

# Admiralty Law and Marine Insurance Update



# Outline

- World Insurance Market
- UNOLS Fleet Insurance Numbers
- Relevant Vessel Problems
- Relevant Legal Decisions and Damage Awards
- Conclusions



# World Insurance Market





# Global Marine Insurance Report 2014

**Astrid Seltmann**

Vice chairman, Facts & Figures Committee

<http://iumi.com/committees/facts-a-figures-committee>

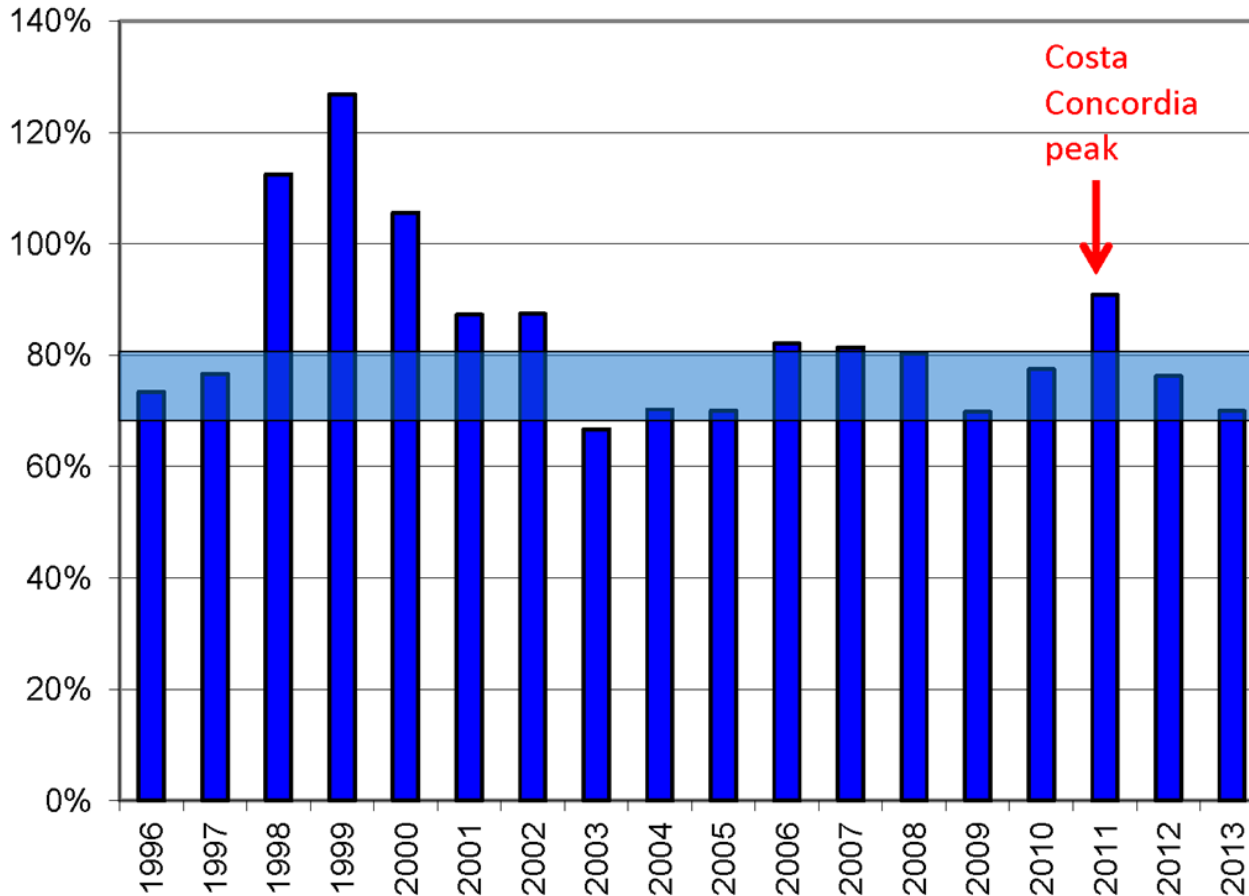
Analyst/Actuary @ Cefor

[www.cefor.no](http://www.cefor.no)



# Hull – Gross\* Ultimate Loss Ratio

Europe/USA\*\*, Underwriting years 1996 to 2013



## 2011

Strong major loss impact (Costa Concordia & others)

## 2012/2013

Less major loss impact as in 2011.

## 2013

Improvement, but technical result still at loss (18th year).

