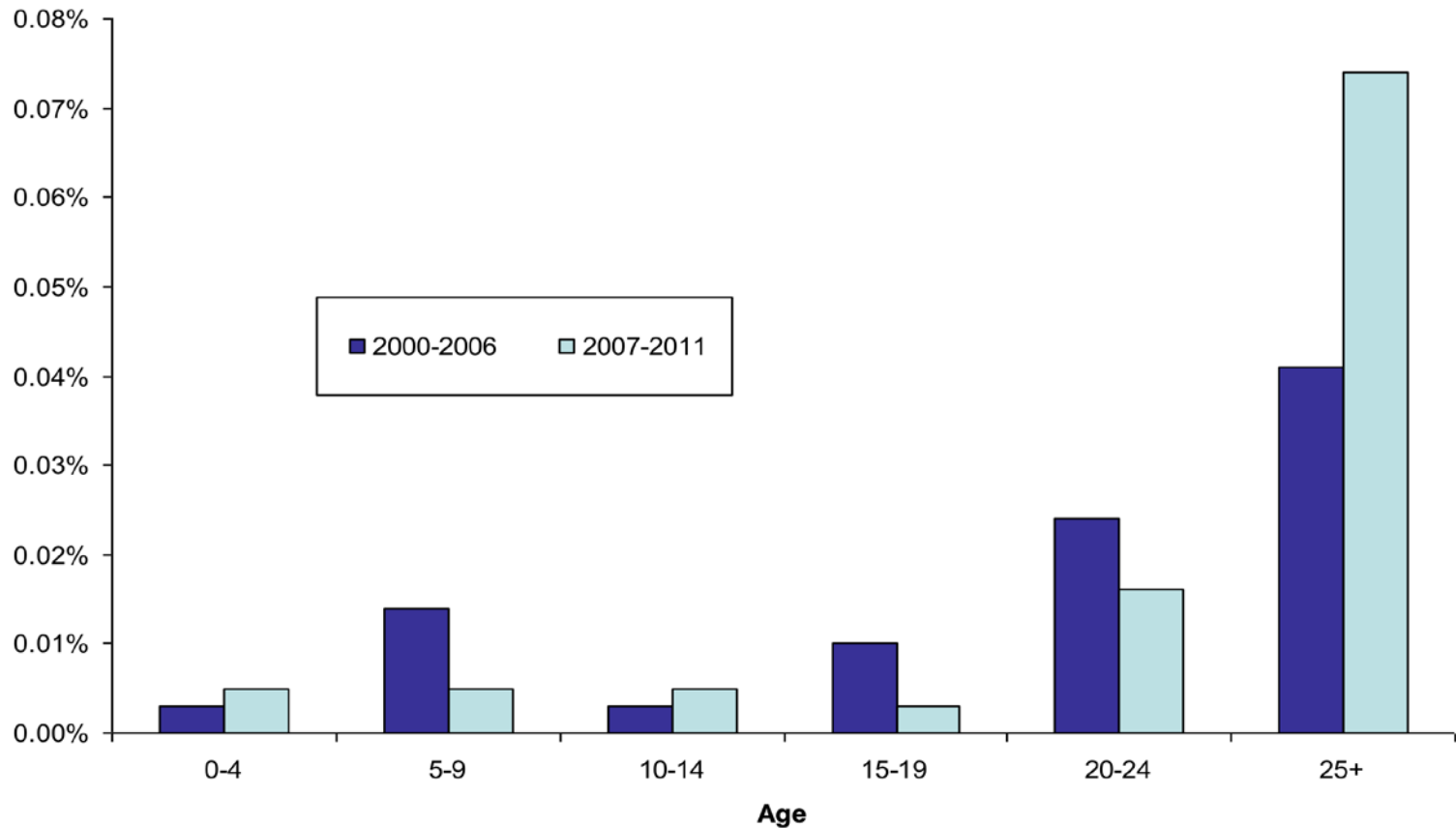
Casualty and World Fleet Statistics as at 01.01.2012

Prepared by Philip Graham

IUMI Facts & Figures Committee

Total Bulker Losses by Age Percentage of World Bulker Fleet

Bulkers >10,000 DWT

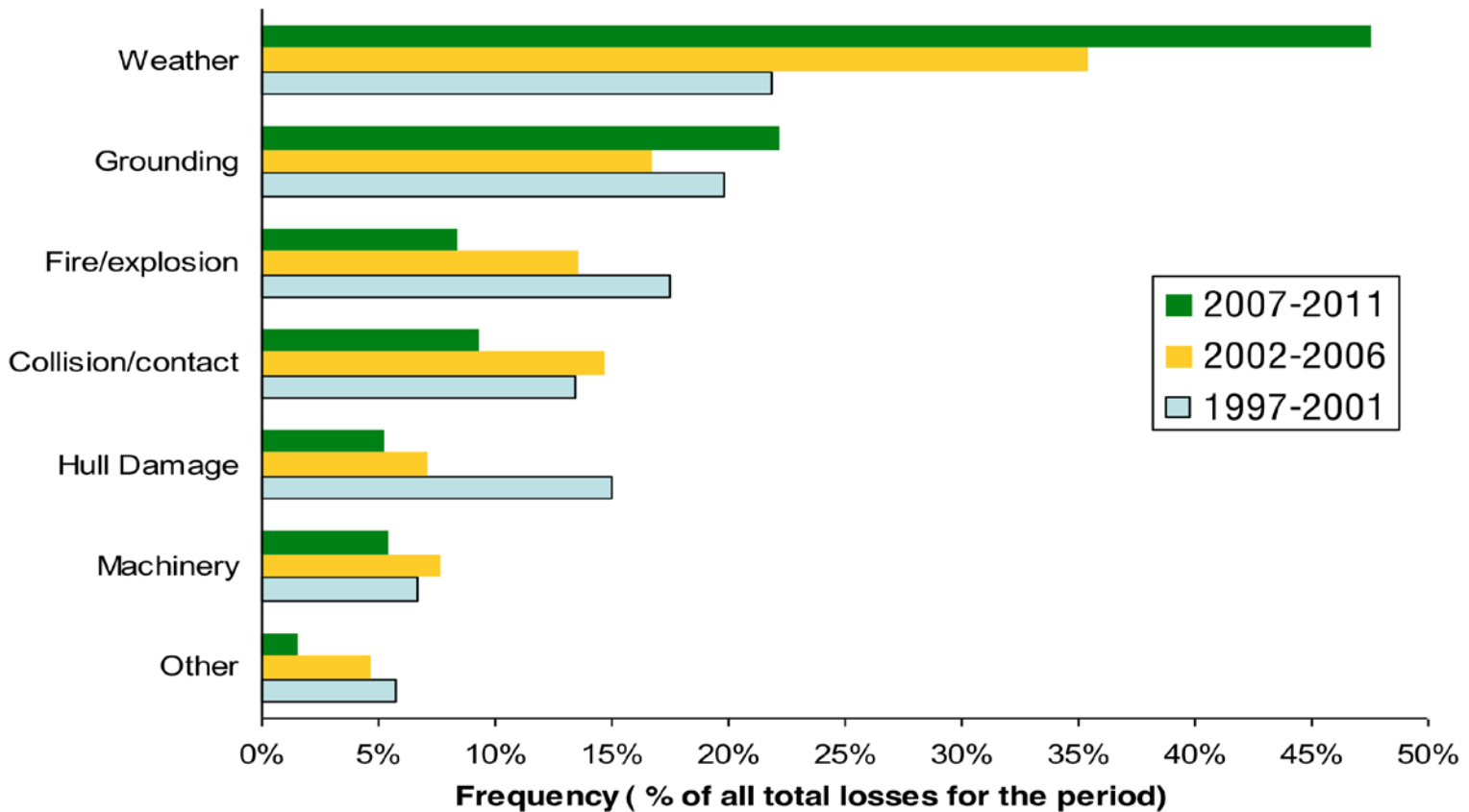


Source: Fleet numbers : Clarkson Research Services

Losses: LMIU, total losses as reported in Lloyds List

Total Losses 1997 – 2011

By Cause, All Vessel Type (vessels > 500 GT)



