

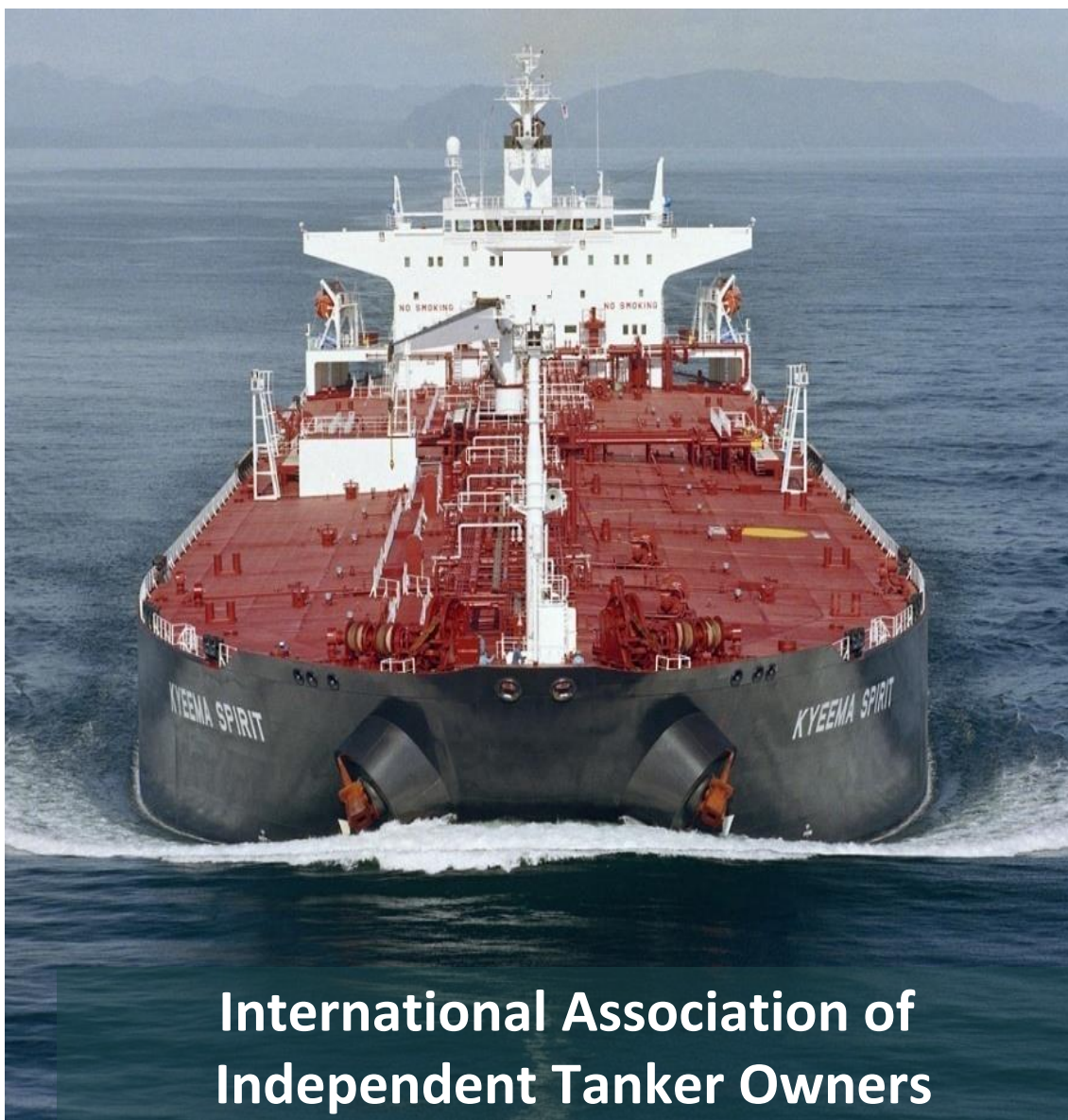


INTERTANKO

FONASBA ANNUAL MEETING DUBAI

**October 2017
C & D Committee**

**Michele White
General Counsel
