

## Liability exposures – Growing concern for marine insurers

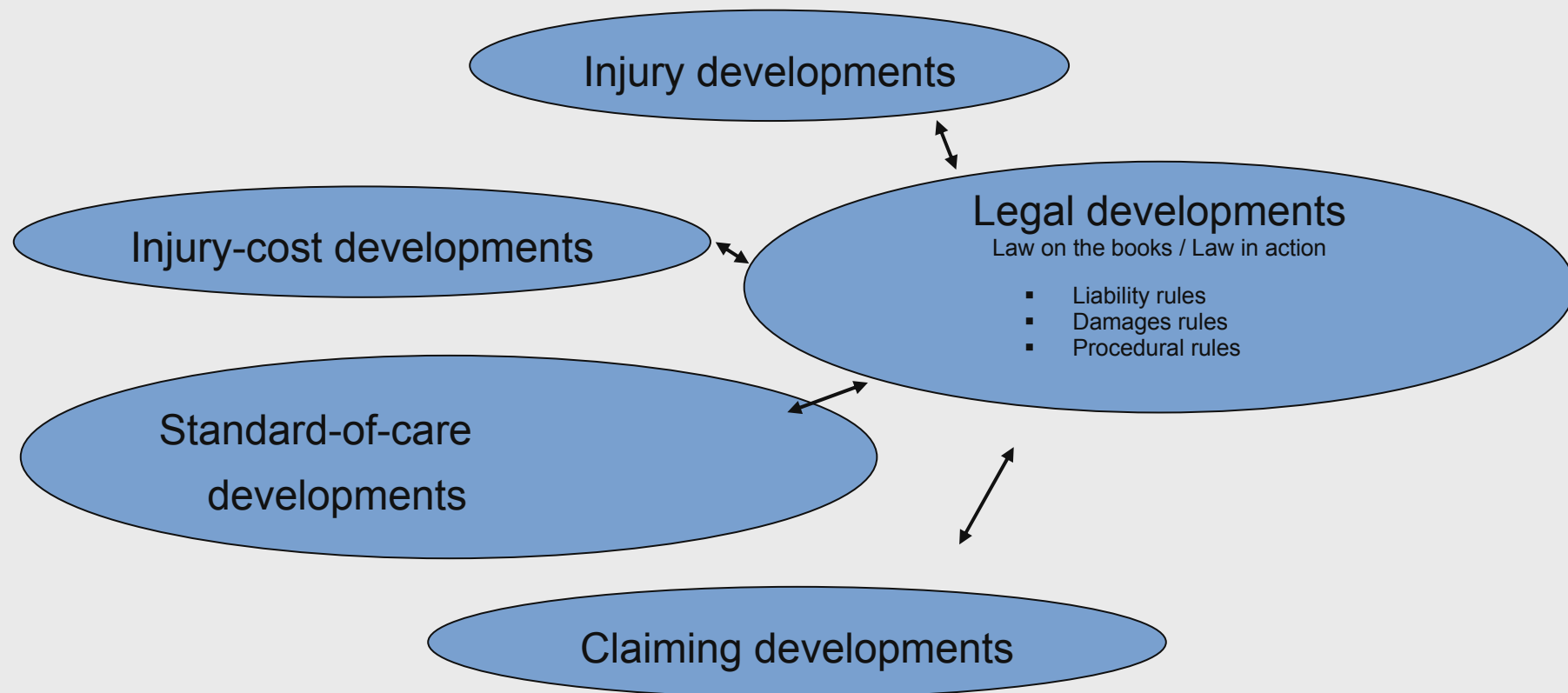
Dieter Berg  
20 September 2005



## Agenda

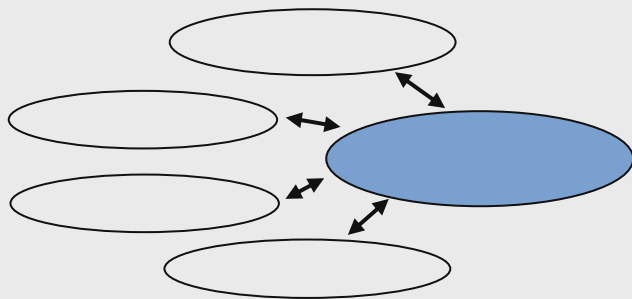
- Increasing liability exposure
  - general liability
  - marine liability
- Non-marine liabilities in marine policies
- Insurers' response to liability exposures
- Reinsurers' view

## Risk of liability – Increasing exposures



## Legal developments

*“... defined by the legal system: legislation and jurisdiction ...”*

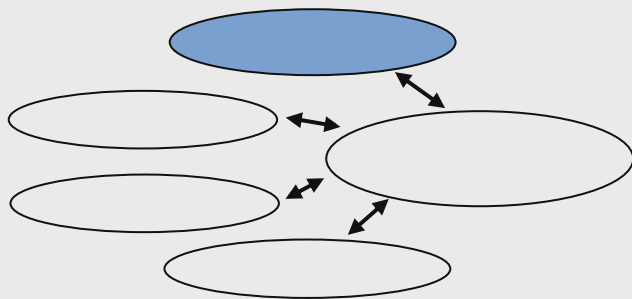


- Increasing regulations to protect consumers and environment
- Ongoing tort law extension / Strict liability
- Increasing indemnifications for non-pecuniary damages
  - punitive damages
  - loss of quality of life
  - fear of future diseases
  - damage to natural resources
  - harm to wildlife
- Pro claimant court attitudes
  - deep-pockets principle