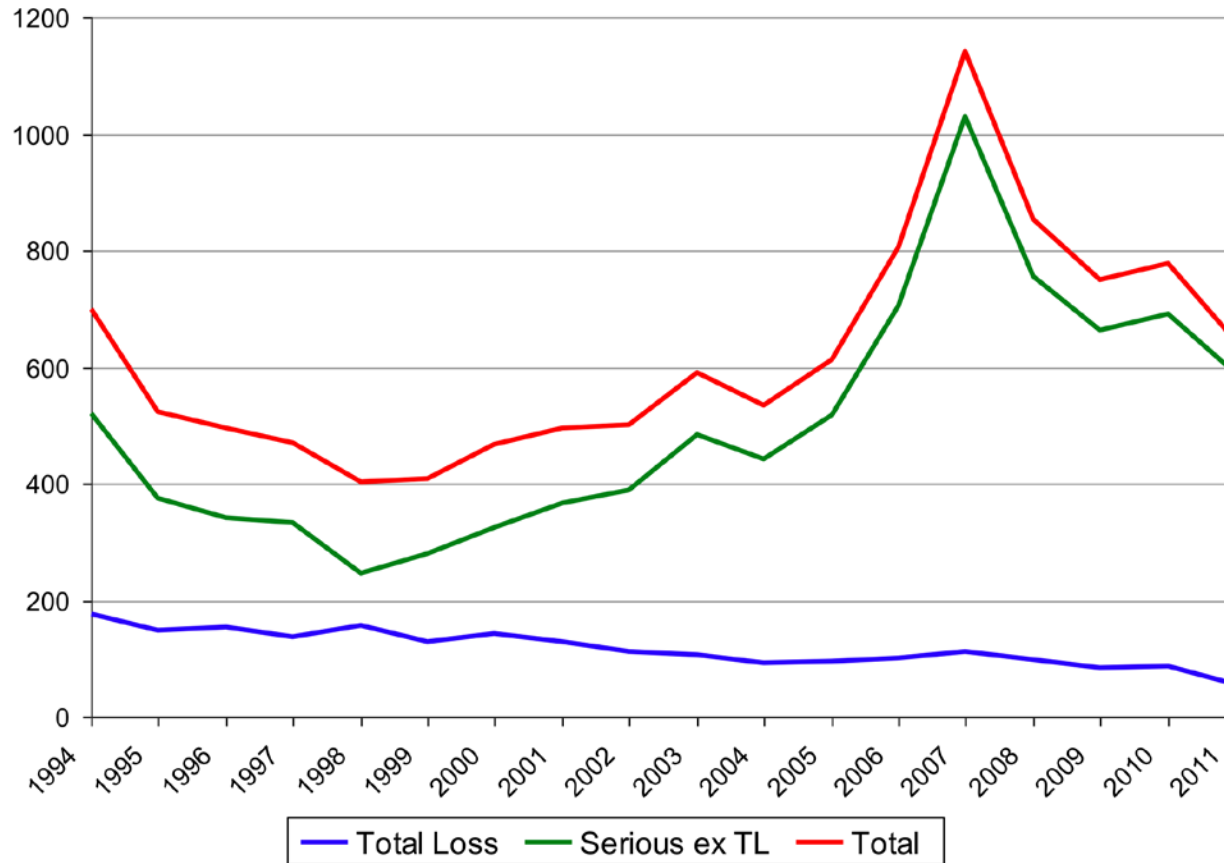
Source: LMIU, total losses as reported by Lloyds List

Serious and Total Losses 1994 – 2011

By Number
(vessels > 500 GT)

