



A Review of the Proposed Revisions to the Institute Cargo Clauses (A)

Nick Gooding FCII

XL London Market Ltd

16th September 2008

Changes Proposed

- Side Headings
- Definition of the Assured
- Packing & Preparation
- The Delay Exclusion
- The Insolvency Exclusion
- Nuclear Accidents
- The Unseaworthiness Exclusion
- Terrorism
- Duration of Transit
- Change of Voyage
- Benefit of Insurance
- General Updating



Insufficiency of Packing or Preparation



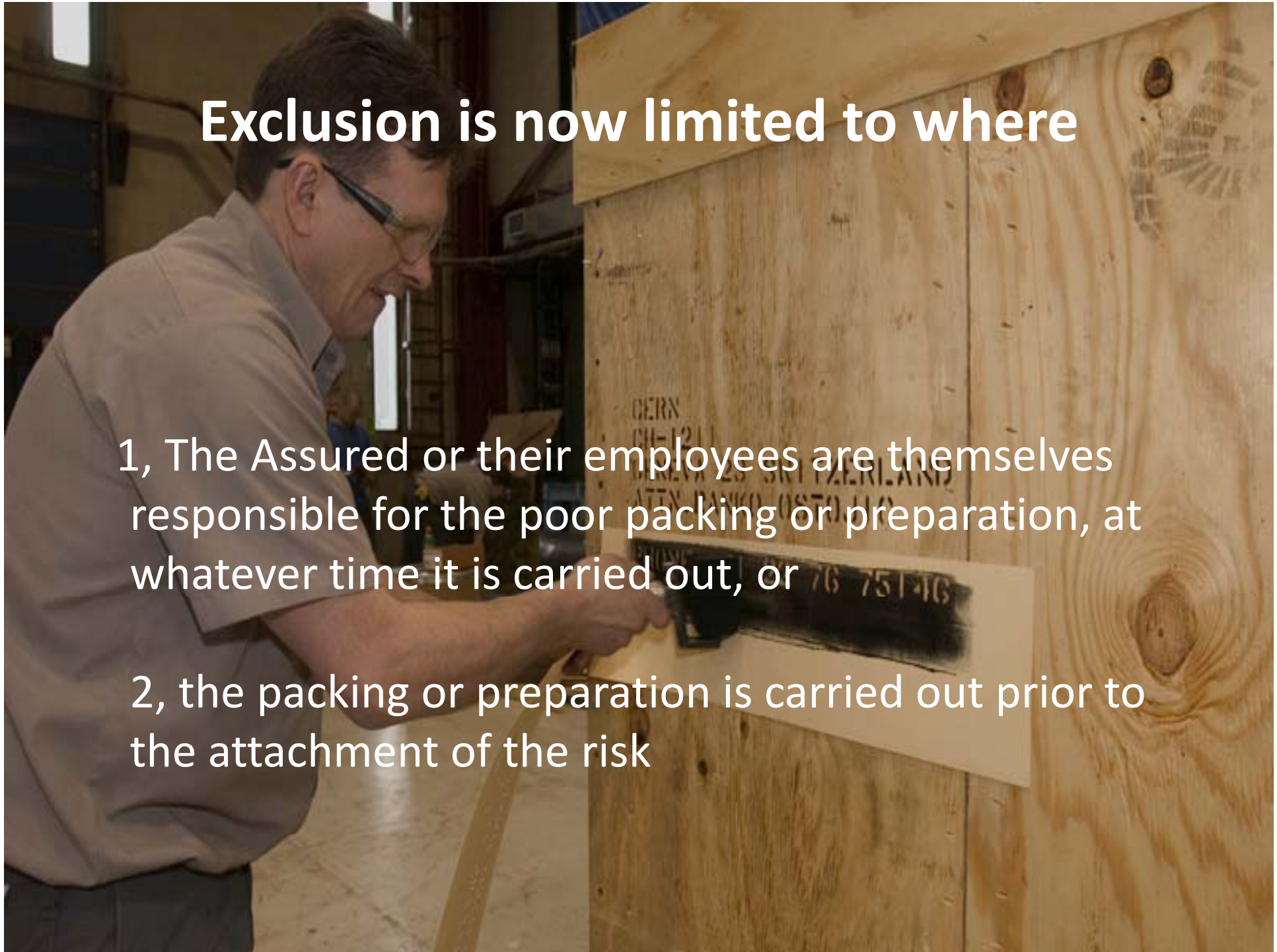
The background image shows the interior of a shipping container. The walls are made of light-colored wood paneling. The floor is dark and appears to be metal. There are several cardboard boxes stacked in the center. A yellow and black striped caution tape is stretched across the top of the container. The number '3-1092' is visible on the top right corner of the container's interior.

