IMCC 2011
COLLISION SCENARIO WORKSHOP
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CHINA

• Currently world’s 2\textsuperscript{nd} largest economy;

• 1.1 trillion US$ of imported goods and materials / 1.4 trillion US$ exported \textit{(Source: OECD)};

• 1,529 vessels (1.5%) / 74.5 million tonnes DWT (5.8%) on Chinese national flag \textit{(Source: UNCTAD)};

• Fishing industry fleet: ~220,000 vessels, incl. ~25,600 vessels over 100gt \textit{(Source: UN FAO)}.
TIMELINE

COLLISION
The Scenario

• Ultra Large Container Ship “MV Dublin” departing Yangshan Deepwater Port (Shanghai), bound for South Korea.
The Scenario

• In outbound channel with port pilot on-board and in command. Weather calm, reduced visibility, strong current. Left berth early hours of morning

• Due to berth / schedule pressure, Master-Pilot eXchange is rushed and with language difficulties. Manoeuvres conducted by pilot in Chinese.
Yangshan Deepwater Port

Yangshan Main Channel
The Scenario

- Transiting Yangshan Gang Main Channel, approaching traffic intersection near Xima’an Do (Precautionary Area);
- Channel is 500m wide, heading ESE towards Traffic Separation Scheme (TSS);
- Variety of vessel traffic crossing channel including Chinese registered coastal tanker travelling North.
Precautionary Area

Traffic Separation Scheme (TSS)
The Ships

- **Containership:**
  - Length: ~400m
  - Beam: ~55m
  - Draught: ~ 15.5m
  - Displacement: 208,000 tonnes
  - Gross Tonnage: 170,000 GT

- **Tanker:**
  - Length: ~105 m
  - Beam: ~ 15.0 m
  - Draught: ~7.0 m
  - Displacement: ~7,000 tonnes
  - Gross Tonnage: 3,000 GT
The Scenario

- Containership is constrained by her draught.
- Tanker continues Northbound at 10 knots;
- Containership travelling at 12 knots;
- Both ships maintain speed.
The Scenario

• Containership calls Tanker - No answer.
• Containership turns to port to minimise impact and tanker collides with containership in way of Heavy Fuel Oil (HFO) tanks and in ballast tanks below water line. Tanker holed in way of Forepeak tank and #1 cargo tank.
• Tanker starts to sink rapidly;
• Containership ballast tanks flood rapidly causing significant list to develop and vessel eventually grounds, weather worsens, causing loss of containers.
• HFO from containership and cargo from tanker causes significant pollution;
• Many local fishing grounds.
IMMEDIATE ISSUES
TIMELINE

COLLISION

- Initial Assessment
- Communication
- The "players"
- Emergency Response
Initial Assessment

• Assess the gravity of the situation:
• Extent of damage to both vessels;
• Damage to cargo on both vessels;
• Loss of Life;
• Personal Injury;
• Fire;
• Oil pollution;
• Salvage;
• Wreck removal.

Multitude of decisions to be made in an effort to expedite the mobilisation of the necessary experts/assets.
Initial Notification

• Variety of reporting lines:
  Owners;
  Correspondents;
  Casualty lawyers;
  Media.

• Insurers’ Concern:
  1/4th RDC / 4/4ths RDC?
  Pollution, crew injury, 3rd party
  injury, cargo (on other vessel),
  wreck removal and other excess
  liabilities not covered under the
  Hull Clauses.
The Various Interests When a Ship has a Casualty

- Shipowner
- Charterer
- Sub-Charterer
- Engine Builder
- Cargo Owner
- Cargo Insurers
- Reinsurance Underwriters
- Liability Insurers
- LOH Insurers
- H & M Insurers
- P & I Insurers
- IACS
- IMO
- Classification Society
- Port State Authority
- Flag State Authority
- Media
- Environmental Authorities/Lobbies
- Finance Institutions
- Stevedores
- Liability Insurers
- Liability Insurers
- Liability Insurers
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- Liability Insurers
- Liability Insurers
Communication

• The 3 “Cs” - **communication, co-ordination and co-operation.**
• Vessel Owners, Managers, Manning agents, charterers / Brokers;
• H+M Underwriters / Brokers;
• Correspondents and local agents;
• Casualty lawyers;
• Marine Surveyors / Consultants/ Fire Expert/ ITOPF (pollution);
• Opponent P+I Club / H+M;
• Salvage brokers / Salvors;
• Cargo interests.
## Primary Loss Issues for each vessel

