FIRE

A REVIEW OF RECENT MARINE FIRE CASUALTIES AND APPLICABLE STATUTORY DEFENSES

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AIMU/MICA SEMINAR- MARINE INSURANCE: A GLOBAL PERSPECTIVE

Major Incidents

- ***Maersk Honam***
- In Jebel Ali, a town in United Arab Emirates had a huge fire that continues to rage on the ultra-large containership Maersk Honam brings into focus longstanding concerns in the industry over the severity of fires on boxships.

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Major Incidents

Maersk Honam *(cont'd)*

- While the cause of the fire onboard the 15,262 TEU Maersk Honam remains unknown Maersk Line says it started in the cargo hold, implying that the case the fire emanated from the vessel's cargo

- 2017- Vessel incident has led to one confirmed death to crew, four missing, and two seriously injured

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Major Incidents (cont'd)

- ***MSC Flaminia*** Fire incident in the Atlantic in July 2012 claimed the lives of three crew members (two confirmed dead, one missing)

Major Incidents (cont'd)

- ***MSC Daniela*** 4 April 2017 – The crew of the 13,800 teu boxship sent a distress call at around 11am on 4 April last year 120 nm off Sri Lanka, the vessel had to reroute to Colombo and the fire took over 12 hours for Sri Lankan and Indian Coast Guard and Navy vessels to bring under control

Major Incidents (cont'd)

- ***APL Austria*** 12 February, 2017 – The vessel carrying hazardous materials caught fire off the coast of South Africa and was forced to enter Port Elizabeth after the crew sent a distress call. The blaze took two days to bring under control.

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Major Incidents (cont'd)

- ***Hansa Brandenburg*** 19 July 2013 – The 1,740 teu containership caught fire while sailing from Singapore to Durban causing major damage to the aft cargo hold and fore superstructure. After the fire was extinguished the vessel was towed to Mauritius

Major Incidents (cont'd)

- ***Eugen Maersk*** 13 June 2013 – Fire broke out on the vessel in the Gulf of Aden enroute to Rotterdam. The *Eugen Maersk* diverted to the Port of Djibouti where the fire was extinguished on 23 June with 16 containers destroyed by the blaze

Major Incidents (cont'd)

- ***Hyundai Fortune*** 21 March 2016 – The crew of the 5,551 teu ship abandoned ship south of the coast of Yemen after an explosion below deck caused a fire that spread through the vessel. The fire burned for several days and one third of the containers onboard were damaged

Firefighting Efforts

- Once a fire starts on board a ship, and in particular when the fire originates in containerized cargo, it is extremely difficult to extinguish it safely and without significant damage to the cargo
- A shipowner or charterer will often incur large costs bringing the vessel into a port of refuge, fighting the fire and repairing the vessel. Unaffected cargo may also have to be discharged in order for fire fighters to access the fire
- It is not uncommon for fires to reignite when cargo is removed which can pose further risks. Cargo can be further damaged by the firefighting operations

US Vessel Response Plans - Salvage and Marine Fire-Fighting Requirements

- Non-tank vessel owners with a fuel and cargo capacity of 2,500 barrels or greater to carry oil (as defined) are required to enter into Funding Agreements with salvors and marine fire-fighting resources.
- The requirements for this category of vessels are almost identical to those for tank vessels.

