

Admiralty Law and Marine Insurance Update



RVOC SEATTLE – APRIL 30, 2015

Dennis Nixon, UNOLS Legal Advisor

Outline

- World Insurance Market
- UNOLS Fleet Insurance Numbers
- Relevant Vessel Casualties
- Relevant Legal Decisions
- Conclusions

World Insurance Market



Global Marine Insurance Report 2014

Astrid Seltmann

Vice chairman, Facts & Figures Committee

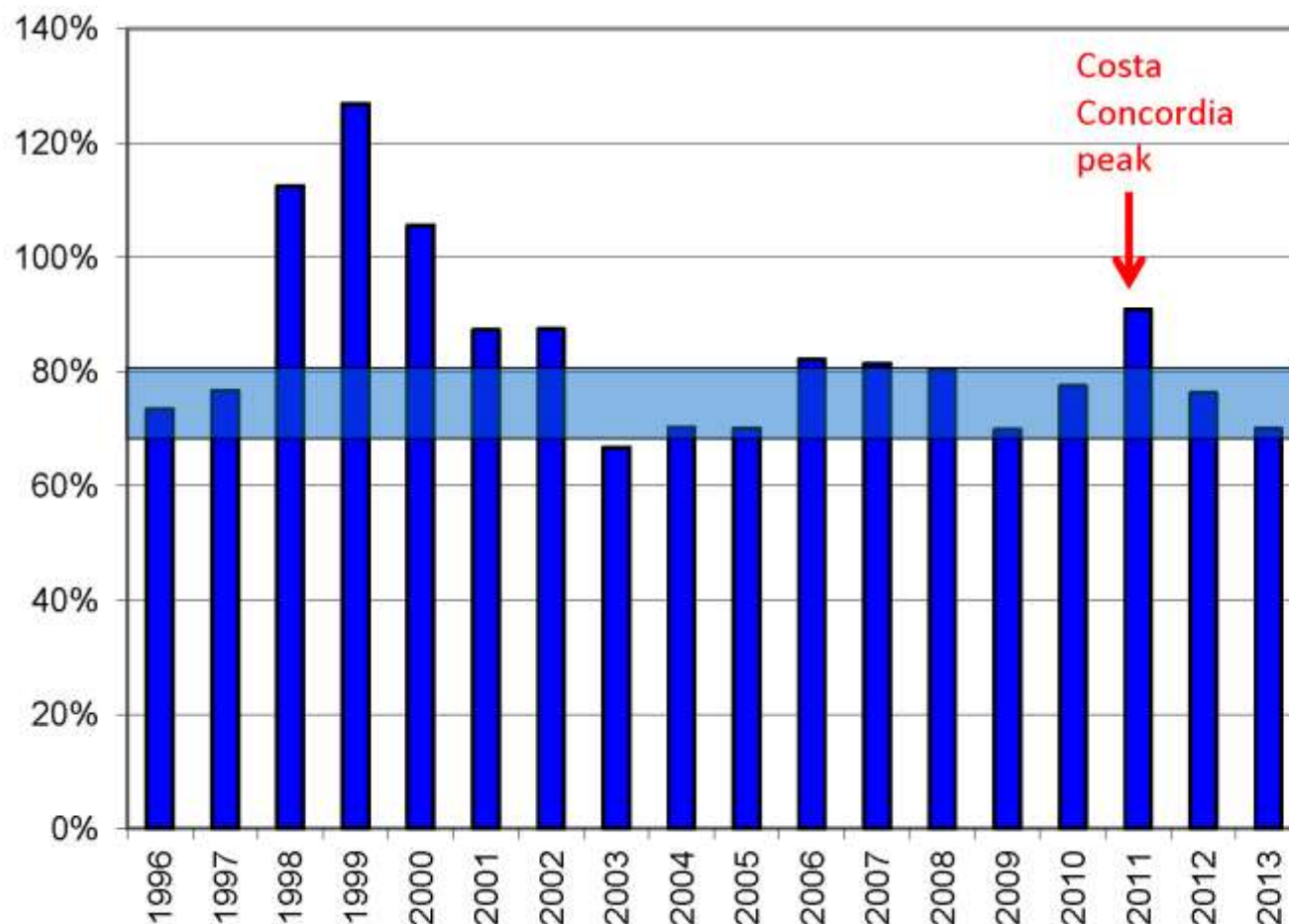
<http://iumi.com/committees/facts-a-figures-committee>

Analyst/Actuary @ Cefor

www.cefor.no

Hull – Gross* Ultimate Loss Ratio

Europe/USA**, Underwriting years 1996 to 2013



2011

Strong major loss impact
(Costa Concordia & others)

2012/2013

Less major loss impact as in 2011.

