

Protecting Your Business From Piracy



A Comprehensive, Commercial Approach

Welcome to the Third Presentation in Our 2009 Series on Topics of
Interest to the Shipping Community
May 13, 2009

SEWARD & KISSEL LLP

Control Risks

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Today's Panelists

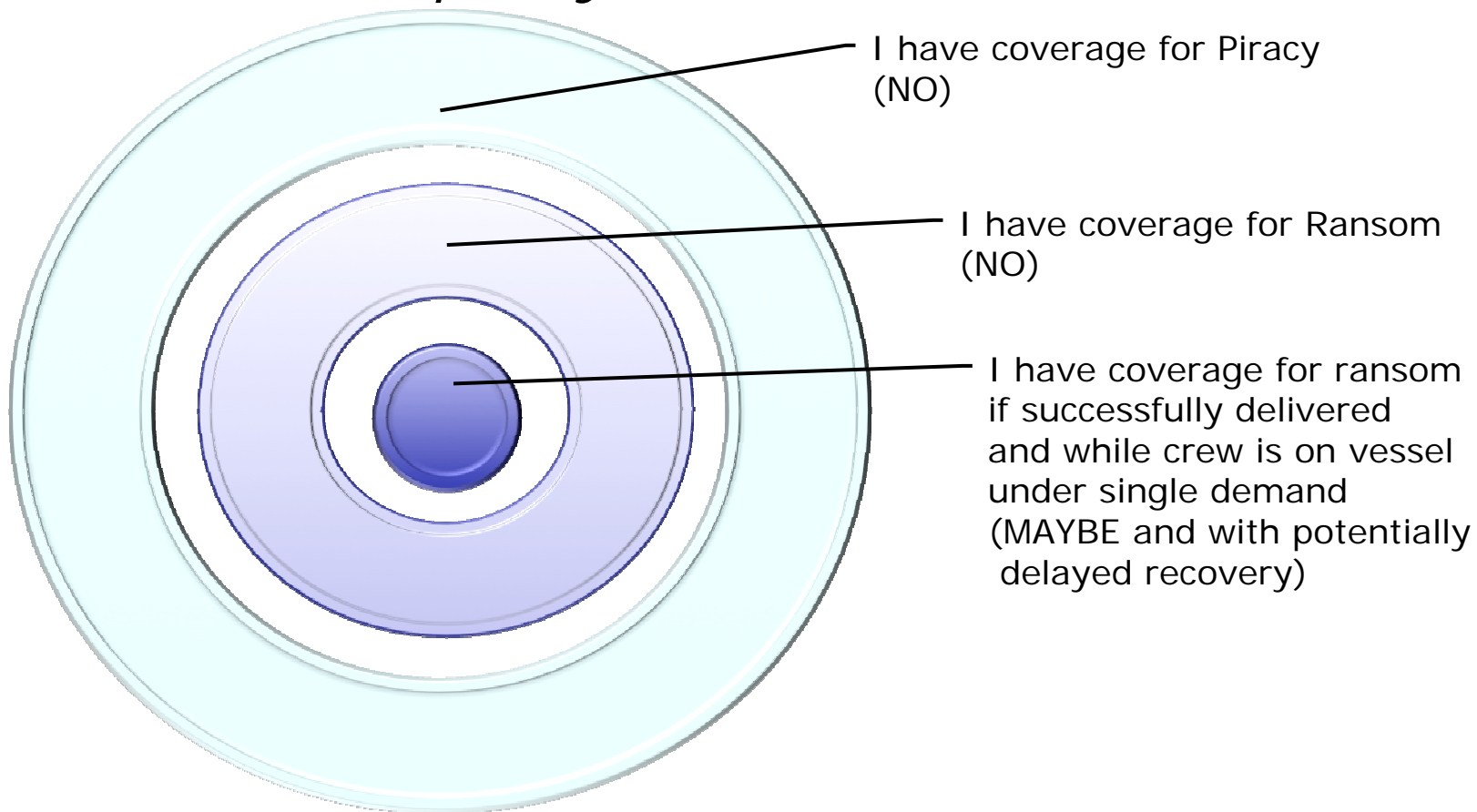
- Daniel Ackerman – Hiscox USA
- James Christodoulou – Industrial Shipping Enterprises Corp.
- Jeroen Meijer – Control Risks
- Thomas J. Rozycki, Jr. – CJP Communications
- Bruce Paulsen - Seward & Kissel LLP
- Lawrence Rutkowski - Seward & Kissel LLP