INTERTANKO**



**International Association of
Independent Tanker Owners**



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INTERTANKO 2017



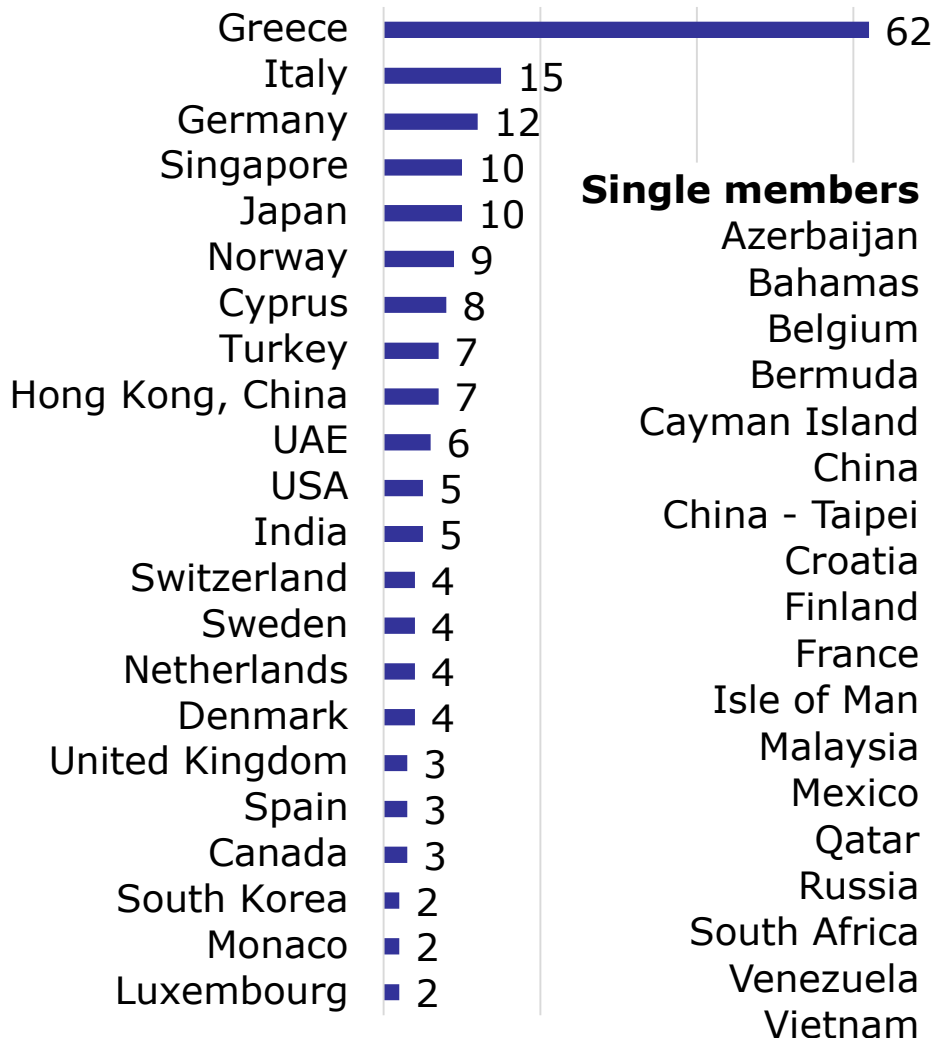
2016



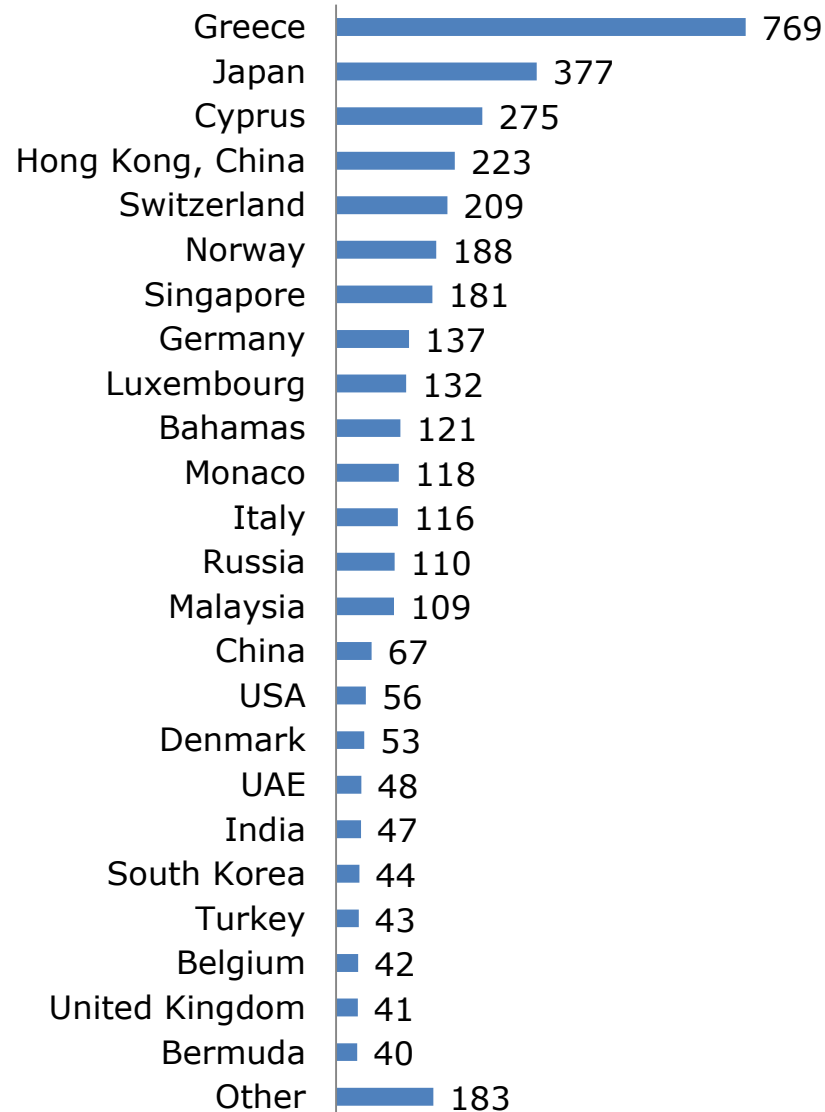
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2017 Membership by Registration

