

Piracy

Coverage and Response

Distinctive. Choice.



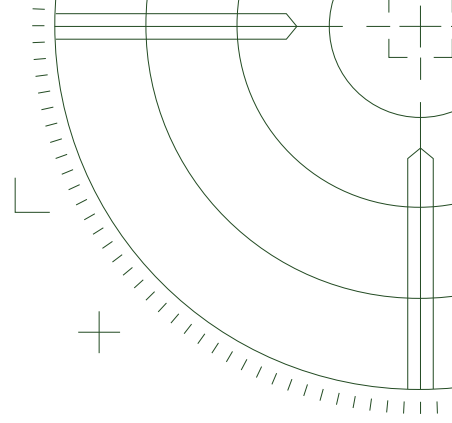
This white paper has been prepared for ship owners and operators and addresses the key insurance issues that need to be considered.





**JLT advise ship owners and operators to
“stress test” their coverage and response**

In order to ensure that your insurances would fully respond to the peril of piracy we would actively encourage you to "stress test" your coverage and consider pre-transit and post-incident issues by undertaking an insurance and response review.



Introduction

The statistics and consequences of piracy in the Gulf of Aden have been widely reported and the crisis continues to be high on the agenda of all owners and operators who have vessels transiting this crucial artery of world trade. As predicted, the monsoon season saw a major reduction in the number of attacks on vessels but in recent weeks there has been a significant increase in the activity of pirates. Since the 2 October a further eight vessels and a UK yacht have been successfully hijacked.

Whilst this peril has always existed on the high seas, the scale and intensity of piracy in the Gulf of Aden has focused the attention of the shipping and insurance industries on this exposure and how coverage for it is structured. A number of specialist coverages have been developed in order to provide greater certainty and assistance to owners where existing arrangements were perceived to be lacking.

In this paper we address the key insurance issues to consider as regards piracy. These issues are:

- What are the key risk factors?
- Where this peril is best placed and what are the advantages and disadvantages of moving the peril from one policy to another?
- What exactly does Kidnap for Ransom (K&R) coverage provide and what is the benefit?

Jardine Lloyd Thompson Limited (JLT) has played a key role in the insurance industry's response to piracy by collaborating with all stakeholders to obtain a deeper understanding of the issues involved with a view to developing new and innovative insurance solutions to address the problems.

This collaborative approach has included consulting with BIMCO, other industry bodies, our own maritime security advisors, underwriters and owners. We also continue to liaise with political and naval contacts to assist the insurance industry in understanding the workings of the group transit scheme which Atalanta operate through the IRTC such as the presentation by Commander Gerry Northwood, at the time Assistant Chief of Staff, Operations, EU NAVFOR Atalanta that JLT hosted to the London market in April. This presentation can be seen on our website using the following link: www.jltgroup.com/Risk-and-Insurance/Events/Protecting-Ships

JLT has participated in the release of four vessels which had been pirated during the past year and, therefore, have first-hand experience in working closely with negotiators and underwriters to secure the release of crew, vessels and cargo. We have included within this paper what we have learnt from the piracy incidents we have managed and what advice we can give to owners/operators both in terms of proactive and reactive measures.

“ The crisis continues to be high on the agenda of all owner/operators who have vessels transiting this crucial artery for world trade. ”

KEY RISK RADAR

AUTO 

Vessels making less than 14 knots are at high risk of being taken.

The most likely time of attack in the Gulf of Aden is sunrise.

Vessels with low freeboard are also at high risk.

Holding out in a 'Citadel' can have disastrous consequences

Weather conditions have a major impact on the frequency of pirate attacks, being severely curtailed during monsoon season or any periods of bad weather.

The Maritime Security Centre (Horn of Africa) (MSC HOA) does not recommend the use of armed guards on the vessel and most underwriters concur with this view.*

Pirates have attacked vessels up to 1,000 miles from the Somali coast, attacks range from the Kenyan coast to the Red Sea.