Dispelling the Myths

- I have insurance for piracy
- My insurance will take care of everything
- This piracy risk is covered by hull/war/general average/P&I
- My vessel won't fall victim
- The naval presence will protect my vessel
- As an owner I am protected from liability through the legal structures
- This is an emergency like any other; I can manage it with my normal emergency response procedures; I can handle it myself

Dispelling the Myths

I have insurance for piracy



Dispelling the Myths

I have insurance for piracy

- Costs associated with managing a piracy event are equal to if not greater than the ransom itself
- Exposures extending beyond ransom
 - Fees and expenses of security consultants
 - Loss of Hire
 - Logistics of delivering ransom
 - Loss of ransom in transit
 - Crew members separated from the ship
 - Attorney fees
 - Legal Liability
 - Medical/psychiatric care for crew members
 - Public Relations
 - Any other reasonable and necessary expense incurred due to event

Dispelling the Myths

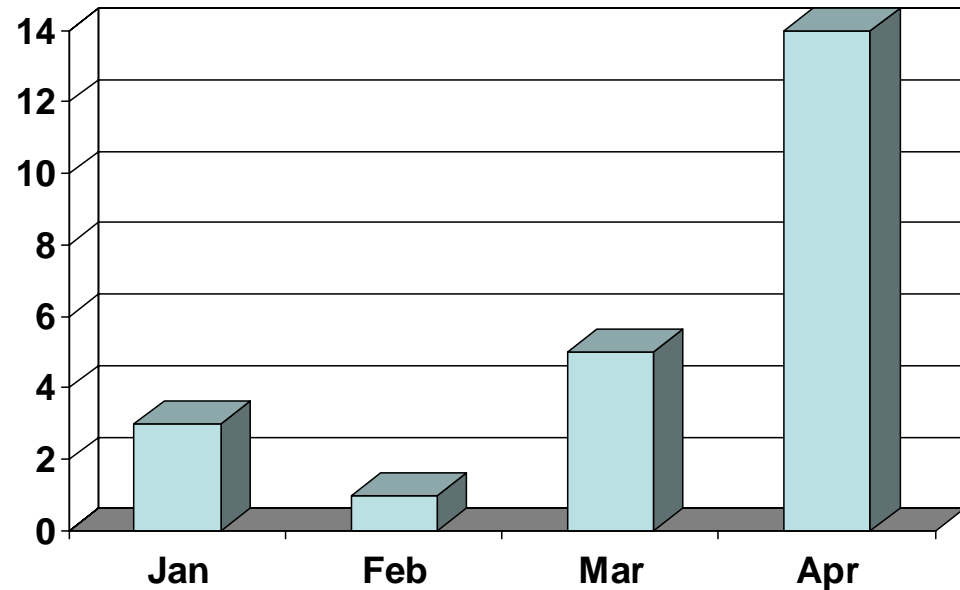
My insurance will take care of everything

- Am I fully protected?
 - Hull & Machinery
 - War Risk
 - P & I
 - Loss of Earnings
 - General Average
 - Assignments of Insurances
 - Cash is King