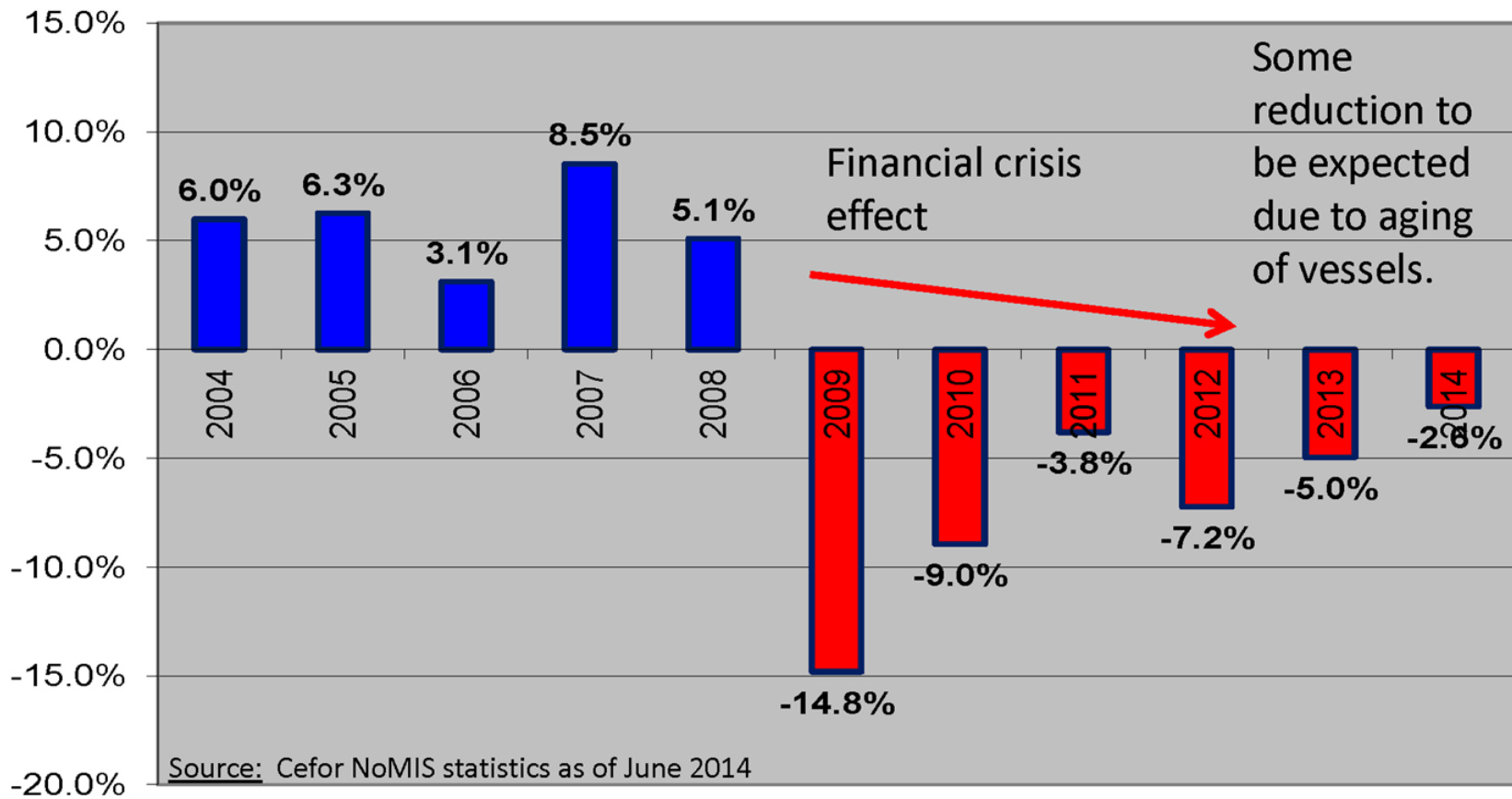
\* Technical break even: gross loss ratio does not exceed 100% minus the expense ratio (usually 20%-30% acquisition cost, capital cost, management expenses)

\*\* Data: Belgium, France, Germany, NL, Nordic (Cefor), Italy, Spain (until 2007), UK, USA

