

SKULD  
MAGAZINE  
JUNE 2009 / ISSUE 194

# BEACON

## WHEN PIRATES ATTACK

SOME LIKE IT HOT / 11  
THE ROTTERDAM RULES / 16



Douglas Jacobsohn  
CEO

## SKULD IS DOING WELL

Earlier this year we concluded one of our most successful renewals in recent times with a record growth in volume. In the current financial turmoil, our commitment to transparency is more important than ever and helps our members and clients make decisions based on facts.

Skuld's transparency and our financial model based on continuity in underwriting discipline pays. And delivering fast, personalised professional and hands-on service for our business partners also certainly pays.

### POSITIONED FOR FURTHER GROWTH

We continue to achieve a balanced underwriting result – premium income less claims and operating expenses – even in a period with increasing claims inflation. This places Skuld in a strong competitive position and gives us the flexibility to expand business volume and market influence even further.

Our approach is yielding results. At the last renewals we achieved a growth of 6 million GT. The club's mutual members' tonnage is now above 50 million GT and charterers' tonnage over a further 40 million – a new record for Skuld. In addition, we have already seen a significant recovery on our investment portfolio in the first quarter of 2009.

### WHEN PIRATES ATTACK

This issue's cover story features the hot topic of piracy and how Skuld works together with a range of organisations to ensure a constant flow of crucial information to our members.

And, yes, some like it hot! Lay-up changes P&I risk so you should take your cover into account when choosing to go 'hot' or 'cold'. More on pages 11 to 13.

We hope you enjoy this issue.

DOUGLAS JACOBSON

BEACON JUNE 2009 / ISSUE 194

PHOTO: REUTERS/SCANPIX

PHOTO © JIMMASENO

# 11

## SOME LIKE IT HOT

It is crucial that ships are laid up technically correct, so they can be successfully reactivated when the world's economy changes for the better.





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## WHEN PIRATES ATTACK

Where is it safest to navigate? How can you reduce the chance of a hijacking? What are the insurance implications of an attack? Skuld proactively works with a wide range of organisations, including governmental and inter-governmental bodies and insurance groups, to ensure a constant flow of crucial information to our members.



# 16

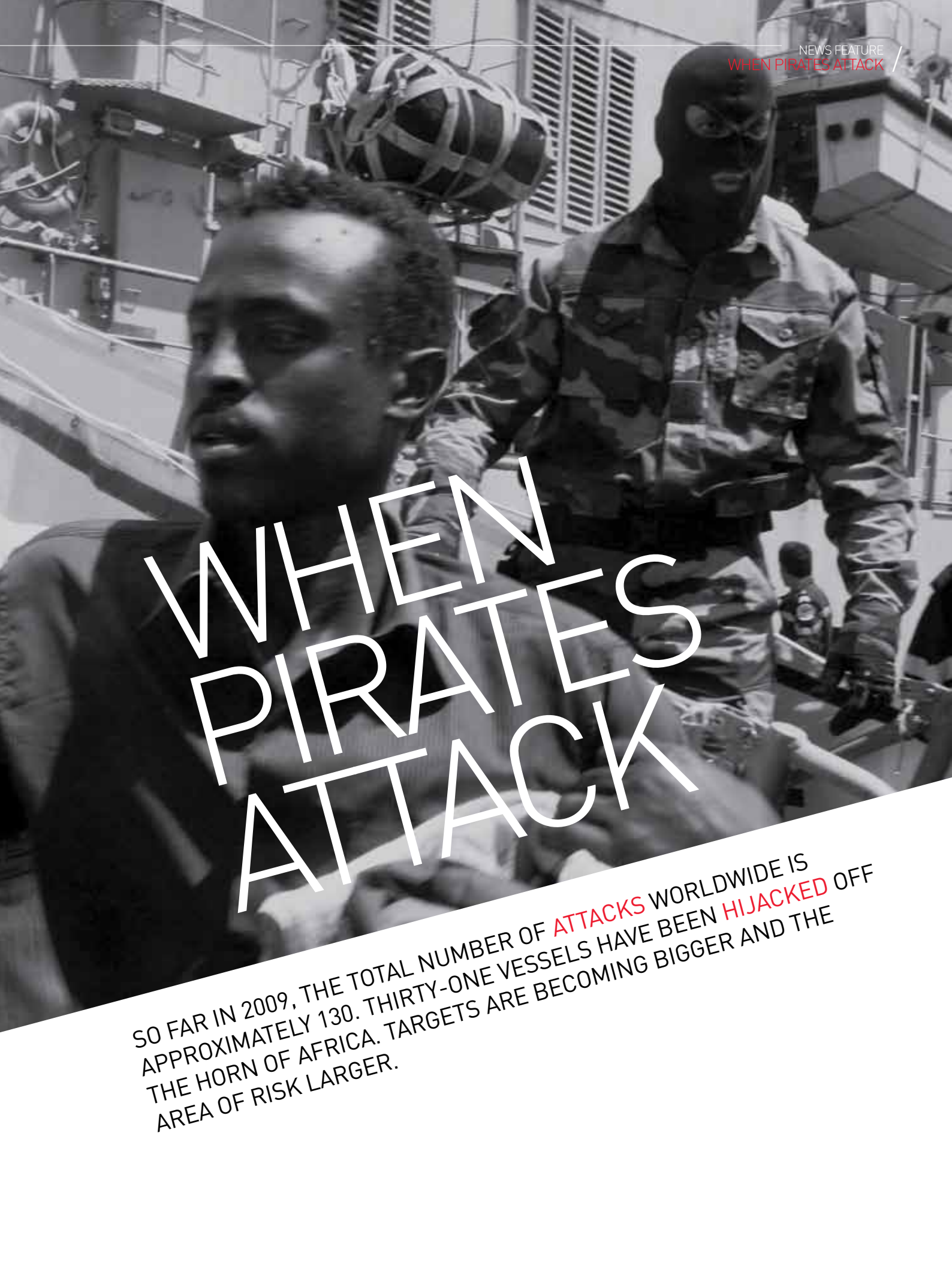
## THE ROTTERDAM RULES

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On 23 September 2009, the Rotterdam Rules are open for signatures. Twenty signatures are enough to enter these new rules into force.