<table>
<thead>
<tr>
<th>Containership</th>
<th>Tanker</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collision liability</td>
<td>Collision Liability</td>
</tr>
<tr>
<td>Physical Damage</td>
<td>Physical Damage</td>
</tr>
<tr>
<td>Injury / Loss of Life?</td>
<td>Injury Loss of Life</td>
</tr>
<tr>
<td>Cargo Loss / Damage</td>
<td>Cargo Loss</td>
</tr>
<tr>
<td>Pollution (HFO)</td>
<td>Pollution (Cargo / Bunkers)</td>
</tr>
<tr>
<td>Salvage</td>
<td>Abandonment / total loss</td>
</tr>
<tr>
<td>SCOPIC invoked?</td>
<td>Wreck Removal</td>
</tr>
<tr>
<td>GA declared?</td>
<td></td>
</tr>
<tr>
<td>RDC items</td>
<td></td>
</tr>
<tr>
<td>Indemnity claims</td>
<td>Indemnity claims</td>
</tr>
</tbody>
</table>
Deployment

• Casualty response team deployment:
  i. Investigate the circumstances of the incident,
  ii. Preserve evidence and stabilise the casualty, not necessarily in any particular order.

• H+M / Owners - salvage services?

• Preserve contemporaneous vessel documentation, VDR data other 3rd party evidence – AIS records etc.

• SCR in any LOF SCOPIC capacity.

• ITOPF
PROCEDURAL ISSUES
TIMELINE

COLLISION

Initial Assessment

Communication

The “players”

Emergency Response

Jurisdiction

Arrest/detention
Procedural Pitfall 1

Time Limits

Chinese law does not recognize voluntary extensions of the prescription period.
Procedural Pitfall 2

Limits of liability

• China has implemented a limitation regime similar to the 1976 Limitation Convention into its Maritime Code (1993).

• Note the reduced limit of liability for Chinese flagged vessels engaged in coastal transport services and other coastal operations.
Procedural Pitfall 3

• Evidence preservation order

• Ensure that the list of documents which you require is comprehensive and focused

• Ensure that it is only the examining judge who attends on board
Procedural Pitfall 4

Jurisdiction and immunity for suit

• In the case of Intraline Resources SDN BHD v The Owners of "Hua Tian Long" HCAJ 59/2008, Guangzhou Salvage Bureau, an entity of the Central People's Government was held to be entitled to claim immunity from suit in Hong Kong courts.
TIMELINE

COLLISION

Initial Assessment

Communication

The “players”

Emergency Response

Jurisdiction

Arrest/detention

MSA
China Maritime Safety Authority (MSA)
Maritime Safety Administration of the PRC ("MSA")

Who are they?
• part of the Ministry of Communications
• control all maritime matters in PRC
• very powerful and bureaucratic

China MSA is a national authority responsible for:
• maritime law enforcement
• administration of shipping safety
• prevention of pollution from ships nationwide
• organization, coordination and conduct of search and rescue operations
• investigation of marine accidents and the approval of vessels involved in international trade for entry into and departure from Chinese ports
China MSA

Where are they?

The overall responsibility rests with Beijing MSA, with regional MSAs having local authority – 14 regional bureaus and 97 local branches along the coast line and Yangtze River, Pearl River and Heilingjiang River.

Subordinate Bureaus:
- Hebei MSA
- Liaoning MSA
- Guangdong MSA
- Tianjin MSA
- Changjiang MSA
- Jiangsu MSA
- Shanghai MSA
- Zhejiang MSA
- Fujian MSA
- Guangxi MSA
- Heilongjiang MSA
- Shenzhen MSA
- Hainan MSA
- Shandong MSA
China MSA - Marine Accident Investigation

What are their powers?

China MSA is responsible for: (i) investigating and analyzing traffic accidents in Chinese waters; (ii) identifying the causes of the accidents; (iii) determining the liabilities of the parties concerned; and (iv) preparing the reports accordingly.

