PIRACY UPDATE – INSURANCE ISSUES

The Fourth International Conference on Insurance & Marine Transportation
"Towards a Safe Cargo Transportation Environment"

13th-15th May 2013

Simon Cartwright, Partner
T: +971 4 423 0520
simon.cartwright@hfw.com
- The problem
- Risk mitigation
- Legality of ransom payments
- Subject to General Average contribution?
- Policy coverage issues
  - H&M, war risks, K&R, cargo, P&I
- Banning ransom payments
Worldwide piracy incidents – 2013

IMB Piracy and Armed Robbery Map 2013
Source: ICC Commercial Crime Services
Risk mitigation

- Best management practices
- Armed guards
- Insurance
Is payment of ransom illegal?

- Under English law: no (since 1782 Ransom Act repealed in 1860's) unless:
  - Terrorism Act 2000; Proceeds of Crime Act 2002
  - Public policy? Unlikely
  - Illegal in law of shipowner's domicile

Is ransom subject to General Average contribution?

- **Hicks v Palington (1590):** Yes, unless illegal
  - Ransom is usually treated as GA expense

- Who contributes, and who pays in the first instance?

- Alternatively: ransom could be treated as sue and labour expense
Policy coverage

- H&M: piracy usually covered now by War Risks
  - ITCH, clause 23: exclusion for "capture seizure… (piracy expected)"
  - Clause 24: exclusion for "riots" (12 or more persons)

- Causative unseaworthiness under s.39(5) MIA?
  - E.g. insufficient training in avoiding / repelling attacks

- Material non-disclosure?
  - E.g. armed guards
Other Insurances

- Kidnap & Ransom insurance
  - Contract of indemnity, so owner must pay first
  - Does not cover cargo's contribution

- Cargo insurance
  - "Piracy" covered in ICC(A), but not (B) or (C)
  - BUT: ICC(B) and (C) cover General Average
P&I

- Property underwriters not happy that P&I do not contribute
  - BUT: interests covered by P&I do not contribute in GA

- Crew's lives = relatively low value

- Maybe sue and labour

- "Weapons of war" exclusion
Banning Ransom Payments – the effect

- Seafarers
- Vessels and cargo
- Environment
Any questions?