PHOTO: REUTERS/SCANPIX



# WHEN PIRATES ATTACK

SO FAR IN 2009, THE TOTAL NUMBER OF **ATTACKS** WORLDWIDE IS APPROXIMATELY 130. THIRTY-ONE VESSELS HAVE BEEN **HIJACKED** OFF THE HORN OF AFRICA. TARGETS ARE BECOMING BIGGER AND THE AREA OF RISK LARGER.

## PROACTIVE PIRACY PLANNING

# WHEN PIRATES ATTACK

Where is it safest to navigate? How can you reduce the chance of a hijacking? What are the insurance implications of an attack? Skuld proactively works with a wide range of organisations, including governmental and inter-governmental bodies and insurance groups, to ensure a constant flow of crucial information to our members.

Based in a fifth floor office overlooking Oslo harbour, Arild Wegener is the Norwegian Shipowners' Association's (NSA) Director for Contingency Planning and its expert on piracy. Skuld keeps close contact with him – and a number of others – for valuable information used to keep members up to date on current trends and the most effective ways to avoid attack.

The last twelve months have been even busier than usual. "So far in 2009, 31 vessels have been hijacked off the Horn of Africa," observes Arild. He has been focusing on piracy for almost seven years, backed by earlier experience in the Norwegian Ministry of Foreign Affairs and several years with the NSA. "The final figures for May can change slightly, but if we take April alone, 18 vessels were hijacked. That makes it the worst month ever for piracy off the Somali coast."

The NSA Contingency Planning Secretariat advises Norwegian ship-owners on emergency response and security. The secretariat has extensive experience dealing with security threats in war zones, terrorist threats and piracy. It also functions as a liaison body to the Norwegian Armed Forces.

### MAJOR INCREASE

"The total number of attacks worldwide this year is approximately 130, giving a 27% figure for hijackings 'successfully' carried out. By comparison, in the whole of 2008, a total of 141 vessels were attacked, with 46 actual hijackings affecting over 700 seafarers on board," notes Arild.

"When comparing the two years, it's important to note that piracy went through the roof in the second half of 2008."

Out of the 130 attacks in 2009, there is a fairly even split between the Gulf of Aden (GOA) and the Indian Ocean.

Attacks off the eastern coast are concentrated in an area around 300 nautical miles wide from the northern tip of the Horn 1,200 nautical miles south. It's currently recommended that vessels in north-south transit should stay east of 62°E, sailing between the eastern and western archipelagos of the Seychelles, and then head for the southern tip of Madagascar on its eastern side.

One major challenge the rise in piracy creates is its growing proximity to the main trade route between the Arabian Gulf and the Cape of Good Hope, including the

**"SO FAR  
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## MONTH BY MONTH PIRACY

### NOVEMBER 2008

The Saudi VLCC *Sirius Star*, carrying crude oil with a value in excess of USD 100 million, becomes the largest ship ever to be hijacked by pirates. The vessel, which was captured 450 nautical miles southeast of Mombassa, Kenya with 25 crew members on board, is released 53 days later. Targets are becoming bigger and the area of risk expands to over 600 nautical miles from the coast of Somalia.



The ransom is dropped on the VLCC *Sirius Star*. ALL TIMELINE PHOTOS: REUTERS/SCANPIX

### DECEMBER 2008

By the end of December, the number of piracy incidents globally reaches 293, with almost 190 taking place off the coast of Africa, followed by South East Asia with 55 and the Indian sub-continent with 23 incidents. Ninety-two cases occur in the Gulf of Aden with 34 of these classed as 'successful' hijackings.

### JANUARY 2009

The London-based Joint War Committee advises underwriters that the area off the Horn of Africa deemed high risk due to piracy has now been extended into the Indian Ocean. It warns that shipping is in danger up to 600 nautical miles from the coast of East Africa. A small pirate boat pursues the cargo ship *MV S Venus*. A nearby French frigate *Premier-Maitre L'Her* captures the boat and arrests eight men.



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**WRITTEN BY**  
 Brad Larson

strategically important Very Large Crude Carrier (VLCC) traffic. "Currently there are some 40 or so naval vessels under multi-national and national commands in 'pirate areas', most of them in the GOA. All vessels under national command are tasked to the Gulf of Aden," Arild points out. "The multinational commands include the European Union ATALANTA fleet and the standing NATO Maritime Group 1, part of which comes under Operation Enduring Freedom. Vessels from China, Russia, India, Saudi Arabia, Japan and other countries are also active in the region, but under national commands."

Although there are over 40 vessels deployed off the Horn of Africa, they are not all operationally active at any one time.

**ADJUSTING TACTICS**

"The significant military build-up has made a difference," Arild emphasises. "At least initially, as far as geographical patterns are concerned. Vessels deemed vulnerable are enjoying the benefit of military protection while in transit. There are also many instances of naval units

and helicopters intervening in ongoing attacks or those about to be launched."

However, this escalation in force has been unable to check the recent mushrooming of pirate groups and pirate communities. There are an increasing number of newcomers and a vast area to patrol. In order to put a tight lid on piracy over the enormous area in question, a massive naval build-up is required.

One lesson can certainly be learned from the experience with the military presence so far – the flexibility and ability to adjust to changing pirate tactics is essential.

**PIRACY REFERENCE GROUP**

Just a ten-minute walk from the Norwegian Shipowners' Association, Skuld's fourth floor head office overlooks the opposite side of Oslo Harbour. Here, Jonathan Hare is reviewing piracy updates for the club's website and other communication channels. Jonathan is Skuld's Senior Vice President and Counsel, responsible for Maritime Law and International Group activities – and a member of the Skuld Piracy Reference Group.

**ADVANCE PLANNING**

The majority of attacks fail. The chances of a successful hijacking are reduced through contingency planning and crew training. The Ship Security Plan required under the ISPS Code must include a section on piracy. Shipowners should also make sure that their masters and crews are properly prepared and supported.

