

# Claims faced by cargo – the innocent bystander

**We will consider the position of cargo interests in a collision**

**The consequences of a collision for cargo will typically be claims for-**

**a) Salvage**

**b) General Average**



# Claims faced by cargo – the innocent bystander

c) PA damage/cargo insurance policy claims

d) Recovery



# Practical issues faced by cargo

**Often the voyage is terminated. First fundamental decision - decide whether to sell cargo “as-is where-is” or on-carry**



# Practical example – “Heung-A Dragon” collision with “Eleni”

**Sometimes the decision is not just whether to on-carry or not. The exposure to claims against cargo can be so high, the dilemma is whether to walk away from cargo or not**

**To illustrate, we will look briefly at the “Heung-A Dragon” which collided with the “Eleni” off Vietnam in November 2013**





# **“Heung-A Dragon” collision with “Eleni”**

**“Heung-A Dragon” had 666 containers on board (of which we represent the majority)**

**“HAD” was coming into Vung Tau and “Eleni” was leaving, in ballast**



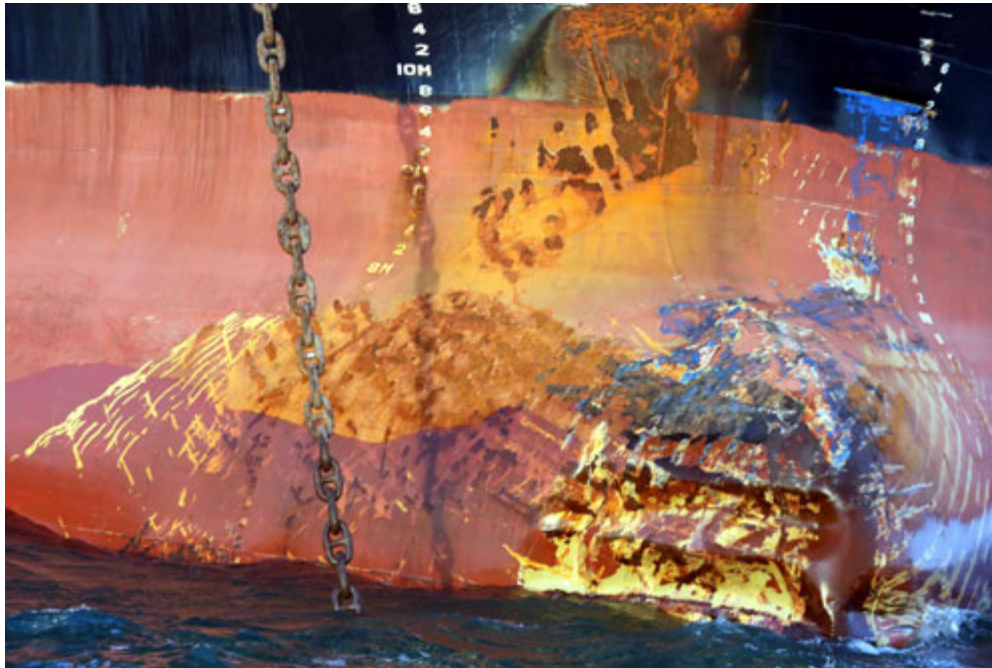
# “Heung-A Dragon” collision with “Eleni”

**“HAD” partly sank – two holds were breached**

**All below deck spaces flooded**



**“Eleni” suffered slight bow damage**



# “Heung-A Dragon” collision with “Eleni”

**LOF was signed with Salvors with SCOPIC incorporated and invoked**

**GA was declared by ship & GA adjusters appointed**

**All cargo below deck flooded**





# “Heung-A Dragon” collision with “Eleni”

Salvors had to overcome local authorities interfering with the salvage

Fire broke out on deck

Cargo being looted/”disappeared”