2013

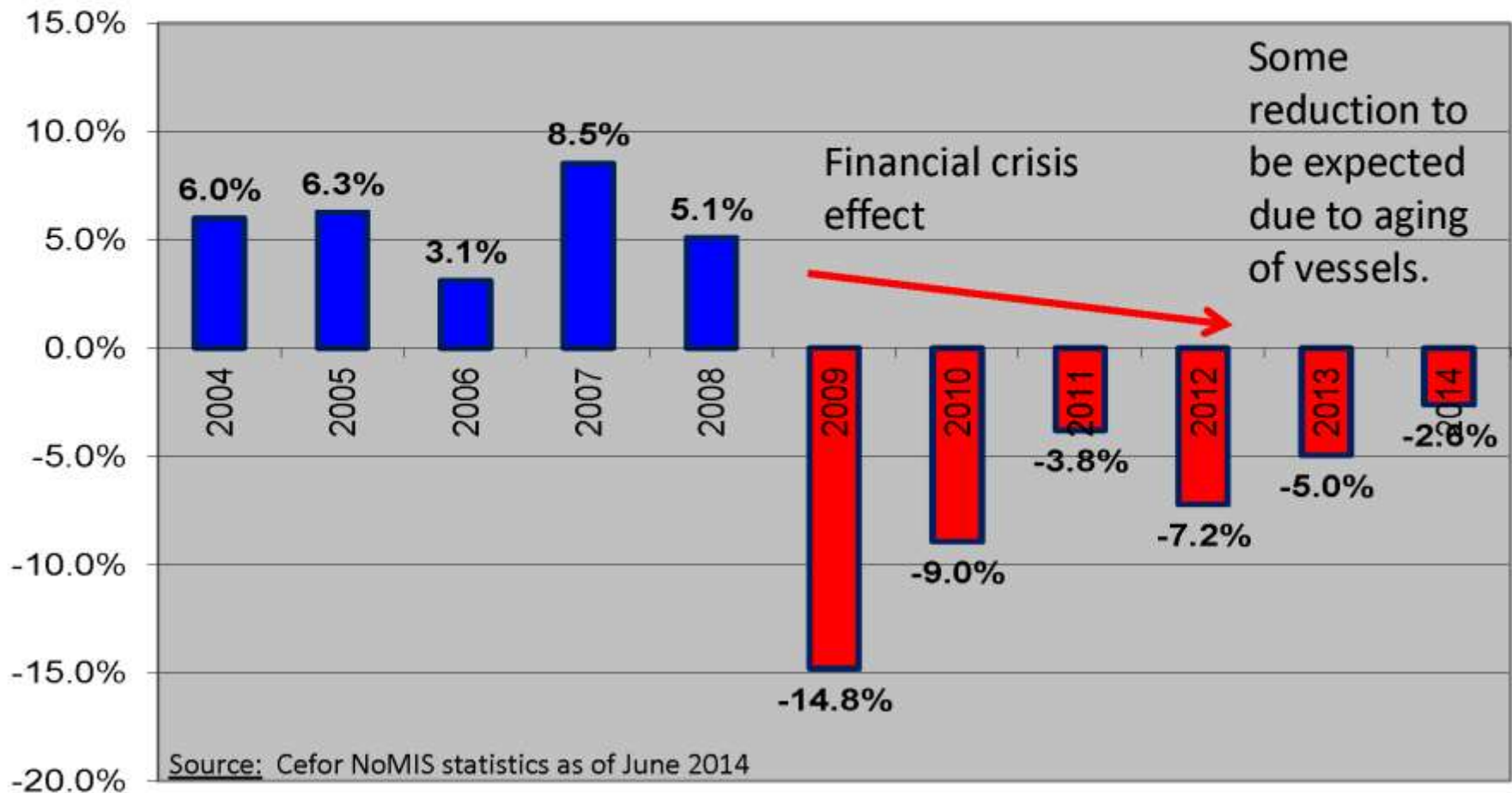
Improvement, but technical result still at loss (18th year).

