



IMCC Yacht Workshop 2016



BRIT

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BRAEMAR
YACHT SERVICES



Panel



INCE & CO | INTERNATIONAL
LAW FIRM
Hong Kong | Dubai | Hanoi | Shanghai | London | Moscow | Paris | Pinar | Singapore

- *Amy Dallaway – Antares Underwriting*
- *Andrew Jameson – MatDan*
- *Stefano Scarpa – Braemar Yacht services*
- *Kevin Allmond – Brit Insurance*
- *Marion Fraser – Brit Insurance*
- *Jim Hurley - Fowler White Burnett*
- *Mike Pennekamp – Fowler White Burnett*
- *Richard Hugg – Ince & Co*

Agenda

9.45am

- *Overview of story line*
- *Notification of claim*
- *Salvage*
- *Pollution*
- *Repairs / paint work*
- *Policy / Clauses*



Agenda



11:15am

- *Personal injury*
- *Jurisdiction*
- *Limitation*

Scenario

Insured vessel - Superyacht

- *11m value*
- *501 gross tonnage*



Scenario



Third party vessel –

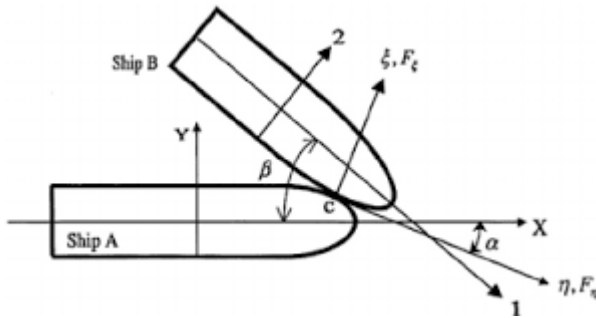
- *2m value*
- *1730 gross tonnage*



Scenario



Collision



Hull Damages

Injuries



Pollution



Goal



- Identifying Heffalump Traps
- What's a Heffalump?



Goal

- Knowing what circumstances might unexpectedly trap an insurer down the line.



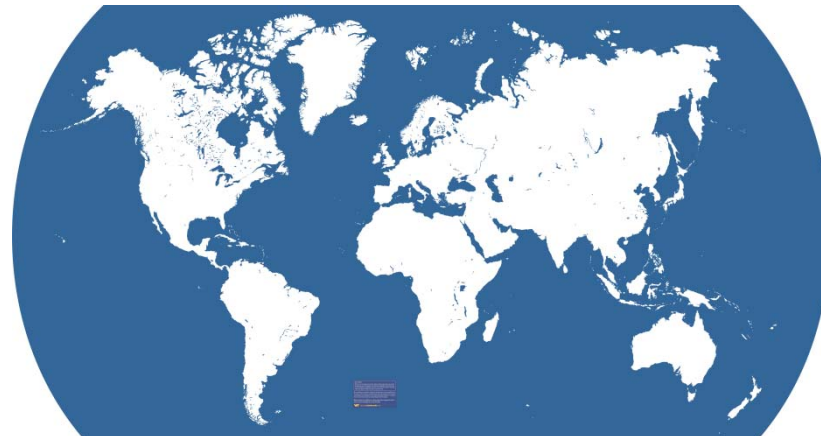
Notification



- *Instruct experts*
 - *Surveyors*
 - *Investigators*
 - *Lawyers*



Where is the Yacht?



Experts



Surveyor

- *Assess quantum (pre-existing damage?)*
- *Oversee repairs (delamination, paint work complications)*
- *Reserve estimate (Potential CTL?)*
- *Cause of loss*

Adjuster vs Surveyor?

Experts



Lawyer

- *Appointment by Insurer*
- *Assess liability*
- *Assist in personal injury investigations*
- *Potentially instructed for coverage purposes*
- *Ethical Issues*



Experts

Heffalump Sighting



Identifying the Proper Lawyer for the Proper Purpose

Experts



Investigator

- *Personal injury investigations & Theft cases*
- *Interview crew / witnesses*
- *Examine medical invoices*



Salvage or Towage?