There are two useful publications that greatly assist in planning and training:

- "Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia"
- "Piracy – The East Africa / Somalia Situation. Practical Measures to Avoid, Deter, and Delay Piracy Attacks in the Gulf of Aden and other Waters near the Horn of Africa – A Seafarer's Guide"

These can be downloaded free of charge from [www.skuld.com](http://www.skuld.com) (Piracy, Practical Guidance)



French forces are actively involved in protecting shipping.

**FEBRUARY 2009**

A kidnap and extortion consultancy warns that the highly favourable risk-reward ratio in pirate attacks indicates that the situation will get worse before it gets better. A Greek-owned cargo ship, the *MV Saldanha*, with a crew of 22, is hijacked while sailing to Slovenia. Also in February, Somali pirates release a Chinese fishing vessel, the UN anti-piracy group holds talks in London and naval forces appear to reduce attacks in the Gulf of Aden.



Naval forces seem to reduce attacks in the Gulf of Aden.

**MARCH 2009**

EU Navfor naval officials estimate that around 90% of traffic entering the Gulf follows the protective corridor established by European Union naval forces. However, many vessels do not register their voyage plans, limiting the ability to identify specific risks and offer help to the most vulnerable vessels. On 26 March, 16 to 18 pirates hijack the Norwegian tanker *Bow Asir* 250 nautical miles off the Somali coast. The vessel is released in April.



"Our Piracy Reference Group takes advantage of the club's global spread and the combined experience across its syndicates," Jonathan notes.

He and the other members of the Piracy Reference Group have been assuring a proactive flow of information and important contact links on piracy for the past several years. They take advantage of Skuld's website for providing access to up-to-date information on this fast-changing issue – making Skuld one of the first clubs to do so.

"One of the questions that often comes up concerns the difference between piracy and terrorism," observes Jonathan. "The motivation for piracy is based on personal or commercial rather than political gain. Although motivation may not always be clear, the pirates in Somalia have been quite helpful. They point out that their motives are purely non-political. However, the extreme turbulence in Somalia means that this may change."

"Attacks in West Africa are mainly criminally motivated, but sometimes goals may at least in part

be political," Jonathan notes. "This difference between piracy and terrorism can be important in determining which insurance policy applies, and also in evaluating legality of a ransom payment."

Another question is whether a shipowner should enter into an agreement with a security company. While it may be sensible to seek advice from reputable and well-qualified consultants to provide crew support and guidance, owners should be aware that they are not covered for liabilities arising under contractual indemnities, unless such agreements are approved in advance.

#### HIRING GUARDS

"The hiring of guards should supplement, but not replace, proper crew training and contingency planning," Jonathan says. "If guards are put on board, there must be careful planning to make sure both the guards and crew are briefed thoroughly so that all understand their respective duties. Otherwise misunderstandings can easily arise that have extremely unfortunate consequences. Ultimate responsibility for the

navigation and safety of the ship rests with the master. And any dilution of the master's authority may amount to a breach of SOLAS and other legal obligations."

"The question of armed guards has also been receiving more focus lately. Entering into an agreement with a security company that provides armed guards is an operational decision for owners," adds Jonathan. "Most governments and shipping organisations advise against the use of armed guards, largely on the grounds that it leads to a more violent response by pirates."

In addition, the use of armed guards may cause legal difficulties. Consequently, the ship's flag state should always be consulted. There may be no insurance cover for indemnities in contracts with such companies. In addition, liabilities arising from the use of 'weapons of war' are excluded from P&I cover, so insurers need to be notified. It is probably also wise to consult with other interested parties, such as charterers, cargo interests and war risk underwriters, in addition to ensuring the crew is aware of what is happening.

**"ATTACKS IN WEST AFRICA ARE MAINLY CRIMINALLY MOTIVATED"**

## MONTH BY MONTH PIRACY



The Norwegian tanker *Bow Asir* is released in April.

### APRIL 2009

Pirates capture a French yacht in early April. French forces storm the yacht when pirates refuse to free the hostages. One hostage is killed and the four others freed. Then, the Danish-owned *Maersk Alabama* is captured by pirates and 21 American crew taken hostage, but are later able to retake the ship. The pirates still hold the captain captive, but United States Navy SEALs and US Marine Corps snipers kill three pirates during the successful rescue operation.



Twenty-one American crew are taken hostage during the hijacking of the *Maersk Alabama*.

### MAY 2009

In mid-May, the US Coast Guard issues a new maritime security directive, following the piracy attacks on the US-flag vessels *Maersk Alabama* and *Liberty Sun* off the coast of Somalia. US-flag ships will now be required to post security guards on board if they are transiting the Horn of Africa. Companies will be required to submit amended vessel security plans, but it is up to shipowners to decide whether these teams are armed.



PHOTO: REUTERS/CANPIX

A French hostage was killed and four others freed when French forces launched a mission to save hostages held on a luxury yacht off Somalia.

#### PIRACY RISK

"At any one time, there are usually between ten and twenty vessels held in the vicinity of Somalia," Jonathan notes. "About 22,000 vessels transit the Gulf of Aden annually. Statistically the chances of being hijacked are very low, but of course this is not much consolation for crew who are very much in the front line. The probability that a hijack is carried to completion depends on vessel design, crew training, weather, location and many other factors."

The common practice is for vessels to be returned. After a negotiation

period of between one and three months – and the payment of a ransom – owners normally get their vessel and cargo back undamaged.

"We are sometimes asked if it is legal to pay a ransom," Jonathan notes. "This of course depends on the applicable national law. The payment is more likely to be illegal if terrorists are involved or they are likely to benefit financially."

The Maritime Security Centre (Horn of Africa) – MSCHOA – advises vessels to maintain a distance of more than 600 nautical

## INSURANCE QUESTIONS

### / Does my owners' P&I policy cover piracy?

Although P&I cover excludes war risks, the definition of 'war risks' does not include piracy (see Skuld's Rules Appendix 1). This means that P&I risks, such as crew claims, cargo damage and pollution, are not excluded on the grounds that they are caused by acts of piracy. The war risks exclusion does exclude liabilities arising from the use of 'weapons of war', but the general view is that something more than guns or rifles is required before this part of the exclusion applies.

