

# LE RENDEZ-VOUS DE L'ASSURANCE TRANSPORTS

*Cannes*  
*4<sup>th</sup> and 5<sup>th</sup> May 2010*



LE  
RENDEZ-VOUS  
DE CANNES

# ***THE LEGALITY OF RANSOM PAYMENTS ( AND DOES PIRACY TRIGGER CARGO COVER?)***

Masefield v Amlin 2010 and Recent National  
Developments in the US and EU

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# The Legality of Ransom Payments

- **Masefield v Amlin February 2010**
- **President Obama's Executive Order 13<sup>th</sup> April 2010**
- **Council Regulation (EU) No 356/2010 28<sup>th</sup> April 2010**



# The facts

- ***Bunga Melati Dua*, Malaysian oil tanker**
- **Voyage: August 2008**
- **Somali pirates demand USD 4.7 million for its release.**
- **Six weeks later, vessel, cargo and crew were released for USD \$2.9 million.**
- **Masefield were the owners of bio-diesel worth USD 13.3 million shipped on board, insured by Amlin**
- **Cargo insured under “All Risks” Policy (ICC A terms)**
- **Masefield claimed for Total Loss**



# Main issues

- **Can cargo claim for a total loss in a piracy situation?**
  - Had cargo owners been “irretrievably deprived” of cargo ? ( s 57(1) Marine Insurance Act 1906)
  - Had there been an actual or constructive total loss of cargo ? (s 60 Marine Insurance Act 1906)
  - Are ransom payments contrary to public policy?  
Should the likelihood of release as a result of a ransom be disregarded by the Court ?



# CONCLUSION

In the context of Somali Piracy the English courts take the view:

- Cargo owner not “irretrievably deprived”
- No actual or constructive total loss
- Ransom payments are legal and not contrary to public policy

BUT- under appeal!

# Obama's Executive Order 13<sup>th</sup> April 2010 (1)

- “Blocking Property of Certain Persons Contributing to the Conflict in Somalia”. ( a blocking sanction)
- Prohibits under section 1 (d) (i) “ The making of any contribution or provision of funds, goods or services by to or for the benefit of any person whose property and interests in property are blocked pursuant to this order [i.e. persons/ groups set out in Annex 1].”
- Presently applies to specifically identified individuals or groups not to “Pirates” ( **How do you know where the ransom payment is going?**)
- **Came into effect at 12.01 Eastern Daylight time on 13<sup>th</sup> April 2010**

# Obama's Executive Order 13<sup>th</sup> April 2010 (2)

- Unclear as to scope of penalties for those ignoring the sanctions
- Applies to property in the US and US companies and individuals and foreign insurer branches in the US
- Section 4: For those persons whose property and interest in property are blocked pursuant to this order... I find that because of the ability to transfer funds or other assets instantaneously prior notice to such persons of measures to be taken pursuant to this order would render the order ineffectual. I therefore determine that for these measures to be effective... **there need be no prior notice of a listing** [ of a blocked person or entity]



# INTERNATIONAL SHIPPING INDUSTRY QUESTIONS TO THE US STATE DEPARTMENT FOLLOWING MEETING ON 20<sup>TH</sup> APRIL 2010

( organised by the Joint War Committee at Lloyds)

- Is the Executive Order designed to prevent the payment of ransoms to any Specially Designated Nationals or any persons engaged in piracy?
- Would reimbursement of Shipowners through insurers using General Average be regarded as contributing or providing funds, goods or services?
- What entities are affected-would the designation capture insurers and other interested parties such as Shipowners in the London market ( or I another foreign jurisdiction) with either US staff, capital, offices? [and another 11 questions]
- **Conclusion: the position is still uncertain.** Follow the story at Joint War committee website within the Lloyds website: [www.lmalloyds.com](http://www.lmalloyds.com)

# Council Regulation (EU) No 356/2010 (1)

- Imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia
- Article 2 (2): No funds or economic resources shall be made available directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex 1( apparently the same list as the US)
- Article 2 (5) The prohibition set out in paragraph 2 shall not apply where the person entity or body “did not know, and had no reasonable cause to to suspect, that their actions would infringe this prohibition”

# Council Regulation (EU) No 356/2010 (2)

- Member States shall lay down the rules on penalties applicable to infringements.. “The penalties provided for must be effective, proportionate and dissuasive”.
- The Regulation shall be binding in its entirety and directly applicable in all Member States
- Came into force on 28<sup>th</sup> April 2010
- **Conclusion: uncertainty on enforcement but not as unclear as the US rules**

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