- conduct on board investigations
- impose fines and arrest personnel
- seize documents
- collect VDR
- issue report on the accident
- determine liabilities of the parties concerned (Chinese courts rely on MSA findings on liability)

Failure to cooperate
Marine Accident Report

• Be prepared

• Specific answers required similar to those in a Preliminary Act

• Need for accuracy

• Sketch required

• Possibility for the questionnaire to be left on board for completion and returned to MSA through local agent
China MSA - Marine Accident Investigation

Marine accident investigation

- who attends on board?
- where and when do they attend?
- pre-planning
- interview of relevant crew
- translation and signature
- documents and VDR
- can lawyers be present during the interview?
China MSA - Marine Accident Investigation

Lessons:

• Prepare for the inevitable investigation
• Do not volunteer anything
• Co-operate with investigating officer
• Keep record of questions and answers given
• Do not sign interview notes unless translated
• Ideally get MSA to leave questionnaire on board to be returned later
The "players"
- Communication
- Initial Assessment
- Emergency Response
- Jurisdiction
- Arrest/detention
- Pollution
- MSA
- COLLISION

TIMELINE
POLLUTION
The Regulations of the People’s Republic of China (PRC) on the Prevention and Control of Marine Pollution from Ships – “The Regulations”

• Establish comprehensive rules governing oil pollution prevention, response and clean up within PRC waters.
• Cover any ship-sourced pollution and any ship-related operation that causes or may cause pollution damage in the internal waters, territorial waters and the contiguous zones, exclusive economic zone and continental shelf of the PRC and all other sea areas under the jurisdiction of the PRC.

• Key Provisions:
  o Requirement to maintain insurance or other financial security to cover liabilities arising from oil pollution damage.
  o Requirement to contract with MSA approved pollution response companies;
Regulations

• Require shipowners, operators or managers to maintain emergency response plans for the prevention and control of marine pollution.
• Understood that a MARPOL Shipboard Oil Pollution Emergency Plan (SOPEP) will be sufficient to meet this requirement.
• The PRC is a State party to the 1992 CLC and the 2001 Bunkers Convention.
• Regulations largely mirror those contained in those Conventions, which provide for strict liability of the owner for pollution damage arising from the carriage of persistent oil by sea (1992 CLC) and strict liability of the shipowner for pollution damage caused by spills of bunker oil (2001 Bunkers Convention).
Issues relating to casualty scenario:

• discharge and reception of oil pollutants;
• oil pollution response planning;
• oil spill clean-up arrangements,
• reporting and emergency handling of pollution incidents;
• investigation and compensation of pollution incidents;
• supervision of the loading, lightening and discharging of the polluting hazardous cargoes;

Image: Mavi Denis
Insurance / Financial Security

- Introduce compulsory insurance regime for all ships (except <1,000 gt and not carrying oil cargoes)
- Should satisfy the requirements of the Chinese Maritime Code or the 1992 CLC and Bunkers Convention where applicable.
- Gives effect to insurance provisions of:

  II. 1992 International Convention on Civil Liability for Oil Pollution Damage (1992 CLC)
  III. A domestic Ship Oil Pollution Compensation Fund - funded by contributions from receivers of persistent oil cargoes transported by sea to a Chinese port. PRC is not a State party to the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992 IOPC Fund).
Pollution Response Contractor

• The Regulations require:
• Operators of any ship carrying polluting and hazardous cargoes in bulk or of any other vessel above 10,000 gt to conclude a pollution clean up contract with an MSA approved pollution response company before entering a PRC port.
• Contractors responsible for conducting clean-up operations in the event of an incident, under the MSA’s supervision, and with the intervention of the MSA if the capabilities of the contractor are exceeded.

Image: Hang Peng
Pollution Response Contractor

- Class 1 – National;
- Class 2 – Coastal;
- Class 3 – Port;
- Class 4 – Terminal.

Certified contractors yet to be published:

http://www.msa.gov.cn
http://www.osp.cn

- MSA will issue lists of all approved contractors in October 2011.
- 1 January 2012 – enforced

Image: Sea Clean
Maritime Safety Agency (MSA)

- Designated authority for enforcing the Regulations;
- Responsible for specific supervision and administration of prevention and control of marine pollution by ships and relevant ship operation activities;
- Overall responsibility rests with Beijing MSA, with regional MSAs having local authority – 14 regional bureaus and 97 local branches along the coast and the Yangtze River;
- Responsible for co-ordination of response to HNS at sea.

Image: Hang Peng
Maritime Safety Agency (MSA)

• Currently approving contractors in the various Chinese ports;
• Designate four levels of contractor who will have the capability to respond to a spill depending on the size and extent;
• Priority likely to be given to the costs of response organised by the Government.
• MSA will recover its costs and demand a relevant financial guarantee - local PRC insurer/PRC bank guarantee).
Issues to consider in response

• Deployment of assets by MSA: “emergent action”
  i. Vessels;
  ii. Equipment;
  iii. Personnel;

• Proportionate?