Dispelling the Myths

My vessel won't fall victim

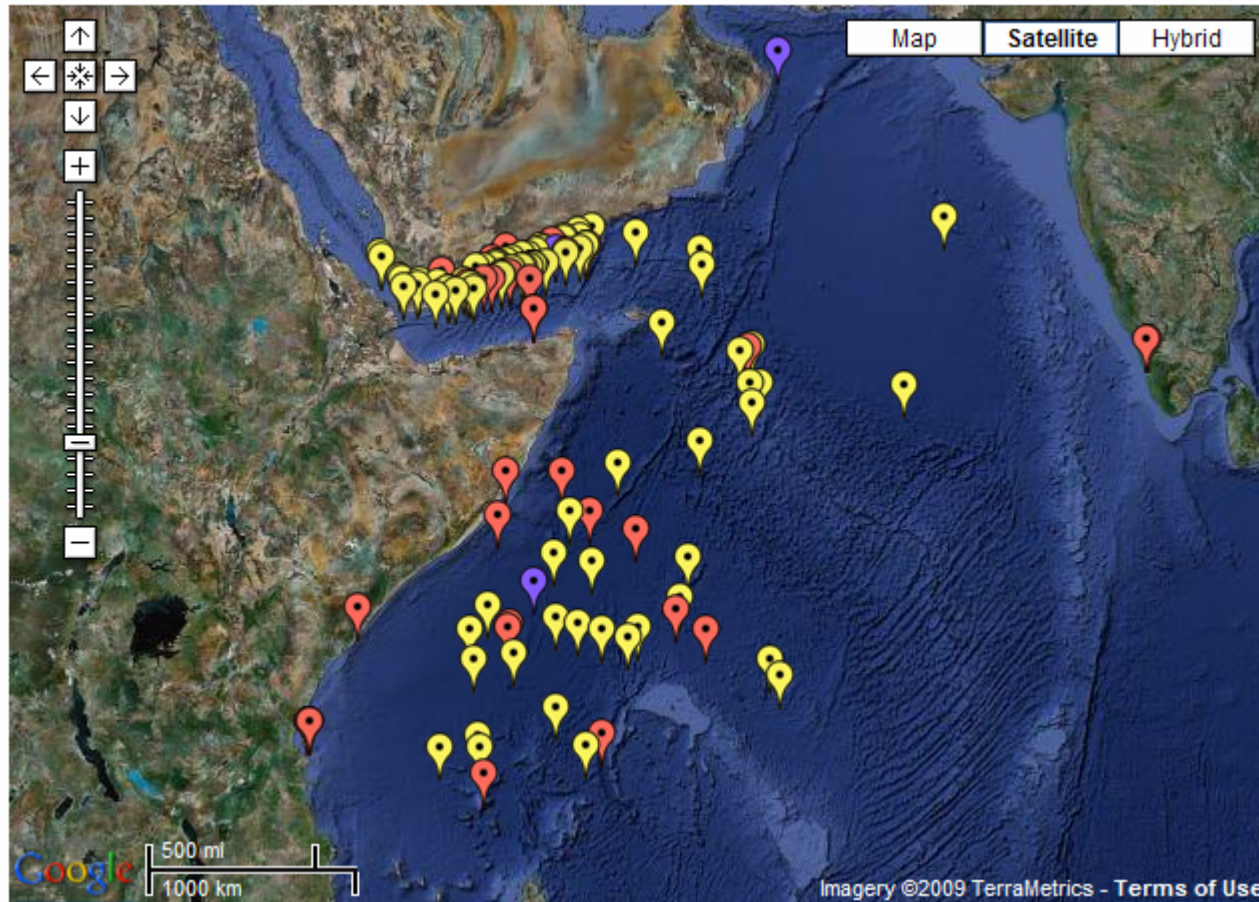
- Atlantic '40-'45 – 1% attrition rate
- GoA '08-'09 – 0.6% hijack rate
- One thing is certain...there will be another hijack soon!