Member Companies

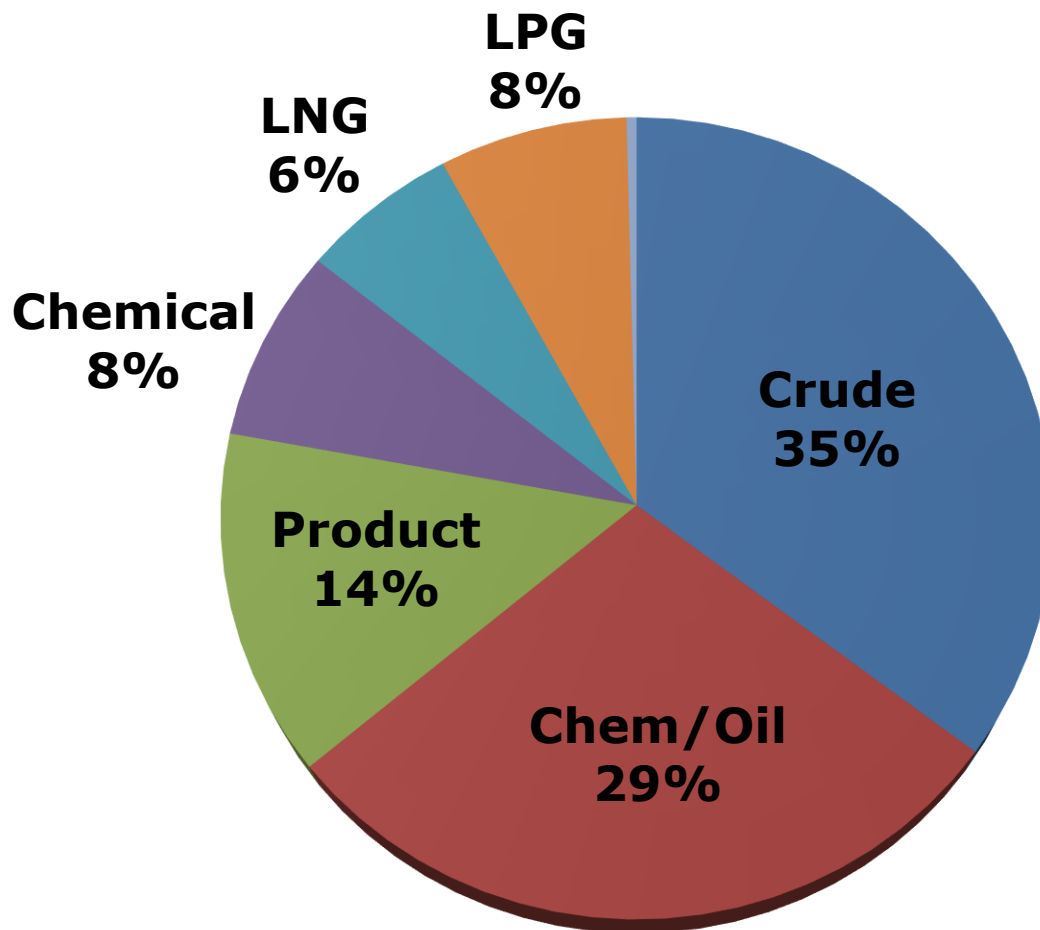


Vessels





2017 Member Fleet



Vessel type by number of tankers

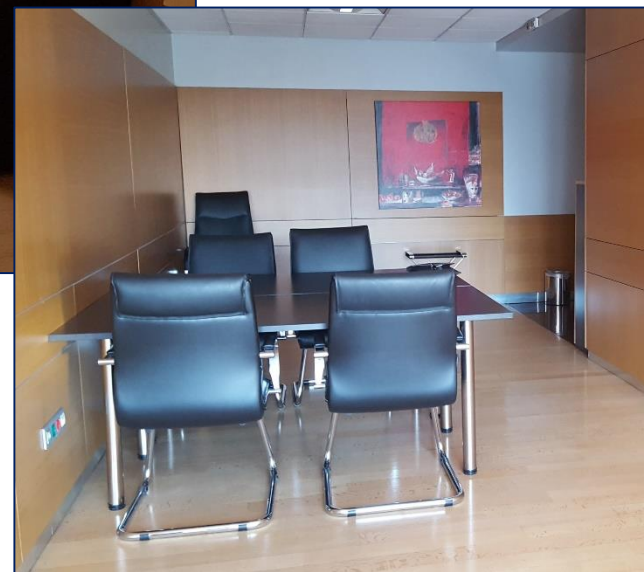


INTERTANKO Athens

INTERTANKO



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Gas Services

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**INTERTANKO GUIDE TO
BLENDING/COMMINGLING
OF LPG CARGOES ON
BOARD GAS CARRIERS**

