

IMCC Dublin 2017

MAJOR CASUALTY WORKSHOP

29 September 2017

Your hosts



- Sam Kendall-Marsden – The Standard Club
- Richard Janssen – Smit Salvage
- Paris Mangriotis – London Offshore Consultants

Issues – part 1

- Lloyd's Open Form (LOF)
- SCOPIC
- Salvage vs wreck removal
- Salvor's role
- Special Casualty Representative's role

Issues – part 2

- Nairobi Convention
- Wreck removal tendering
- Contracting
- Quantitative risk assessment
- Managing a wreck removal operation

Scenario – part 1

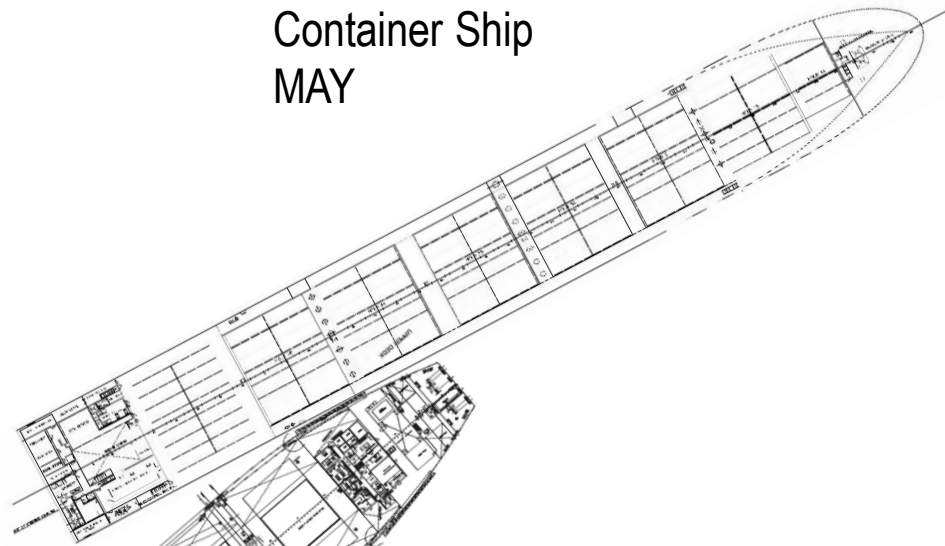


Scenario

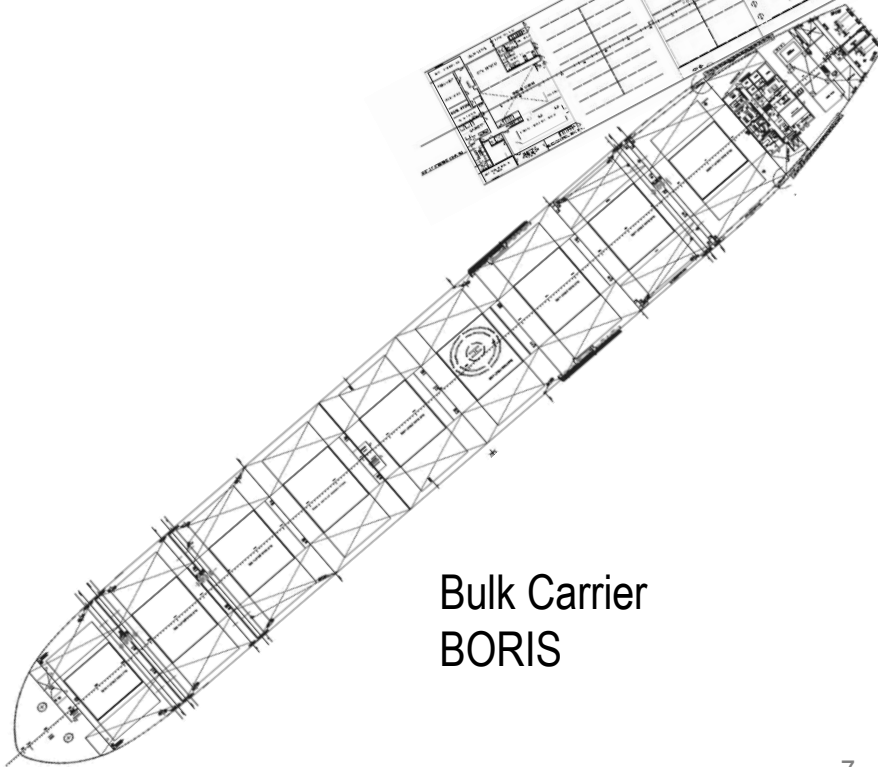
- The MAY: a container ship of 4,000 gross tonnes
- The BORIS: a bulk carrier of 20,000 gross tonnes
- Collide in darkness and heavy weather in the territorial sea of the small but bureaucratic state of Junckertania
- Both ships are badly damaged