## Injury developments

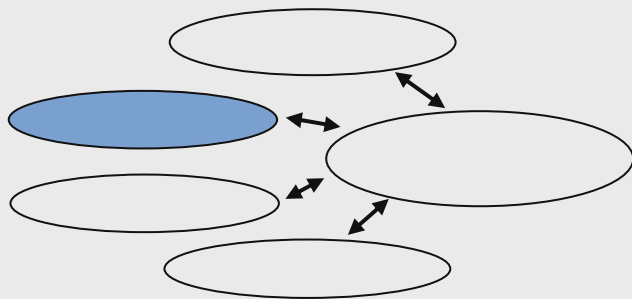
*“... defined by broader  
social factors ...”*

- Appearance of particular claims / Injury pattern
  - accumulation of injuries / losses
- Frequency of claims
- New types of diseases
  - post-traumatic stress
  - burnout
  - depression
  - back / neck pain



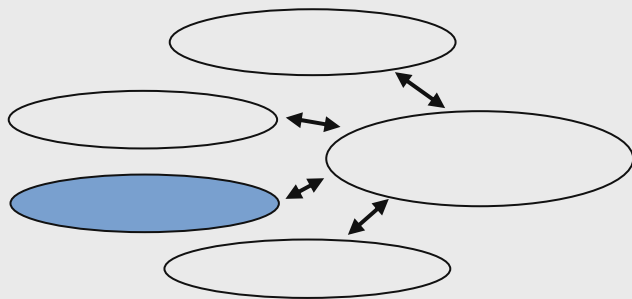
## Compensation cost and injury cost developments

- Claims inflation
  - medical costs
  - legal fees
- “End of welfare state”
  - less compensation under social security
  - recourse of health and disability insurers
- Disproportional growth in cost for cleanup and restoration