# **“Heung-A Dragon” collision with “Eleni”**

**Salvors removed about 50 containers under LOF & removed pollutants**

**SCOPIC terminated by P&I**

**Not financially viable for Salvors to continue so LOF terminated**

**Wreck removal contract**



# “Heung-A Dragon” collision with “Eleni”

**Security demand very high –**

**75% salvage security**

**22% GA estimate – total 97%**



# “Heung-A Dragon” collision with “Eleni”

**Dilemma for cargo interests –**

**Provide security for the full cargo value?**

**Potential PA claims under the policy**



# **“Heung-A Dragon” collision with “Eleni”**

**Possibility for dispute over values and claims**

**For example – cargo partly damaged, and suffering progressive deterioration**

**Salvors claim salvage based on value of cargo at the time salvage services terminate**

**GA value based on value of cargo at the end of the voyage (which may be significantly later)**



# “Heung-A Dragon” collision with “Eleni”

**Insured claims total loss under policy, which is on warehouse to warehouse terms**



## **“Heung-A Dragon” collision with “Eleni”**

**Potential dispute over the values and the quantum of the loss may cause total insured exposure to exceed 100% of cargo value**

**Progressive deterioration of cargo during on-carriage may make the problem worse**

## “Heung-A Dragon” collision with “Eleni”

**GA – implied cap of 100% of cargo value but this is plus interest. Interest is fixed under the YAR at 7% and container ship casualties can take many years for the adjustment to be produced**



## **“Heung-A Dragon” collision with “Eleni”**

**Temptation to pay total loss and not provide security but this does not extinguish the salvage & GA claims**

**Cargo are still a party to the LOF contract and Salvors can still obtain an arbitration award against cargo**

**Cargo owners may also face a GA liability**

**Cargo owners then seek indemnity from the insurers for the above sue & labour expenses (as well as the total loss)**

# “Heung-A Dragon” collision with “Eleni”

**Careful management to ensure the exposure to salvage, GA & policy claim is controlled & the values are agreed**





# “Heung-A Dragon” collision with “Eleni”

## **Solution-**

**Negotiate a settlement with Salvors at a percentage of arrived value of cargo**

**Negotiate with P&I/Owners to drop the GA**

**A few cargoes sold “as-is where-is”**



# Causation

**Investigation of the cause**

**Basic inequality as cargo not present**

**Ships reluctant to provide evidence**

**Sometimes ships will agree liability split but decline to tell cargo**



# Causation

Internet now often has information eg Thuan My, Hanjin Italy

<http://www.youtube.com/watch?v=FmDybTlXrJc>

<http://www.youtube.com/watch?v=xYPA3TBMJYg>

Consider possible steps to force provision of evidence at an early stage – options will vary depending on the jurisdiction involved

Flag state enquiries

Local enquiry

Court survey

# Recovery – carrying ship

**Losses – PA/GA indemnity/salvage indemnity**

**From carriers**

**Usually contractual claims**

**Inevitably Hague/Hague-Visby Rules and carriers raise error of navigation defence**

**Look for claims where Hamburg Rules apply, as no error of navigation defence**



## Recovery – carrying ship

**Investigate to see if any causative unseaworthiness arising from a failure to exercise due diligence before and at the commencement of the voyage**

**Consider claims against NVOCCs under the b/l. Although this can be laborious (on the “MOL Comfort” we had claims against more than 150 different NVOCCs), the NVOCC cannot claim the protection of global limitation under 76/96 Conventions**



# Recovery – colliding ship

**Investigation of degree of blame**

**Jurisdiction for the tort claim**

**Various options, the choice is often driven by limitation**

**Different limitation conventions**

**1957/1976/1996**

# Recovery – colliding ship

**US law has advantages - limitation based on the value of vessel**

**Also possible innocent cargo rule for US claims**

**Cargo can recover 100% from colliding vessel even if the colliding vessel was only 1% to blame e.g. “New Flame”**

# Recovery – colliding ship

**Bs/I typically will have “both to blame collision clause” to permit carrying ship to recover the “extra” recovery from cargo**  
**“Both to blame collision clause” not always enforceable**



# Security

**Maritime lien in most jurisdictions for damage done by a ship**

**Maritime lien will survive the sale of the vessel (except court sale) in some jurisdictions**

**Value of ship arrested may be low because of damage caused by the collision**

**Consider the other claims brought against the ship and the impact that will have on strategy**

**Limitation fund may be constituted by ship**

# Summary – the best outcome for cargo

**Complex interaction of factors involving salvage, GA and PA claims  
(including policy claims)**

**Early steps to obtain evidence on collision liability**

**Essential to obtain security from recovery target**

**Integrated approach to ensure all these factors are considered to  
obtain the best outcome**



# Summary – the best outcome for cargo

**Cargo is innocent but should not remain a bystander**



**Questions?**



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