MAY c/w BORIS

Container Ship
MAY

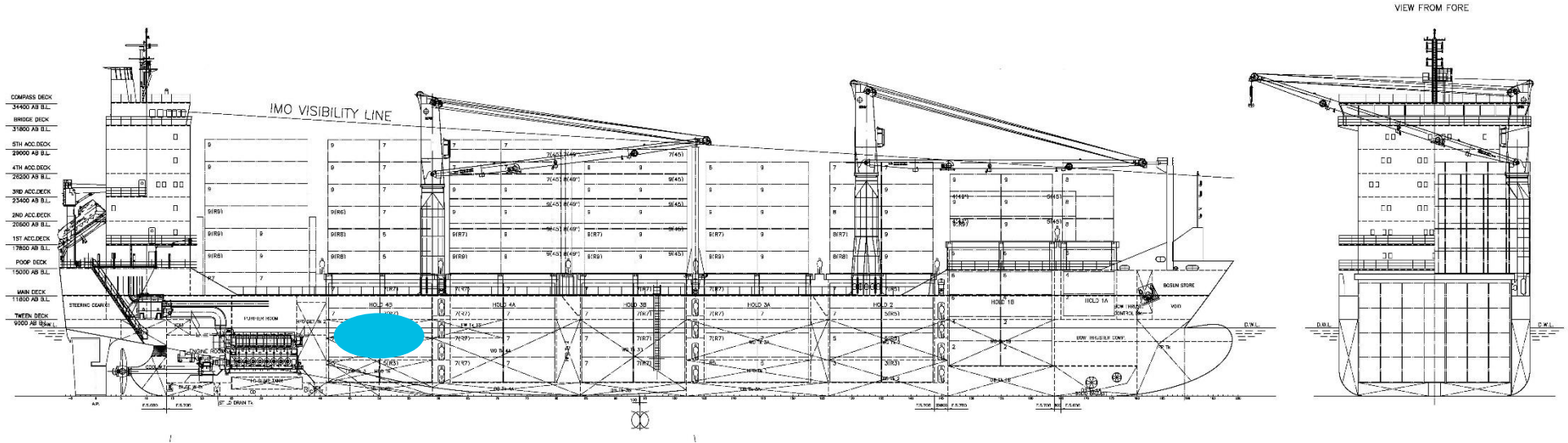


Bulk Carrier
BORIS

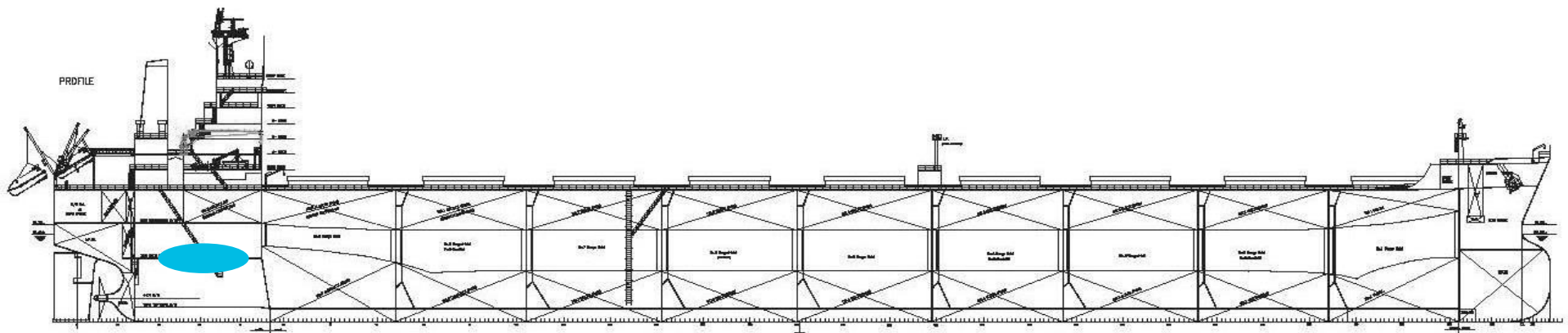


MAY c/w BORIS

Damage to MAY



Damage to BORIS



Scenario (cont'd)

- The MAY has structural damage adjacent to her heavy oil bunker tanks
- She is able to proceed under her own power, but is not capable of undertaking a sea passage
- The BORIS has a flooded engine room and drifts towards Junckertania's rocky coastline
- Local salvors, Farage Salvage, send tugs to the aid of the stricken BORIS and offer Lloyd's Open Form (LOF)

Discussion points (15 minutes)

- Advantages and disadvantages of LOF
- Should Farage Salvage invoke SCOPIC?
- Pros and cons of other contractual options

Wrap-up (Richard Janssen)

- Pros and cons of LOF
- Factors to consider in invoking SCOPIC
- Pros and cons of other contractual options

The scenario - developments

Scenario (cont'd)

- The owners of the BORIS reject the LOF and try to negotiate commercial terms
- Unfortunately, the weather suddenly deteriorates and the BORIS runs aground on the rocky coastline of Junckertania
- The BORIS suffers serious structural damage, including to her heavy oil bunker tanks
- Fortunately, Farage Salvage remain on hand to assist and again offer LOF

Discussion points (15 minutes)

- Should the Master of the BORIS now sign LOF?