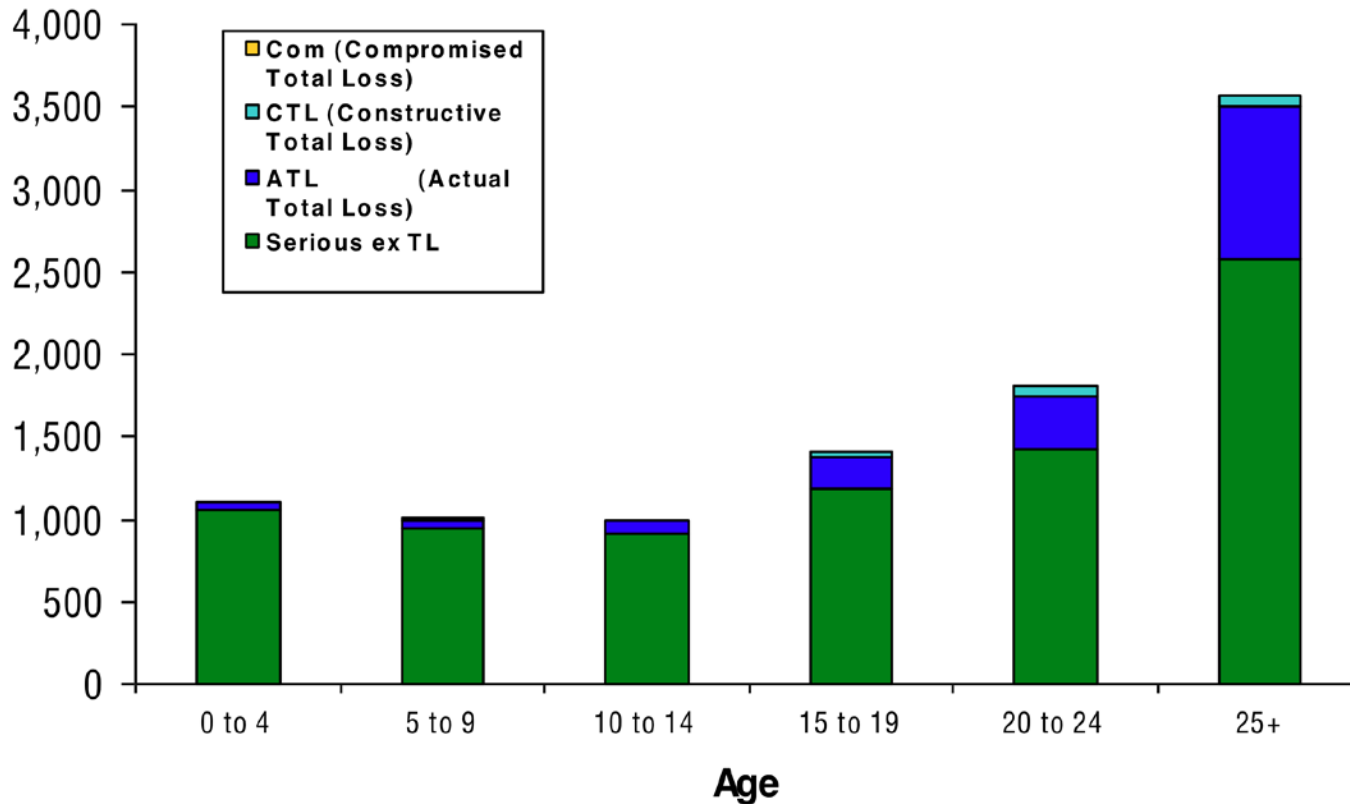


Number of Incidents



Source: LMIU, total losses as reported by Lloyds List

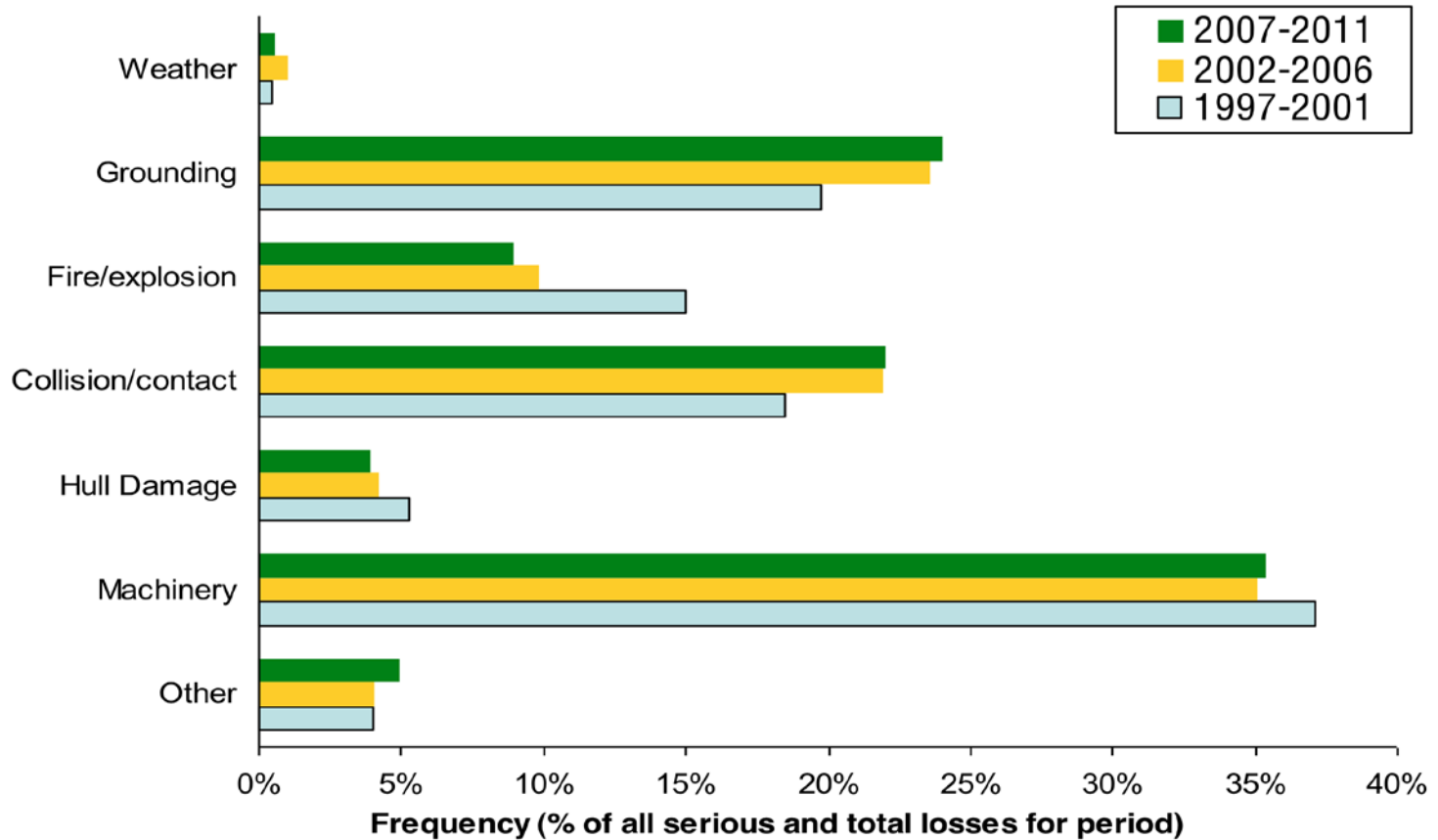
Serious and Total Losses 1996 - 2011 By age (vessels > 500 GT)



Source: LMIU, total losses as reported by Lloyds List

Serious Losses 1997 - 2011

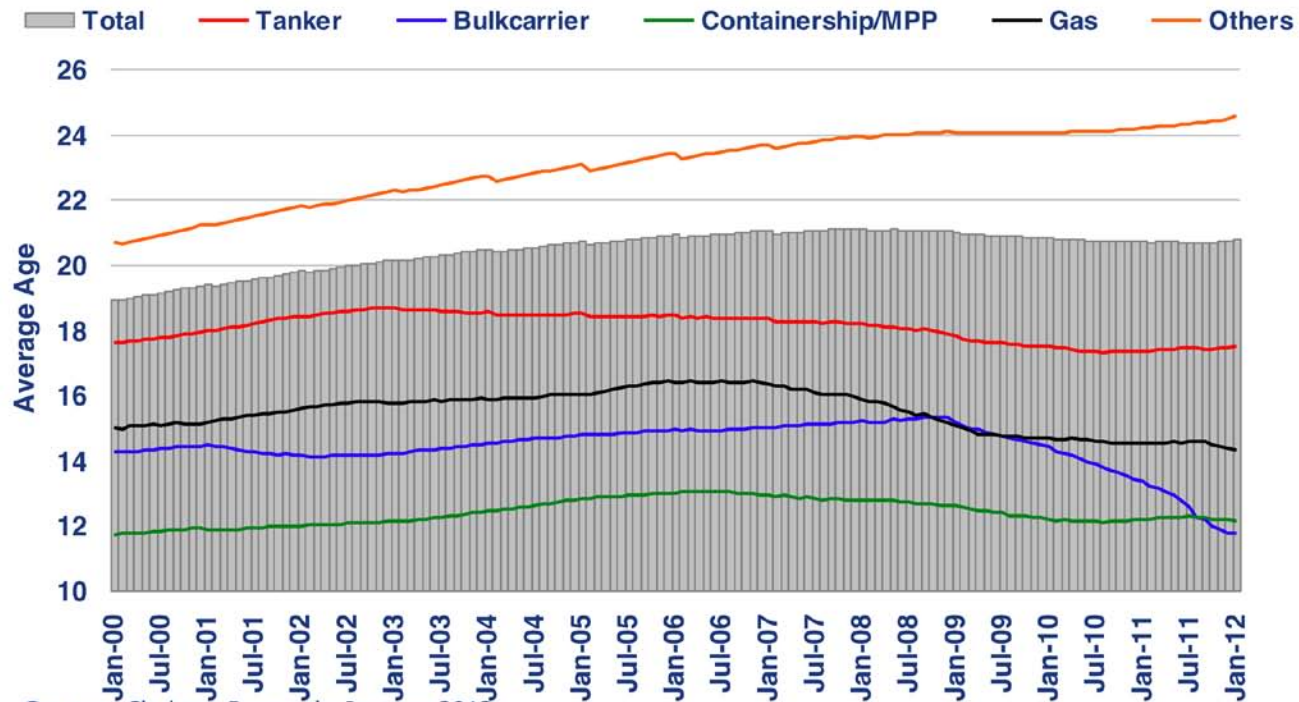
By Cause, All Vessel Type
(vessels > 500 GT)



Source: LMIU, total losses as reported by Lloyds List



Average Age of the World Fleet



Source: Clarkson Research, January 2012.