TWENTY



Main Focus Areas

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Safety	Seafarers	Environment	Operations	Commercial Sustainability
Tanker design/ construction <ul style="list-style-type: none">- Enforcement of CSR- Classification standards	Fair treatment <ul style="list-style-type: none">- Criminalization- Shore access/visas- Medical treatment	Emissions to water <ul style="list-style-type: none">- Ballast water- Reception facilities & waste minimization- Hull fouling man't	Vetting & Risk Assessment Port state control	Payment performance Charter party terms & Documentation
Machinery/ equipment <ul style="list-style-type: none">- Lifesaving appliances- Classification standards	Crew competence <ul style="list-style-type: none">- Training requ'mnts (ECDIS, BWM)	Greenhouse gas emissions to air <ul style="list-style-type: none">- SOX, NOX, VOC- Greenhouse gas- Energy efficiency- Monitoring & Reporting & Verification (MRV)	Ports <ul style="list-style-type: none">- Ports & Terminals- Offshore Ops Maritime Security <ul style="list-style-type: none">- Piracy	Worldscale Insurance <ul style="list-style-type: none">- Compensation- Liability limits- Reinsurance Anti-corruption
Fuel <ul style="list-style-type: none">- Quality- Sampling- Switching operations- LNG, Biofuels- Alternate fuels	Seafarer welfare <ul style="list-style-type: none">- Accom'm'n. space- Cadet berths- Fatigue/rest hours	Ship Recycling <ul style="list-style-type: none">- Recordkeeping	Gas tanker ops Refugees	
Cargo <ul style="list-style-type: none">- Properties- Safe tank entry- Gas detection- Inert gas- Biofuels				

VETTING
COMPETENCY MANAGEMENT
BALLAST WATER MANAGEMENT
GREENHOUSE GAS EMISSIONS
FUEL OIL QUALITY & AVAILABILITY
CYBER RISK MANAGEMENT
E-NAVIGATION



Members working for Members

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Recent Clauses and Current Work

Clauses

- Storage (Anti-fouling) Clause (*Environmental*)
- River Ports Clause (Parcel Tankers) (*Chemical Tankers*)
- Demurrage Payment Clause (*Worldscale and Markets*)
- Interest on Late Payments (*Worldscale and Markets*)