Some owners have piracy included in their war risks cover, however. For example, the Norwegian Marine Insurance Plan includes piracy as a war risk. Members who have insurance cover on Norwegian terms are therefore covered for piracy by their war risks insurance provider rather than their P&I club. Japanese war risks cover also includes piracy.

### / Does my charterers' policy include piracy?

Skuld's combined P&I and CLH cover contains the same definition of war risks as owners' policies do. Cover is therefore not excluded for claims arising from pirate attacks.

### / Will vessel loss or damage be covered under my hull or war risks policy?

This depends on the terms of cover. Under the Norwegian Marine Insurance Plan (§ 2.9), piracy falls under war risks cover. In contrast, from 1983 the London market generally covered piracy under hull policy but, since 2005, alternative wordings are available that transfer piracy to war risks policy (International Hull Clauses 2002/3). The Swedish Hull Club's insurance conditions have recently been amended to exclude piracy. This is part of an increasing trend towards regarding piracy as a war risk.

### / Is additional insurance available?

Special Kidnap & Ransom (Extortion) cover is available on the market and includes the service of consultants who are able to provide support should the vessel be seized. Loss of earnings cover is at present available, normally for 30 days in excess of a seven-day deductible. Additional costs cover may be available on the market. We recommend you to contact your insurance broker, your Skuld underwriter or the special risks division of Skuld for guidance.

### / I am considering entering into an agreement with a private security company. Will my P&I cover include my liabilities under this agreement?

Contractual indemnities are not covered unless approved in advance and you must therefore contact your Skuld underwriter. Exclusions may apply for claims arising from use of weapons.

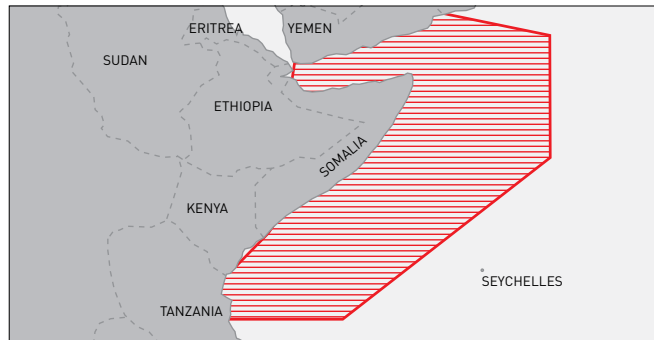
## UP-TO-DATE INFORMATION

Current information is available from these websites:

- Maritime Security Centre Horn of Africa (MSCHOA) [www.mschoa.eu](http://www.mschoa.eu)
- International Maritime Bureau [www.icc-ccs.org](http://www.icc-ccs.org)

Shipowners are also strongly urged to ensure that before their ships transit the Gulf of Aden or coast of Somalia they:

- Register on the MSCHOA website [www.mschoa.eu](http://www.mschoa.eu) or by e-mail to [opscentre@mschoa.org](mailto:opscentre@mschoa.org)
- Join the Voluntary Reporting Scheme administered by UK Maritime Trade Operations by contacting UKMTO Dubai on e-mail [ukmtdubai@eim.ae](mailto:ukmtdubai@eim.ae) or telephone +97 1505 523 215



High-risk area off the Somali coast.

## “WE SIMPLY SUPPORT OUR MEMBERS IN THEIR CARE FOR THE CREWS”

miles from the coast and, when navigating in the region, to operate at a heightened state of readiness. This means maintaining strict 24-hour anti-piracy visual and radar watches, and actively implementing other recommended anti-piracy measures.

### CREW SUPPORT

“Through our experience with a range of piracy cases we have become aware of a number of important steps to take regarding welfare of the crew and their relatives,” emphasises Jørgen Rasch, Skuld Vice President and Deputy Head of Syndicate in Skuld Copenhagen. Jørgen is another experienced member of the Skuld Piracy Reference Group.

“From the time a member ship is hijacked, we recommend our members take immediate contact with the crew members’ families, either directly or via the crew manager, to give them a

status report and some idea of the normal course of events – the fact, for example, that crews, vessels and cargoes are most often returned unharmed after one to three months,” Jørgen adds.

“By passing on the experience we have gathered, we assist our members in their efforts to keep families informed through, for instance, meetings or a dedicated web page. We emphasise the need to follow up on the mental state of the crew, not just after they are released, but also after they have arrived home. Assuring post-incident care is an important part of our service,” he observes.

“We simply support our members in their care for the crews,” notes Jørgen. “Often we’re behind the scenes and help in what ever way we can. That’s part of our commitment to caring for our members during a complex and challenging time.”

Jørgen also refers to the many enquiries from members regarding charterparty terms. Both INTERTANKO and BIMCO have recently issued clauses and there are also other clauses in circulation drafted by individual owners. Our advice is being

sought by both owners and charterers and it is often necessary to amend clauses to reflect the needs of the individual member.

A common question is whether owners are obliged to follow charterers’ orders to proceed through the GOA or waters off the Horn of Africa. Owners understandably want a firm yes or no answer, but there is no alternative other than studying each case individually and providing a tailored response. It depends on factors such as the vessel’s design and vulnerability to attack (freeboard, speed, etc.), and, above all, the charterparty terms.

So, whether it’s providing current information on the status of hijackings in the Gulf of Aden, facilitating important links to relevant organisations, or giving insight into the complexities of insurance cover and service support, members value the support they receive from Skuld’s experts on proactive piracy planning. “When pirates attack, it’s nice to know there are experienced people here to help,” Jørgen concludes.

READ MORE

[www.skuld.com](http://www.skuld.com) (Publications, Piracy)

# / LOSS PREVENTION

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## HOW LAY-UP CHANGES P&I RISK

# SOME LIKE IT HOT

It is crucial that ships are laid up technically correct, so they can be successfully reactivated when they resume trading in a more favourable economic climate.

The global slowdown in trade is causing an oversupply of vessels resulting in an increasing number lying idle. Shipowners are adjusting by cutting costs. Newbuilds are being cancelled and existing vessels are being sold, scrapped, recycled or laid up. Of those newbuilds reaching completion an increasing number are heading straight from the yard into lay-up rather than being traded at low rates.