Dispelling the Myths

My vessel won't fall victim

- Attacks in 2009...114 (total 2008 was 111)



Dispelling the Myths

The naval presence will protect my vessel

- 2,5M sqnm sea space
- 15-20 naval units
 - Different missions
 - Different command structures
 - 20nm radius
- Conclusion - Protect yourself

Dispelling the Myths

This is an emergency like any other, I can manage it with my normal emergency response procedures

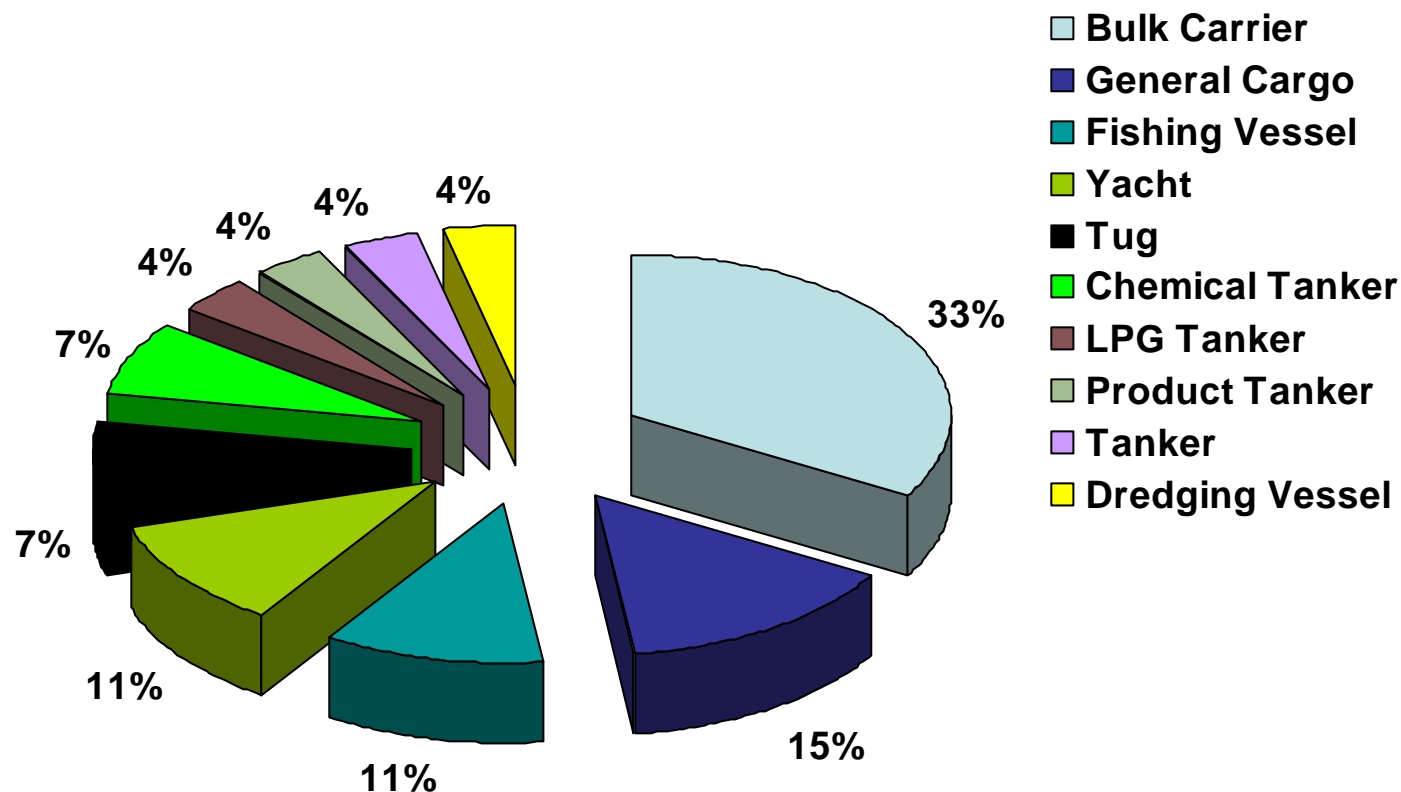
- Typical oil spill, collision, grounding, sinking = single, spike event, clean up the mess
- Piracy hijack
 - Long duration (60+ days) = sustainability!
 - Intelligent opponent
 - Intense daily negotiations
 - Tremendous impact on crew, families across the globe, colleagues etc.
 - Involvement of – sometimes many – governments and law enforcement agencies
 - Work with specialized K&R consultant
 - HIGHLY STRESSFUL & FRUSTRATING PROCESS