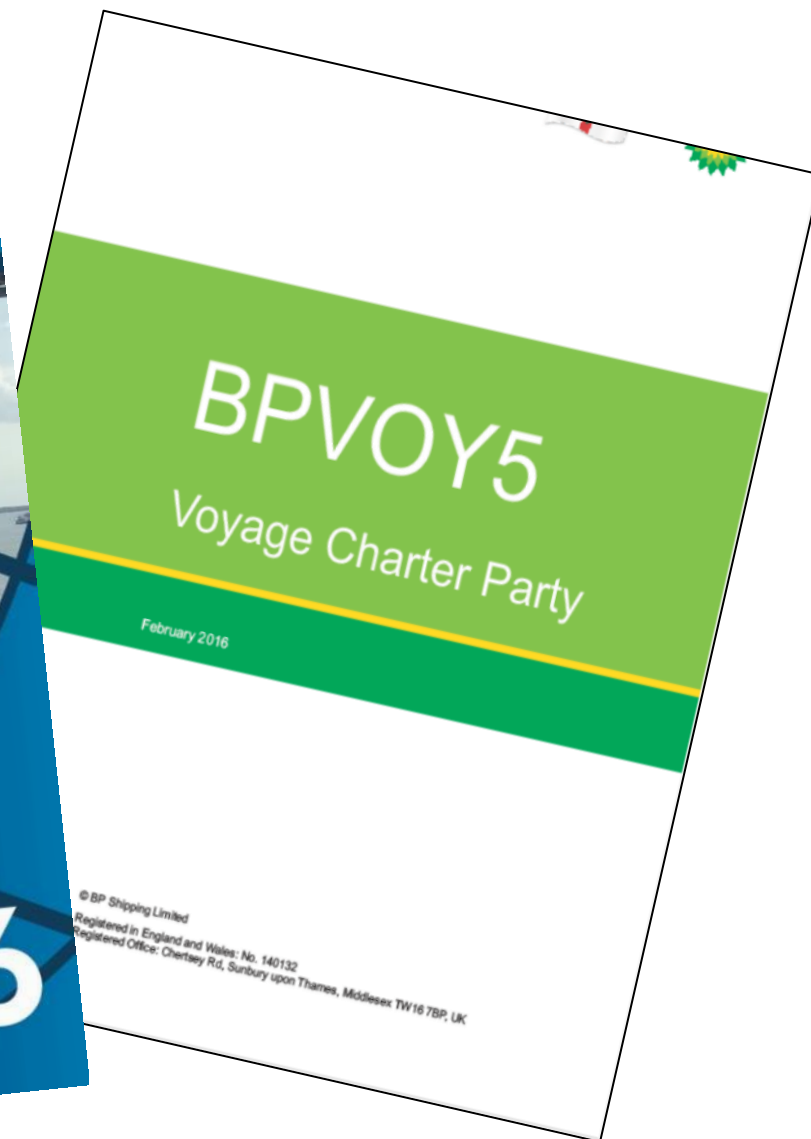
Publications

- INTERTANKO Commentary on BPVOY5 (published 2016)
- Guide to Terminal Conditions of Use (*ISTEC*)
- Guide to LNG Chartering (*Gas*)
- Bunker Supply Project 2020 (*Bunker*)



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Tangible Output & Support





Guide to Terminal Conditions of Use

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INTERTANKO Guide to Terminal Conditions of Use

- Contractual Issues
 - Contract formation and terms
- Limitation of liability
 - LLMC 76
 - Contractual exclusion of limit of liability
- Insurance Cover
 - CAPE BARI case
- Practical considerations
- Charterparty issues



Guide to Terminal Conditions of Use

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Contractual Issues

Onerous provisions that:

- irrespective of fault, not only exonerate the Terminal from any liability for any damage caused to the vessel; but also
- require Owners to compensate the Terminal for any damage caused or injury suffered due to the negligence of the Terminal
- In addition, COUs usually endeavour to deprive Owners of their statutory right to limit liability

Master's authority

- As Owner's agent – express, implied or apparent.
- Signature or by conduct



Limitation of Liability

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- Statutory Limitation Regime: **Convention on Limitation of Liability for Maritime Claims 1976 (the “1976 Convention”)**:
 - Currently 54 States are party to the 1976 Convention
- Relevant provisions:
 - Art. 1: confers on “shipowners” and “salvors” statutory entitlement to limit their liability in respect of **claims falling within categories listed in Art. 2**
 - Art. 2: confirms that claims listed “shall be subject to limitation of liability.....whatever the basis of liability may be”:
 - claims in respect of **loss of life or personal injury**; or
 - claims in respect of **loss of or damage to property**



Limitation of Liability

INTERTANKO

- **Chapter II: sets out the limits of liability.**
 - Lower limits for personal injury claims compared to property claims
 - Set limit for vessels under 2,000 GT; from 2,001 GT upwards, limit calculated per tonne
 - 3 different GT ranges with corresponding per tonne limit – lowest limit for largest vessels
 - Increased under 1996 Protocol to LLMC and again by IMO in 2015

Art 4: Conduct barring limitation

A person liable shall **not be entitled to limit his liability** if it is proved that the loss resulted from his personal act or omission, committed with the **intent to cause** such loss, or **recklessly and with knowledge** that such loss would probably result.