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

** Data: Belgium, France, Germany, NL, Nordic (Cefor), Italy, Spain (until 2007), UK, USA

Change in insured values on renewal

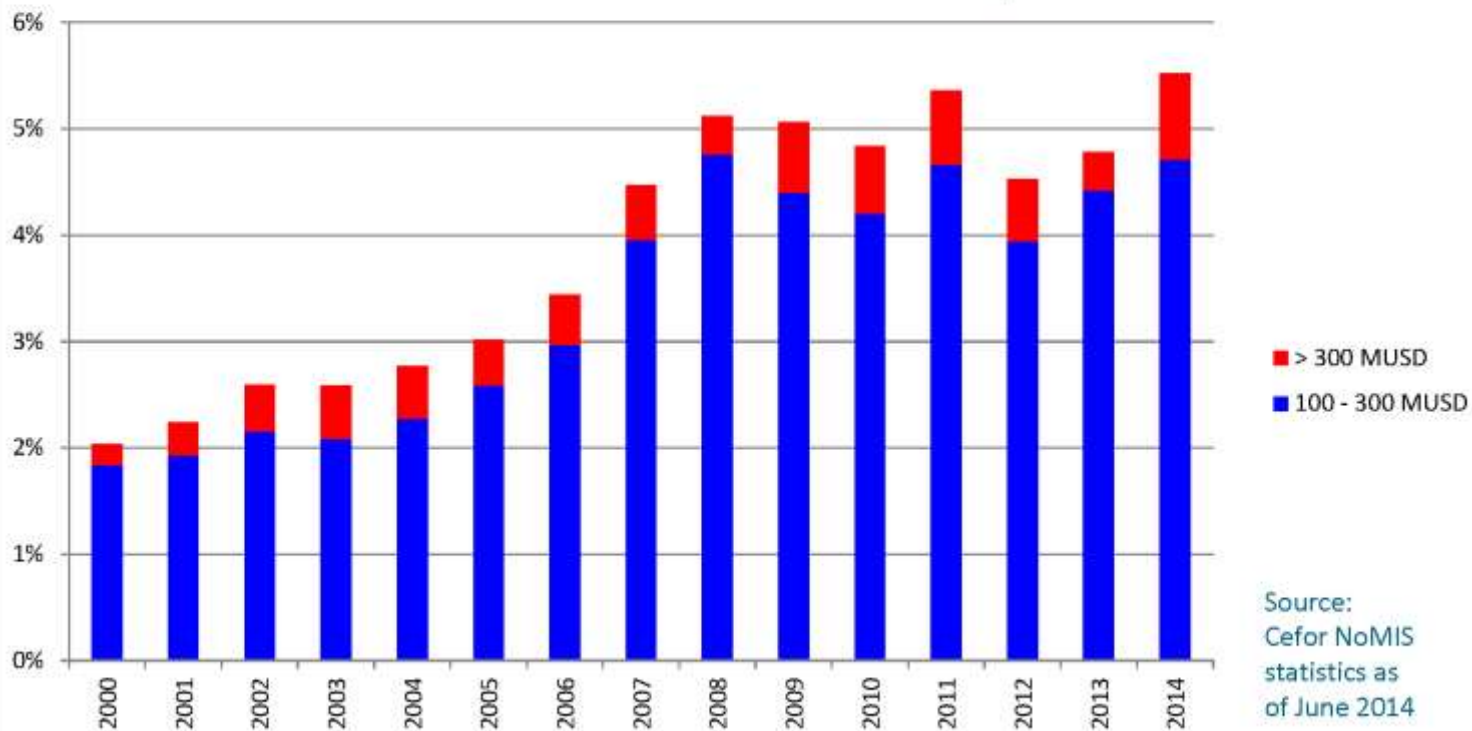
= insured value on renewal / insured value previous underwriting year for same vessel