Article 36:
MSA may take action such as marine traffic control, pollution removal, salvage, towage, pilotage, convoy, lightering, oil pumping or other necessary methods. (carte blanche?)
Ship to pay for such costs or provide a financial guarantee—domestic bank or insurance company only.
• Cash deposit—no entitlement now
### Issues to consider in response

#### VTS System Breakdown

<table>
<thead>
<tr>
<th>Unit</th>
<th>Technical Data</th>
<th>Labels</th>
<th>Attending Time</th>
<th>Claim Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>VTS system</td>
<td>Total 5 platforms with the values: RMB150 million and annual maintenance RMB12 million</td>
<td>Commander 5 person, 30 coordination and engineers</td>
<td>July 8-14 (7 days)</td>
<td>RMB1,340,270 (USD1,949,645)</td>
</tr>
<tr>
<td>Hai Xuan 1517</td>
<td>Main engine 339kw X2</td>
<td>1 salvage master and 4 engineers; 3 sailors</td>
<td>July 8-14 (7 days)</td>
<td>RMB41,664.5 (USD64,212.25)</td>
</tr>
<tr>
<td>Hai Xuan 1516</td>
<td>Main engine 339kw X2</td>
<td>1 salvage master and 4 engineers; 3 sailors</td>
<td>July 9-14 (6 days)</td>
<td>RMB64,525 (USD94,887.75)</td>
</tr>
<tr>
<td>Sai Gang Hua Bo 2</td>
<td>Main engine 394kw with fire and pollution facilities</td>
<td>1 commander and cleaners</td>
<td>July 8-10 (3 days)</td>
<td>RMB23,844.25 (USD36,036.25)</td>
</tr>
<tr>
<td>Sai Gang Hua Bo 2</td>
<td>Main engine 394kw X2 with fire and pollution facilities</td>
<td>1 commander and cleaners</td>
<td>July 9-14 (6 days)</td>
<td>USD16,335 (USD24,573.5)</td>
</tr>
<tr>
<td>Nan Hai Fu 101</td>
<td>Main engine 18.55HP</td>
<td>1 salvage commander and 4 crewmen</td>
<td>July 8-9 (2 days)</td>
<td>RMB5,434.5K (USD805,25.25)</td>
</tr>
<tr>
<td>Hai Te 1504</td>
<td>Main engine 3400hp</td>
<td>1 salvage commander and 5 engineers</td>
<td>July 9-14 (6 days)</td>
<td>RMB97,588.5 (USD135,125)</td>
</tr>
<tr>
<td>Vehicle</td>
<td>Minibus or above</td>
<td>30 drivers</td>
<td>July 9-14 (6 days)</td>
<td>RMB4,010 (USD6,117.6)</td>
</tr>
<tr>
<td>Logistic and food</td>
<td>Logistic and cook</td>
<td>30 drivers</td>
<td>July 9-14 (6 days)</td>
<td>RMB3,000 (USD4,411.8)</td>
</tr>
<tr>
<td>Total</td>
<td>RMB5,330,000 (USD7,647.5)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Notes
1. The above cost is calculated as SCOPIC2007, excluding VTS, vehicles, logistics, dismounter and cost checking.
2. The exchange rate is 6.881 USD.
3. The above calculation is not final and Guangzhou MSA reserves the right for revising.
Issues to consider in response

• Requirement to deploy experts to monitor all MSA activities.

**ITOPF notes:**

• Specialist equipment limited outside China National Offshore Oil Corp. (CNOOC);
• Strict regulations on use of dispersants;
• Major ports resourced with skimmers, booms, pumps, dispersants and absorbents;
• Largest cache of oil spill containment held by CNOOC;
• PRC government establishing large equipment stockpiles
TIMELINE

- COLLISION
  - Initial Assessment
  - Communication
  - The “players”
  - Emergency Response
- MSA
- Pollution
- Jurisdiction
  - Arrest/detention
- Salvage / SCOPIC
- Wreck Removal
SALVAGE IN CHINESE WATERS
Who can salve in Chinese waters?

- China Rescue and Salvage Bureau of the Ministry of Communication (CRS) is China’s only national maritime rescue and salvage force.

- Three divisions – assessed geographically
  1. Guangzhou Salvage (Nan Hai)
  2. Shanghai Salvage (Dong Hai)
  3. Yantai Salvage (Bei Hai)

- Its primary responsibilities are the response to marine accidents in Chinese waters, including life-saving, salvage of vessels and property, wreck removal, fire-fighting, spill clean-up, etc.
Who can salve in Chinese waters?