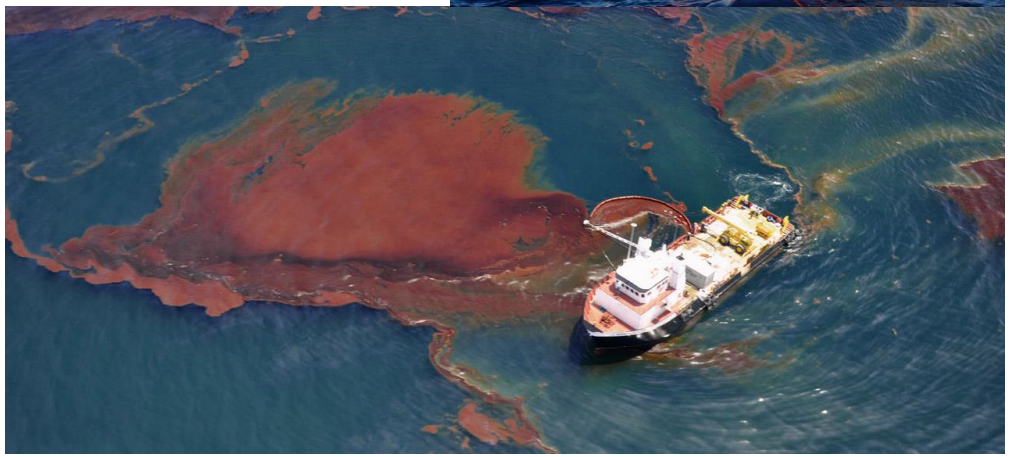
Funding Agreements Approved by the IG

- Donjon-Smit – (Tanker and Non-Tank) Version A - October 4, 2013
- Marine Response Alliance LLC – Version 16 October 2013
- Resolve Salvage & Fire (Americas) Inc – Version 3 – 1 October 2013
- Svitzer – USA Companies Version October 1, 2013
- Svitzer – INTL Companies Version October 1, 2013
- T&T Salvage LLC – USA Owner (Tanker and Nontank) Version – 4 October 2013
- T&T Salvage LLC - Non-US Owner (Tanker and Nontank) Version – 4 October 2013

Crew Claims:

Injury/Death claims, Repatriation of crew

- POLLUTION
- SALVAGE / SCOPIC
- WRECK REMOVAL
- FD&D LEGAL EXPENSE



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General Average Claims

- Where a shipowner has incurred extraordinary expenditure to preserve maritime property or to continue the voyage and deliver the cargo to the intended destination, some costs will be recoverable.
- This is the principle of general average whereby the other interests (such as the cargo interests, the ship itself and its owners' hull and machinery insurers and the charterers) will contribute to general average on a proportional basis

FIRE DEFENSES

The carrier may try to raise one of two very similar defenses: the COGSA fire defense (46 app. U.S.C. §1304(2)(b), the U.S. enactment of Art. 4, r. 2(b) of the Hague Rules)

The Fire Statute (46 app. U.S.C. §182)

The Fire Statute (46 app. U.S.C. §182).

The fire statute provides as follows:

'182. Loss by fire

No owner of any vessel shall be liable to answer for or make good to any person any loss or damage, which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner.'

COGSA

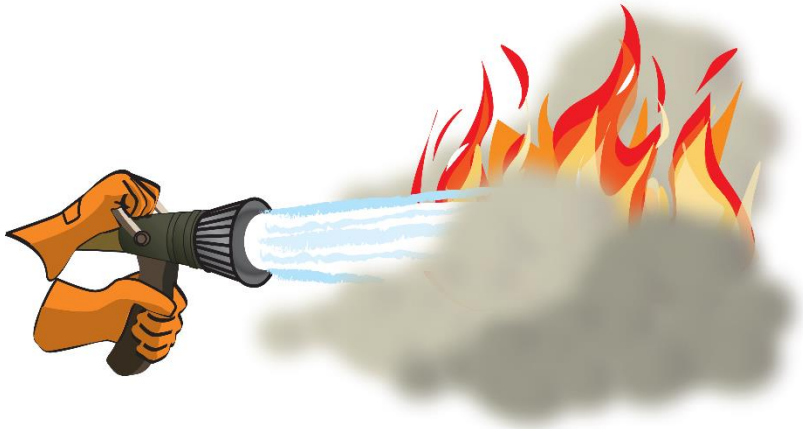
The COGSA fire defense provides as follows:

'Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from –

…

(b) Fire, unless caused by the actual fault or privity of the carrier.'