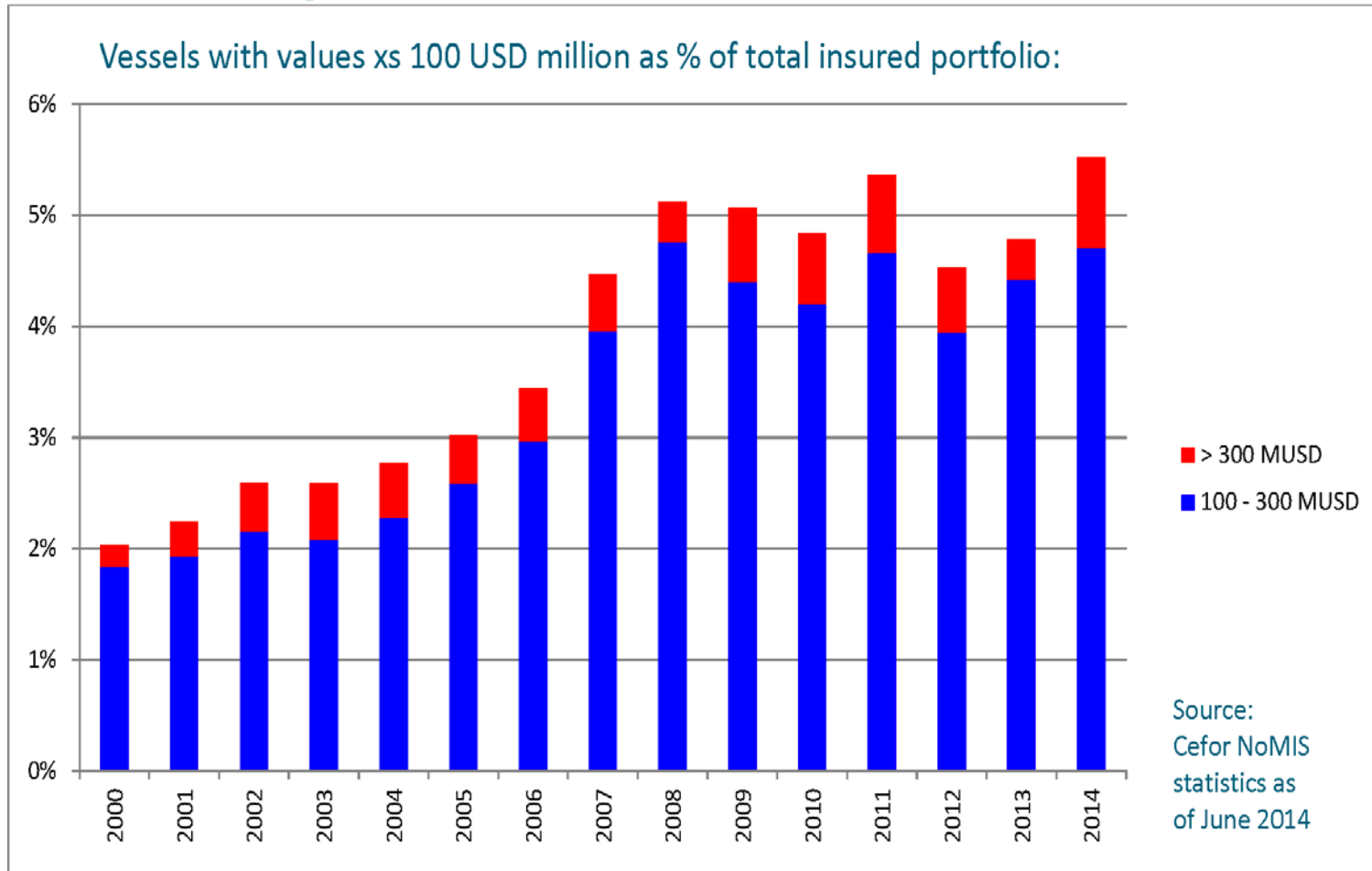


# Change in insured values on renewal

= insured value on renewal / insured value previous underwriting year for same vessel