Can foreign salvage companies salve in PRC waters?

- Require permit from MSA

- For vessel over 5000GT – only Salvage Bureau

- For vessel under 5000GT – foreign salvor may apply to MSA for licence
  - not readily granted

- However, Salvage Bureau and MSA will take advice from foreign based salvage master if on board casualty.
Salvage – General Provisions

• Salvage operation under control of local MSA

• If minor casualty - local MSA will orchestrate response and impose assistance on salved interests and claim compensation

• If major casualty – Salvage Bureau will respond depending on location of casualty

• Differing levels of expertise
Deployment Diagram of National Professional Rescue and Salvage Forces
Salvage - Lessons

• Salvage contract and jurisdiction

• The issue of excessive response

• Crown immunity – *Intraline Resources SDN BHD v The Owner of MV Hua Tian Long* HCAJ 59/2008
Post Salvage - Pre departure casualty site
Post Salvage - Pre departure casualty site

- Class and Flag State - Is the vessel structurally sound and meet statutory regulations
- Owners – Will want to protect their property/reputation
- P&I – Is the vessel a risk
- H&M – Is the vessel a risk
- Salvors – Is the LOF signed off / salvors accompanying vessel
- Cargo interests – How much cargo will be delivered
- General Average – Interested in sacrifice damage
- Towage – LOF or Towcon
Temporary Repairs
Temporary Repairs
Temporary Repairs
Towage Contract
SECURITY
Security

Most common form – Club LOU:
- Club standard wording;
- ASG wordings.

Counter security
- One Fourth cover
  - Subject Rules 43 & 31
  - Hull underwriter, three fourths proportion, cash, bank guarantee or equivalent;

Also, - Bank Guarantees
- Security by proxy:
  i. correspondents;
  ii. PRC Insurance entity
Security

Successive security demands from various interests as a casualty scenario evolves.

These could include:

- **Inter-ship**: securing claims for damage between each vessel. Normally Club letters are exchanged, though bank guarantees / cash deposits may be a requisite. Counter security from H+M has to be in place, where Club is only 1/4\(^{th}\) RDC;

- **Cargo security.** Cargo owners / insurers on opposing vessel will generally seek security for loss of / damage to cargo. Where GA is declared, then there may be a request for the Club to provide security for cargo’s indemnity proportion of general average. Where salvage features, then an additional requirement for security in respect of a salvage indemnity claim from cargo.
Security

- Where GA features, Owners will look to secure cargo’s proportion of GA through their GA Adjuster. Average Bonds and Guarantee;
- Local authorities will usually demand security from Owners for pollution claims and/or clean up costs - MSA
- Salvors will seek security from Owners and cargo in respect of their respective proportions of the potential salvage award/settlement.
- Salvors will seek security from Owner’s P+I for SCOPIC (where invoked).
The "players"

Emergency Response

The "players"

Initial Assessment

Communication

Jurisdiction

Arrest/detention

Pollution

MSA

Salvage / SCOPIC

Security – LOU/ Cash

Wreck Removal

Repairs

Collaboration

TIMELINE
REPAIRS IN CHINA
China as a Repair Destination

- China remains the busiest repair location in the World
- Business up until 2008 was very good
- Shipyard space was at a premium
- Owners return time after time as it is cheap - a sign of success
- Based on low labour costs and government subsidy
- Broad range of repair facility quality
- China now diversifying from repair to building
Arrival Discharge Port

• Authorities may arrest the vessel if they regard the damage as significant

• There may be a perceived pollution risk – superintendents or Master can be arrested

• An disproportionate anti pollution response operation can be put in place

• Floating dock or graving dock – Differing pollution risks

• Ship preparation – on site surveyors/superintendents
Graving Dock
Floating Dry dock
Post Salvage – Pre arrival shipyard

Considering a yard:

• Space availability
• Yard Quality or Reputation
• Previous experience
• Private understandings
• Where will MSA allow?
Post Salvage – Pre arrival shipyard

Competitive tendering:

- H&M surveyors cannot dictate - only advise without prejudice
- The Owner must act as a prudent uninsured
- When costs are submitted to the underwriter they must be fair and reasonable
- Insurers can insist on other yards being considered
Post Salvage – Pre arrival shipyard

Normalising of quotations is time consuming but worthwhile:

• Allows the quotations to be assessed on a like for like basis
• Quotations can be complex/ lengthy/confusing
• Additional items not agreed beforehand will be charged at a premium
• Is prefabrication an option to save time
Post Salvage – Pre arrival shipyard

Implications of damaged vessel arriving at Chinese port:

• We assess it is safe, but do the authorities in China - they may have different perspective.