- Are Farage Salvage likely to invoke SCOPIC?
- If not, what impact would Article 14 of the Salvage Convention have?
- Is this salvage or wreck removal – what's the difference?

Wrap-up (Richard Janssen)



- Dangers of delay
- Article 14 of the Salvage Convention

Wrap-up (Sam Kendall-Marsden)



- Salvage vs wreck removal
- Roles of H&M and P&I

Scenario - developments

The BORIS

- Farage Salvage are engaged on LOF terms
- Large quantities of specialist, but obsolete, equipment are mobilised
- SCOPIC is invoked
- An SCR is appointed
- Security is provided
- The operation does not go well...

LOF/SCOPIC (Richard Janssen)



LOF

- ‘No cure, no pay’
- Best endeavours
- Article 13 of the Salvage Convention - criteria for fixing the reward
- Salvor’s obligation deemed performed when the property is redelivered at the agreed place of safety
- LOF side letters/caps/tariffs

SCOPIC

- SCOPIC - a top-up on the Article 13 award
- No requirement for damage to the environment (cf Article 14)
- Tariff rates
- Invoked by salvors

SCOPIC (cont'd)

- Security from owners (P&I) of USD 3 million within two working days
- Discount, if the Article 13 award is greater than the SCOPIC remuneration
- 25% of the difference
- Special Representatives

Role of the Special Casualty Representative (Paris Mangriotis)



