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ASD | MARITIME  
INDUSTRY



# MIND THE TRAP !

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# MIND THE GAP



MIND THE  
TRAP

# WHY TAKE OUT CO-INSURANCE

## Different Intentions and Purposes:

- No idea why I took out co-insurance. Everybody else did, so I did as well.
- I wanted to be sure that there is no recourse by the insurer against me.
- I wanted real insurance cover for myself and got it cheaply here.
- I have my own insurance, but my contract provides for taking out co-insurance.

## CONTRACT FORMS

- CI. 17 (b) BARECON 2017

*The party insuring the Vessel shall do so on such terms and conditions and with such insurers as the other party shall approve in writing, ... and shall name the other party as **co-assured**.*

## CONTRACT FORMS

- BIMCO Cl. 10 SHIPMAN 2009 ≈ cl. 6.8 (iii) CREWMAN A

*The Owners shall procure ...that ...*

*....*

- (c) the Owners' Insurances name the Managers and, subject to underwriters' agreement, any third party designated by the Managers as a **joint assured**, with full cover.*

## DO YOU REALLY KNOW WHAT YOU GET?

- If you agree to be co-assured, the contract is not „your“ contract.
- Query: Do you have access to the policy and conditions?
- You are subjected to the law agreed between Assured and Insurer:
  - American Institute Hull Clauses: No choice of law clause in the form
  - Institute Time Clauses: **English Law**
  - German ADS: **German Law**
  - Nordic Plan:
    - Nordic Claims Leader: Law at his seat (**Danish; Finnish; Norwegian; Swedish**)
    - Other Claims Leader: **Norwegian Law**

# DO YOU REALLY KNOW WHAT YOU GET?

- P&I Clubs:
  - American Club: **New York** law
  - Britannia; London; NorthStandard; Steamship; Shipowners; UK; West of England: **English** law
  - Gard; Skuld: **Norwegian** law
  - Japan P&I: **Japanese** law
  - Swedish Club: **Swedish** Law



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Focus on P&I



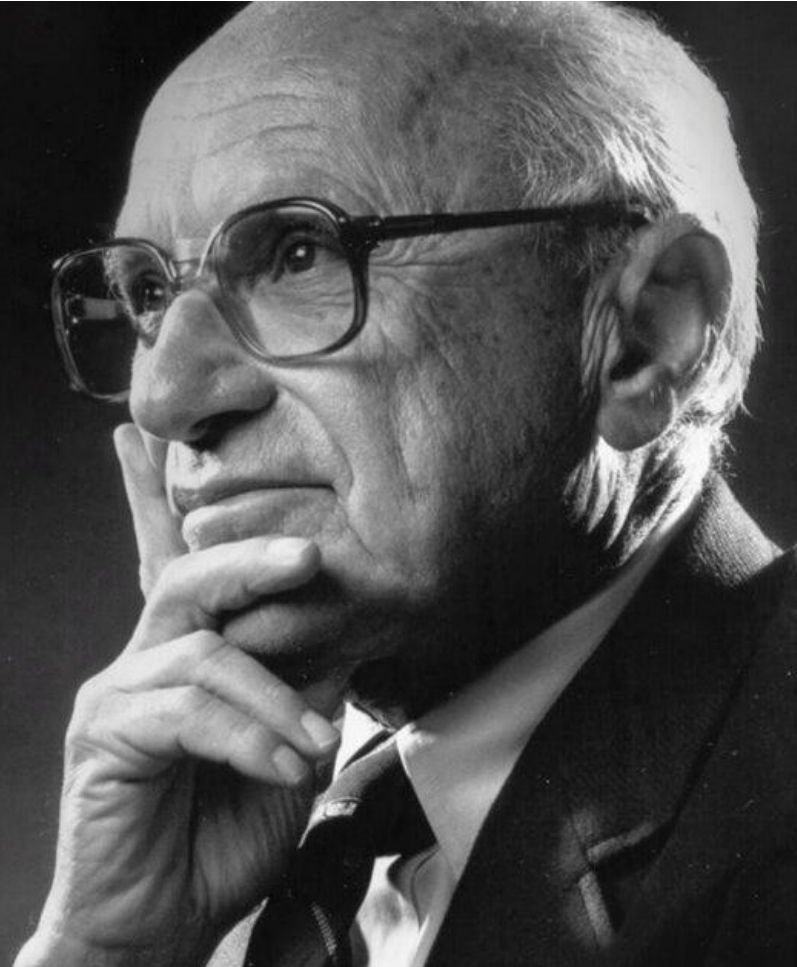
## CO-ASSURANCE IN P&I

- Rules contain provisions on co-assurance and joint membership
- Examples of Co-assureds from Rule Books
  - *Holding companies or beneficial owners of the member*
  - *Someone who has entered into a contract with the Member for the provision of services for or by the insured vessel*
  - *Time or voyage charterers*
  - *Mortgagees*
  - *any other named Co-assured*