# The risk exposure – Inflow of high-value vessels continues



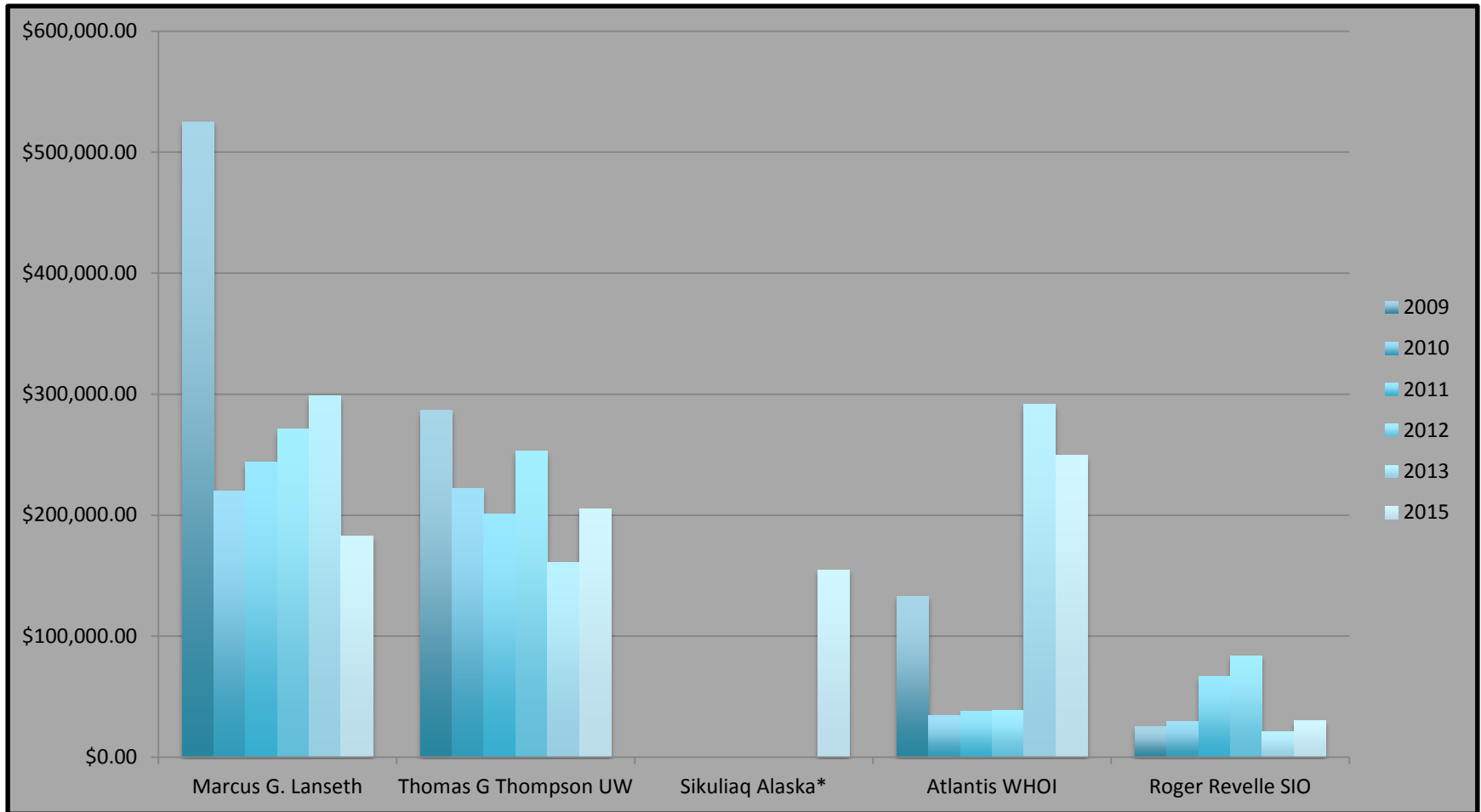


# UNOLS Insurance





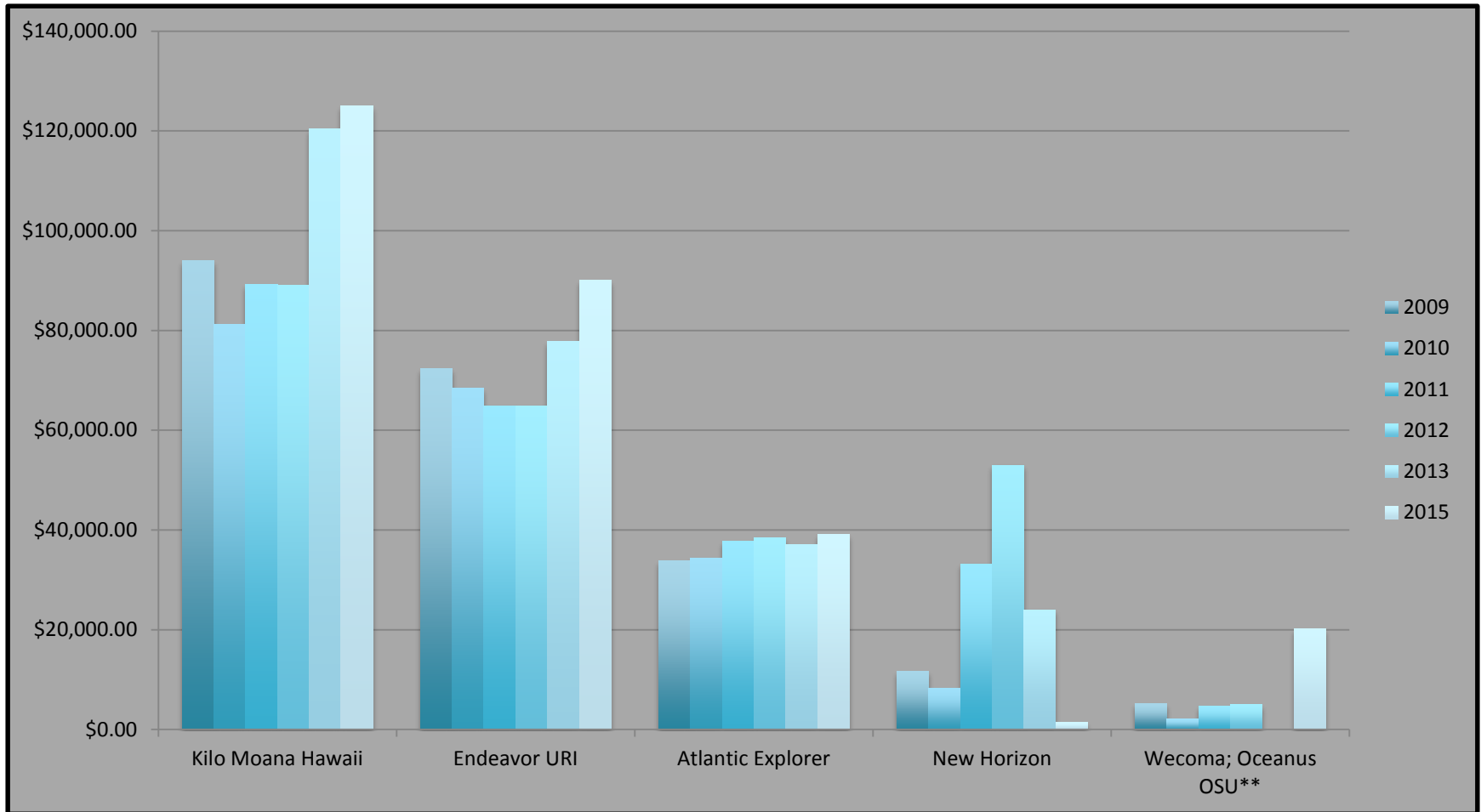
# UNOLS Insurance Global/Ocean



\*\* Alaska Sikuliaq 2015



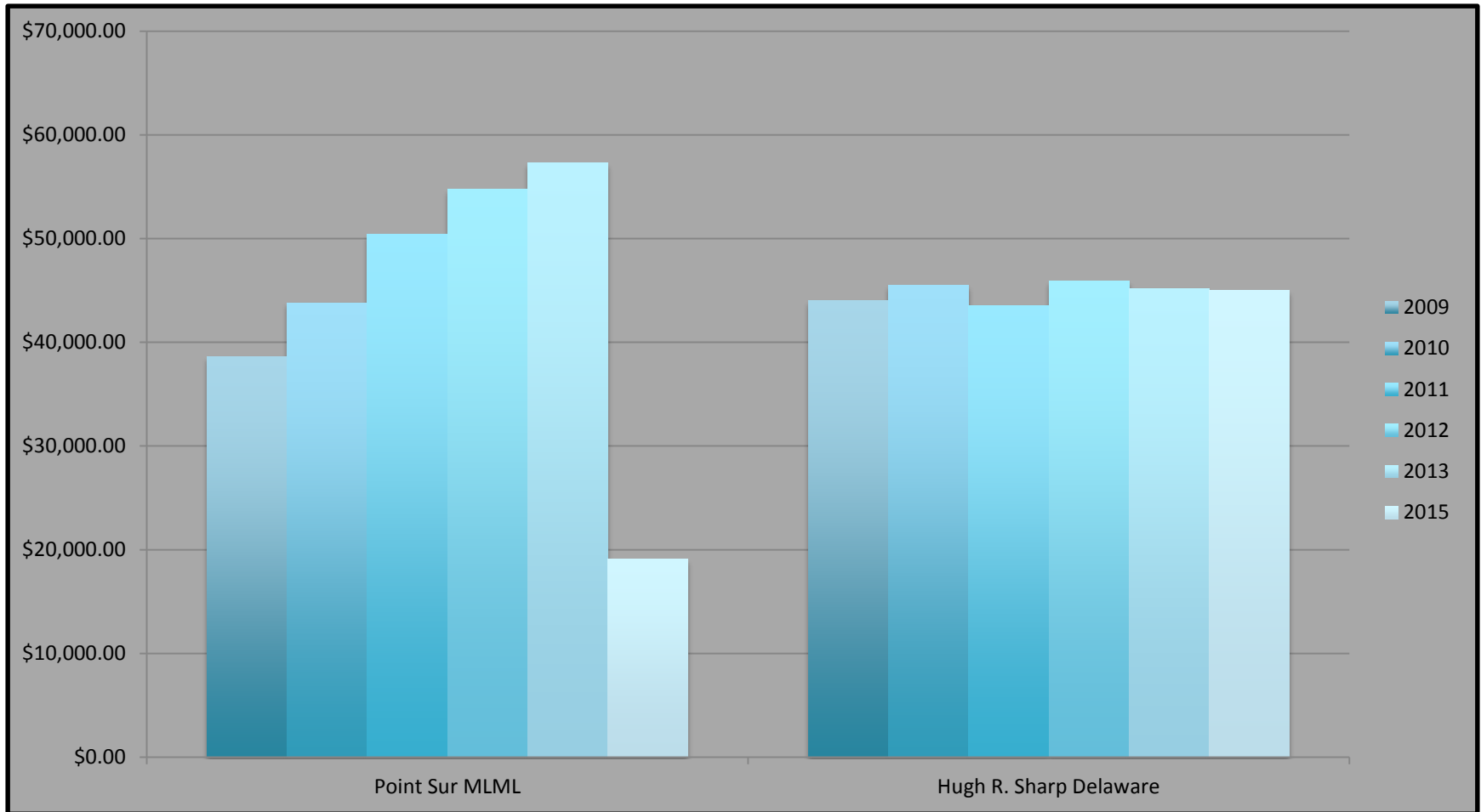