Salvage

- *The danger is real (burden of proof with Salvor)*
- *Voluntary service (no previous contract)*
- *Success*

Towage

- *Usually agreed beforehand*
- *No salvage award*



Salvage



- *Is the vessel in imminent danger?*
- *Has the Salvor used own equipment or put themselves in danger?*
- *How much skill & effort?*
- *How much time and money did it cost the Salvors?*
- *Promptness of services*
- *Measure of success*



Salvage award



- *How much is a reasonable salvage award?*



Salvage

Heffalump Sighting



Salvage



The Salvage Contract:



Salvage of Yachts

Life Salvage



Salvage of Yachts



1989 Salvage Convention

- What was going on in 1989?
 - Taylor Swift was born



- There were a lot of theses:



- and the Salvage Convention of 1989 was passed

Pollution



Environmental issues

Pollution caused by the bunker tanks being breached.

- *Who is liable for environmental damage?*
- *How is the charge calculated?*



Pollution

Potential Issues in Pollution Claim:



*T*iming
is
everything

Clauses

Yacht Policies

- *R12 American yacht form*
- *Institute Yacht clauses*



Repairs



Repairs to Yacht

- *Pre-existing damage & Owners expectations*
- *Experts involved*
- *Paint /Delamination*

Owner's Requirements



Pre-loss

- *Pride & Joy*
- *Asset*
- *Secure Safe Haven*
- *Show of Wealth*
- *Use of the Yacht*



Owner's Requirements



Post loss

- *Returning the yacht to it's pre-loss condition*
- *Repair or Replace*
- *Moving the goal post*
- *Betterment*



Superyacht coating damage



- *Example of coating damages*
- *Common causes of coating damage*
- *Superyacht paint background information*
- *Specific issues with extent of damage, nature of repair and cost estimate*

Cost of coating damage

55m motor yacht



Linear White

COATING AND FAIRING	USD 600,000
SCAFFOLDING AND TENTING	USD 140,000
REMOVAL FITTINGS	USD 170,000
<u>TOTAL</u>	<u>USD 910,000</u>

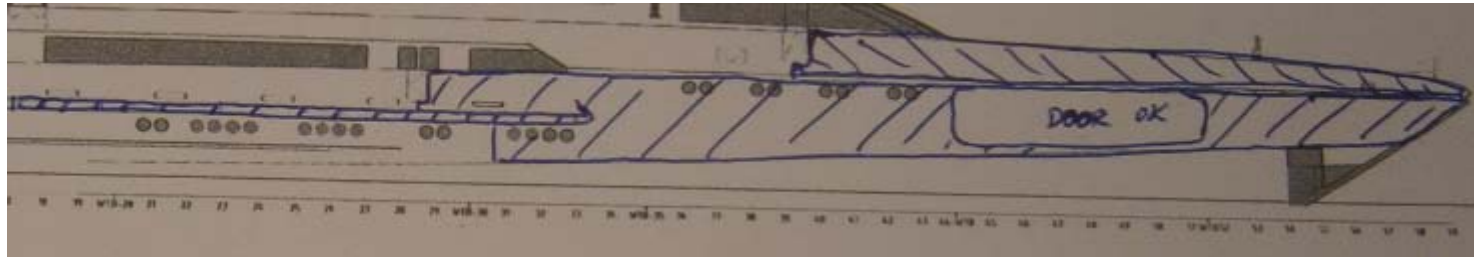
Cost of coating damage 50m motor yacht



Linear White

COATING AND FAIRING	USD 84,000
SCAFFOLDING AND TENTING	USD 29,000
REMOVAL FITTINGS	USD 9,000
<u>TOTAL</u>	<u>USD 122,000</u>

Cost of coating damage 70m motor yacht



Silver Metallic

COATING AND FAIRING	USD 210,000
SCAFFOLDING AND TENTING	USD 170,000
<u>TOTAL</u>	<u>USD 380,000</u>

Common causes of paint damage

- Grounding
- Collision
- Mooring and anchoring errors
- Latent paint defect
- Maintenance errors



Superyacht paint background information



- *Topcoat and gelcoat*
- *Objectives of superyacht paint*
- *Paint systems, types and application*

Topcoat and Gelcoat



Topcoat

- *Superyacht*
- *Steel, aluminum, composite hulls*
- *High gloss, several finishing effects*
- *High cost, high skill to apply, manage and inspect*
- *Sometimes difficult to repair*