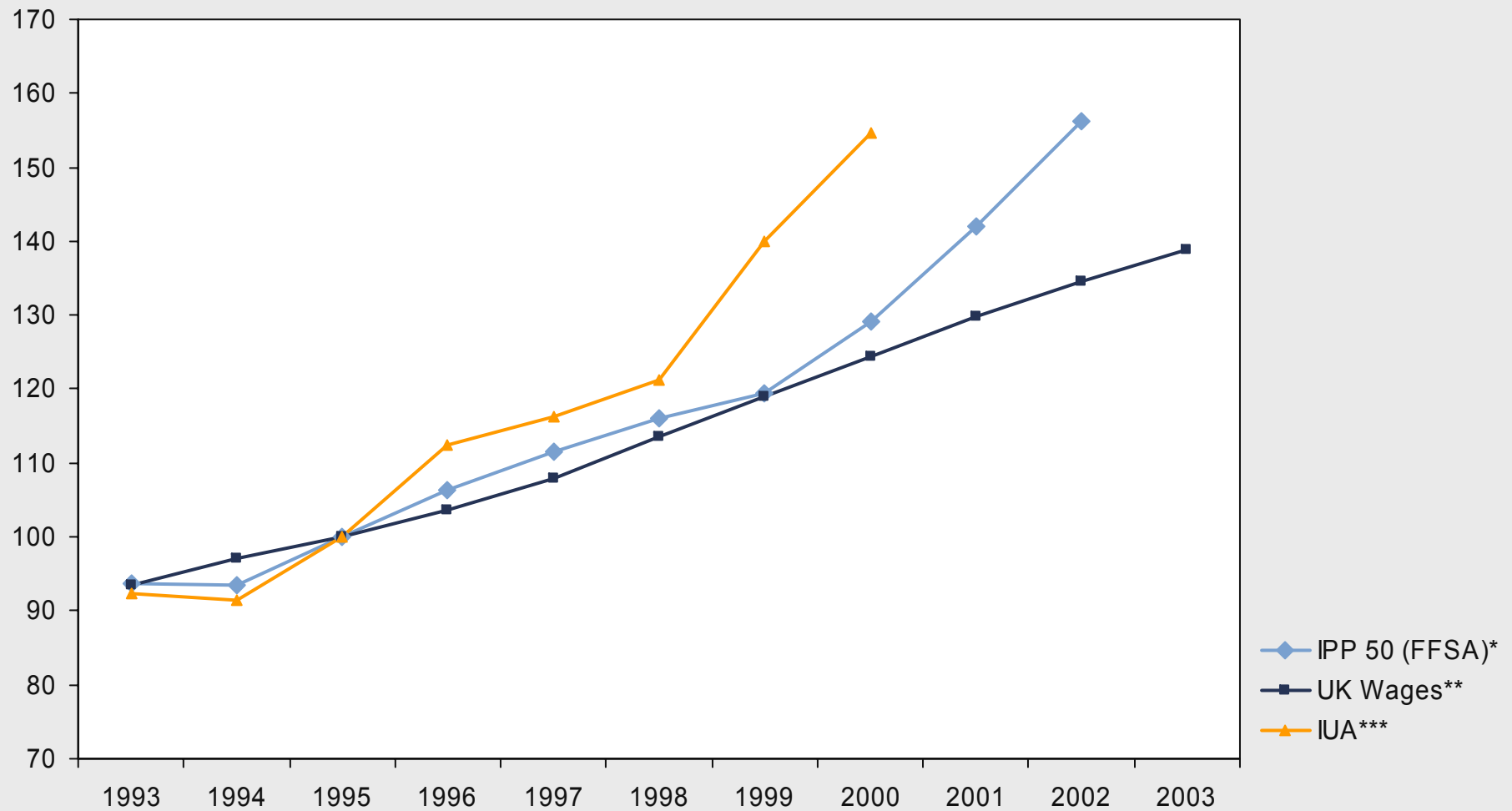


## Standard-of-care developments

- Expanding duty of care for professionals, contractors, shipowners and employers
- Comprehensive interpretation of negligence
- Safety at work requirements
- Raising standards in respect of environmental protection



## Medical cost inflation



\* Fédération Française des Sociétés d'Assurances, April 2004: disabilities 50% plus

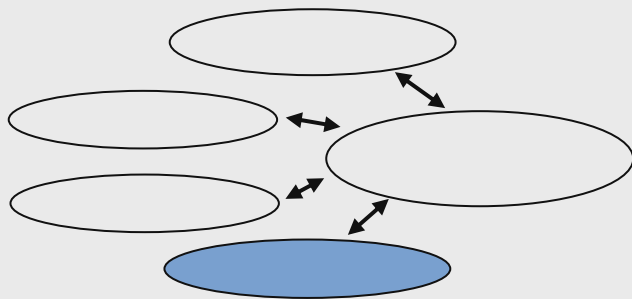
\*\* Office for National Statistics (ONS)

\*\*\* IUA Third UK Bodily Injury Awards Study (overall results)



## Claiming developments

*“... most persons who suffered a loss don’t bring an action...”*



- Litigious societies
- Expanded scope of persons entitled to claim
- Legal industry
  - advertisement
  - contingent / conditional fees
- Simplified access to courts
- Internet allows better information and organisation of victims’ association
- Under-compensation of personal injuries in developing countries or for low-cost crews

## More stringent marine liabilities

- New laws in respect of environmental and criminal sanctions
  - Canada, France, Brazil
  - increased penalties and fines
- Additional compensation for oil pollution damage
  - CLC (Prot.1992): Increase in limits by 50% as from Nov. 2003
  - STOPIA: Denmark, Finland, France, Germany, Ireland, Japan, Norway, Spain + others
  - Taiwan: Marine Pollution Control Act
  - USA: Increase of OPA 90 tanker liability limits
- Norway: Limit for shipowners' liability for loss of life or personal injury to passengers doubled
- Substantial increase of "Global Limitation Rules"
- Increase of liability limits per passenger (Athens Convention)

## **Marine liabilities – Trend towards higher compensation ?**

Three main trends in general liability are carried forward to marine liabilities:

- ▶ Broadening scope of liabilities
  - new laws and regulations
  - limitations of liabilities for maritime industry are questioned
- ▶ Claims inflation
  - increasing compensation for bodily injury and non-economic damages
  - crew claims are the largest single claims category
  - frequency and large loss claims
  - inflation of cleanup costs and third-party claims for pollution incidents
- ▶ Fluid borderline between legal, moral or factual liability
  - social / environmental responsibility

## Non-marine exposures in marine liability policies

- Scope of cover often lacking transparency in general liability
- Advantages for special line
- Increasing non-marine liability exposures
  - surveyor companies (industrial surveys and management consultancy activities)
  - engineering products companies (non-marine in addition to oil and gas products)
  - drilling contractors also manufacturing various other production equipment
  - energy services companies
  - bumbershoot policies (CGL, auto, EL, aviation, .... )

## Insurers' response

- Strengthen risk-management activities
- Intensify underwriting research and liability expertise
- Identify additional liabilities in marine coverage
  - wider pollution coverage
  - contractual liabilities
  - non-marine liabilities in marine packages
- Limit coverage on pure marine liabilities !

## Reinsurers' view of non-marine liabilities

- Pricing must reflect the changing loss environment
- Structural change of exposure
  - long-tail cover
  - reserving problems / IBNRs
  - indexation
- Underwriting expertise
- Claims handling

## Reinsurers' view on non-marine liabilities

- Transparency
  - underwriting policy of cedant
- Precise “Interest Clauses”
  - definition of the covered classes of business
  - agree on necessary exclusion clauses to further define the cover if necessary
  - Liability Exclusion Clause (LEC B) might not be sufficient in all cases

***„..... it is all about partnership, ongoing exchange of views and common understanding of risk ....“***

Thank you very much for your attention.

Dieter Berg



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