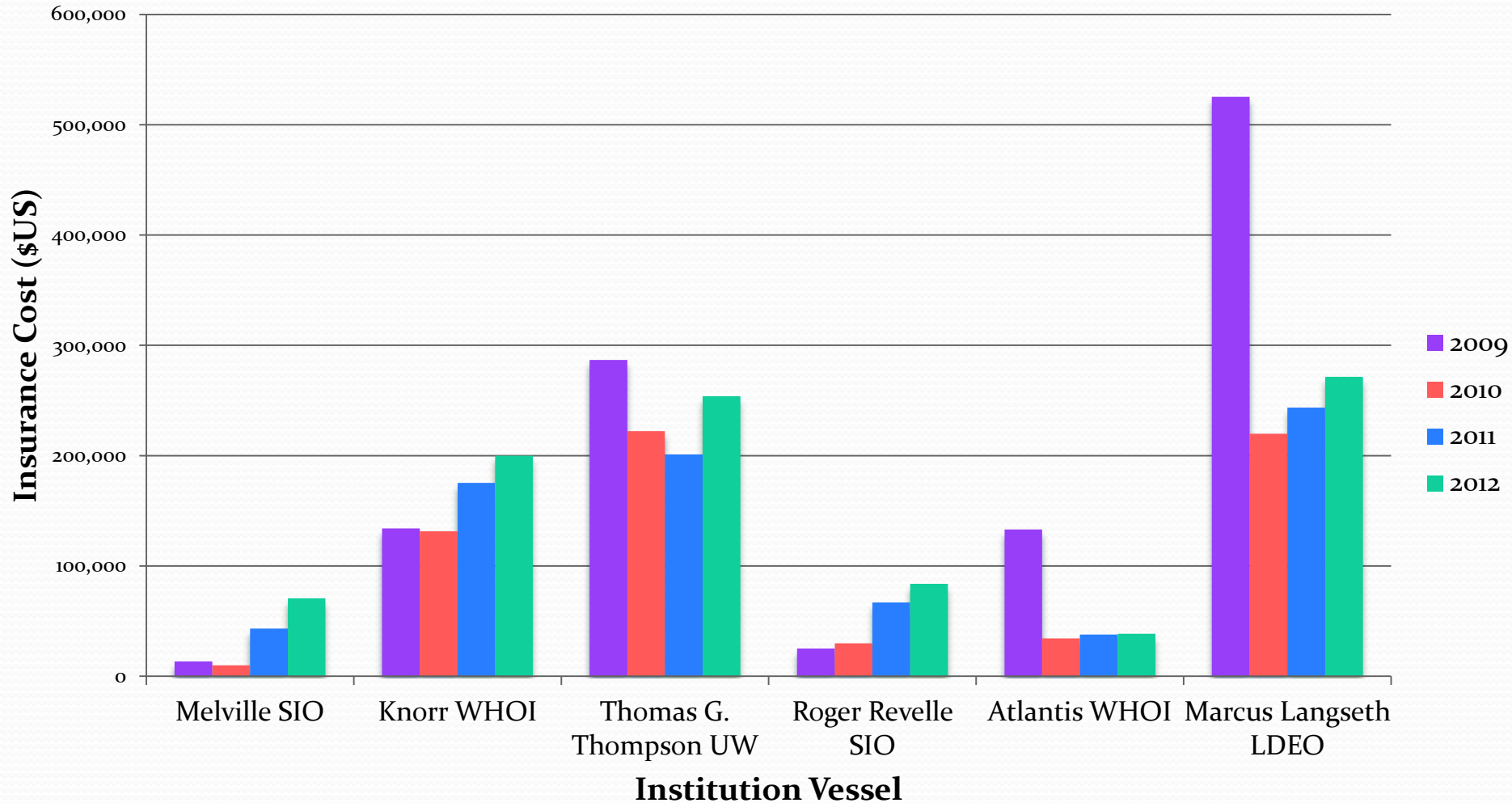
Note (1): Includes all vessels in these categories above 100 GT.

Note (2): Average age is calculated using number of vessels. Calculations are based on year and month of build.