The risk exposure –

Inflow of high-value vessels continues

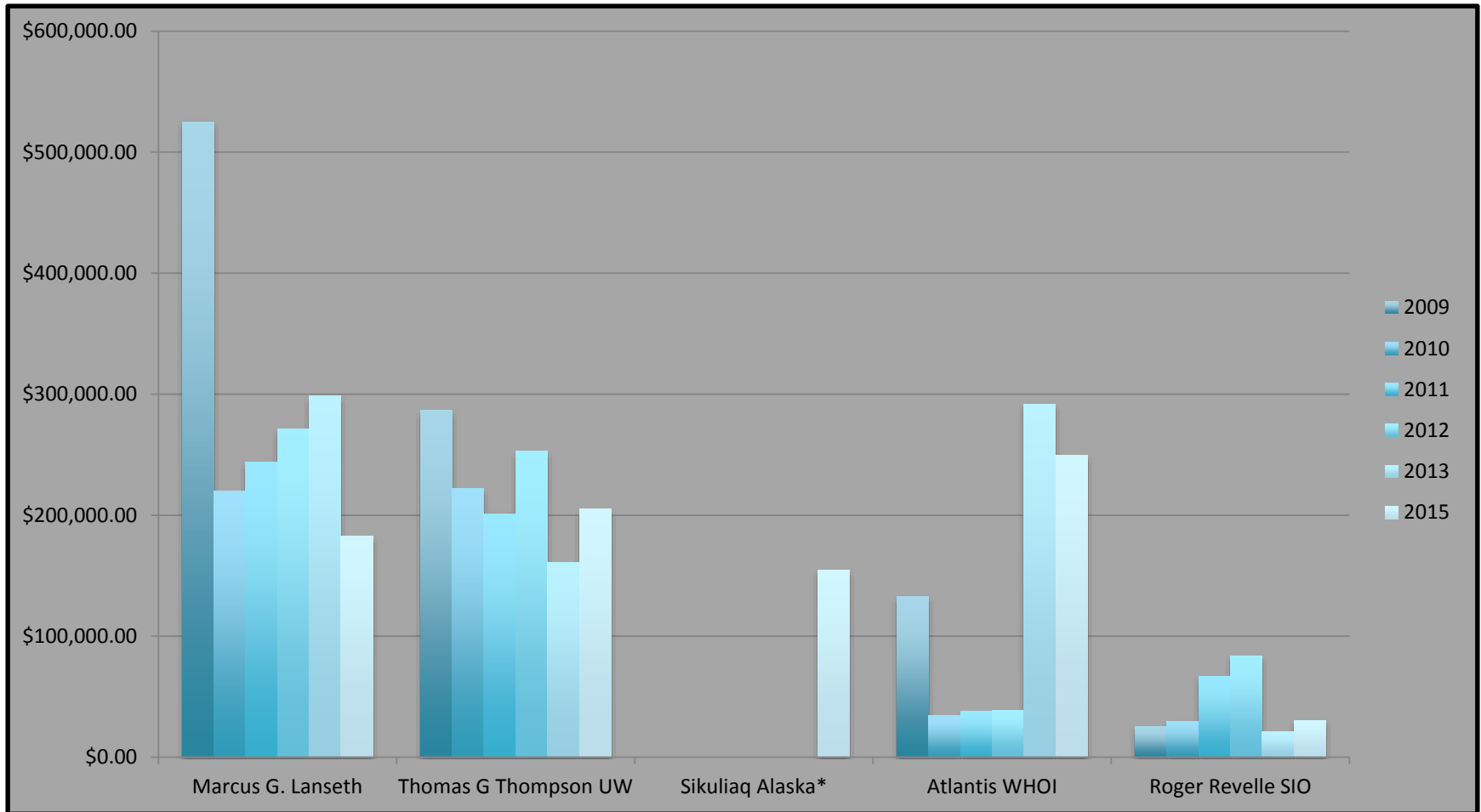
Vessels with values xs 100 USD million as % of total insured portfolio:



UNOLS Insurance

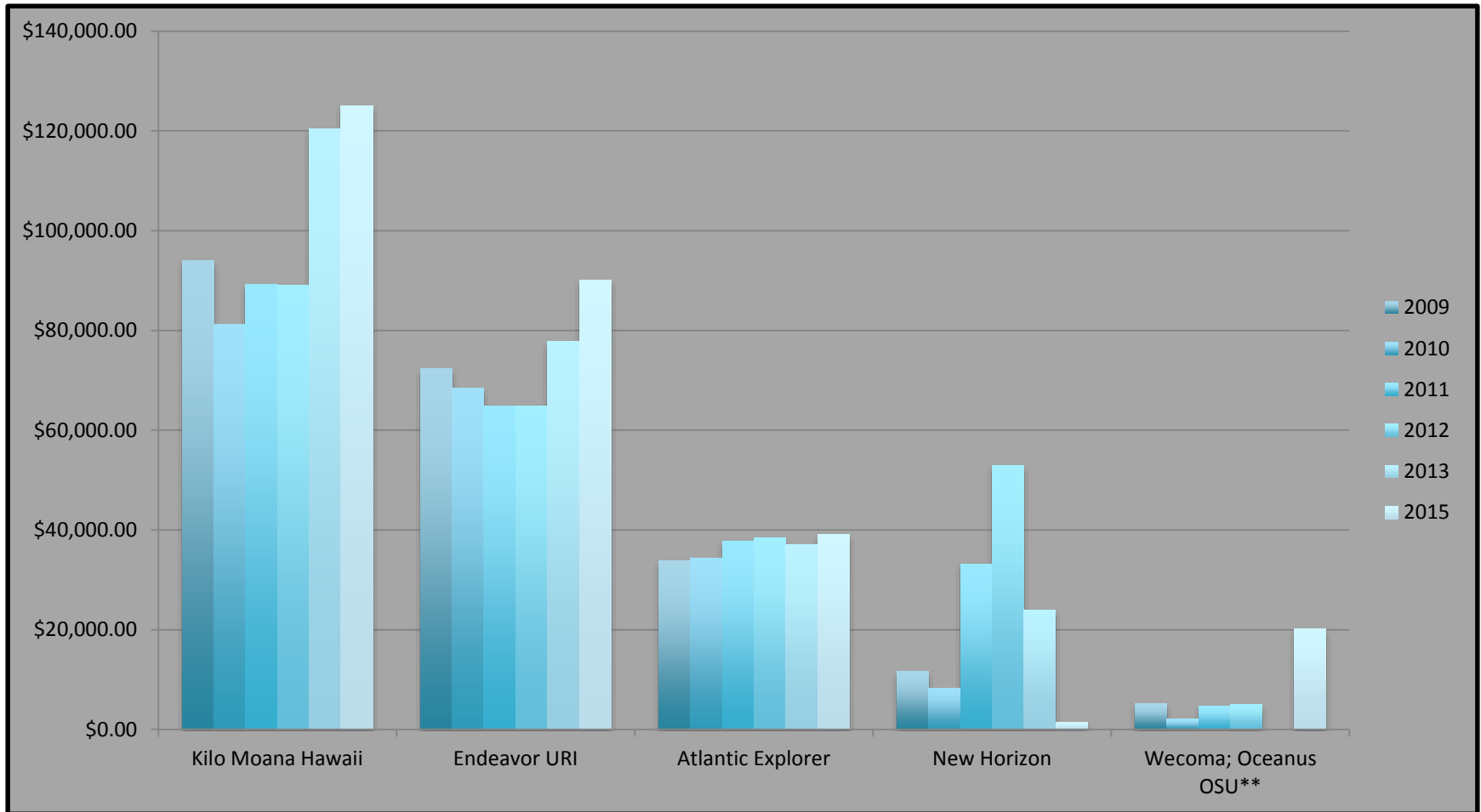


UNOLS Insurance Global/Ocean



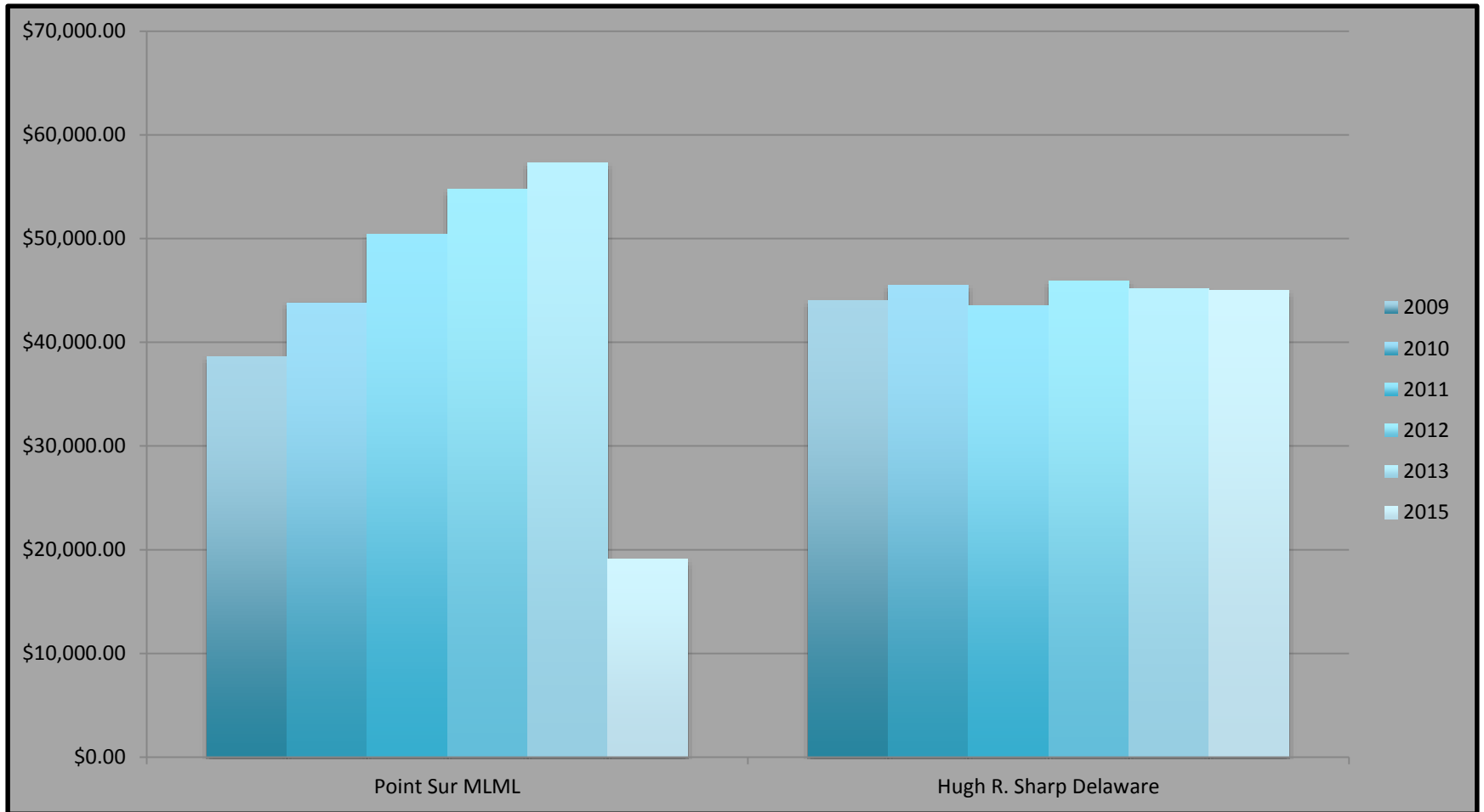
** Alaska Sikuliaq 2015

UNOLS Insurance Ocean/Intermediate

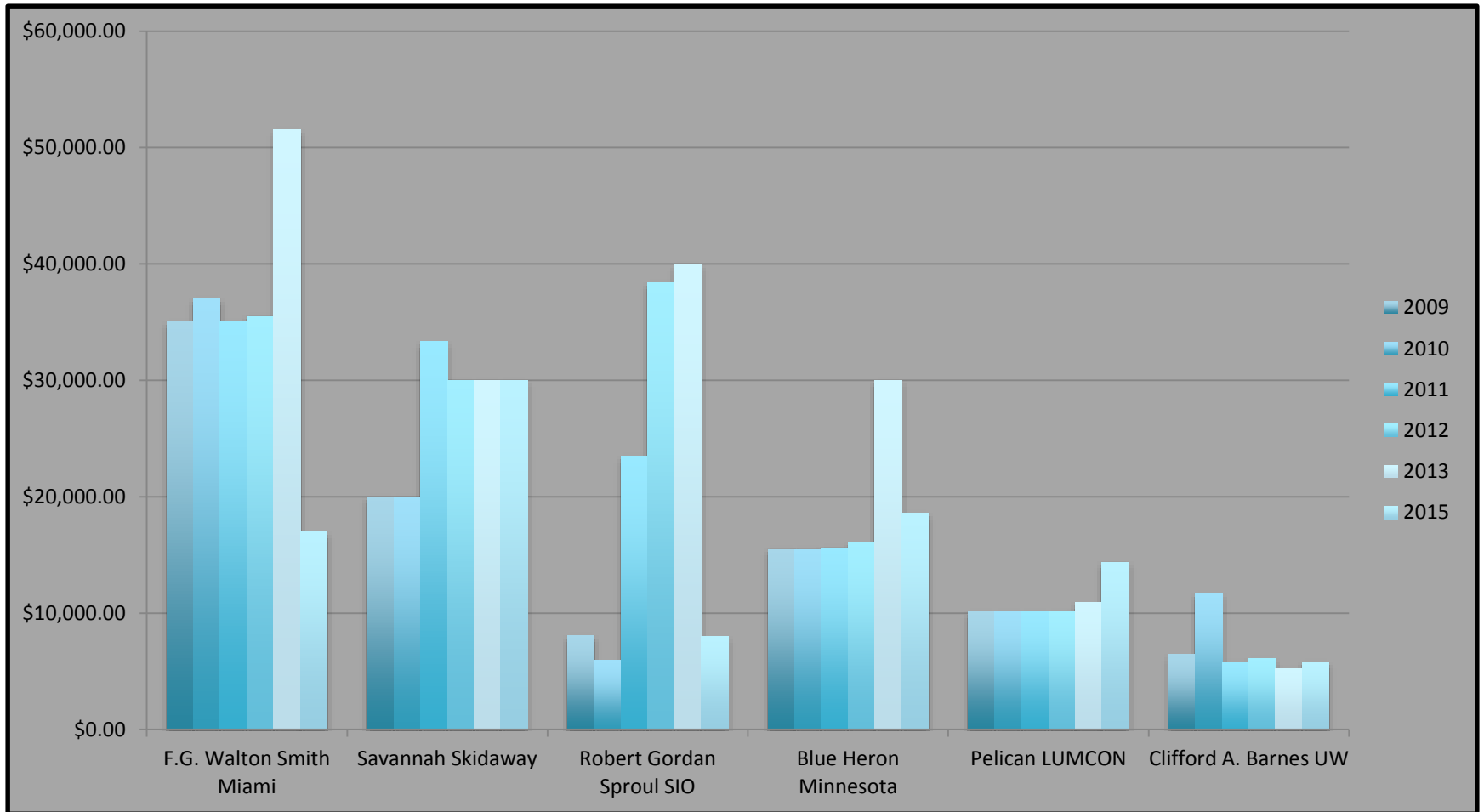


** OSU Wecoma 2009 – 2013, Oceanus 2015

UNOLS Insurance Regional



UNOLS Insurance Coastal Local



Relevant Vessel Casualties



The Challenge of Large Vessels



Ocean Hull Workshop 22nd September

Salvage Cost & Capabilities



- **concern within the industry.....**
 - **..key challenge facing the shipping industry is the gap that has developed between the increasing size of vessels – notably container ships, passenger vessels, bulk carriers and LNG vessels – and the capability and equipment available to handle them either as casualties or wrecks**

'The Challenges and Implications of Removing Shipwrecks in the 21st Century' (Lloyd's 2013)

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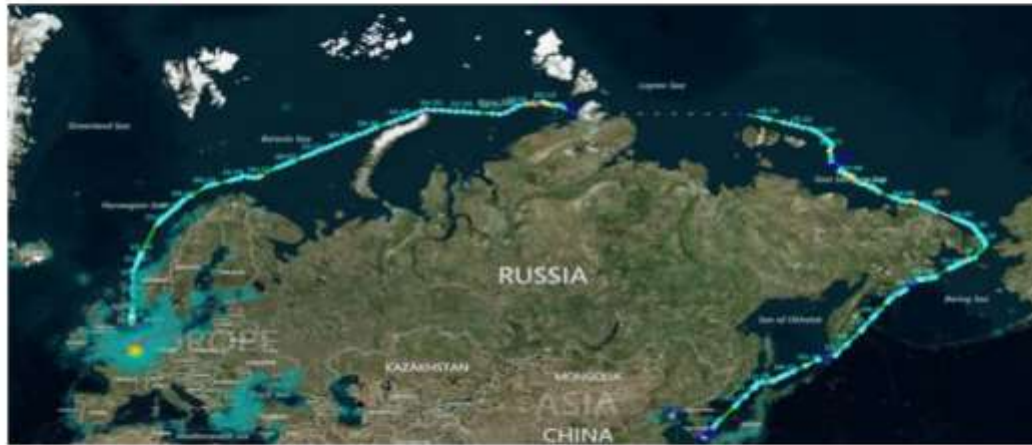
Salvage Cost & Capabilities



- **Challenges for underwriters.....**