### HOW LONG IS LAY-UP?

It is important to make a distinction between so-called hot lay-up and cold lay-up as these are totally different risks from a P&I perspective. The most important question for a shipowner to ask when deciding whether to choose hot or cold lay-up is how long the vessel is estimated to be in lay-up. The cost differential relating to these two options is significant, with cold lay-up operational costs considerably lower than those for hot lay-up.

### HOT LAY-UP FOR QUICK REACTIVATION

In hot lay-up, the vessel is normally deactivated for a limited number of weeks. In this situation, the vessel has crew on board, the machinery is running and she can lift anchor when her owners/managers wish to do so. Hence, she can be ready for quick reactivation. Many shipowners choose hot lay-up while they assess market conditions. Skuld treats hot lay-up situations as trading and, therefore, no return of premium is normally granted.

### COLD LAY-UP FOR COST REDUCTION

In cold lay-up, machinery is taken out of service and the vessel is kept electrically dead, except for emergency power. Apart from watchmen the vessel is unmanned. Furthermore, there is no cargo on board. Effective reactivation can take anything from a few weeks to several months, depending on the time spent in lay-up and the level of preservation and maintenance undertaken. Cold lay-up results in significant cost reduction for shipowners. However, cold lay-up provides low flexibility (compared to hot lay-up) when the long time required for reactivation is considered.

Skuld focuses on cold lay-up as it implies an alteration of risk for the club. When advised of a vessel in cold lay-up, information is requested to complete an overall risk assessment. In order to assess whether or not a vessel is successfully laid up, a lay-up declaration from a classification society, or other organisation approved by Skuld, is required.



### LAY-UP SITE CAREFULLY CHOSEN

It is essential that the lay-up site is carefully chosen. Some key considerations include: shelter from heavy wind, current and swell, seabed characteristics that provide adequate anchor holding power and distance to other ships. Also, it is vital to coordinate the lay-up process with the national and local authorities, which permit vessels to be anchored/moored off their coast. The environmental conditions at the lay-up site are also very important when deciding what preservative measures are taken. For instance, if the vessel is laid up at a site exposed to sub-zero temperatures then damage from freezing needs to be prevented.

A major challenge for ships in lay-up is humidity. The longer a vessel is laid up, the more

Hot lay-up means quick reactivation. The vessel can swiftly lift anchor and resume trading. Insurance premiums remain the same.

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prominent the threat of moisture will be. The level of preservation for cold lay-up can be extensive, depending on the time the vessel is laid up. It is of paramount importance that the ship is preserved correctly to avoid corrosion and rust of vessel, machinery and equipment. All spaces containing machinery and sensitive equipment should be dehumidified. This is particularly true of areas with sensitive electronic equipment.

Vessel age is important when considering cold lay-up. For instance, if the ship is 25 years old and is expected to be out of service for several years, costs of cold lay-up may be significant, especially the cost of re-commissioning. In addition, the vessel may be too old to start trading again after a long period in lay-up. Hence, shipowners may opt for the scrap yard or recycling of their old vessels rather than placing them in cold lay-up.

#### LOGGING PRESERVATIVE ACTION

The scope of re-commissioning work required depends on several factors, such as lay-up duration, location and preservative measures taken during lay-up. For cold lay-up, re-commissioning normally implies extensive reactivation work, which may include dry-docking. Shipowners should keep a log of all preservative measures taken during lay-up; this will be important information for the classification society in the re-commissioning stage.

#### LAY-UP REQUIREMENTS AND DECLARATION

Members are advised to contact their classification society for a complete set of lay-up requirements. Examples of key risk

assessment factors for vessels in lay-up are: general lay-up plan, intended lay-up site, expected weather conditions, mooring arrangements, planned manning and watch-keeping, emergency contingency plan, anti-pollution measures and security arrangements.

A copy of the lay-up declaration from a classification society, or other organisation approved by Skuld, is essential. This provides the information needed to assess overall risk.

In general, the association only grants lay-up return for mutual P&I entries. Skuld Rule 4.7 regulates lay-up of vessels entered for P&I cover. In respect of smaller vessels (less than 200 GT), no return is granted. In order to be entitled to a return of premium, the minimum lay-up period is 30 days. Furthermore, as set out in Rule 4.7, a pro-rata reduction or return of premium (other than overspill calls) is given in such proportion as the association considers appropriate, providing written notice of the lay-up is given to the club no later than three months after the end of lay-up.

#### REDUCED RISK WHEN PROPERLY LAID UP

A ship properly laid up represents reduced risk. A number of the risks included in P&I trading cover are significantly reduced, or not present, under P&I lay-up cover, i.e. cargo and crew risk. However, collision risks remain during lay-up, especially in light of how close vessels often are laid up. Also, wreck removal and oil pollution are still risks for the club. P&I cover is normally needed for the very few persons on board, such as watchmen. Each

lay-up risk must be evaluated on a case-by-case basis and determined by the documentation we receive for each particular situation. If the rate for a member is already low, this is likely to limit the lay-up return premium given by the club.

Prior to commencement of trading, the club needs to be assured that the vessel is in a condition approved for trading. Hence, the vessel's policy will contain a lay-up clause requiring a recommissioning survey.

Skuld has recently published lay-up guidelines on [www.skuld.com](http://www.skuld.com). In addition, many classification societies have published lay-up guidelines online.

**“EACH  
LAY-UP RISK  
MUST BE  
EVALUATED  
ON A  
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BASIS”**

#### ASSESSING INSURANCE COSTS

##### / Key information Skuld uses when assessing lay-up return or lay-up premium:

- Lay-up type – hot or cold?
- Type of ship
- Copy of approved lay-up declaration issued by the classification society or other Skuld-approved organisation
- Lay-up site (needs to be pre-approved by Skuld and is part of the approved lay-up declaration)
- Duration of lay-up (minimum of 30 consecutive days)
- Confirmation that the vessel maintains its classification society approval during the lay-up period

#### READ MORE

[www.skuld.com](http://www.skuld.com)  
(Products & Services, P&I, Lay-up, Simplified Guidelines)



The lay-up site should be carefully chosen. Here, on the river Fal in Cornwall, England, the harbour master is kept busy with increasing demand for berths.

