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Rotterdam Rules

Marine Insurance Day
October 2, 2009
New York City

Agenda

- Overview
- Convention on the International Carriage of Goods Wholly or Partly by Sea (“Rotterdam Rules”)
- Procedures for Ratification and Implementation
- Comparison with COGSA

Overview

- Quest for International Uniformity and Modernization
 - Current lack of uniformity
 - COGSA enacted in 1936
- Prior Efforts
 - Hague Rules
 - Hague-Visby Rules
 - Hamburg Rules
 - Attempts to amend COGSA

Overview

- UNCITRAL
- Other groups involved
 - U.S. State Department
 - AIMU
 - MLA
 - Other Industry Groups
 - Shippers
 - Carriers
 - Freight Forwarders



Procedural Background

- Work began on Convention by UNCITRAL in 1996
- Adopted by UN in December 2008
- 18 Chapters; 94 Articles; 26 Pages of Rules
- Was presented for signature in September 2009 in Rotterdam; 16 countries signed
- Requires 20 signatures for entry into force
- Then will require implementing legislation in the U.S.

Comparison with COGSA - 1

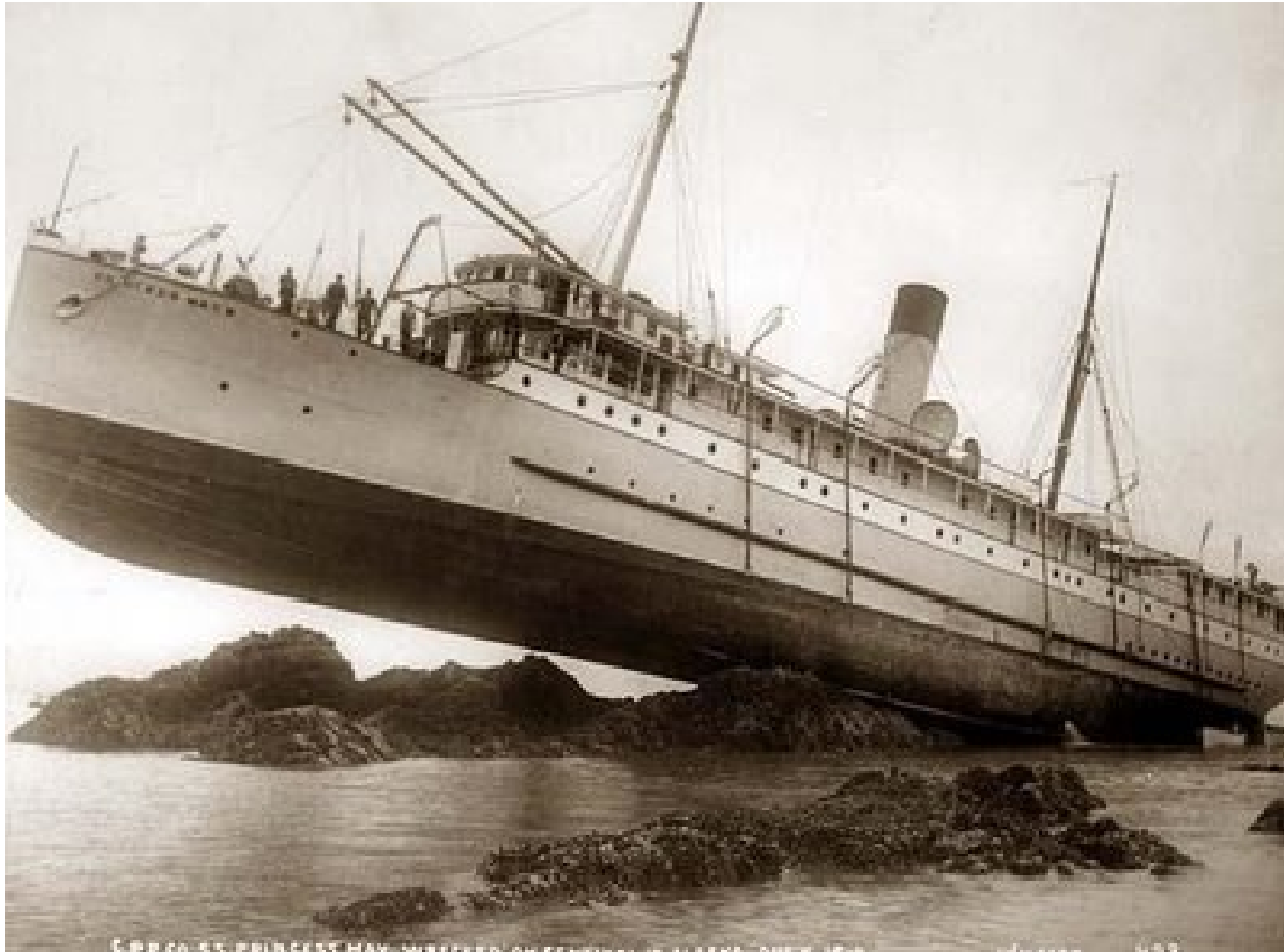
- When Applicable
 - Door to door, rather than tackle to tackle



Comparison with COGSA - 2

- Whom They Apply To
 - Maritime Performing Parties
 - But Not Inland Carriers





Comparison with COGSA - 3

- Basis of Liability
 - Based on Fault, with exceptions
 - However, Error of Navigation or Management no longer excepted
 - Fire defense remains, but burden has shifted

Comparison with COGSA - 4

- Burdens of Proof and Apportionment
 - Similar to current case law in U.S.
 - Apportionment of liability allowed, based on excepted and non-excepted causes of damage or loss

Comparison with COGSA - 5

- Charter Parties and Volume Contracts
 - Rules do not apply to charter parties
 - Parties to volume contracts may opt out

Comparison with COGSA - 6

- Jurisdiction and Arbitration
 - Not dealt with in COGSA
 - Included in Rotterdam Rules, but ratifying parties may ratify or disapprove separately
 - Mandatory jurisdiction and arbitration clauses have restrictions





Comparison with COGSA - 7

- On-Deck Carriage and Deviation
 - Detailed rules for on-deck carriage (and no limiting of liability if carrier agreed to stow under deck)
 - Deviation does not affect limit of liability, unless intentional or reckless (which would avoid limitation in general)

Comparison with COGSA - 8

- Transportation Documents and Control of Shipment
 - Requirements for Bills of Lading
 - Control of Shipment



Comparison with COGSA - 9

- Calculation of Damages and Limits of Liability
 - Limit may be based on packages, units or weight, whichever is greater
 - 875 SDR per package; 3 SDR per kilogram
 - Permits determination of packages or units in a container



Comparison with COGSA - 10

- Damages Due to Delay
 - Delay defined
 - Liability for delay (other than for physical damage) is limited to 2.5 times freight

Comparison with COGSA - 11

- Time for Suit
 - Two years
 - Separate provisions for indemnity actions

Comparison with COGSA - 12

- Liability of Shippers and Dangerous Goods



Comparison with COGSA - 13

- Rules for Electronic Communications (and Bills of Lading)

Conclusion

- Expectation of Ratification
- Questions?

Thank you for attending today's
presentation regarding:

Rotterdam Rules



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