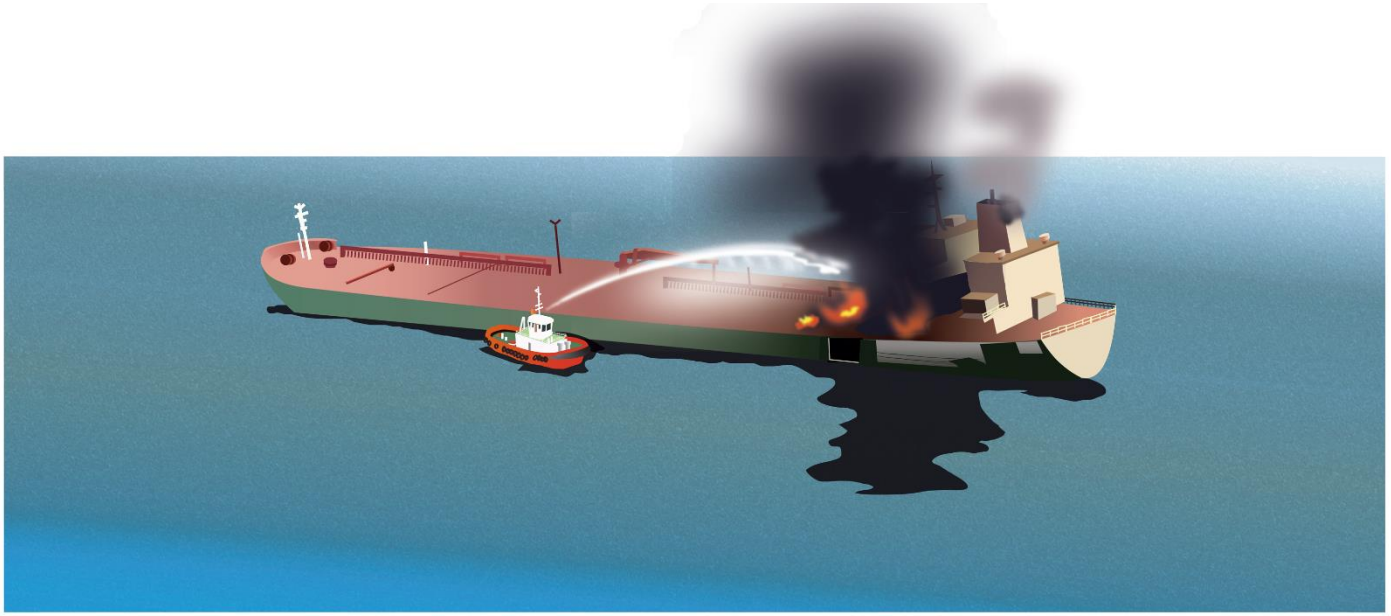
Case Law



- The Second, Fifth and Eleventh Circuits hold that the order and onus of proof are different in relation to the fire defense, and that it is for the cargo-owner to prove fault on the part of the carrier once the carrier has shown that the loss or damage was caused by fire
- The cargo-owner can only succeed in its claim if it is able to show fault on the part of the carrier itself. It is not sufficient to show fault on the part of the carrier's employees or agents

Case Law

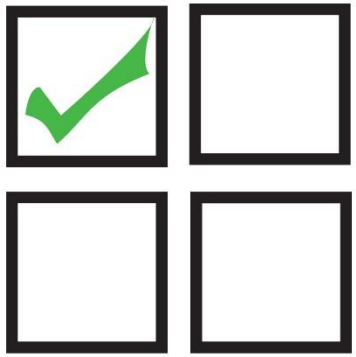
- The Ninth Circuit disagrees, holding that the order and onus of proof are the same for the fire defenses as for the other COGSA defenses, requiring the carrier to show that it did exercise due diligence. Nissan Fire & Marine Insurance Co. Ltd v. M/V HYUNDAI EXPLORER, 93 F. 3d 641, 1996 A.M.C. 2409 (9th



Carrier's obligation under the Hague/Visby Rules

Exercise due diligence in respect of:

- Making the vessel SEAWORTHY before and at the beginning of the voyage
- Properly man, equip and supply the vessel
- Vessel fit for the safe receipt and carriage of cargo
- Properly handle and care for the cargo throughout the voyage



The Hague/Visby Rules- key defenses

The carrier shall not be liable for any loss of or damage to cargo arising from, inter alia,

- Fire
- Perils of the sea
- Act of God
- Act of war
- Insufficiency of packing
- Latent defect (vessel)

Burden of proof

Carrier must show:

- Show absence of (causative) negligence
- Has exercised due diligence to make vessel seaworthy
- The cause of loss/damage falls within one of the expected perils

Hamburg Rules (1978)

Article 5.4 (a)

The carrier is liable

- For loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents
- In case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyors report shall be made available on demand to the carrier and the claimant

Questions?

Thank You!