• Pollution or any other risk can be viewed differently
Post Salvage – Pre arrival shipyard

Specialist services required:

• Main engine damaged from salvor’s efforts or casualty
• Main engine and shafting alignment checks
• Propeller damage
• Rudder damage
• Problem in China with a low skill base at certain yards
• External expertise may be required
Propeller damage
Rudder Missing
Propeller Repairs
Shafting Alignment
Repair Period

Supervision:

• Additional ships personnel
• To monitor each repair area
• Work closely with Class
• Requires daily meetings and coordination
• Additional superintendents sometimes needed
Repair Period

Attention to detail essential:

• Examine everything in detail
• Take nothing for granted
• Take the time to discuss this with the yard managers
• Try to pin them down can be elusive
• Morning meetings
• Be present at all testing
Repair Period

Experience essential:

• To understand the working practices
• To understand the culture
• To understand the language
• To protect the Owner’s Interests
Repair Period

Quality control:

• Ship yard quality control should be monitored closely don’t take their word for it
• Weld quality
• Materials specifications –avoid Chinese equivalent materials
• Painting quality
NO. 2 DB W37

1) MORE GRINDING
2) TANK CLEANING
3) MISSING WELDING
4) NO VENTILLATION
5) 1 BRACKET, RENEW
6) NO SAFETY
7) QC MUST CHECK BEFORE INUA
8) 1 CRACK FLOOR INSERT (LOC) RENEW
Repair Period

Testing and Commissioning:

• This is the last opportunity to ensure quality
• Pressure testing – attend all tests
• Quality of welding - check every inch of weld
Inspect every inch of weld
Vacuum testing
Typical Scenario

• “MV XYZ” with extensive underwater damage requiring 1000 tonnes of steel replacement.

• Performed at HRDD Chongming Island near Shanghai

• Took 32 days – steel replacement rate 31 tonnes/day

• Where 15-20 is regarded as good
Typical Scenario

• Quality was satisfactory in the end but required a lot of supervision

• 25% Over budget

• The correct steel was not available 1 to 2mm @10% extra

• Charged top steel rate for using scrap for faring plates

• Additional damage items charged at a premium
Typical Scenario – damaged cargo hold tank tops
Typical Scenario – faring plates charged at a premium
Typical Scenario

• Superintendent was threatened with arrest because of the pollution threat on arrival

• The anti pollution deployment cost USD 250,000 for three hours work

• Disposal of fuel tank water was not possible by normal means because non eco-friendly dispersant had been used during salvage
Typical Scenario – hull support required for structural support
Typical Scenario

- The job was carried out quickly
- It cost significantly more than budgeted
- But the cost was still relatively cheap
- A lot of stress on the Superintendent
Negotiations and sail off

• This is where the diligence in supervision pays off
• This avoids unnecessary surprises
• There is always an element of negotiation
• Often the senior managers are not involved
• If staged payments on account are agreed then timing and communication are essential so that the funds are in place
• A deposit will have at least 50% will have to be paid first before the ship can sail or superintendent depart
Negotiation / Settlement

• Reliance on records of vessel’s local surveyors;

• Seek to obtain full supporting materials from MSA;

• Identify rates applied (MSA tariff?) – new contractual rates?

• Scrutinise each item forensically - duration of deployment of individual assets corresponds to actual deployment?

• Robust but amicable posture;

• MSA hierarchy;

• Recovery - according to liability apportionment.
Investigation

- MSA will instruct vessels to move to ‘safe’ location;
- Vessels are effectively ‘arrested’;
- MSA have remit to investigate (+ fine / arrest);
- Co-operation with authorities;
- Preserve as much evidence as possible with copies;
- Shore VTS data very hard to access from MSA;
- Essential that vessel VDR data is preserved;
Investigation

• MSA likely to be first on scene;
• P&I, H&M and other surveyors/experts work with MSA;
• Access to evidence may be difficult;
• ‘Without Prejudice’ survey;
• MSA will issue report for the Maritime Courts;
• Access to evidence after the event.......!
Investigation - Challenges

- Provenance & proportions of pollution (HFO / Cargo);
- Salvage of cargo from containership;
- Lack of ship-board evidence from tanker;
- Chinese owner’s likely to ‘shut up shop’;
- Access to ship and crew (both sides);