The ransom demands are not related to the value of the ship and cargo. The demands are consistent regardless of property value.

Vessels are held for an average of 60 days.

Crew are often beaten and their personal effects stolen. Many crew members suffer deep trauma as a result of being held for long periods under intimidation and threat of death. Crew are kept on starvation rations as provisions are either consumed or stolen by pirates.

The vessel is invariably damaged by random acts of vandalism, some repairs taking many weeks.

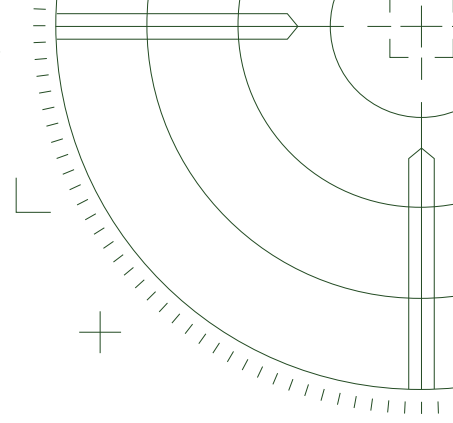
Ransom payments average between USD\$ 2-3 Million. Cost of delivering ransom/ ancillary costs are generally 30-40% of the total cost incurred.

SCALE: 1KM/PXL
50KM 



RADAR IMAGE

*Armed security guards stationed onboard are only allowed under international law with the agreement of the flag state. Insurance coverage can also be compromised.



Where Should the Peril of Piracy be Placed?

We summarise below where the peril of Piracy customarily rests under the different clauses commonly used in the market.

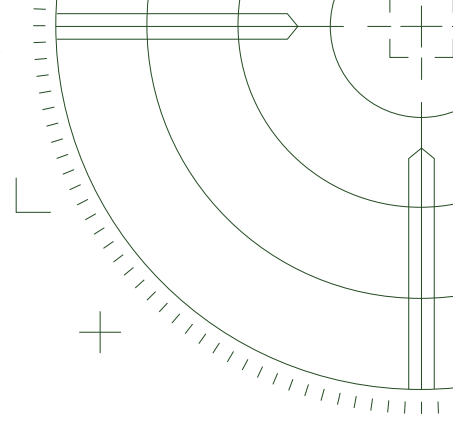
- Institute Time Clauses → Hull and Machinery policy
- Norwegian Plan → War policy
- American Hull Clauses → War policy
- German DTV Clauses → Hull and Machinery policy

The advantages and disadvantages of having this peril included in your Hull and Machinery or War Policy can be summarised as follows

Policy	Advantages	Disadvantages
Within the Hull and Machinery policy	<ul style="list-style-type: none"> • No breach additional premiums are charged for Piracy coverage under the Hull placing • Constructive total loss payable within 90 days (DTV clauses only) 	<ul style="list-style-type: none"> • Piracy claims normally subject to deductible • Potential issues relating to the definition of pirates/terrorists, violent theft/barratry • Hull and Machinery record exposed to the cost of any ransom settlement • Application of weapons of war exclusion (per DTV) could be a "grey area" • Ransom demands for the vessel which exceed the Insured Value are irrecoverable
Within the War policy	<ul style="list-style-type: none"> • No exposure to Hull and Machinery record for ransom payments • No deductible • Clarity of coverage. Piracy or terrorism/violent theft/barratry are all covered at no additional premium to basic annual 	<ul style="list-style-type: none"> • Charterers having to pay War additional premiums where payable by them under the Charter Party • War record would be exposed to ransom claims either as War General Average (GA)/Sue and Labour

**K&R insurance
confidentiality is crucial**





Kidnap for Ransom (K&R)

Coverage and Benefits

There are differing views in the market regarding the necessity or otherwise of purchasing K&R insurance. JLT place a considerable number of K&R insurances into the market for shipowners/operators and were instrumental in refining the K&R product to reflect the workings of the marine market rather than the traditional non-marine K&R market.