Limitation of Liability

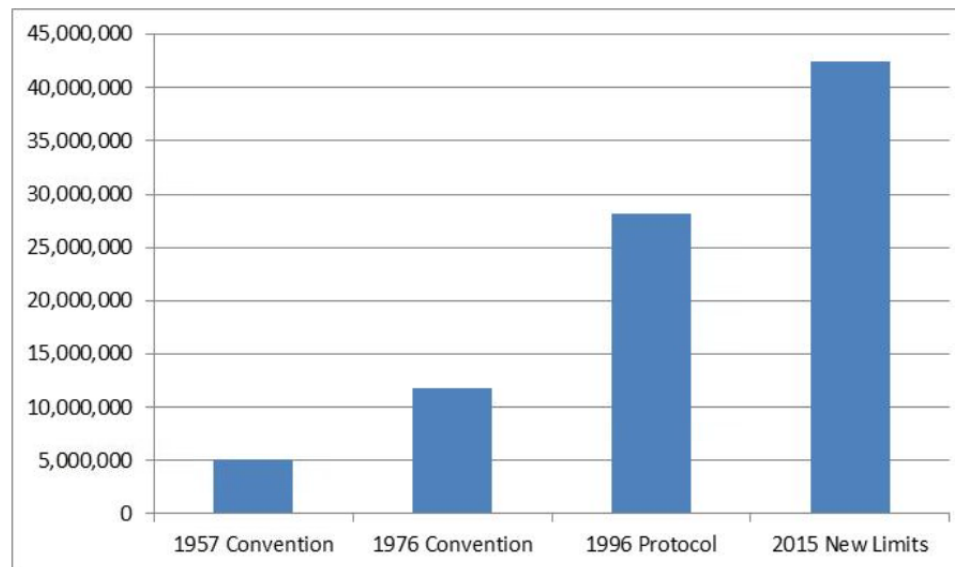
Development of limitation amounts over time:

Based on vessel of 50,000 GT
Change in limitation amount for
property damage under
Conventions Protocol and
amendment

Values shown in USD

Lower values for personal injury

The development of limitation amounts over time



Credit: <http://www.gard.no/web/updates/content/20741048/increased-limits-of-liability-enters-into-force-in-2015>



CAPE BARI - Facts

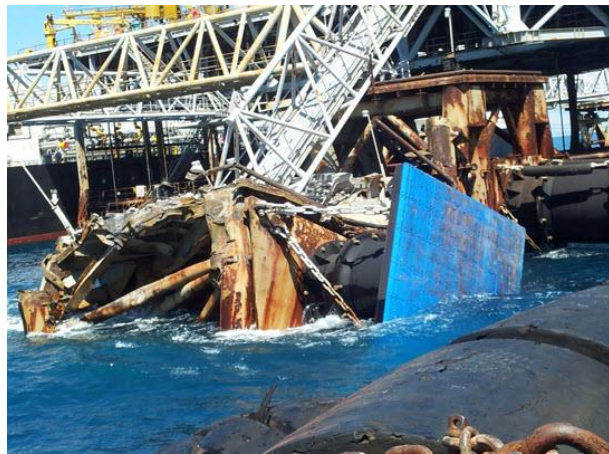
25 May 2012 Vessel called at BORCO Terminal

Conditions of Use printed on a single page document and in BORCO's standard form

COU - Presented to Master for signing late at night at the Master/Pilot interchange – along with other documents including Pilotage/ Towage Agreement

Master required to sign in order to enter the Terminal. Master did not have authority to sign a document surrendering Owners' statutory entitlement to limit their liability under the 1976 Convention

Vessel came in too fast, tried to turn
Failed and hit the jetty
BORCO Claim US\$26m+
Owners limited liability to US\$16.7m





Clause 4 BORCO COU

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*“If in connection with, or by reason of, the use or intended use by any vessel of the terminal facilities or any part thereof, any damage is caused to the terminal facilities or any part thereof from whatsoever cause such damage may arise, and **irrespective of whether or not such damage has been caused or contributed to by the negligence of BORCO or its servants, and irrespective of whether there has been any neglect or default on the part of the vessel or the Owner, in any such event the vessel and the Owner shall hold BORCO harmless from and indemnified against all and any loss, damages, costs and expenses incurred by BORCO in connection therewith. Further, the vessel and her Owner shall hold BORCO harmless and indemnified against all and any claims, damages, cost and expenses arising out of any loss, damage or delay caused to any third party arising directly or indirectly from the use of the terminal facilities or any part thereof by the vessel.**”*



CAPE BARI - Issues

Bahamas Oil Refining Company International Limited (“BORCO”) vs The Owners of the Cape Bari (Privy Council)

Appeal by BORCO to Privy Council against finding of Bahamas Appeal Court

1. Can an Owner contract out of 1976 Convention rights?
2. Did the Master (on behalf of the Owner) actually contract out?