The Current Piracy Landscape

- Who is targeted?
 - **SPEED:** Attacks are opportunistic. Vessels at greatest risk $\leq 14\text{kts}$
 - **FREEBOARD:** Vessels at greatest risk freeboard $\leq 5\text{m}$ (available fixed metal ladders)
 - **TYPE OF VESSEL:** most common slow-moving **cargo and tanker vessels** – those laden and hence running low in the water, less maneuverable
 - **TIME OF DAY:** Most attacks occur in **daylight hours**, 0400-1000 = 40%, 1400 – 1800 = 27%
 - **SEASTATE:** waves $\leq 1\text{ m}$

No Vessel is Immune

Types of vessels hijacked, as at 11 May 2009

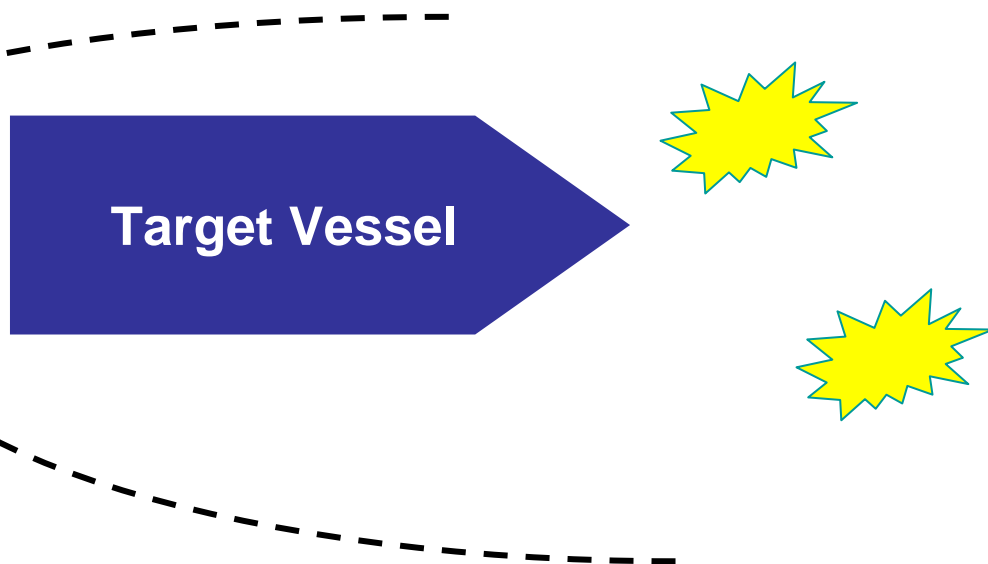


The Current Piracy Landscape

- What typically happens?
 - How is it executed?
 - GoA & farther offshore
 - Natural bottleneck
 - Mother ships enable attacks further offshore, close to Yemen coast & south off Kenya (near Seychelles)
 - 2-3 speedboats with 3-5 crew armed with AKs and RPGs = **SATURATION OF DEFENSES**

The Current Piracy Landscape

- What typically happens?
 - How long?
 - FAST!



