P&I claims related to the carriage of goods by sea
Cargo claims in context in Gard

- Owners and charterers liabilities in respect of cargo
- Approximate claim cost to Gard of USD50m/year (25%)
- Approximately 5000 cargo cases/year (50%)
- Upto 100 persons in Gard handling cargo claims
- What factors influence cargo claims?
Cargo: Reserves, compensations and expenses
## Claim severity by ship type

<table>
<thead>
<tr>
<th></th>
<th>% share of tonnage</th>
<th>change</th>
<th>% share of claim cost</th>
<th>change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2008</td>
<td>2009</td>
<td></td>
<td>2008</td>
</tr>
<tr>
<td>container</td>
<td>18</td>
<td>18</td>
<td>0</td>
<td>22</td>
</tr>
<tr>
<td>bulker</td>
<td>18</td>
<td>17</td>
<td>-1</td>
<td>22</td>
</tr>
<tr>
<td>general cargo</td>
<td>7</td>
<td>6</td>
<td>-1</td>
<td>19</td>
</tr>
<tr>
<td>tanker</td>
<td>42</td>
<td>40</td>
<td>-2</td>
<td>26</td>
</tr>
<tr>
<td>other</td>
<td>15</td>
<td>19</td>
<td>4</td>
<td>11</td>
</tr>
<tr>
<td>total</td>
<td>100</td>
<td>100</td>
<td>4</td>
<td>100</td>
</tr>
</tbody>
</table>
Typical terms

- **Carrier** – the person who undertakes, in return for payment, to carry goods for others - normally a ship owner (actual carrier) or charterer (contractual carrier)
- **Charterer** – typically charters a ship for a voyage or period of time
- **Contract of carriage** – the terms on which the goods are carried, usually evidenced by a bill of lading or a waybill
- **Shipper** – a person shipping the goods
- **Consignee** – to whom the goods are to be delivered
Typcial contracts

- A charterparty is a contract to provide a ship to:
  - carry goods for one voyage (voyage charter)
  - perform a carriage service for a period of time (time charter)
  - provide a space on the ship to carry goods (slot charter)

- A bill of lading is evidence of title to the goods described in the bill of lading and a contract for the carriage of goods.

- A negotiable bill of lading is one that can be transferred, e.g., from a consignee to a 3rd party.

- A waybill is evidence of a contract for the carriage of goods, it is not a document of title and is not negotiable.
Typical contractual arrangement in the bulk trade
Typical contractual arrangement in the liner trade

- **SHIPOWNER**
- **TIME CHARTERER**
- **SLOT CHARTERER**
- **FREIGHT FORWARDER**

**B/L HOLDER**

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P&I cover for cargo claims (Rule 34) – what is covered

- basic cargo liability cover is for liability arising out of unseaworthiness or the failure to properly care for the cargo
- reflects the fundamental legal obligations that a carrier has under the Hague or Hague Visby Rules
- not designed to cover liabilities arising from a failure to perform the contract at all
- also cover for loss caused by delay but only where the liability arises under compulsorily applicable rules of law
P&I cover for cargo claims (Rule 34) – what is not covered

- Long list of exclusions (11 in all):
  - Examples: mis-description of goods in B/L, mis-delivery, deviation which deprives the carrier of defences or rights of limitation, contractually agreed liability for delay, late arrival, excess HVR liability.

- why are there exclusions?
  - for non mutual risks (eg contractually agreed liability exceeding Hague/Hague Visby Rules)
  - quantifying the risk, especially for the IG reinsurance programme

- exclusions under Gard’s cargo rule are subject to discretion, ie the Member can apply to the Club’s Executive Committee for discretionary cover
International Conventions on the carriage of goods by sea*

- The Hague Rules 1924
  - Freedom of contract disproportionately in carrier’s favour
- The Hague-Visby Rules 1968
  - Further refinement and recognition of containerisation (increased limits of liability)
- The Hamburg Rules 1978
  - A completely separate convention - more cargo friendly
- The Rotterdam Rules 2008:
  - To replace existing patchwork of cargo conventions, reflect advances in law and practice
  - Wholly or partly by sea*
  - Enters force 12 months after 20 States have ratified it (so far no ratifications, 22 signatures, inc. USA, Norway, Netherlands)
The Hague Visby Rules