# UNOLS Insurance Ocean/Intermediate



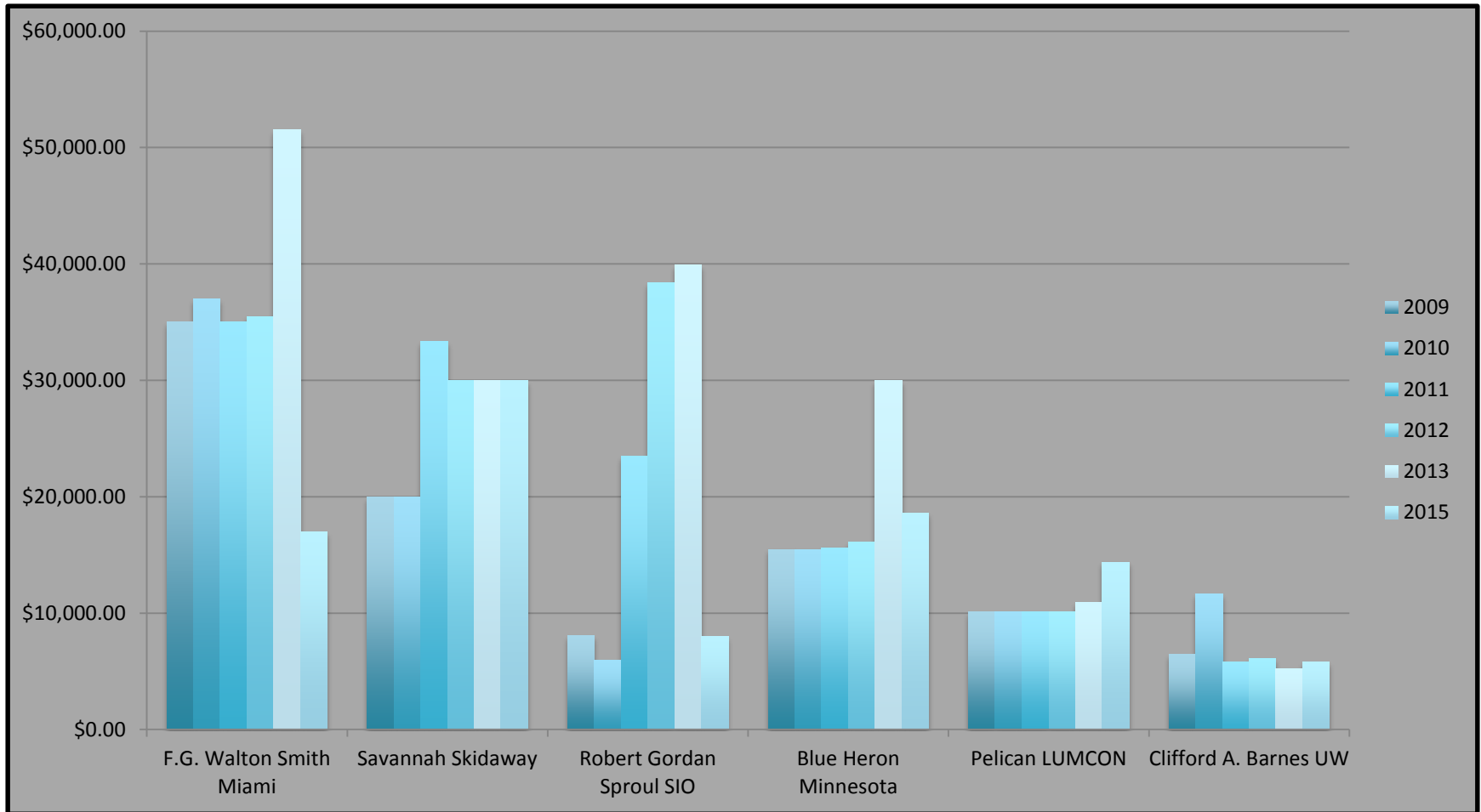
\*\* OSU Wecoma 2009 – 2013, Oceanus 2015



# UNOLS Insurance Regional



# UNOLS Insurance Coastal Local



# Relevant Vessel Problems



# The Challenge of Large Vessels

## Salvage Cost & Capabilities



# Salvage Cost & Capabilities



- **concern within the industry.....**
  - **..key challenge facing the shipping industry is the gap that has developed between the increasing size of vessels – notably container ships, passenger vessels, bulk carriers and LNG vessels – and the capability and equipment available to handle them either as casualties or wrecks**