Gelcoat

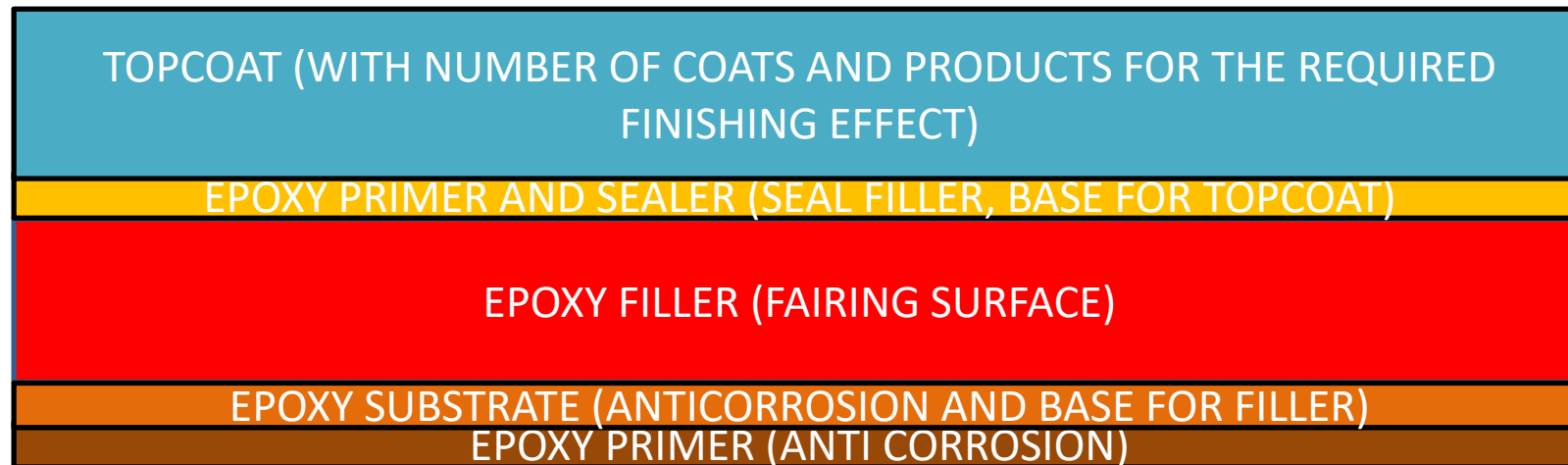
- *Smaller yachts*
- *Only GRP hulls and part of the hull structure*
- *Lower gloss and not many finishing effects*
- *Lower cost and skill set for application*
- *Generally easy to repair*

Superyacht paint objectives



- *Protect the hull material from corrosion*
- *Look good, often distinctive and unique: smooth, high gloss, metallic effect, pearl, matt, custom color, etc.*

Paint systems, types and application



Each paint in the system does a different job

*Specific issues with extent of damage,
nature of repair and cost estimate*



- Labour intensive – Long time to repair and high cost
- Applicator company has to be highly skilled and experienced – Not many good application companies
- Scaffolding, tenting and removal of fittings costs is to be included into the cost of coating
- Substantial repairs
 - Paint manufacturer representative should be involved
 - Acceptance criteria and sample panel should be agreed before paint works start

*Specific issues with extent of damage,
nature of repair and cost estimate*

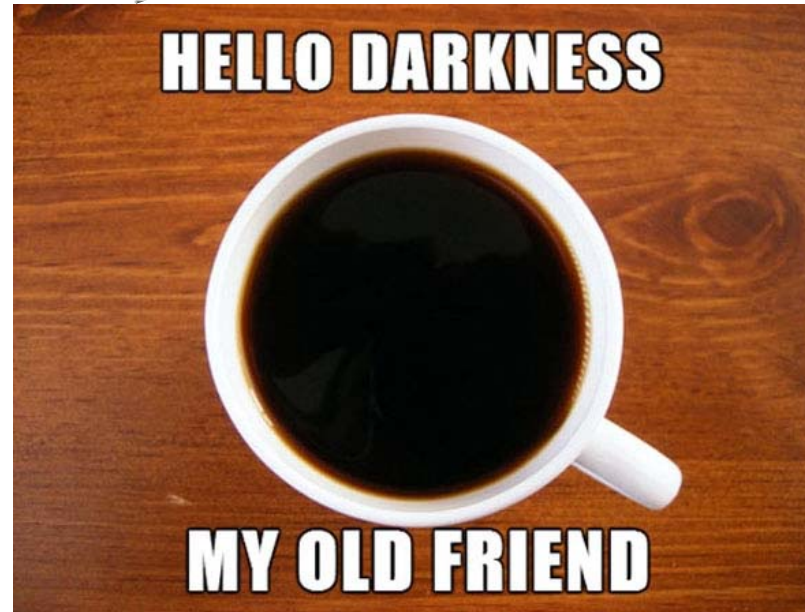


Challenging and expensive if the paint system is:

- Polyester polyurethane – intolerant to buffing
- Dark colour or metallic – application is difficult
- No recent application – pigment is aged and gloss reduced
- High gloss or matt system
- Yacht design has no cut lines



Coffee break



Personal Injury



Injuries

- *Crew*
- *Owner*
- *Passengers / guests*



Personal Injury

Crew – Jones Act



Personal Injury

Jones Act – § 688. Recovery for injury to or death of seaman



- Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

Personal Injury

Jones Act – Pattern Jury Instructions

Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

Negligence under the Jones Act is a cause of an injury if it played any part, **no matter how slight**, in bringing about the injury or damage, even if the negligence operated in combination with the acts of another, or in combination with some other cause.



Personal Injury



What is a crewmember entitled to when they are injured?

- *Prompt, adequate, proper, and complete medical treatment*



Personal Injury



What is a crewmember entitled to when they are injured?

- *Maintenance:*



Personal Injury

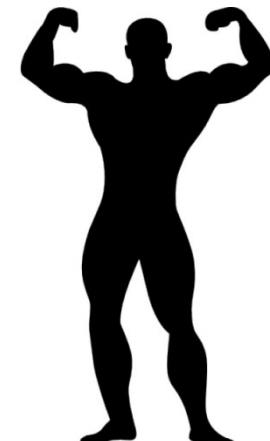


What is a crewmember entitled to when they are injured?

- *Cure:*



- *Fit for Duty versus
Maximum Medical Improvement:*



Personal Injury



Fair Claims Practices Act, Bad Faith & Enterprise Act



Jurisdiction



- *Crew contract*



- *Conflicts of Law & Choice of Law*



- *Forum & Venue*



Limitation



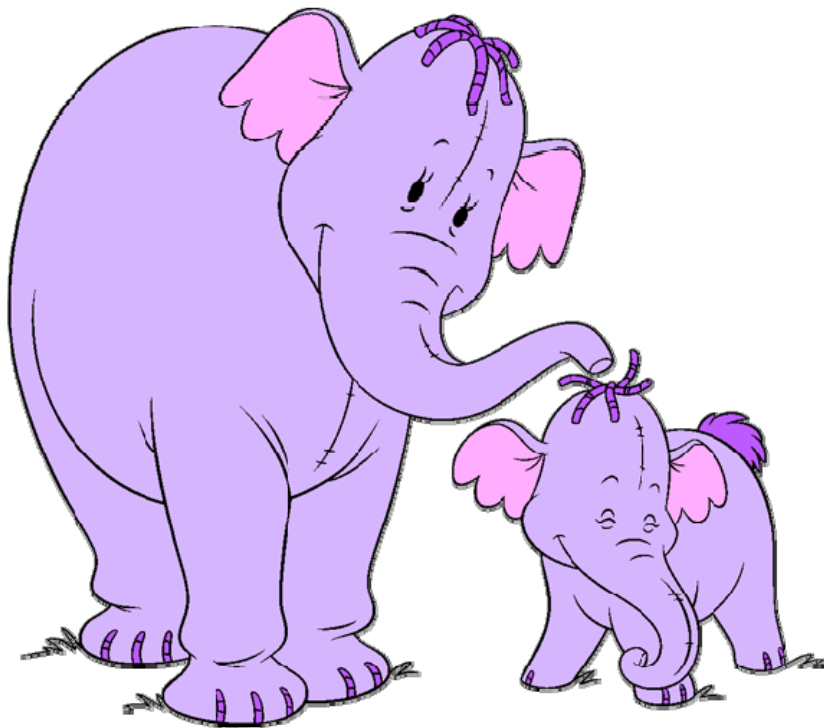
- *Limitation convention*
- *Who can limit their liability?*
- *Common issues?*



Limitation



Heffalumps Sighting



- 1) Time Bars & Deadlines
- 1) Privity & Knowledge of the Owner

Summary



- *Yacht policies are similar to personal lines insurance. They are often bespoke and tailored to the Insured's needs.*
- *Repairs can be complex due to the insured's expectations, modifications and the quality of the Yacht.*
- *Yachts are generally made of fibreglass and carbon fibre as oppose to steel.*
- *Injury cases can be expensive and time consuming if not managed effectively.*



Questions?