Role of the Special Casualty Representative



- Primary duty is to assist in salvage and prevent damage to environment (same as contractor)
- Observe and consult with Salvage Master and produce Dissenting Reports (if necessary) and the Final Salvage Report
- Endorse the Daily Salvage Reports of the Salvage Master to interested parties
- Not the same as Company Representative on Wreck Removal

LOF – the future (Sam Kendall-Marsden)

- Decline of LOF
- Why is LOF in decline?
- Salvaging LOF

Scenario – part 2



Scenario - the MAY makes for safety

- Damaged but not broken the stricken MAY heads for the nearby coast of Europa
- Shortly afterwards, the MAY suffers structural failure in a storm, breaks in two and sinks in 20 metres of water in an area of high marine traffic
- The area is a marine nature reserve and there are telecommunications cables and a fish farm nearby
- 100 MT of heavy bunker oil leaks into the sea and washes towards Europa's principal port. 200 MT of heavy bunker oil remains in other tanks

The scenario – Nairobi bites

- Europa is a signatory to the Nairobi International Convention on the Removal of Wrecks
- The European authorities issue a wreck removal order, citing the vessel's location in a marine nature reserve, proximate to the port and a fish farm, and as a hazard to navigation
 - The vessel must be de-bunkered and all pollutants removed
 - The vessel must be removed in its two pieces
 - 'Every last nut and bolt' must be removed from the sea bed

Nairobi Convention (Sam Kendall-Marsden)



- What is the Nairobi Convention?
- Why did it come about?
- Came into force April 2015 – largely untested
- Applies generally beyond the territorial sea to limit of EEZ
- Seagoing vessels, objects carried by ships, cargo

Nairobi Convention (cont'd)



- Liability of the shipowner for costs of locating, marking and removing a wreck
- Reporting wrecks
- Locating and warning of wrecks

Nairobi Convention (cont'd)

- Evidence of relevant insurance, in line with 1976 Convention limits
- Removal of the wreck – by owners or the coastal state
- The liability of the registered owner

Nairobi Convention (cont'd)



- Hazard criteria – Article 6
- Use of salvors – WRECKHIRE 2010, WRECKSTAGE 2010, WRECKFIXED 2010
- Direct action against P&I clubs

Discussion points (10 minutes)

- What are the owner of the MAY's options?
- Is the wreck likely to be determined a hazard under the Nairobi Convention?
- Does the Nairobi Convention provide any grounds for challenge?

Wrap-up (Sam Kendall-Marsden)

- Hazard classification under Nairobi
- Grounds for challenge?

Recap

- The MAY has sunk
- Europa is suffering serious pollution from the bunkers on board the MAY
- The MAY's owners have been ordered to remove the wreck
- The MAY's owners have determined it would be futile challenging Europa
- The MAY's owners issue a tender for wreck removal

Wreck removal tendering

Wreck removal tendering (Paris Mangriotis)

- Pre-tender market assessment
- Invitation to tender
- Time for submission of tenders
- Requests for clarification/further information
- Tender assessment
- Selection of preferred bidder

Wreck removal tendering – the salvor's perspective (Richard Janssen)

- Responding to the invitation to tender
- Allocation of time and resources
- Level of detail provided in bid
- Responding to requests for clarification/further information
- Attitude to risk: time and materials vs (qualified?) lump sum

Wreck removal tendering – how would you do it? (15 minutes)

- Imagine you are the salvor!
- Review the invitation to tender
- Ask for further information if you need it
- Devise an outline wreck removal and wreck/cargo disposal methodology
- Consider whether you would offer time and materials or (qualified?) lump sum
- What contract would you offer?