**'The Challenges and Implications of Removing Shipwrecks in the 21<sup>st</sup> Century' (Lloyd's 2013)**





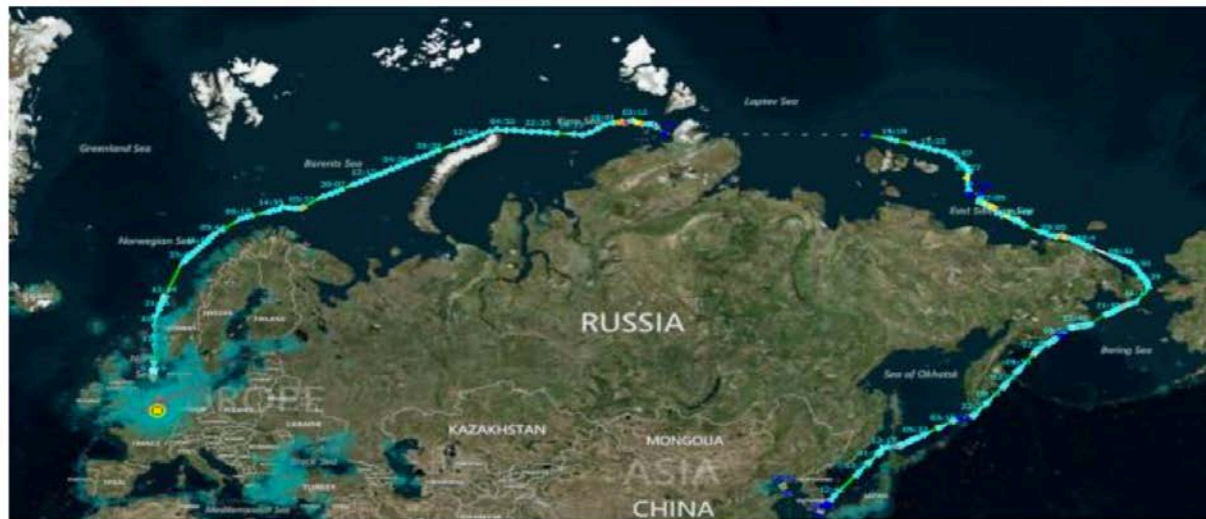
# Salvage Cost & Capabilities



- **Challenges for underwriters.....**
  - **Capability vs risk profile gap continues to increase**
  - **Will that gap simply increase as the world fleet profile develops?**
  - **How can the wider shipping industry counter an increasing shortfall in salvage capability?**
    - **Wider adoption of statutory vessel response planning?**
    - **Encourage more coastal state funded salvage assets?**
    - **Adopt the pollution fund model to finance more comprehensive salvage capabilities?**



# Salvage Cost & Capabilities



Northern Sea Route	2011	2012	2013
Number of Transits	41	46	71

Source: NSR Information Office

Ocean Hull Workshop 22<sup>nd</sup> September

# Salvage Cost & Capability: Issues for debate?



- A genuine threat to underwriting performance?
- How should the industry respond?



# Human error led to sinking of Taiwanese research vessel







# National Transportation Safety Board

## Marine Accident Brief

### Sinking of Oceanographic Research Vessel *Seaprobe*

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<b>Accident no.</b>	DCA13NM008
<b>Vessel name</b>	<i>Seaprobe</i>
<b>Accident type</b>	Sinking
<b>Location</b>	Gulf of Mexico, about 130 nautical miles south-southeast of Mobile, Alabama 28°12.2' N 86°27.3' W
<b>Date</b>	January 18, 2013
<b>Time</b>	About 0315 central standard time (coordinated universal time – 6 hours)
<b>Injuries</b>	Three (two minor, one serious)
<b>Damage</b>	Total loss of vessel
<b>Environmental damage</b>	Potential release of 44,000 gallons of diesel fuel on board at the time of sinking
<b>Weather</b>	Clear skies; north winds at 20–25 knots, gusting to 34 knots; wave height 14–16 ft; 3+ miles visibility; air temperature 56°F; water temperature 71°F
<b>Waterway information</b>	Gulf of Mexico, open water

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About 0315 local time on January 18, 2013, the oceanographic research vessel *Seaprobe* sank in the Gulf of Mexico, about 130 nautical miles south-southeast of Mobile, Alabama. Before the vessel sank, all 12 crewmembers evacuated to inflatable liferafts from which the United States Coast Guard rescued them shortly thereafter. Three crewmembers were injured.





## National Transportation Safety Board

### Marine Accident Brief

Collision between US Fishing Vessel *American Dynasty* and  
Canadian Naval Frigate *Winnipeg*

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<b>Accident no.</b>	DCA13RM018
<b>Vessel names</b>	US fishing vessel <i>American Dynasty</i> ; Canadian Navy frigate <i>Winnipeg</i>
<b>Accident type</b>	Collision
<b>Location</b>	Esquimalt, British Columbia, Canada 48°25.9'N, 123°25.8'W
<b>Date</b>	April 23, 2013
<b>Time</b>	0817 Pacific daylight time (coordinated universal time – 7 hours)
<b>Injuries</b>	Six minor injuries
<b>Damage</b>	More than \$500,000 in damage to the vessels and pier
<b>Environmental damage</b>	None
<b>Weather</b>	Clear; good visibility; northeast winds at 3 knots
<b>Waterway information</b>	Protected harbor and entrance to graving dock; ebbing tide 3.6 feet

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On April 23, 2013, at 0817 local time, the US-flag commercial fishing vessel *American Dynasty* was approaching the graving dock at Esquimalt in British Columbia, Canada, when it lost electrical power and propulsion control. The vessel veered off course and collided with a Canadian Navy frigate, HMCS (Her Majesty's Canadian Ship) *Winnipeg* FFH 338 ("*Winnipeg*"), moored nearby. Both vessels sustained extensive structural damage, and the naval pier required repairs. Six shipyard workers suffered minor injuries.



Fishing vessel *American Dynasty* (white vessel at left) and Canadian Naval frigate *Winnipeg* after the collision. (Photo by Transportation Safety Board [TSB] Canada)

NTSB/MAB-15/03



# Russian Navy interferes with *R/V Aranda* in the Baltic Sea



Finnish Environmental Institute vessel was the recipient of a Russian military fly-by after submarine sighting.





# *R/V Urania* capsizes in dry dock



One worker killed and 11 injured in Livorno, Italy after “support blocks” holding the vessel gave way.