## ENSURE YOUR CREW'S WELFARE



Members must consider both their crew's physical and mental well-being.

# MIND YOUR CREW – A CAUTIONARY TALE

During a routine voyage last year a crew man was lost overboard from a member's vessel. A tragic event, made even more tragic because it could, perhaps, have been prevented.

During the night a member of the crew contacted the master to say he felt threatened by another crew man, who he didn't identify, and was worried about his own safety. The call came in fairly late and the master told the

crew man to go to sleep and that they would talk in the morning. Unfortunately, by that time, it was too late.

As part of an investigation undertaken by Skuld, the events

of the night in question were reconstructed. Shortly after contacting the master, the crew member left his cabin and proceeded to take several items of ship's equipment for survival at sea, including a life jacket and

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an immersion suit. Weather conditions were rough. It was clear he was desperate to leave the ship as he apparently tried to launch two life rafts. During this operation, or in the process of trying to get on to one of them, he fell into the water and drowned. His body was recovered later by fishermen.

#### NOT THE FIRST SIGN

What would drive a man, someone who was no stranger to life at sea, to take such a great risk by trying to leave the ship at night when it was under way in circumstances where the smallest mistake could cost him his life? The investigation revealed that the phone call on that fateful night was not the first sign of trouble. Subsequent interviews with the master and the crew disclosed that the crew man did feel threatened by someone, but for reasons unknown, and that he had previously wanted to leave the ship and sign off. In addition, a close family member had become seriously ill not long before this event, and a request for compassionate leave had been refused. The crew man's behaviour had become more erratic in the days leading up to the tragedy.

Misadventures of this nature or suicides always result in difficult situations for members, as families rarely like to admit that a loved one made such a tragic decision. In addition, the loss of a breadwinner is a serious blow and can place a family into real difficulty, especially in the current economic climate. In all likelihood, a significant claim for death compensation may follow, to which a member may also have to add investigative expenses and costs relating to recovery

and repatriation of the remains. A criminal investigation may also follow.

Technically and legally speaking, a member will not normally be liable for death or injury resulting from suicide or another wilful act of self harm.

Yet, as it can be difficult to successfully prove that mitigating circumstances exist, such cases often end in a situation where it's impossible to firmly conclude whether a death resulted from a deliberate act or just misadventure. Employment tribunals and courts may, understandably, also be very sympathetic to a grieving family facing a difficult time.

#### ENSURE THE CREW'S WELFARE

The key lesson from this story is that members need to maintain clear focus on ensuring crew welfare, not just in terms of physical health, but also their mental well-being. Seafaring is stressful and demanding, and crews face ever increasing

challenges from coping with the amount of work a modern ship creates, the never-ending increase in regulatory requirements, as well as the risks of accidents, piracy and the criminalisation of seafarers. Add to this the general stress that a harsh economic climate brings, and some people are pushed to the edge and beyond.

#### A HAPPY CREW IS A SAFE CREW

A well-managed ship with an alert master and officers, attuned to the crew and their needs, is one of the very best loss prevention measures possible. A happy crew is a safe crew and vital for the sound operation of the ship.

#### UNDERSTAND THE DANGER SIGNS

/ Skuld can give you detailed advice on loss prevention and crew welfare, but it is worth keeping in mind that the following are signs of a potentially critical problem that the master should act on immediately:

- Crew member becoming distant from other crew or spending too much time alone
- Failure to show up for work on time
- Failure to join in group events, especially sharing of meals
- Sudden inexplicable changes in performance and/or attitude
- Unprovoked, threatening, erratic, or paranoid behaviour towards other crew
- Repeatedly serious arguments between crew
- Signs of serious stress or depression
- Significant negative events in a crew member's personal circumstances and/or those of their family

**“A HAPPY  
CREW IS A  
SAFE CREW  
AND VITAL FOR  
THE SOUND  
OPERATION OF  
THE SHIP”**

## SEACHANGE FOR INTERNATIONAL TRADE

# THE ROTTERDAM RULES

On 23 September 2009, the Rotterdam Rules are open for signatures. Twenty signatures are enough to enter these new rules into force.

On 11 December 2008, by Resolution No. 122 at the sixty-third session, the General Assembly of the United Nations adopted the 'Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea' (hereafter the Rotterdam Rules). These were the culmination of more than a decade of work by CMI (Comité Maritime International) and UNCITRAL (United Nations Commission on International Trade Law). The purpose is to create a modern and uniform law that harmonises international marine contract law on liability for carriage of goods by sea.

Today, we are familiar with the *Hague, the Hague-Visby and the Hamburg Rules*<sup>1</sup>, which are wholly or partly adopted by various states involved in international trade<sup>2</sup>. Since 1924 the dominant set has been, and still is, the Hague Rules, which were overhauled to some extent in 1968 and replaced by the Hague-Visby Rules. These rules (Hague and Hague-Visby) have received much criticism for being too shipowner-friendly and out of date, especially in relation to navigation and communication.

### MAIN CHANGES

The Rotterdam Rules are 18 chapters/96 articles of complex reading. They significantly change the Hague and Hague-Visby Rules in the following ways:

- Continuing obligation for keeping a vessel seaworthy, including due diligence throughout the sea carriage
- The nautical fault exclusion no longer an available defence
- Loss, etc. by fire caused by crew negligence no longer available as a defence
- Liability for economic loss resulting from delay beyond the agreed delivery time
- Increased package and weight limitation
- Applies door-to-door. Not relevant, however, for owners and charterers uninvolved in pre/post sea-carriage
- A holder (*controlling party*) of a bill of lading or similar document may, during the carriage, re-direct a ship to another discharge port or order the cargo to be discharged for another party

There are two revolutionary changes that these rules introduce. Firstly, a shipowner needs to keep their vessel seaworthy (*per definition*) throughout the entire sea-carriage. Secondly, the owner is now liable for losses, etc. from fire or navigation errors if the crew has been negligent. For centuries, these defences have given a clear and coherent

system of assessing risks for insurers of both ships and cargoes. Now, theoretically, if the Rotterdam Rules are endorsed, it is natural that insurance premiums/deductibles for cargo risks (P&I) for shipowners and charterers increase, and the premiums/deductibles for traders' cargo insurance decrease. From a practical point of view it is, however, difficult to say what effects the new rules will have of course. Only time will tell.