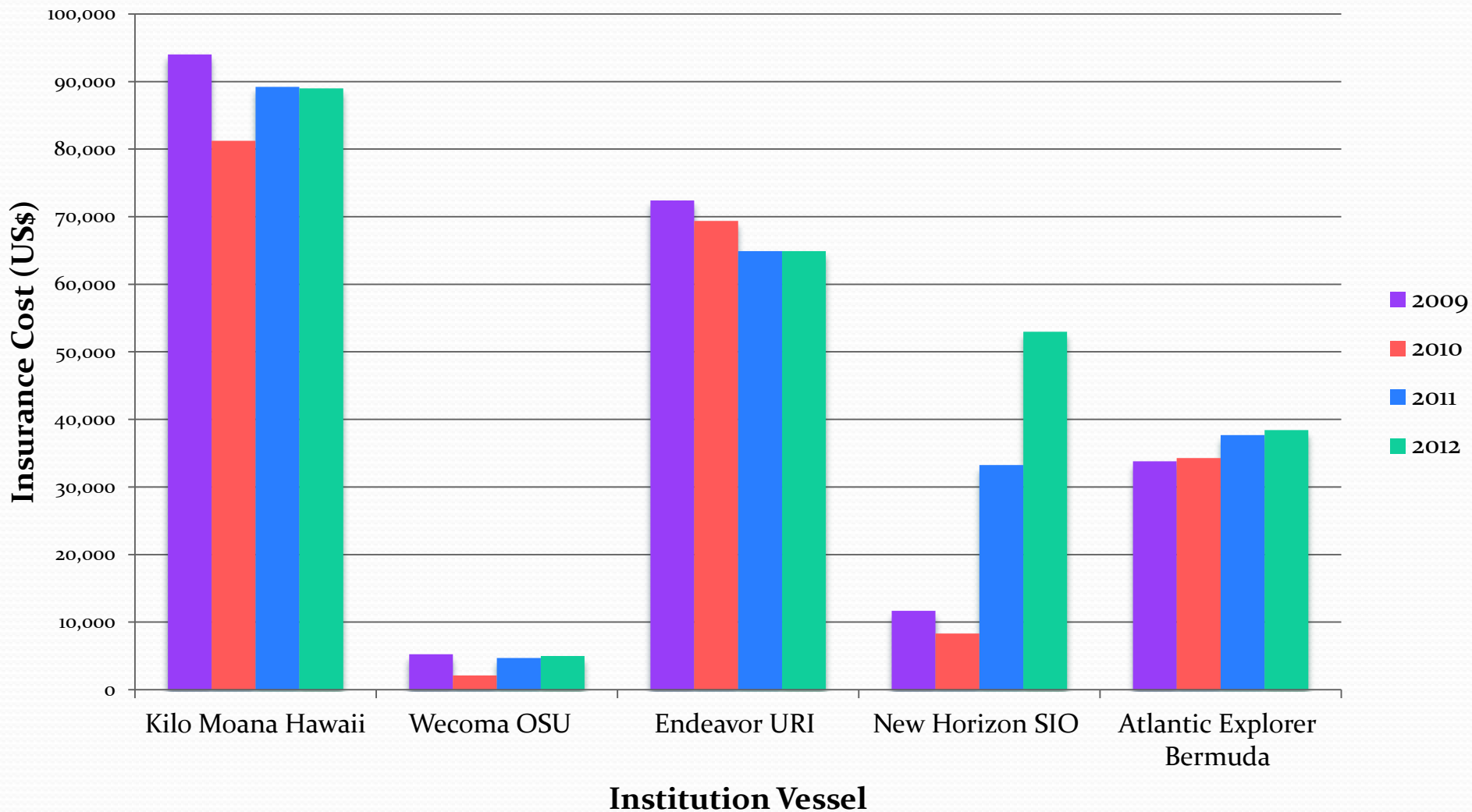


Global View of Insurance

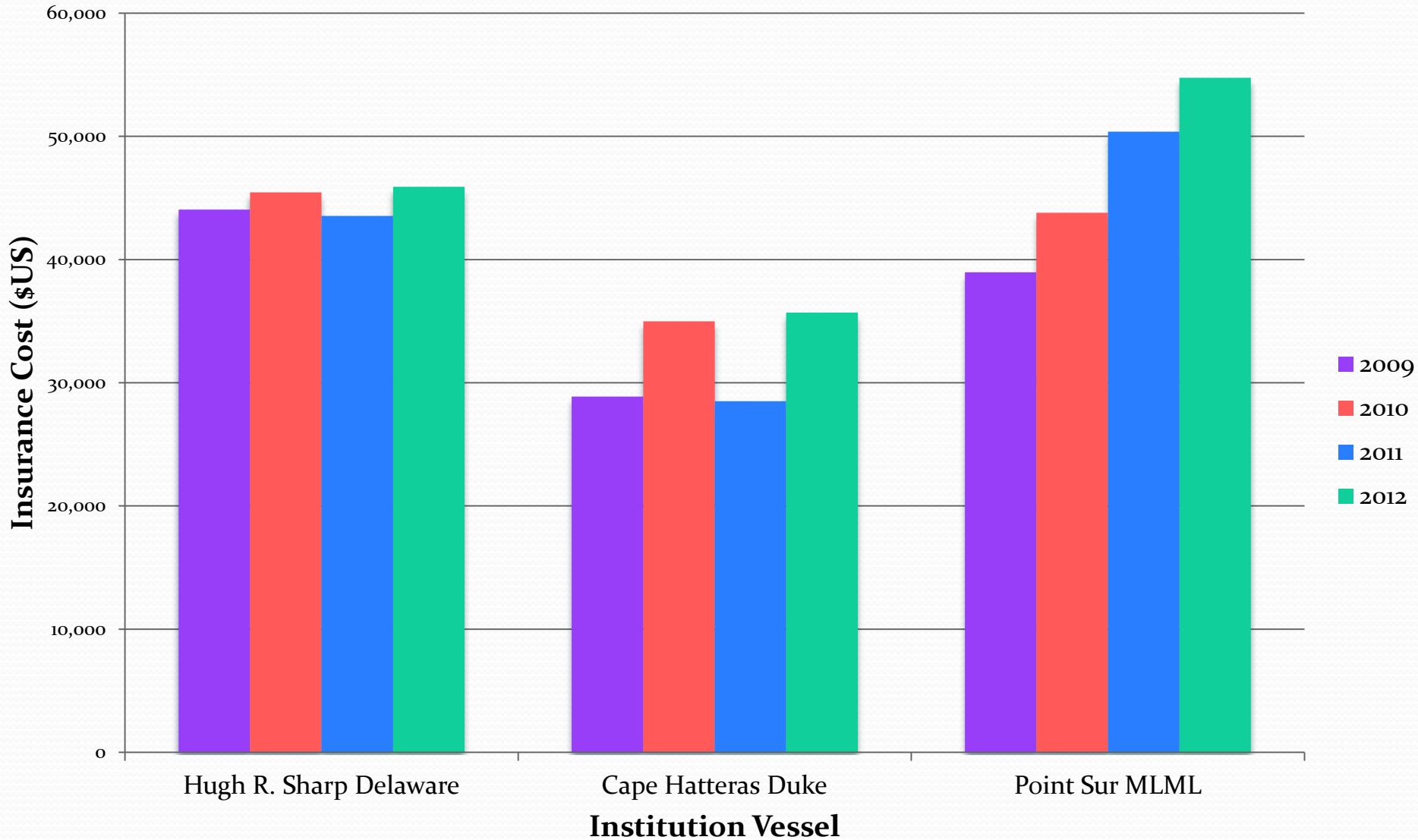
2009-2012 Insurance Costs: Global/Ocean



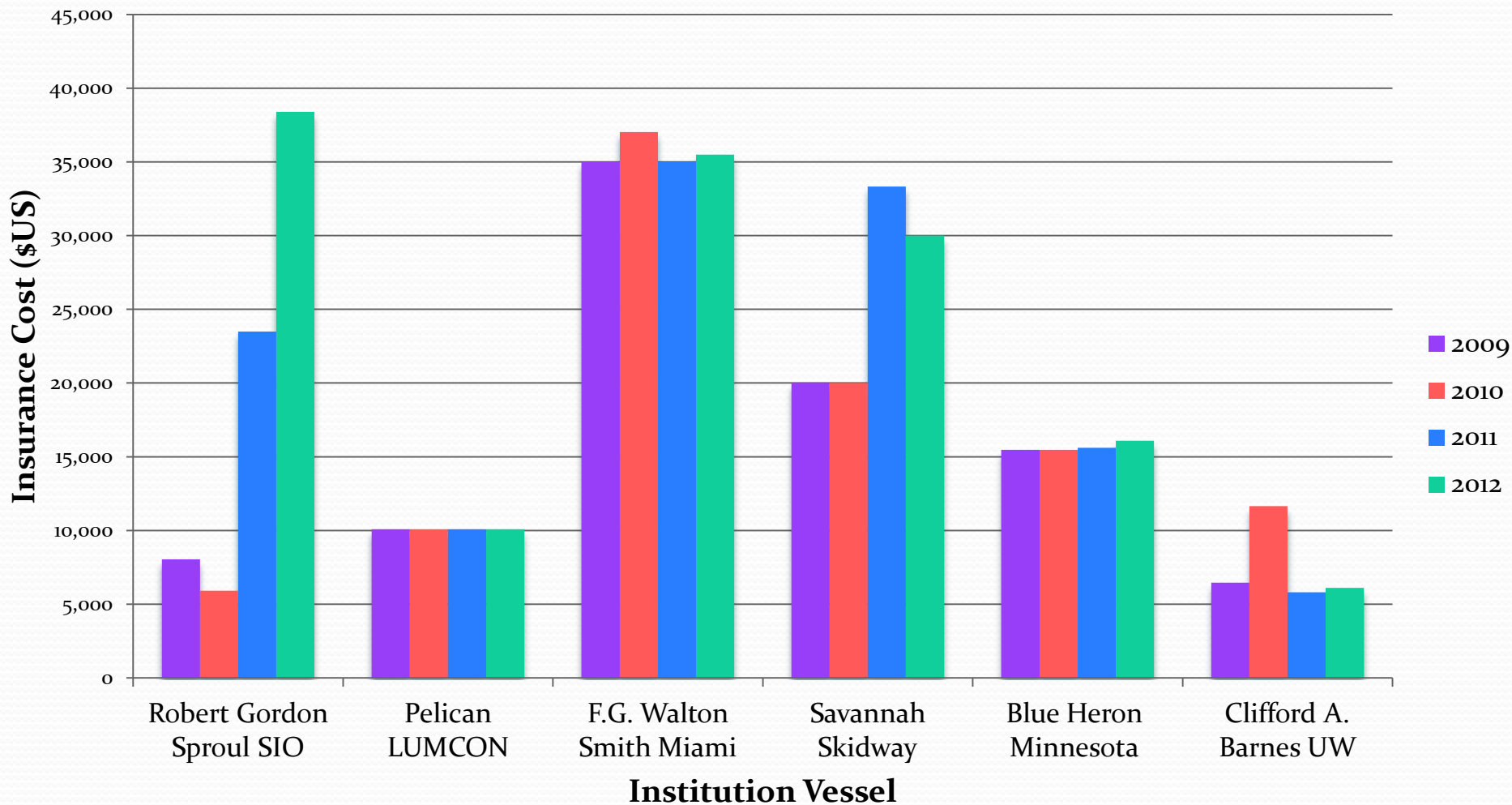
2009-2012 Insurance Costs: Ocean/Intermediate