“In no case shall this Insurance cover

- 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of this Clause 4.3 “packing” shall be deemed to include stowage in a container)”

Exclusion is now limited to where

- 1, The Assured or their employees are themselves responsible for the poor packing or preparation, at whatever time it is carried out, or
- 2, the packing or preparation is carried out prior to the attachment of the risk

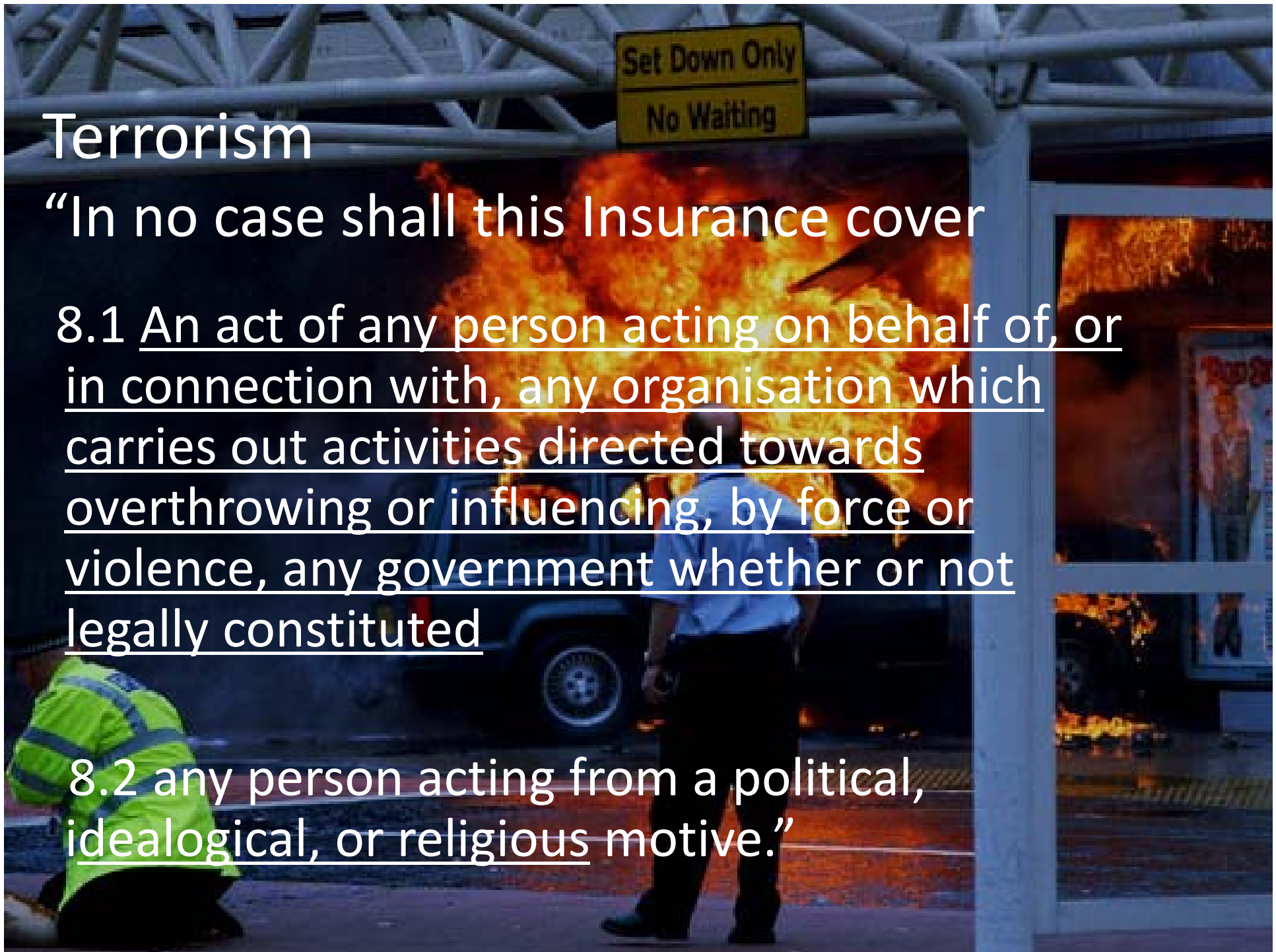


Terrorism

“In no case shall this Insurance cover

8.1 An act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards overthrowing or influencing, by force or violence, any government whether or not legally constituted

8.2 any person acting from a political, ideological, or religious motive.”



Transit Clause - Attachment