It comes as no surprise that the suggested Rotterdam Rules have already come under criticism. Professor William Tetley of McGill Law Faculty<sup>3</sup> says the following:

*"The final drafting was apparently not by a single drafter, but by a very large committee with many commentators. A single drafter provides a simpler and more coherent product." (...) "The Rotterdam Rules are very long. Will they be intelligible or understandable to even the skilled ship operator or owner or charterer or shipper or consignee or receiver, etc? Will even the skilled full-time maritime lawyer not have constant, important doubts as to their meaning?" (...) "The Rotterdam [R]ules are not a carriage act or a multimodal act but a contracts act. This is a very new and unfamiliar approach." (...) "In general the Rotterdam Rules are in content terms, style and drafting in an unfamiliar form. This not only erases years of practice*

**“THE  
ROTTERDAM  
RULES ARE 18  
CHAPTERS/  
96 ARTICLES  
OF COMPLEX  
READING”**



The new rules will cause a seachange for international trade. They are open for signatures in Rotterdam from 23 September this year.

*and custom, but sets aside 100 years of established jurisprudence.”*

To the rules’ defence, it should be said that the aim is admirable, i.e. that one set of rules prevails for cargo liability no matter what country’s waters a vessel sails in. With the following prefatory words the General Assembly for the Rotterdam Rules states that it is:

*‘Concerned that the current legal regime governing the international carriage of goods by sea lacks uniformity and fails to adequately take into account modern transport practices, including containerization, door-to-door transport contracts and the use of electronic transport documents.’ (...) and (...) **Convinced***

*that the adoption of uniform rules to modernize and harmonize the rules that govern the international carriage of goods involving a sea leg would enhance legal certainty, improve efficiency and commercial predictability in the international carriage of goods and reduce legal obstacles to the flow of international trade among all States.’*

It is not the first time that steps are being taken to try and change well-established principles for carriage of goods by sea. A good example concerns the ancient concept of general and particular average and the suggested York-Antwerp Rules of 2004, where the risks of a common venture, previously shared between cargo and ship, now to a much larger

extent have been pushed over to the shipowner.

After 23 September, we’ll know whether the rules will gain the number of signatures required for ratification. It is, however, already clear that some influential countries, including the United States and Japan, are in favour of the rules. The European Union, China and India are also expected to add their consent, so it is most likely that carriers and traders of the world will soon face a new ‘chapter’ in the exciting life of international trade.

The International Group of P&I Clubs, including Skuld, has not yet taken a position on the Rotterdam Rules.

1) *The Hamburg Rules of 1978 did not come into force until 1992 and did not provide the effect that was hoped for.*

2) *The maritime codes of the Scandinavian countries blend the ‘flavours’ of the Hague-Visby and Hamburg Rules and provide an example of the hybrid approach.*

3) *Summary of Some General Criticisms of the UNCITRAL Convention (The Rotterdam Rules) – Preliminary observations of William Tetley, Nov. 5, 2008 - <http://www.mcgill.ca/maritimelaw/rotterdamrules/>.*

READ MORE

<http://www.uncitral.org/uncitral/en/index.html>

# / PERSONNEL NEWS

## NEW EMPLOYEES & PROMOTIONS/CHANGES



### SKULD HAMBURG

**1 / Thomas Bjørn Larsen**  
SENIOR VICE PRESIDENT  
HEAD OF OFFICE

Thomas Bjørn Larsen (47) takes over as Senior Vice President, Head of Skuld Hamburg from 1 July. Thomas has been with Skuld Copenhagen since 1991, with the exception of a secondment to Skuld Hong Kong in 1999. He was a Skuld board member from 2000 for eight years. In 2008, he was named Assistant Vice President and joined Skuld Germany in March 2009. Before joining Skuld, Thomas Bjørn Larsen studied law at the Universities of Copenhagen, Oslo and UCL, and worked for Danish shipowners A.P.Møller-Maersk. He teaches maritime law at the University of Copenhagen and other venues and is now finalising his MA in Marine Insurance & Risk Management at the University of Oslo.



Bank and SKF AB Treasury Centre. He comes to Skuld from a position as Portfolio Manager Global Team at Andra AP-fonden.

**3 / Elisabeth Bull**  
SENIOR EXECUTIVE CREDIT CONTROL  
Elisabeth Bull (40) is appointed Senior Executive in the Credit Control department. Elisabeth started in Skuld as an Accountant in 1990 and has been a Credit Controller since 1998. She has studied Economics at the Norwegian School of Management (BI). Her new responsibilities include coordination of future development projects and credit control support.

**4 / Johan Gjernes**  
SENIOR VICE PRESIDENT  
UNDERWRITING RISK MANAGEMENT  
Johan Gjernes (37) is appointed Senior Vice President Underwriting Risk Management. Johan joined Skuld Oslo in 1998 as Claims Executive and transferred to Underwriting in 2000. Since 2005, he has served as Head of Skuld Hellas. Johan has seagoing experience as a Deck Officer. He has studied maritime engineering, nautical engineering and maritime law, and has an MBA from the Norwegian School of Economics and Business Administration (NHH).

**5 / Lisbeth Larsen**  
RECEPTIONIST  
Lisbeth Larsen (57) is appointed Receptionist in Skuld Oslo. Previously, Lisbeth worked for FPS Ocean, an offshore/oil rig company, where she worked as receptionist. She has relevant experience from several companies and has also lived abroad for a number of years.