K&R insurance covers any ransom request in respect of the crew of a vessel and unless amended is a personal lines coverage rather than a property coverage. We have ensured that marine wordings now reflect both the crew and property exposures. K&R coverage includes the cost of delivering the ransom and its attendant insurance cost. The policy also covers the cost of negotiators and their disbursement expenses. The requirement to purchase K&R coverage is most commonly assessed on a vessel by vessel basis.

A K&R policy should be a first loss policy, where Piracy is in the War policy and K&R is purchased with a waiver of rights of subrogation, the exposure of War underwriters is mitigated and this should be positively reflected in the additional War risk premiums.

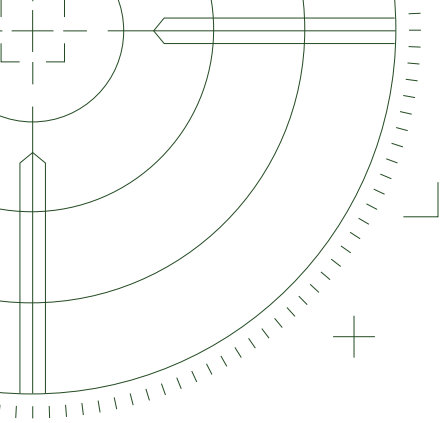
The existence of K&R coverage is highly confidential. Permission should be specifically obtained from K&R underwriters regarding disclosure of the coverage to other underwriters to avoid coverage issues.

“ Permission should be specifically obtained from K&R underwriters regarding disclosure of the coverage to other underwriters to avoid coverage issues. ”

Confidentiality is crucial.

The key advantages and disadvantages of K&R insurance are as follows:

Advantages	Disadvantages
<ul style="list-style-type: none"> • Avoids the cost of a ransom claim and associated expenses impacting on underlying marine policies (waiving rights of subrogation is key) • Provides certainty that in the event of a hijacking, appropriate coverage and response capability is in place • No delineation between Hull and Cargo interests, nor potential delay in ransom payment by Cargo until safe arrival of the vessel and cargo at final destination • The cost of insurance will normally be borne by charterers although this is obviously dependant on the charter party wording and individual commercial relationships • Provides certainty of coverage where the vessel/cargo have a low sound market value and GA contributions could be below the ransom demand 	<ul style="list-style-type: none"> • Potential duplication of coverage (double insurance) where policies are un-amended • Cost



What We Have Learned

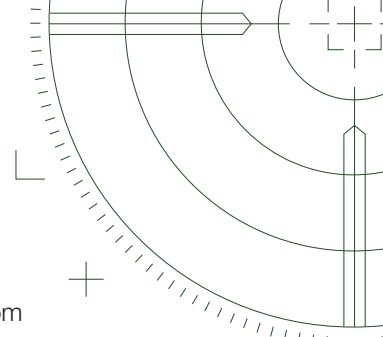
Drawing on the expertise that JLT has gathered, we have detailed below a pre-transit/post-incident checklist which provides some guidance to owners/operators together with some other insurance considerations which need to be borne in mind.

Pre-transit checklist

- Assess the risk profile of the vessel speed, freeboard and predicted weather patterns.
- Establish where piracy/ransom coverage rests. Would K&R coverage be beneficial?
- The appointment of the right security company to conduct negotiations is the key to an early release and a pre-existing relationship with that company should be established if possible.**
- Can War breach additional premiums be mitigated?
- Charter Party considerations - Would the charterers remain on hire?
- Is non-damage loss of hire coverage an option?
- Contact UKMTO Dubai