 - **Capability vs risk profile gap continues to increase**
 - **Will that gap simply increase as the world fleet profile develops?**
 - **How can the wider shipping industry counter an increasing shortfall in salvage capability?**
 - **Wider adoption of statutory vessel response planning?**
 - **Encourage more coastal state funded salvage assets?**
 - **Adopt the pollution fund model to finance more comprehensive salvage capabilities?**

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Salvage Cost & Capabilities



Northern Sea Route	2011	2012	2013
Number of Transits	41	46	71

Source: NSR Information Office

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Salvage Cost & Capability: Issues for debate?



- **A genuine threat to underwriting performance?**
- **How should the industry respond?**

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Human error led to sinking of Taiwanese research vessel





National Transportation Safety Board

Marine Accident Brief

Sinking of Oceanographic Research Vessel *Seaprobe*

Accident no.	DCA13NM008
Vessel name	<i>Seaprobe</i>
Accident type	Sinking
Location	Gulf of Mexico, about 130 nautical miles south-southeast of Mobile, Alabama 28°12.2' N 86°27.3' W
Date	January 18, 2013
Time	About 0315 central standard time (coordinated universal time – 6 hours)
Injuries	Three (two minor, one serious)
Damage	Total loss of vessel
Environmental damage	Potential release of 44,000 gallons of diesel fuel on board at the time of sinking
Weather	Clear skies; north winds at 20–25 knots, gusting to 34 knots; wave height 14–16 ft; 3+ miles visibility; air temperature 56°F; water temperature 71°F
Waterway information	Gulf of Mexico, open water

About 0315 local time on January 18, 2013, the oceanographic research vessel *Seaprobe* sank in the Gulf of Mexico, about 130 nautical miles south-southeast of Mobile, Alabama. Before the vessel sank, all 12 crewmembers evacuated to inflatable liferafts from which the United States Coast Guard rescued them shortly thereafter. Three crewmembers were injured.