“9.1 Subject to clause 12 below, this insurance attaches from the time the subject-matter insured is first moved for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance in or at the warehouse or place of storage at the place named here in for the commencement of the insured transit”



- This is now covered !!!!

Transit Clause - Termination

“9.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named herein.

9.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or any other place of storage, whether prior to or at the destination named herein, which the assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or”

Termination continued

“9.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage of the subject-matter insured whether temporary or otherwise.”

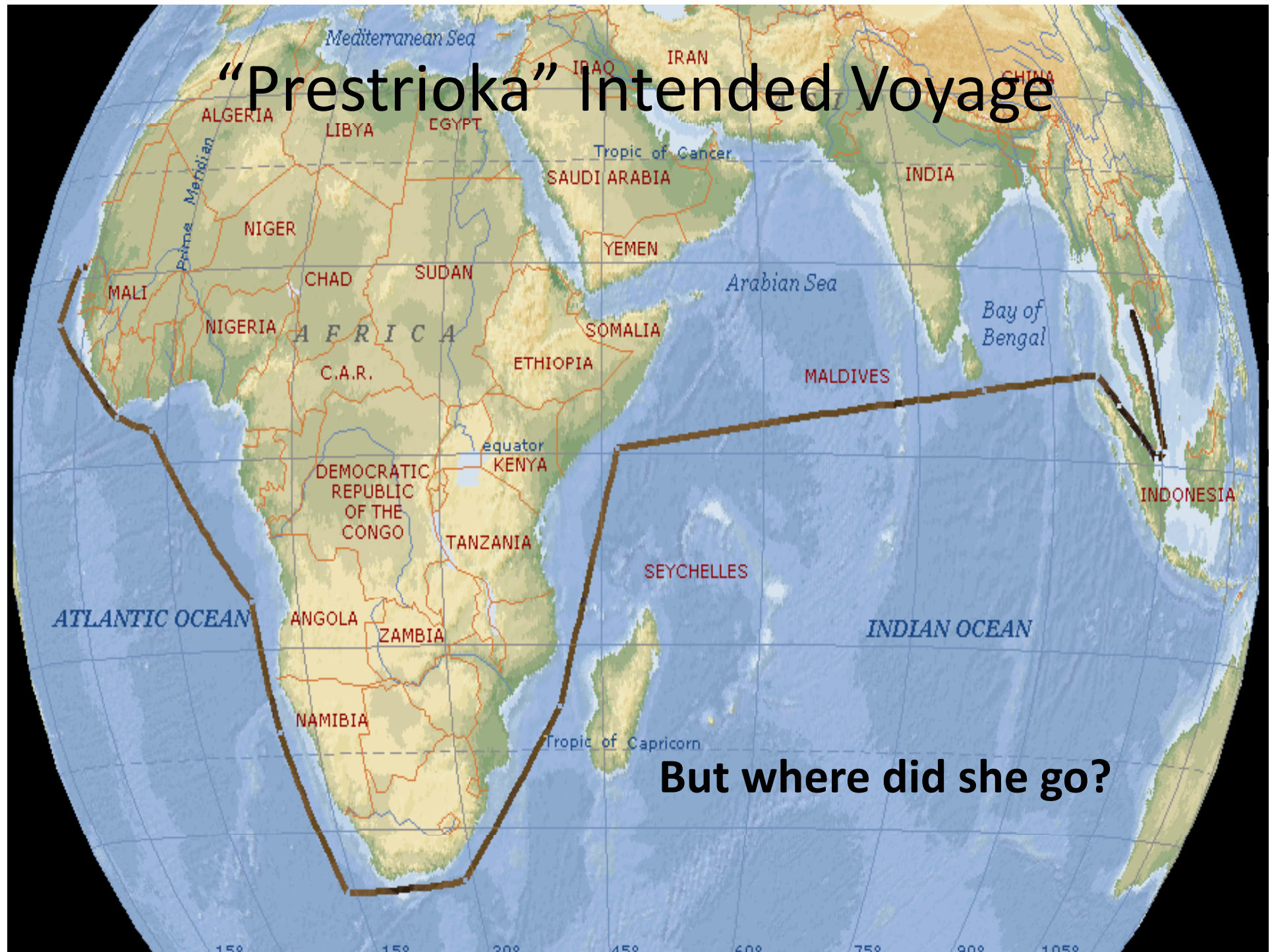
**9.1.4 on the expiry of 60 days after completion of discharge
overside of the subject-matter hereby insured from the
oversea vessel at the port of discharge, whichever shall first
occur.”**