# CO-ASSURANCE IN P&I

*A Milton Friedman favorite political aphorism:*

**“There’s no  
such thing  
as a free lunch.”**



## CONTRACT FORMS

- BIMCO Cl. 10 SHIPMAN 2009 ≈ cl. 6.8 (iii) CREWMAN A

*The Owners shall procure ...that ...*

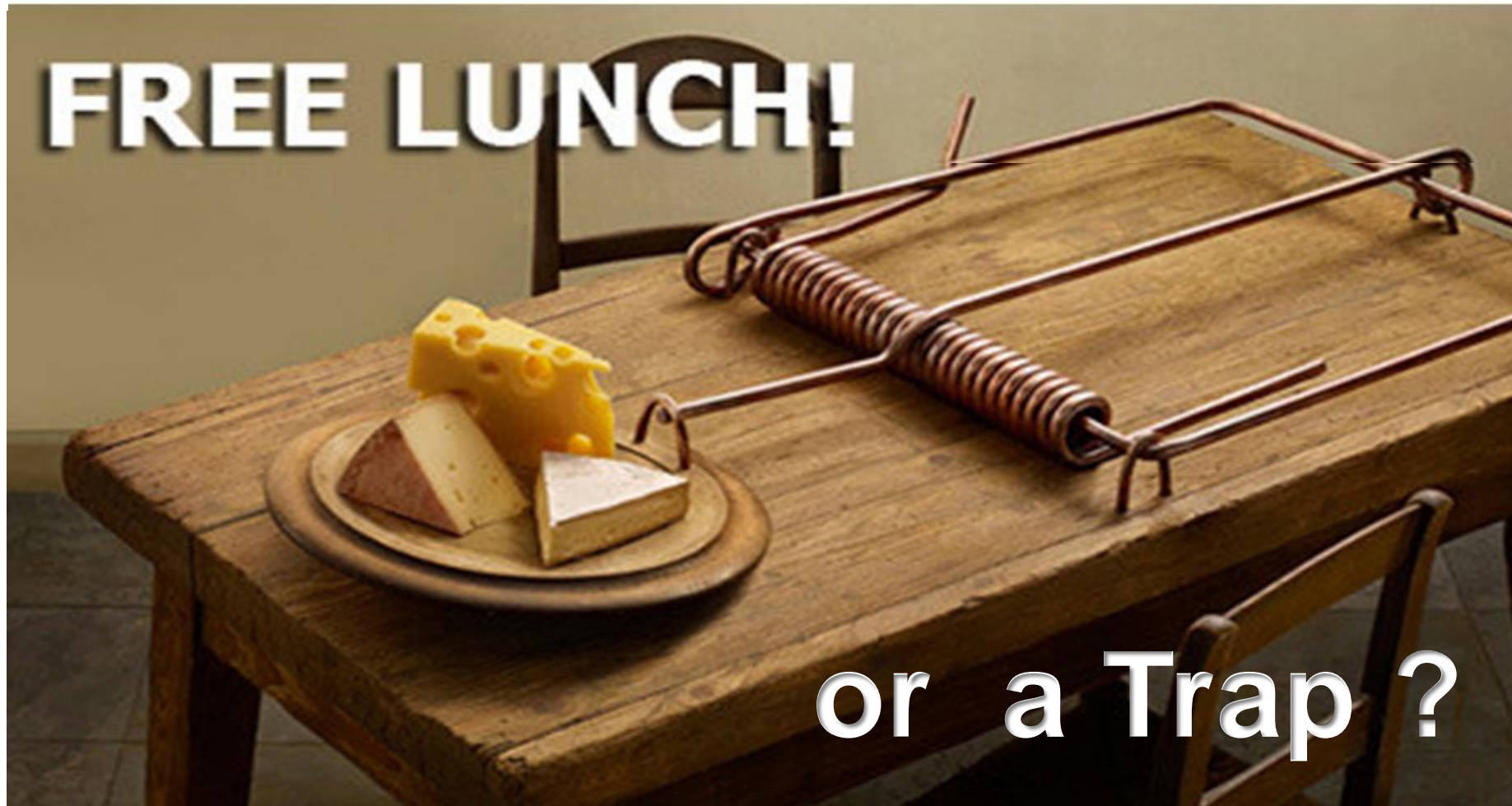
*....*

*(c) the Owners' Insurances name the Managers and, subject to underwriters' agreement, any third party designated by the Managers as a joint assured, with full cover. It is understood that in some cases, such as protection and indemnity, the normal terms for such cover may impose on the Managers and any such third party a liability **in respect of premiums or calls** arising in connection with the Owners Insurances.*