Wreck removal tendering – who wins the tender?! (Paris Mangriotis)

- Engineering Method Statement
- Schedule
- Health and Safety
- Management and Regulatory Compliance
- Dismantling and Recycling/Disposal
- Risk Assessment

Wreck removal tendering – who wins the tender?! Commercial Considerations

- Price Basis
- Breakdown of Costs Provided
- Value for Money
- Form of Contract
- Bonus/Penalties
- Innovative Contract Terms
- Flexibility

Contract selection (Richard Janssen)



Common contracts

- LOF 2011
- BIMCO WRECKHIRE 2010
- BIMCO WRECKSTAGE 2010
- BIMCO WRECKFIXED 2010

LOF

- ‘No cure - no pay’
- Simple contract – widely accepted
- Good for emergency situations
- SCOPIC

BIMCO WRECKHIRE

- Parts 1 and 2 plus bespoke clauses
- Time and materials contract
- ‘Carrot and stick’ – bonus and reduced rates
- Flexible and widely used

BIMCO WRECKSTAGE

- Parts 1 and 2 plus bespoke clauses
- Lump sum – stage payments
- Cost control

BIMCO WRECKFIXED

- Parts 1 and 2 plus bespoke clauses
- ‘No cure – no pay’
- Fixed price
- Cost control

Quantitative Risk Assessment (Sam Kendall-Marsden)

What is QRA?

- QRA is a risk tool
- Risk identification
 - Time, cost, health, safety, environment, security, quality, reputation
- Probability



- Risk score
- Risk register
- Contractual allocation of risk and cost



QRA in practice

- Technical
- Non-technical
- Project management



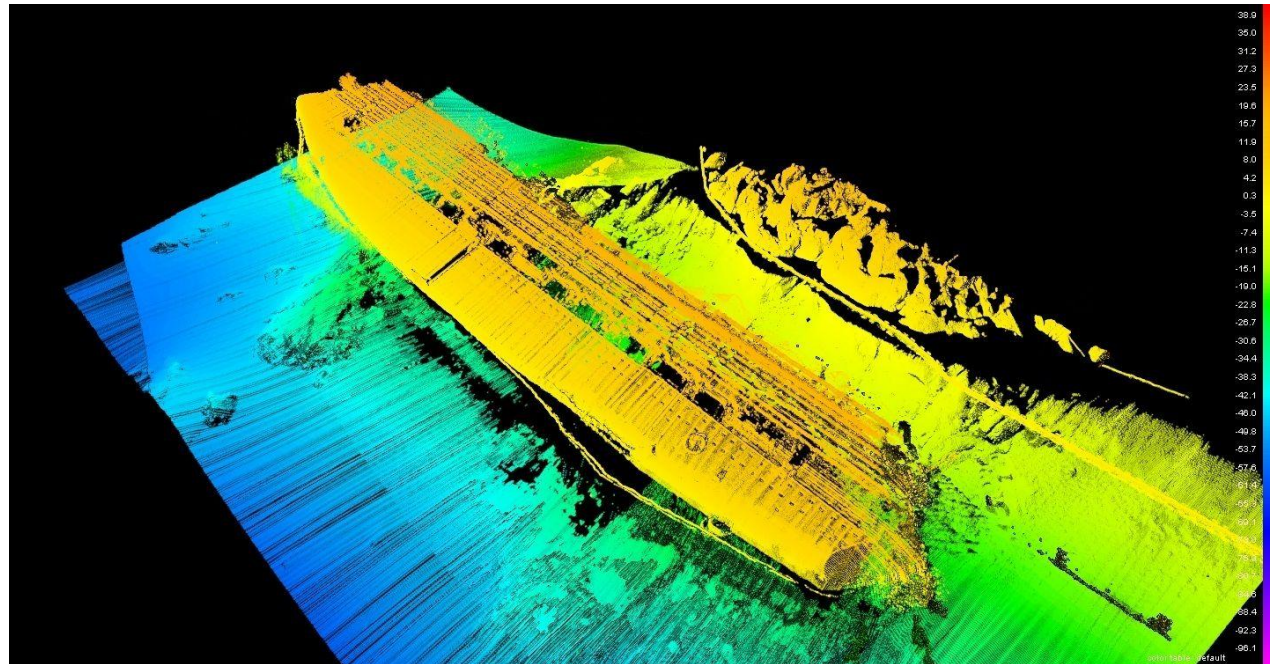
Why is QRA growing in importance?