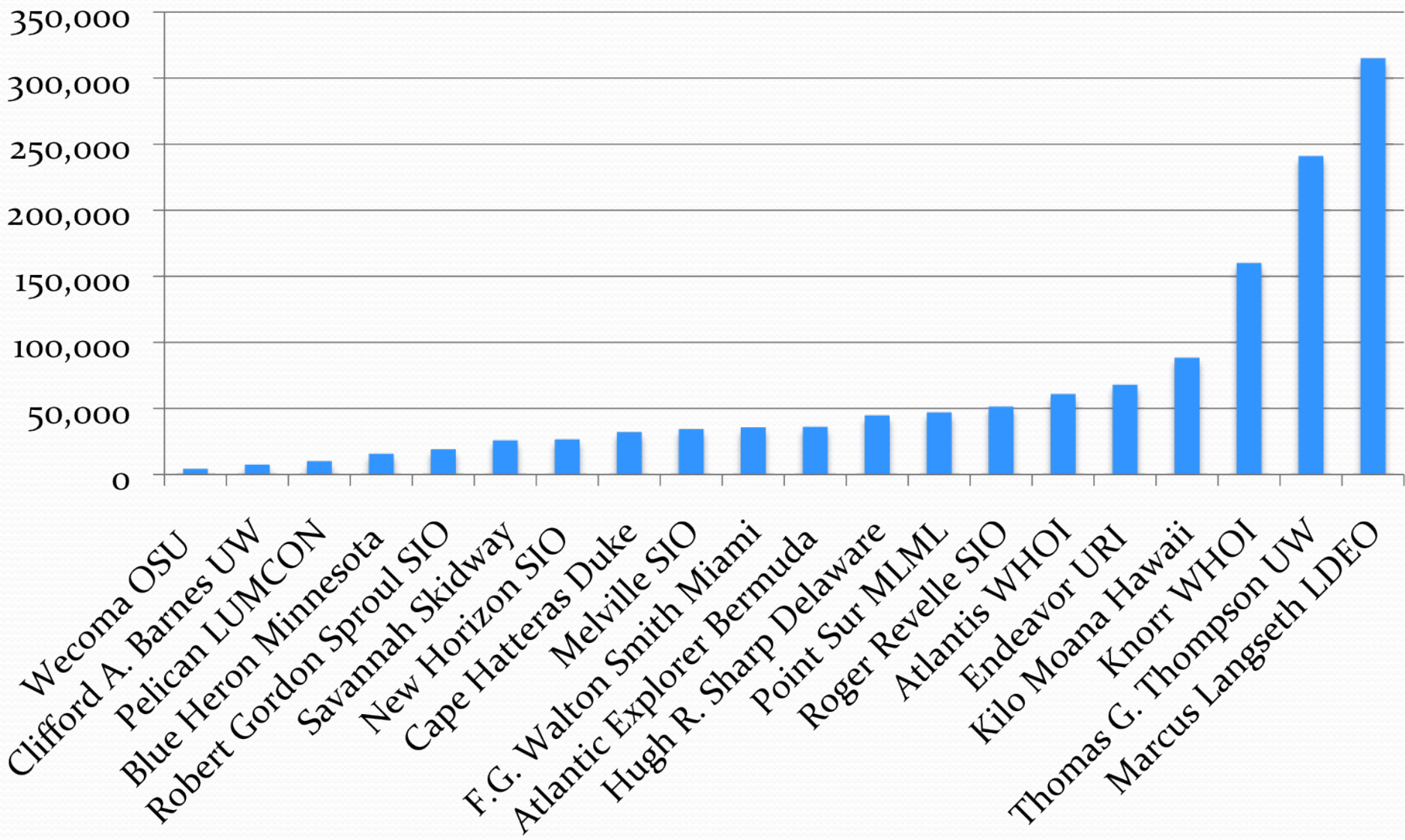
2009-2012 Insurance Costs: Regional



2009-2012 Insurance Costs: Coastal/Local



2009-2012 Insurance Costs: 4 Year Averages



Willis Report: P&I Market

- Mixed messages
 - The P&I market “delivered a blockbuster financial performance last year,” according to a report from Willis.
 - However, 2011 brought fragile investment income and increased claims, which has led to proposed “rate and deductible increases for the 2012 renewal.”
- 2011 saw an overall market underwriting surplus of three percent - the highest underwriting profit ever recorded by the market.
- Ship operators are facing one of the most challenging economic periods in a generation – pressure to cut costs is likely to create tensions between buyers and underwriters.
- Climate of apprehension within a number of clubs.
- 2012 renewal has all the early signs of being confrontational.



Relevant Vessel Casualties

Casualties: M/V “Waldhof” 2011

The Rhine River Disaster

- January 13, 2011 – Cargo ship capsized at St. Goarhausen/Loreley are on the Rhine in Germany.
- Cargo was 2,378 tons of Sulphuric Acid with a concentration of 96%.
- Overloaded by 631 tons.



Casualties: M/V “Waldhof” 2011

- Serious economic consequences for the inland navigation industry, harbors and the supply industry.
- High water at time of accident.
- Navigation interrupted both up and downstream.
- Blockage of waterway lasted 33 days.



Casualties: M/V “Waldhof” 2011

- Two of the four crew members were saved.
- The body of one was found and the fourth crew member was never found.



Casualties: Rena Grounding 2011

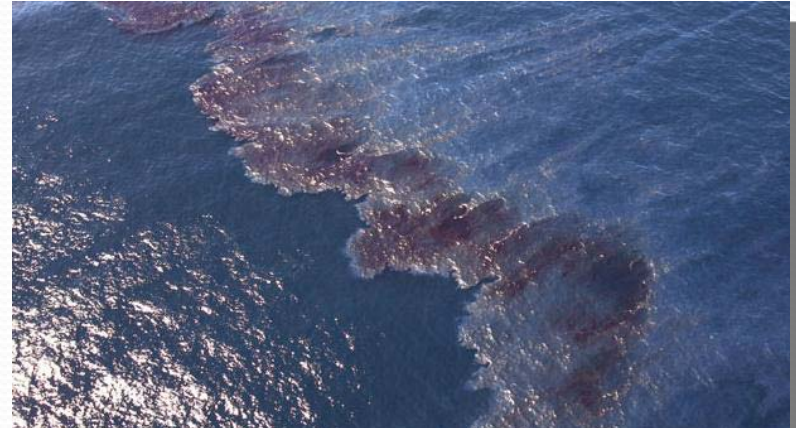
RENA SPLITS AND STERN SINKS

- Three months after grounding on New Zealand reef, container ship splits in half and stern sinks.
- The bow remains lodged on Astrolabe Reef where RENA originally wrecked on October 5, 2011.



Casualties: Rena Grounding 2011

- Containers from the Rena continue to be washed up on shore
- Lumber, debris, and what looks like an oil sheen can now be seen all around the reef.
- Up to 300 tons of heavy fuel have leaked into the environmentally sensitive Bay of Plenty since the Rena hit the reef, 15 miles off New Zealand's North Island coast.
- Damage to beaches and wildlife from the resulting oil spill in October created the worst environmental disaster on record for New Zealand.



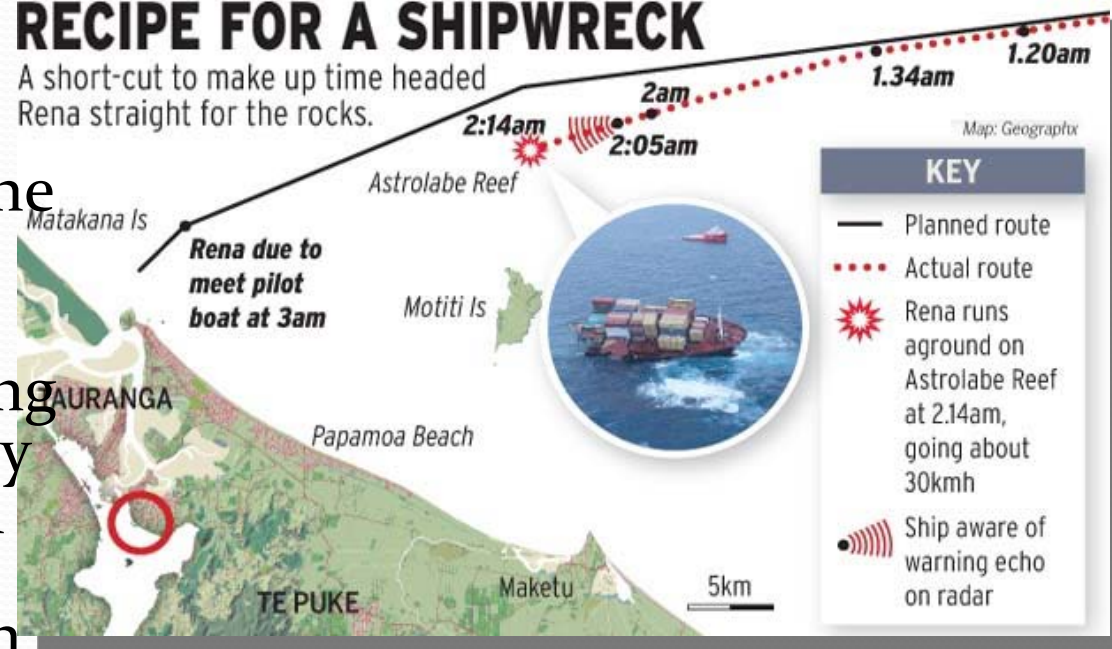
Casualties: Rena Grounding 2011

Update as of April 7, 2012:

- New Zealand's Transport Accident Investigation Commission (TAIC) determined that the casualty was caused by the captain taking a "short-cut" to beat a deadline.
- The captain and navigating officer have pleaded guilty to mishandling the vessel and tampering with ship documents after the crash.

RECIPE FOR A SHIPWRECK

A short-cut to make up time headed Rena straight for the rocks.