# Relevant Legal Decisions

- Two criminal and three civil cases will be reviewed
- One of the cases is clearly on its way to the Supreme Court and the final outcome will not be known until next year
- Top ten damage award cases for injuries to crew members



# U.S. v. AML Ship Management and Nicholas Sassin

- Sassin was the Chief Engineer of a vehicle carrier operated by AML
- Both charged with knowingly dumping oil into US waters off Alaska in August 2014 in violation of the Clean Water Act; also charged with creating and presenting false records
- Guilty pleas for both, \$800,000 in fines and community service



# Seaman's Manslaughter Act Charges Dropped for Two BP Employees

- On March 12, 2015, a three judge panel of the 5<sup>th</sup> Circuit Court of Appeals ruled that two former BP supervisors will not face charges under the SMA
- Court held that the 1838 law was only to be directed at captains, engineers, and pilots, not the supervisors of a drilling operation
- The two still face 11 counts of involuntary manslaughter charges and many Clean Water Act violations



# Catlin v. San Juan Towing, First Circuit Court of Appeals, February 15, 2015

- Catlin, a Lloyd's syndicate, agreed to insure a floating drydock owned by San Juan
- Drydock was insured for \$1.75 million, despite being offered for sale at \$800K
- Drydock sank, claim for full amount of policy
- Court held that doctrine of “Uberrimae fidei” applied (utmost good faith) and invalidated policy



# Skye v. Maersk Line, Eleventh Circuit Court of Appeals, May 15, 2014

- Skye claimed damages under the Jones Act for excessive work hours and an erratic work schedule
- Jury awarded \$2.3 million, reduced to \$590K due to Skye's comparative negligence
- Appeals Court reversed because Skye's complaint of injury caused by work-related stress not compensable under Jones Act, which concerns injuries caused by physical perils only – but strong dissent because of outrageous facts in the case



# McBride v. Estis Well, Fifth Circuit Court of Appeals, September 25, 2014

- At trial, court denied recovery for punitive damages for breach of the warranty of seaworthiness
- In 2013, a three judge panel of the fifth circuit reversed and allowed punitive damages
- Petition for rehearing en banc (all 14 judges!)
- In an 8-6 decision, original trial verdict upheld
- Now on appeal to the U.S. Supreme Court





# Harrington v. Atlantic Sounding Co.

- Injury: Back
- Plaintiff's Occupation: Seaman
- Action Under Jones Act and General Maritime Law
- \$1,678,948 award, prejudgment interest of 2%
- Vessel Type: Motor Vessel
- Trier of Fact: Judge



# Henderson v. Irika Shipping

- Injury: Back
- Plaintiff's Occupation: Longshoreman
- Action under Longshore and Harbor Workers' Compensation Act
- \$1,734,943 award, reduced in judgment by 56%
- Vessel Type: Motor Vessel
- Trier of Fact: Jury



# McCuller v. Nautical Ventures LLC

- Injury: Back
- Plaintiff's Occupation: Longshoreman
- Action under Jones Act
- \$1,296,000 award
- Vessel Type: Motor Vessel
- Trier of Fact: Judge



# Neal v. Int'l Marine Inc.

- Injury: Back
- Plaintiff's Occupation: Seaman (Engineer)
- Action under Jones Act
- \$1,531,000 award, reduced in judgment by 55%
- Vessel Type: Motor Vessel
- Trier of Fact: Judge



# Lambert v. United States

- Injury: Head
- Plaintiff's Occupation: Longshoreman (Repair Estimator)
- Action under Longshore and Harbor Workers' Compensation Act
- \$1,760,000 award, reduced in judgment by 50%
- Vessel Type: Motor Vessel
- Trier of Fact: Judge



# Robichaux v. U.S. Army Corps. of Engineers

- Injury: Shoulder
- Plaintiff's Occupation: Tankerman
- Action under Jones Act
- \$250,348 award
- Vessel Type: Barge
- Trier of Fact: Judge



# Newsom III v. Jantran Inc.

- Injury: Leg
- Plaintiff's Occupation: Seaman (River Pilot)
- Action under Jones Act and General Maritime Law
- \$2,200,000 award, reduced in judgment by 56%
- Vessel Type: Motor Vessel
- Trier of Fact: Jury





# Jackson ex rel. Williams v. Groton Pac. Carriers Inc.

- Injury: Death
- Plaintiff's Occupation: Seaman
- Action under Jones Act
- \$5,751,000 award, reduced in judgment by 25%
- Vessel Type: Motor Tanker
- Trier of Fact: Judge



# Maclay ex rel. Hawkins v. MV Sahara

- Injury: Death
- Plaintiff's Occupation: Office Administrator
- Action under General Maritime Law
- \$4,000,000 award
- Vessel Type: Motor Vessel
- Trier of Fact: Judge



# In re Moran Towing Corp.

- Injury: Death
- Plaintiff's Occupation: Seaman
- Action under Jones Act and General Maritime Law
- Vessel Type: Anchor Handling Tug
- \$2,000,000 reward
- Trier of Fact: Judge



# Conclusions

- Insurance market relatively stable, still recovering from Costa Concordia
- Losses in the UNOLS fleet have clearly led to higher premiums
- Two research vessels lost with loss of life – both caused by human error
- We will likely see a new ruling on punitive damages, which could have a significant impact on both awards and premiums



# Questions?