### SKULD PIRAEUS

**6 / Clas Rydén**  
SENIOR VICE PRESIDENT  
HEAD OF OFFICE

Clas Rydén (48) is appointed Senior Vice President and Head of Skuld Hellas. Clas comes from a position as Head of the Swedish Club in Piraeus. He has studied mechanical engineering and naval architecture at Chalmers University of Technology in Gothenburg and joined the Swedish Club in 1987, where he served first in the technical department and later as Technical Manager in Hong Kong. Since 1993 – with the exception of a three-year period with the head office's underwriting and marketing team – Clas has been General Manager of the Swedish Club's Piraeus office.

**7 / Mattias Hedquist**  
ASSISTANT VICE PRESIDENT  
Mattias Hedquist (36) is promoted to Assistant Vice President, Claims. Mattias joined Skuld in 2002 as Claims Executive in Skuld Oslo. In 2006, he transferred to Skuld Piraeus and was named Senior Executive, Lawyer in 2008. He has an LLB, LLM from Lund University and an LLM from the University of Oslo.



### SKULD OSLO

**2 / Jens Bergrahm**  
SENIOR VICE PRESIDENT  
ASSET MANAGEMENT  
Jens Bergrahm (46) is appointed Senior Vice President Asset Management. Jens has more than 20 years' experience of risk management and trading, bond and equity portfolio management, tactical asset allocation and proprietary trading, and hedging of financial market exposure. Jens has a Bachelor of Science in Business (Finance) and a Master of Business Administration from Murray State University, USA and has held various positions within SEB Skandinaviska Enskilda

/ GENDER SPLIT OF  
SKULD STAFF:

51/49

WOMEN/MEN

## SOME CURRENT CASES AND OTHER SKULD NEWS

### /SERIOUS INJURY

A crew member suffered serious cuts while performing on-board maintenance work. Surgery and lengthy hospitalisation was necessary. Skuld Bergen followed up closely by supporting the crew member and shipowner, including taking measures to monitor and contain medical costs.

### /BRAIN INJURY IN ALABAMA

A shore-side worker suffered a brain injury after he fell inside the hold while working on a vessel in a drydocking yard in Alabama. After the injured worker filed a multi-million dollar suit against the vessel owner and the yard, the owner commenced limitation of liability proceedings. The litigation is in its early stages.

### /SUCCESSFUL DEFENCE OF ASSIGNMENT

Skuld charterer members settled several open positions with an owner through a commercial settlement that included an assignment of hires under a charterparty with sub-charterers. The sub-charterers sought to challenge the validity of the assignment and repudiate the whole contract on the basis of an invalid assignment. Skuld success-

fully supported the member in cooperating with owners. The result was a sweeping High Court victory, which included cost orders.

### /VALUABLE CARGO LOST

A valuable piece of cargo was lost overboard during extreme weather conditions. Experts were appointed to investigate how the cargo was secured and the vessel's condition, as well as taking detailed statements from the crew, establishing defence and gaining knowledge for loss prevention purposes.

### /FUTURE CONTAMINATION PREVENTED

At discharge, a cargo of caustic soda carried on a Danish vessel showed hydraulic oil contamination. The post discharge survey concluded that the vessel was not at fault. Meticulous investigation in a similar case some weeks later, however, uncovered a defect cargo tank pump seal, and consequently liability in the case of the Danish vessel. Looking on the positive side, future cargo contamination was prevented.

### SKULD SCHOOL 2009

This year's Skuld School will be held from 7-9 October in Oslo. The certificate given by the school is primarily aimed at members' junior staff or others in shipping that need to know the basics of P&I insurance.

### HEBEI TWO RELEASED

Organisations from across the world's shipping industry have issued a vigorous joint protest at the unjust and unreasonable detention of the captain and chief officer of the *Hebei Spirit*. On 11 June, we received the great news that they were finally free to leave South Korea and return to India.



## NEW BOOK FOR MEMBERS /CAPTAINS LEGAL

Through its cooperation with publishers Witherby Seamanship International Ltd., Skuld now offers a separate edition of 'Captains Legal' to all its members.

While sailing around the world a captain encounters various rules and regulations, some of which he is familiar with and others, particularly country-specific ones, less so. Maritime law, on the other hand, is designed for international use regardless of flag or administration.

Many problems arise because one side or other does not understand the applicable law for a given incident. And it is serious if shore authorities come to believe that ships' masters are unfamiliar with the laws and regulations they are supposed to uphold.

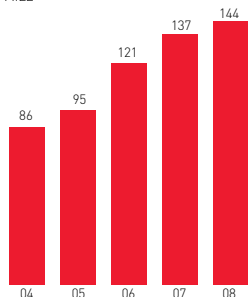
There are a number of books dealing with all aspects of maritime law and business. However, the aim of 'Captains Legal' is to explain – in plain language – the laws governing incidents and problems that a master might encounter on an average vessel, of any registration, while sailing the world's oceans.

"It is the sort of book that should be left lying around the bridge for everyone to have a look at", says Captain Nick Cooper.

Every Skuld member receives a copy of the book free of charge. Further copies may be ordered directly from [www.witherbyseamanship.com/category/SKULD.htm](http://www.witherbyseamanship.com/category/SKULD.htm). By entering the promotional code SKULDSPEC, Skuld members receive 20% discount on the retail price of GBP 25.

## FACTS

Claims incurred for own account  
USD MILL



SOURCE: SKULD CLAIMS HANDLING

READ MORE

See Beacon December 2008

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[www.skuld.com](http://www.skuld.com) (Publications)

SKULD  
MAGAZINE

BEACON

NEXT ISSUE

OUT NOVEMBER 2009

# WINDS OF CHANGE

The offshore industry is changing. Wind farms and other forms of alternative energy are gaining ground. How can Skuld, as an insurer, respond to future industry demands? And what progress has been made by Skuld's recently established Offshore syndicate?

In our November issue we will take a closer look at these developments, including coverage of some of our offshore members' operations.

## ABOUT SKULD

As the New Generation P&I Club, **SKULD** provides liability insurance to New Generation shipowners and clients in the shipping industry. The head office for our global operations is located in Oslo, with additional offices in Bergen, Copenhagen, Hamburg, Hong Kong, Moscow, New York and Piraeus.

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Call this number if you have an emergency incident where Skuld can assist.

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