You Can Be Prepared

Pre-Voyage Preparations I

- Crew consideration (volunteerism/training)
- Insurance considerations
- Alternate routes
- Physical security measures
 - **Maximize support available from international community**
 - **But...ultimate responsibility with shipper**
 - Physical measures - LRAD's, barbed wire, FiFi, strong room, NVG's
 - Organizational measures - security guards, crew training, deck patrols, separate control room, frequent reporting to UKMTO, MARLO and company
 - Seamanship – maneuvering (short leg & long leg), clean sides (pilot ladders etc up & secured), 360 active radar & visual watch

You Can Be Prepared

Pre-Voyage Preparations II

- Pre-voyage education of staff/technical managers
 - Crisis management & crisis communications training
 - On shore and on board
 - Well thought through policy on negotiating
 - Specific contingency plan for this type of incident, deep involvement “Corporate”
 - Crew security training
 - Watch keeping routines, deck patrol, response to attack

What To Expect After a Hijacking

Minute Zero through Day Three/Four

- Typically, Master contacts technical manager
- All teams (legal, crisis management, communications) must be ready to go at a moments notice
 - Set up CM facilities...START LOG of events
 - Prepare to sustain long time, rota
 - Prepare for first captor contact
 - Consider family and media relations, communications with other stakeholders
- Usually, there is NO contact from the pirates or crew during this time
 - Contact commences once they are at anchor

What To Expect After a Hijacking

Days 4-14

- Negotiations begin, intense due to:
 - Time zones, frequency, language, “the unknown”
- OBJECTIVE: safe release of crew, vessel, cargo
- Communications are normalized with outside audiences
 - Media
 - Governments (of the crew members)
 - Seafarers’ unions
 - Most importantly, the families of the crew
 - Health and safety concerns
 - Financial concerns (payment of wages)

What To Expect After a Hijacking

Days 4-14

- Communications are normalized with outside audiences
 - Constant monitoring of comms channels and technical aspects
 - Food, water, fuel
 - Most importantly, the health and safety of the crew
 - Communicate with other stakeholders – charterer, mortgagee

What To Expect After a Hijacking

Days 14-60

- Expecting the unexpected
 - Families can become agitated over long-term crisis
 - Manage expectations constantly, emotional distress
 - Contact can become more sporadic with captors
 - Outside your control, sense of frustration
 - Preserve morale
 - Technical issues (bunkers to reach safe port, etc.) become top of mind

What To Expect After a Hijacking

Day 60 through Release

- Preparing for payment of ransom/drop
 - Devil is in the details; Can I legally pay ransom? Can I afford it? Who will deliver it?
- Preparing for voyage into safe waters
- Creating an agreement that both parties can agree and adhere to
- Preparations for reuniting crew with families

What To Expect After a Hijacking

Day 60 through Release

- Extremely important phase of the crisis
 - You must “finish the job”
 - Documentation in order?
- Creating a sense of family and community for reintegration
- Physical and psychological assessment *as soon as vessel reaches safe port*
- After-care once crew returns home
 - Respect wishes of victims
 - Everybody responds differently

Can I Legally Pay Ransom?

- For now, yes, but watch for developments in the political arena
- Foreign Corrupt Practices Act – Cannot make payments that undermine the rule of law of a foreign country
- Office of Foreign Asset Control – Payments prohibited to certain foreign governments, political parties, terrorists and designated individuals (“pirates” not yet designated “terrorists”)
- Anti-terrorism and Effective Death Penalty Act – prohibits “material support” to “foreign terrorist organizations”

Can I Legally Pay Ransom?

- U.S. Anti-Money Laundering Laws, e.g., Bank Secrecy Act/Money Laundering Control Act – These statutes impose various reporting requirements. These statutes are aimed at money derived from illegal activities such as piracy, but not the payment of ransom.
- Conclusion – There are limits to what a vessel owner may know about the identity of the captors of his vessel and crew but as long as the owner can be certain the ransom to be paid is not going directly to a prohibit person, no statutory violation should occur.

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Questions & Answers

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