**Mind you: This is BIMCO.**

**They foresee a premium/calls liability**

# CO-ASSURANCE IN P&I



## CO-ASSURANCE IN P&I

- Example
  - *Co-assured: Manager, Time Charterer; Mortgagee*
  - *Vessel causes damage to cargo on board*
  - *Cargo owners arrest the Vessel and start action (only) against the Owners – the Co-Assured is not liable in law*
  - *P&I puts up security by way of a Letter of Undertaking*
  - *Thereafter, P&I finds out that cover is prejudiced*
  - *P&I pays under the LoU*
  - *P&I turns around and wants to recover from Owner and the Co-assureds*
- Who is liable to the Club?  
|

## CO-ASSURANCE IN P&I

- Mind you:
  - *The action was only against the Owners*
  - *The Co-Assured is not liable in law*
  - *The only party benefitting from the P&I settlement are the Owners*

## CONTRACT FORMS

- Cl. 10 SHIPMAN 2009 ≈ cl. 6.8 (iii) CREWMAN A

*The Owners shall procure ...that ...*

*....*

- (c) the Owners' Insurances name the Managers and, subject to underwriters' agreement, any third party designated by the Managers as a joint assured, with full cover. It is understood that in some cases, such as protection and indemnity, the normal terms for such cover may impose on the Managers and any such third party a liability **in respect of premiums or calls** arising in connection with the Owners Insurances.*

- We are not talking premium, but liability? Is the Co-assured liable?



# CO-ASSURANCE IN P&I

Here comes the recommendation  
how you should react as a lawyer:



## CO-ASSURANCE IN P&I

- Britannia Steamship Rule 8.1.1.1:  
the Senior Member and all **Joint Members** shall be jointly and severally liable to pay all Contributions **or other sums** due to the Association
- Similar Rules with



- Japan P&I
- NorthStandard
- Shipowners
- Steamship
- UK Club
- Swedish Club

## CO-ASSURANCE IN P&I

- Skuld Rule 45.1:

*Joint members and **co-assureds** named on any one Certificate of Entry shall be jointly and severally liable in respect of all premiums, calls **and other sums due** to the Association in respect of the entered vessel*

- *Any other sums?*
- Only sums comparable to premiums and calls (“*ejusdem generis*”)?

## CO-ASSURANCE IN P&I

- American Club Rule 1.14:

*Joint Members, **Co-assureds** ... and Affiliates ... shall be jointly and severally liable for **all sums due to the Association in respect of such insurance,***

- No reference to premiums or calls
- No room for any *ejusdem generis* considerations

## CO-ASSURANCE IN P&I

- Similar rule with Gard (though limited to certain Co-assureds)
- Gard “Guidance to The Rules 2024”:

*Similarly, if the Association is obliged to pay a third party claim pursuant to the terms of a guarantee that has been issued by the Association at the request of the Member, and it subsequently transpires that cover is not available for such a claim, **the Member** is obliged to indemnify the Association for such payment. If he is unable to do so, the Association is entitled to seek recovery from the **Co-assured** ...*

# CO-ASSURANCE IN P&I

So, this is what you get:



**No Lunch**

**But the bill**

**BILL / CASH MEMO** Phone No: \_\_\_\_\_  
Bill No: \_\_\_\_\_

**LOGO** **COMPANY NAME**  
Address Line 1: \_\_\_\_\_  
Address Line 2: \_\_\_\_\_

**Date:** \_\_\_\_\_

**To** \_\_\_\_\_

Vehicle No \_\_\_\_\_ Type \_\_\_\_\_ Reading \_\_\_\_\_

SL.No:	PARTICULARS	RATE	Amount	
			Rs.	P.
		<b>TOTAL:</b>		

**TOTAL AMOUNT** \_\_\_\_\_

Terms and Conditions \_\_\_\_\_

**For Company Name**

Authorized Signatory \_\_\_\_\_

## CO-ASSURANCE IN P&I

Re-writing the example:

- The Co-assured is the ship manager
- He is liable to the Owner for bad maintenance of the vessel
- This liability is limited:

Cl. 17. (b) SHIPMAN A:

*The Managers' liability ... shall never exceed a total of ten (10) times the annual management fee payable hereunder.*

## CO-ASSURANCE IN P&I

Re-writing the example:

- The Co-assured is the ship manager
- He is liable to the Owner for bad maintenance of the vessel
- Upon settlement under the LoU, P&I is subrogated into the Owners' rights for claims against the ship manager
- As just seen, that recourse claim is limited by cl. 17 (b) SHIPMAN A



## CO-ASSURANCE IN P&I

### **BUT:**

- P&I does not pursue a subrogated claim under SHIPMAN
- P&I pursues a genuine claim under its Rules
  
- Co-assurance effectively wipes out the contractual agreement on limited liability

**There could be people who might call that a trap**



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Thank you very much for your attention

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