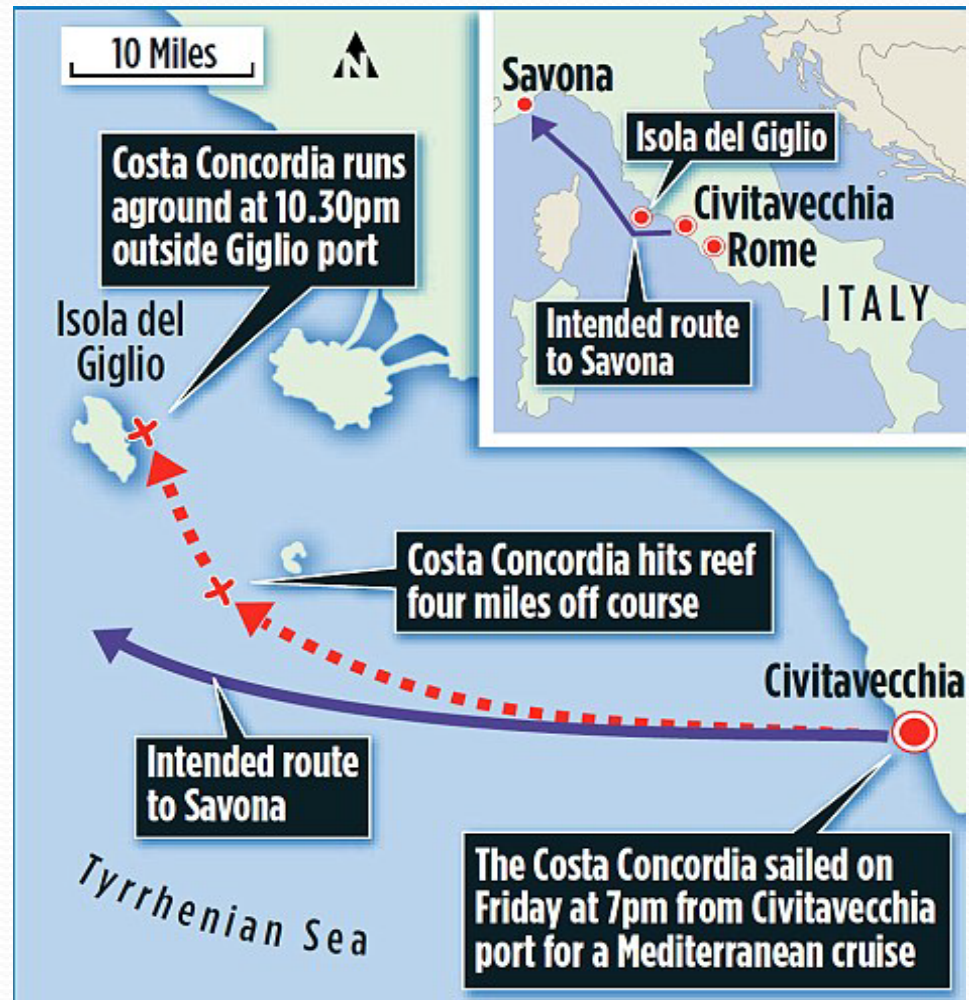
Casualties: Costa Concordia

- January 13, 2012 – The cruise ship Costa Concordia partially sank after hitting reef off the Italian coast and running aground at Isola del Giglio, Tuscany, requiring the evacuation of the 4,252 people on board.
- After hitting the reef, the ship started to take in water, flooding the engine room and generators, causing the ship to drift for more than an hour off the eastern shore of Isola del Giglio before running aground and being evacuated.



Casualties: Costa Concordia

- The captain deviated from the ship's computer-programmed route to treat people on Isola del Giglio to “the spectacle of a close sail-last or near-shore salute.”
 - He claims his bosses put him under intense pressure to sail the cruise ship close to Giglio island in order to present a spectacle to passengers.
- He delayed preparations to abandon ship, and the ship developed a list, both of which hindered eventual evacuation attempts.
- Soon after grounding, the ship listed more extremely, trapping people inside.



Casualties: Costa Concordia

- The captain left the ship during the evacuation and did not re-board despite orders by maritime officials.
- Captain claims that the rocky islet that the ship smashed into was not marked by his electronic navigation systems. However, the rocky islet rises several feet out of the water and is clearly marked even on tourist maps of the island.
- Captain faces charges of causing a shipwreck, abandoning ship and multiple counts of manslaughter.



Casualties: Costa Concordia

- Costa Concordia being compared to Titanic
- Sinking of the Titanic in 1912 resulted in the Safety of Life at Sea Convention
- What changes do you anticipate arising as a result of this casualty?



Relevant Legal Decisions

Major Legal Cases

Atlantic Sounding Co., Inc., v. Edgar L. Townsend U.S. Supreme Court (2009)

- The crew member (Townsend) hurt his arm and shoulder while working on the owner's tugboat. The owner allegedly told Townsend that he would not provide maintenance and cure.
- Supreme Court held that punitive damages were available for willful and wanton disregard of the maintenance and cure obligation as a matter of maritime law. The Jones Act did not eliminate preexisting remedies available to seamen for the common-law cause of action based on the right to maintenance and cure.

Major Legal Cases

Victor Dennis v. Calm C's, Inc., et al.

U.S. District Court (2011)

- Plaintiff (Dennis, captain) alleges to have suffered physical injuries to his right knee, back, and neck from an explosion that occurred when the M/V Bayou Princess hit an underwater pipeline
- Dennis argued that the ship was unseaworthy because it lacked adequate, updated charting from NOAA
- District Court found that the updated charts were available to Dennis prior to the accident and clearly marked the pipeline location.
- The ship was not unseaworthy and the injury was not caused by any defective condition of the ship.

Major Legal Cases

Amanda Beech v. Hercules Drilling Company, LLC.

U.S. District Court of Appeals, Louisiana (2011)

- While watching TV, an on-duty seaman (Cosenza) showed the plaintiff, Beech (a seaman onboard and subject to call of duty), the gun he had unintentionally brought on board. When Cosenza sat down, he bumped his arm on the couch accidentally discharging the gun and killing Beech.
- Beech's estate sues Hercules for wrongful death under the Jones Act
- District Court held that Cosenza and Beech were both acting within the course and scope of their employment when the gun discharged, therefore, Beech could recover from Hercules under the Jones Act based on vicarious liability.

Major Legal Cases

In Re: Osage Marine Services, Inc.

U.S. District Court, Missouri (March 5, 2012)

- Woodfin, a mate on the towboat M/V Carrie Elizabeth, claims he sustained injuries to his left foot when it came in contact with a deckfitting on a barge that Osage was preparing to switch.
- Osage argued that general maritime law does not permit the recovery of punitive damages for claims based on the doctrine of unseaworthiness.
- Following the analysis of *Atlantic Sounding*, the Court found that punitive damages are available under general maritime law for unseaworthiness claims and the doctrine of unseaworthiness was well established before the Jones Act



Major Legal Cases

Dana Clausen v. Icicle Seafoods, Inc., Washington Supreme Court (March 15, 2012)

- Clausen was working on board Icicle Seafoods' *Bering Star* as second engineer when he suffered serious injury to his lower back, neck, and hand from lifting a 122-pound piece of steel.
- Icicle refused to pay for medical treatment questioning whether Clausen really needed any treatment and whether his back problem preexisted his employment on the vessel. (Icicle's own doctor supported need for treatment)
- Based on the reasoning in *Atlantic Sounding v. Townsend*, Court found that punitive damages for wrongful treatment of seamen in failure to pay maintenance and cure must be paid if the employer's actions constitute "willful and wanton" disregard.



Major Legal Cases

Jason Grab v. Traylor Bros et al., Joint Venture

U.S. District Court, Louisiana (2011)

- Two ironworkers, Abshire and Kinchen, were injured when the boat Kinchen was operating allided with a survey tower because two large tires on the front of the push knees obstructed his view.
- Both men qualified as seamen even though it was Abshire's first day of work – the Court looked to his intended relationship with the vessel.
- Boh Bros. is liable to both workers under the doctrine of unseaworthiness and negligence under Jones Act because it knew the tires created a visual obstruction to the pilot.
- Under general maritime law claims Abshire was entitled to 100% of his damages against Boh Bros. because his injuries were caused by the negligence of an employee and the unseaworthiness of the vessel caused by another employee who had installed the tires.