National Transportation Safety Board

Marine Accident Brief

Collision between US Fishing Vessel *American Dynasty* and
Canadian Naval Frigate *Winnipeg*

Accident no.	DCA13RM018
Vessel names	US fishing vessel <i>American Dynasty</i> ; Canadian Navy frigate <i>Winnipeg</i>
Accident type	Collision
Location	Esquimalt, British Columbia, Canada 48°25.9'N, 123°25.8'W
Date	April 23, 2013
Time	0817 Pacific daylight time (coordinated universal time – 7 hours)
Injuries	Six minor injuries
Damage	More than \$500,000 in damage to the vessels and pier
Environmental damage	None
Weather	Clear; good visibility; northeast winds at 3 knots
Waterway information	Protected harbor and entrance to graving dock; ebbing tide 3.6 feet

On April 23, 2013, at 0817 local time, the US-flag commercial fishing vessel *American Dynasty* was approaching the graving dock at Esquimalt in British Columbia, Canada, when it lost electrical power and propulsion control. The vessel veered off course and collided with a Canadian Navy frigate, HMCS (Her Majesty's Canadian Ship) *Winnipeg* FFH 338 ("*Winnipeg*"), moored nearby. Both vessels sustained extensive structural damage, and the naval pier required repairs. Six shipyard workers suffered minor injuries.



Fishing vessel *American Dynasty* (white vessel at left) and Canadian Naval frigate *Winnipeg* after the collision. (Photo by Transportation Safety Board [TSB] Canada)

Relevant Legal Decisions

- Two criminal and three civil cases will be reviewed
- One of the cases is clearly on its way to the Supreme Court and the final outcome will not be known until next year

U.S. v. AML Ship Management and Nicholas Sassin

- Sassin was the Chief Engineer of a vehicle carrier operated by AML
- Both charged with knowingly dumping oil into US waters off Alaska in August 2014 in violation of the Clean Water Act; also charged with creating and presenting false records
- Guilty pleas for both, \$800,000 in fines and community service

Seaman's Manslaughter Act Charges Dropped for Two BP Employees

- On March 12, 2015, a three judge panel of the 5th Circuit Court of Appeals ruled that two former BP supervisors will not face charges under the SMA
- Court held that the 1838 law was only to be directed at captains, engineers, and pilots, not the supervisors of a drilling operation
- The two still face 11 counts of involuntary manslaughter charges and many Clean Water Act violations

Catlin v. San Juan Towing, First Circuit Court of Appeals, February 15, 2015

- Catlin, a Lloyd's syndicate, agreed to insure a floating drydock owned by San Juan
- Drydock was insured for \$1.75 million, despite being offered for sale at \$800K
- Drydock sank, claim for full amount of policy
- Court held that doctrine of "Uberrimae fidei" applied (utmost good faith) and invalidated policy

Skye v. Maersk Line, Eleventh Circuit Court of Appeals, May 15, 2014

- Skye claimed damages under the Jones Act for excessive work hours and an erratic work schedule
- Jury awarded \$2.3 million, reduced to \$590K due to Skye's comparative negligence
- Appeals Court reversed because Skye's complaint of injury caused by work-related stress not compensable under Jones Act, which concerns injuries caused by physical perils only – but strong dissent because of outrageous facts in the case

McBride v. Estis Well, Fifth Circuit Court of Appeals, September 25, 2014

- At trial, court denied recovery for punitive damages for breach of the warranty of seaworthiness
- In 2013, a three judge panel of the fifth circuit reversed and allowed punitive damages
- Petition for rehearing en banc (all 14 judges!)
- In an 8-6 decision, original trial verdict upheld
- Now on appeal to the U.S. Supreme Court

Hicks V. Vane Line, Second Circuit Court of Appeals, April 17, 2015

- Hicks claimed Vane breached duty to provide maintenance and cure, and sought compensatory damages, punitive damages, and all attorney's fees for torn rotator cuff
- Court affirmed jury trial verdict of \$322K compensatory, \$123 punitive, and \$112 in attorney's fees for a total of \$557K – all because he was forced back to work too soon

Conclusions

- Insurance market relatively stable, still recovering from Costa Concordia
- Losses in the UNOLS fleet have clearly led to higher premiums
- Two research vessels lost with loss of life – both caused by human error
- We will likely see a new ruling on punitive damages, which could have a significant impact on both awards and premiums

Questions?