- Defines ‘carrier’, ‘contract of carriage’, ‘goods’ etc.
- Outlines carrier’s responsibilities and defences:
  - Error in navigation or in the management of the ship
  - Fire
  - Perils of the sea
  - Act of God
  - Insufficiency of packing
  - Latent defect
- Period of responsibility – ‘tackle to tackle’ – freedom to contract beyond that
- Limit of liability: SDR 666.67 per package or SDR 2 per kilogram of lost or damaged cargo, whichever is higher
- Time bar – one year from the date of delivery of the goods
- No compulsory insurance requirements
<table>
<thead>
<tr>
<th>Change in gross claims paid</th>
<th>USD million, inflation adjusted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wider freedom of contract, e.g. jurisdiction</td>
<td>11.1</td>
</tr>
<tr>
<td>Possibility to require withdrawal of actions seeking non-liability or forum selection</td>
<td>5.5</td>
</tr>
<tr>
<td>Extended time bar</td>
<td>4.1</td>
</tr>
<tr>
<td>Increased limits of liability</td>
<td>3.5</td>
</tr>
<tr>
<td>Expanded scope of application (beyond loading/discharge)</td>
<td>1.5</td>
</tr>
<tr>
<td>Stricter requirements to seaworthiness</td>
<td>1.4</td>
</tr>
<tr>
<td>Recognition of electronic documentation</td>
<td>0.7</td>
</tr>
<tr>
<td>Recognition of free in/out of stow</td>
<td>-0.6</td>
</tr>
<tr>
<td>Increased number of shipper obligation</td>
<td>-0.8</td>
</tr>
<tr>
<td>Freedom in respect of goods that may become a danger</td>
<td>-0.9</td>
</tr>
<tr>
<td>Provisions for dangerous goods</td>
<td>-0.9</td>
</tr>
</tbody>
</table>

Note: Changes with an impact below USD 500,000 are not shown.

Potential impact of the Rotterdam Rules
P&I cover for extra costs of handling cargo (Rule 35)

- in handling and discharging cargo where the extra costs and expenses are necessarily consequent upon damage to the cargo or damage to the ship
- cargo which has been rejected by the consignee

Exclusions:
- Member has recourse to recover from any other party
- daily running costs and expenses
Typical life of a cargo file – incident phase

- Incident of cargo damage for entered ship reported to Club by the member – where?
- Appoint a surveyor to investigate incident – what & why?
  - nature, extent and cause of damage (inc. mitigation of loss)
  - to establish the facts
- Evaluate the potential claim and takes steps to minimise the exposure – how?
  - carrier
  - security, jurisdiction
  - legal/expert advice
  - evidence
  - recourse
Typical life of a cargo file – claim phase

o Formal claim presented – when and what?
  - time bar
  - to do with the claim – reject, settle, fight?

o How to decide?
  - Evaluate the merits
    ▪ who is entitled to claim?
    ▪ what is the claim worth? – quantum (limitation)
    ▪ is there liability?
Burden of proof in a typical b/l claim

- b/l holder raises prima facie case - clean b/l + damaged cargo
- carrier seeks to rely on a defence (eg proof that damage caused by perils of the sea - an exception under HV Rules)
- b/l holder challenges defence and seeks to prove that damage caused by unseaworthiness or failure to properly care for the cargo (ie breach of carrier’s HV Rules obligations)
- carrier counters with proof that there was no causative unseaworthiness or causative lack of due diligence to make the vessel seaworthy
Typical life of a cargo file – claim phase

- Formal claim presented – when and what?
  - time bar
  - to do with the claim – reject, settle, fight?

- How to decide?
  - Evaluate the merits
    - who is entitled to claim?
    - what is the claim worth? – quantum (limitation)
    - is there liability?

- Pay the claim – against what?
  - award or final unappealable judgment
  - settlement agreement

- is that it?
Typical life of a cargo file – recovery phase

- The NPYE Inter-Club Agreement
  - an agreement between the IG Clubs to “mechanically” apportion cargo claims under the NYPE c/p form
  - why?
    - for example, shortage claims are to be apportioned 50/50 unless there is clear and irrefutable evidence that the claim arose out of pilferage or act or neglect by the owner or charterer (or their servants) in which case that party bears 100% of the claim