Major Legal Cases

Robert Haney v. Miller's Launch, Inc., et al.

U.S. District Court, New York (2010)

- Haney was thrown to the deck and injured his back and neck when the vessel (water taxi), hit a pier then hit a bulkhead while docking.
- Captain contacted Miller's port office to request immediate medical attention but was instructed to return to Staten Island before providing aid.
- Haney received his first medical treatment four hours after the accident.
- District Court found sufficient evidence to raise genuine issues regarding unseaworthiness of vessel and negligence under the Jones Act. Also, damages for maintenance and cure should have included the cost of medical treatment to reduce pain and suffering (palliative care), even after physical injuries were corrected to the extent practicable.

Major Legal Cases

Mark Henderson v. Atlantic Pelagic Seafood, LLC.

U.S. District Court, Maine (2011)

- Henderson was working on fishing vessel APS when a heavy steel hatch door struck him on the back of the head as he was descending the ladder to the ship's hold. He suffered severe injuries to face and mouth.
- The District Court held that damages for pain and suffering are recoverable under the Jones Act because APS failed to service, maintain, repair, secure or warn of dangers of the hatch cover, and Henderson will indefinitely suffer emotional and physical pain and cognitive difficulty as a result.



Major Legal Cases

Donna Deloise Moore v. United States

U.S. District Court, California (2011)

- While serving as a steward on the Cape Horn, Moore fell into the freezer and was struck on the neck and shoulders when the milk crate she was standing on slipped due to a wet tile floor.
 - Had previously requested step-stool but was denied
- District Court held that Moore proved her claims for unseaworthiness and for negligence under the Jones Act and her right to damages for maintenance and cure. The US knew, or should have known that the work space was not fit for intended use (should have had step-stool and non-skid stripping).

Major Legal Cases

Patrick B. Vaughn v. United States, U.S. District Court, California (2011)

- Vaughn claimed he was injured switching out life raft canisters on the vessel, Cape Jacob, owned by the US.
- There was no agreement by any of the parties about the facts.
- District Court held that Vaughn did not meet the burden of proof for unseaworthiness or negligence. Furthermore, there was no negligence or indication of unseaworthiness that would have caused his injuries. This was standard seamen's work and no formal assessment of risk was required.
- An injury while working as a seaman does not automatically establish unseaworthiness.



Major Legal Cases

Neville Motts, et al. v. M/V Green Wave; Central Gulf Lines, Inc.; Lash Marine Services

5th Circuit Court of Appeals (2000)

- Motts (deceased) was severely injured during an accident on the ship while at sea. Care was delayed due to the location of the ship and the failure of ship's captain to relay pertinent medical condition information
- Court said that the cause of Motts' death originated on the high seas (even though he died elsewhere) so Death on the High Seas Act preempts state law and general maritime claims

Major Legal Cases

Joseph Coleman v. Omega Protein, Inc.

U.S. District Court, Louisiana (2011)

- Plaintiff (Coleman) was employed as a seaman by Omega Protein, onboard the F/V Mississippi Sound at the time of the alleged injury.
- Returning from the restroom between 2a.m. and 3a.m., Coleman alleges that he began to feel dizzy and passed out in the hallway, hitting his head when he landed. He lacerated his left eye and nose as a result of the fall.
- Court was asked to determine if Coleman could seek to recover damages for maintenance and cure (Court already determined there was no valid theory to claim negligence and unseaworthiness).
- Omega asserted the affirmative defense of willful misconduct, alleging that Coleman's injuries were caused by his use of illegal drugs (cocaine), for which he tested positive.
- Court found that Coleman engaged in willful misconduct, and that this willful misconduct caused the injuries at issue, therefore, Omega is not obliged to pay maintenance and cure.

Major Legal Cases

In Re: Edward E. Gillen Co.

U.S. District Court, Wisconsin (2012)

- Plaintiff (Grenier) brought a claim against Case and Gillen Co. for allegedly injuries resulting from being tossed about during inclement weather while being transported from shore to the crane barge on board the M/V P-T II. The boat was owned by Case and operated by employees of Gillen Co.
- Grenier was employed by Case as a crane operator, working on board a mobile crane barge, as part of a project installing intake and exhaust pipes for a power plant. To get to and from the crane barge, employees were transported by way of the M/V P-T II.
- Grenier's negligence claim is based on his assertion that: (1) the captain of the M/V P-T II violated the "12 hour rule" of 46 U.S.C. § 8104(h) and this violation establishes negligence per se; and (2) the captain should have warned Grenier of and trained him in preparation for the dangerous lake conditions when the vessel was leaving the dock.
- Court found that the negligence per-se doctrine is irrelevant because the 12-hour rule only applies to towing vessels that are at least 26 feet long (M/V P-T II was not).
- Court also found that there is no duty to instruct an experienced seaman on matters within common sense, or to remind him of what he already knew or should have known.

Major Legal Cases

William H. Waldsachs v. Inland Marine Service, Inc. and C/C Transport, Inc., U.S. District Court, Kentucky (2011)

- A van, owned by C/C Transport, took Waldsachs home following his 31-day shift aboard one of Inland's barges and on the way, pulled over on the highway to let Waldsachs relieve himself.
- While walking towards the woods, Waldsachs stepped into a hole that had been obstructed by debris and fractured his left tibia and fibula. He was immediately taken to the hospital for treatment.
- Question for the Court was whether the van provided by C/C was an "operational activity" of Inland Marine allowing recovery under the Jones Act.
- The court held that seaman may recover under the Jones Act whenever they are injured in the service of a vessel, regardless of whether the injury occurs on or off the ship, and C/C had a duty as a common carrier to stop at a safe location for Waldsachs to urinate and the issue of causation was one best resolved by a jury.





Safety Issues

Safety Issues

- Maersk halted all man overboard (MOB) drills on their container ships after a crewmember on the 93,496 ton Anna Maersk was killed in the Port of Kobe, Japan on March 28, 2012.
- A Filipino seaman died and a



The Great East Japan Earthquake

2. Impact of the Earthquake and the Tsunami

2-3 Damage to Port Facilities and Fishing Vessels



(1) Damage to Port Facilities

- Number of damages to Jetty, Seawall and Port Equipment: 1,441
- Amount of Loss : JPY 479B
(as at 30 June, 2011)

(2) Damage to Fishing Vessels

- Number of Damaged Vessels: 25,008
- Total Amount of Loss: JPY 168B
(as at 23 August, 2011)



(Source) - Ministry of Land, Infrastructure, Transport and Tourism
- Ministry of Agriculture, Forestry and Fisheries

(Photo: Japan Coast Guard. All rights reserved)



2. Impact of the Earthquake and the Tsunami

2-10 Examples of Damage to Vessels (Small & Coastal)



(Photo: Japan Coast Guard. All rights reserved)



IUMI PARIS 2011



IUMI PARIS 2011

Dangers of Sleep Deprivation

- “Seafarer fatigue” –work hours reveal huge risks to both shipping safety and marine environment and potential for increased insurance premiums
- Worker fatigue plays a critical role in 16% of serious vessel casualties.
- Real life examples”
 - (1) watchkeeping officers falling asleep while in control of fast ferries,
 - (2) a cargo ship which collided with an oil tanker when the watchkeeper fell asleep after sleeping just 2.5 hours in the prior 33 hours, and
 - (3) several car crashes after driving home from ships.
- The International Transport Workers' Federation (ITF) - making sure employees are well-rested should be of the utmost importance



Conclusions

- Insurance Trends
 - The market is flat as a result of the economic recession and a decline in fleet casualties
 - Fleet insurance numbers remain relatively stable, with most differences resulting from claims history and institutional contributions
- Casualties and Legal Decisions
 - Despite increased regulations, training, and better equipment, the human element still results in casualties
 - The Atlantic Soundings decision regarding maintenance and cure has had serious impacts
 - The development of policy and technology will continue to improve the potential for a safer working environment for seafarers, but risk will always remain

Questions?