- Club cover
- Claims environment
- Pooling and reinsurance
- Cost control



Approach to risk management

- Strategy
- Detailed bid evaluation
- Salvor selection



Contracting

- Contracting as an aspect of cost control
- Price and risk allocation
- Risk transfer



- Contract selection: time and materials vs lump-sum
- Clause 4 (additional costs)
- Clause 7 (delay)



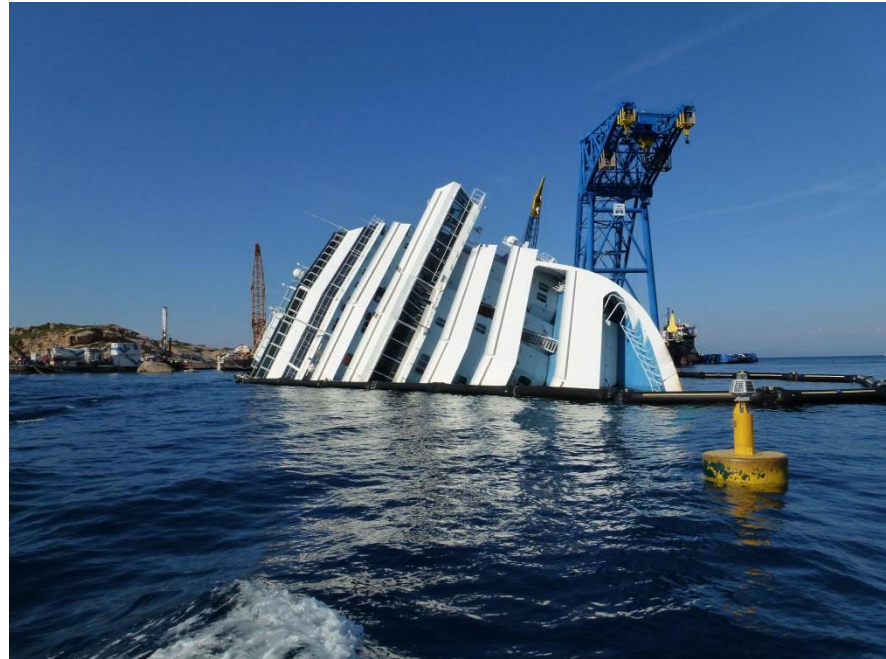
Benefits of QRA

- Greater confidence in time and cost forecasts
- Reduction in project risk
- More accurate reserving
- Facilitates stakeholder management
- Risk transfer for reward
- Greater efficiency



Potential concerns

- Burden of work
- Potential to disadvantage smaller salvors
- Not appropriate for every case
- Dangers of a 'bad bargain'



Closing thoughts

- Desire for greater certainty
- Risk mitigation
- Risk allocation
- Potential benefits for all stakeholders
- Not appropriate for all situations
- The role of the salvor
- Impact of wider economic considerations – a ‘new dawn’?



Managing a wreck removal operation (Paris Mangriotis and Richard Janssen)

The salvor's perspective (Richard Janssen)

- Project management
- Reporting
- Liaison with authorities
- Interface with owner and insurer's representatives
- Schedule and cost control
- Claims for additional costs

The consultant's perspective (Paris Mangriotis)

- Supervision and reporting
- Interface with wreck removal contractor
- Liaison with authorities
- Sharing of experience, lessons learned and expertise
- Managing project schedule and variations of method
- Cost control and claims for additional costs



Your perspective! (5 minutes)

- What are the most important ingredients for positive working relationships on site?
- What could salvors do differently?
- What could consultants do differently?

Final wrap-up (All)



THANK YOU!