CAPE BARI - Finding

1. Can an Owner contract out of 1976 Convention rights? **Yes**
2. Did the Master (on behalf of the Owner) actually contract out? **No**
 - Has to be clear and unequivocal to contract out of rights arising by operation of law
 - The more valuable the right – the more improbable it would be that it was excluded except by clear wording



Why is it important? P & I Cover

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P & I Cover for third party risks associated with a call at a port or terminal

BUT Club cover is limited:

...this liability may be determined and fixed by law including any laws pertaining to limitation of liability. The Association shall in no circumstances be liable for any sum in excess of such legal liability. (UK P & I Club)

Which would not have arisen but for the terms of the contract or an indemnity entered into by or on behalf of the member, unless the contract or indemnity is approved by the Association. (Skuld)

Owner may find himself exposed where he has lost the right to limit or has otherwise waived it contractually (subject to P & I Club discretion).



Practical Implications

Terminals, Pilots, bunker suppliers will now include express and unambiguous wording in contracts excluding the statutory right to limit.

Master is Owners' representative and therefore has actual and/or apparent authority

- review whatever he is asked to sign
- 'for receipt only without authority to bind'
- clear SOPs for Master's guidance
- Master's Statement
- Chartering issues? Indemnity?





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**CHEVRON NIGERIA LIMITED
ESCRAVOS TERMINAL**
**TERMINAL INFORMATION, REGULATIONS
AND CONDITIONS OF USE**

To the Master MV _____
A copy of the "Escravos Terminal Information, Regulations and Conditions of Use" booklet is enclosed for your guidance.

You are requested to study this booklet and acquaint your crew with the regulations in force at our Terminal.

Chevron Nigeria Limited Mooring Masters will be on board your vessel throughout the period your vessel is on the berth and are empowered to cease operations should there be any contravention of the regulations.

For and on behalf of CHEVRON NIGERIA LIMITED

(Signature)

Name _____

Title _____

ACKNOWLEDGMENT:

I acknowledge receipt of the "Escravos Terminal Information, Regulations and Conditions of Use" booklet.

I hereby accept and agree to be bound by the terms and conditions set forth in "The Conditions of Entry into and use of Escravos Terminal Nigeria", on behalf of myself, my vessel and her Owners, the terms and conditions set forth therein.



Ships Stamp

(Signature)

Captain Name _____

Date & Time _____

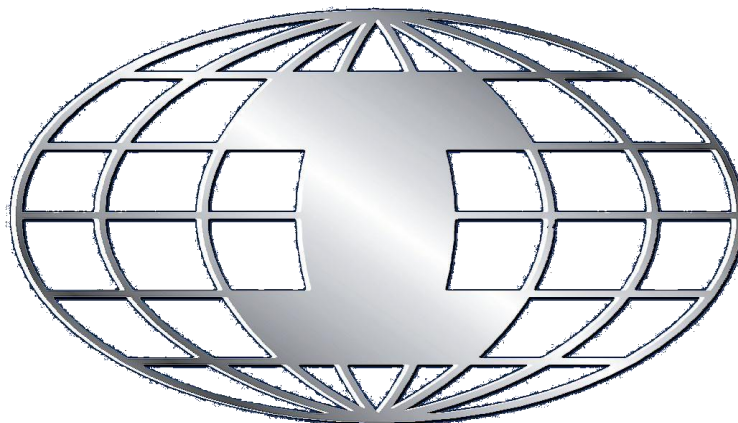
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Edition number 13 dated July 2010
O/T/terminal/Report Group/Controlled Documents/Terminal Information/TERMINAL INFORMATION BOOKLET - July 2010.doc





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Thank you

For more information, please visit:

www.intertanko.com

Documentary

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