Change of Voyage

“Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach.”

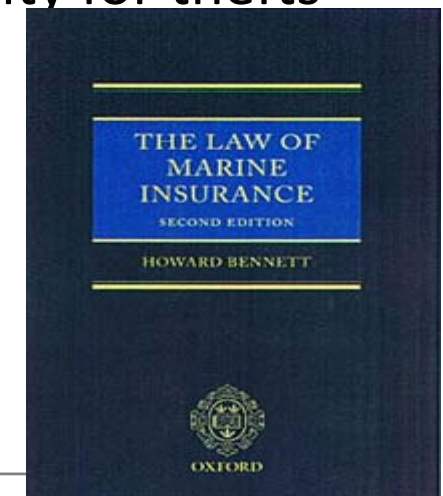
Marine Insurance Act 1906 Section 44

“Prestrioka” Intended Voyage



But where did she go?

“There appears to be no intrinsic merit in the decision in the “Prestrioka”. The insured cargo embarked upon the contemplated journey, albeit not technically upon the insured adventure. It was lost by the peril of theft. Had it been stolen in any other way, even by being driven away in a “phantom lorry” at the port of destination the insurers would be liable. Instead, they escaped liability in what must have been considered a technicality. The only solution appears to be a clause drafted specifically to disapply section 44 and make it clear that insurers accept liability for thefts involving phantom vessels”



1. Insurable Interest
2. “Subject-Matter Insured” substituted for
“Goods”

Feedback from Consultation

- Helpful and constructive response
- Comments posted by
- London Market Brokers' Committee
- Market bodies in
- Belgium, Italy, Norway, Japan, New Zealand & Australia

JANUARY

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				<u>1</u>	2	3
4	5	6	7 Orthodox Christmas Day (Orthodox)	8	9	10
11	12	13	14 Orthodox New Year (Orthodox)	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

• Further amendments due to points raised by respondents

• Will not alter overall thrust of revision

• Reissue of draft clauses with changes end of September

• Consultation period of 1 month

• Clauses to be available for use from 1st January 09

Closing Remarks

Reference Book of Marine Insurance Clauses 76th Edition

- Amendments will be carried through to
Including IUA policies and schedules
- Institute Cargo Clauses 'B'
- Institute Cargo Clauses 'C'
- Institute War Clauses

Witherbys Publishing
2006 - 2007

- Institute Strike Clauses will be known as Institute Strike & Terrorism Clauses



- Thank you to the working group being
- John Dunt - Consultant to Clyde & Co



- William Melbourne – Consultant Clyde & Co



- Tony Sigwart – Brit Insurance



- Nick Harris – Xchanging Claims Services



- Gordon Dickson – RSA



- Neil Smith – London Market Association