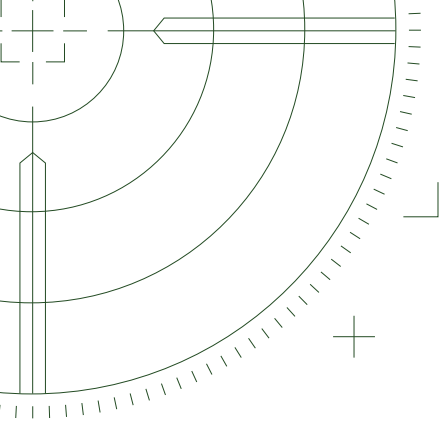
Post-incident checklist

- Where does the peril of Piracy rest?
- Who should be contacted?
- Who will undertake the initial negotiations if contact is made and have they received initial response training?
- Who are the negotiators and does the company know them?
- Will a loss be considered as a GA or Sue and Labour?
- Should GA be declared?
- Who would pay a ransom in the first instance?
- Who will handle the company's relationship with the relatives of the crew, media and authorities?



Other insurance considerations

- 1) GA is now generally accepted by both Hull and Cargo interests as the equitable way to treat ransom payments. Under English law the only relevant case is *Royal Boskalis v Mountain*, which ruled that ransom payments were covered under the standard marine policy as either GA or Sue and Labour. We believe the legal position is the same under both German and Norwegian law.
- 2) Some cargo interests will not contribute to the ransom demand until the cargo reaches its destination (being a provision of GA). This requires Owner's funding cargo's proportion of the ransom to secure the release of the vessel and cargo.
- 3) If the Sound Market Values of the vessel/cargo are low, then ransom demands can be in excess of the contributory values for ship and cargo. We have had a recent situation, where the release of the vessel was delayed as cargo interests would not contribute (a) because the demand exceeded the value of ship and cargo and (b) Cargo had not reached its destination. It is important to note that any deterioration of the cargo also has an important impact on its contribution to the ransom demand.
- 4) K&R insurance provides additional cover for loss in transit, and legal liability cover for damages as a result of actions brought by employees as a result of kidnap.
- 5) Lawyers can add value to a piracy scenario but the appointment of an Average Adjuster to collect GA security and cargo contributions is a far more practical step.
- 6) The Blocking and Trapping clause needs to be amended to remove the piracy exclusion in the underlying clauses under ITC.
- 7) K&R policies need to be amended to reflect the Marine market, i.e. first loss, waiver of subrogation, assureds to pay in the first instant.
- 8) K&R premiums can be recoverable from Charterers dependent on the Charter Party wording. The new BIMCO piracy clause specifically provides for related costs to be charged to a Charterers' account.
- 9) Ransom payments are neither included nor specifically excluded under standard P&I wordings but P&I Club Managers will try to resist any contribution to ransom payments even where the crew are injured.
- 10) Best Management Practice should be applied at all times although, as mentioned earlier, from our experience and that of our security advisors moving to a "Citadel" once boarded is not advisable. We are discussing this issue further with industry representatives.
- 11) Some law firms representing cargo interests, are now suggesting that vessels who do not register with MSC HOA or follow their recommendations, could be considered unseaworthy which could allow non-vessel interests to avoid making GA contributions.
- 12) Specific "non damage" loss of hire cover would need to be purchased to cover the vessel's loss of earnings whilst pirated or existing traditional loss of hire coverage would need to be amended. In such cases most charter party wordings make provision for hire to continue whilst the vessel is detained by pirates. Charterers can secure the benefits of this coverage in addition to a waiver of rights of subrogation from underwriters where they are prepared to pay the premium.
- 13) K&R Policies can be extended to include non damage LOH coverage but certain variations in cover should be considered.
- 14) The companies relationship with the negotiators is key both pre-loss and post-loss.



Further Assistance

If you find the information contained in this paper of interest and would like to discuss any of the issues covered in greater detail, please contact your JLT Account Executive or, alternatively, Sean Woollerson on +44 207 558 3866 or Sean_Woollerson@jltgroup.com or Robert Whaley on +44 207 558 3982, or Robert_Whaley@jltgroup.com

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Vessel Distress call
VHF - 16 and MF/HF DCS

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