

OPENING REMARKS BY MR. HAYDEN

Good morning ladies and gentlemen. It is indeed a pleasure to appear before you this morning for the task of untangling what is the most interesting collision scenario that Patrick Bonner and I could dream of. Please note that the collision scenario that we have suggested and is before you is replete with problems, legal questions and scenarios that will affect the United States Coast Guard, Average Adjusters, Salvors and generate a potential criminal proceedings for the ensuing oil spill.

It is important to note that Mr. Bonner and I both will breach the rules of ethics and provide advice without regard to the thought that we could be in any way conflicted. Mr. Bonner will speak as the shipowners' lawyer representing both ships, the M/V OIL CARRIER and the M/V TESTBANK. I will speak on behalf of cargo interests not only that were laden on the OIL CARRIER but also the TESTBANK. In real life, of course, such would rarely happen as the cargo interest on each ship may be in dramatically opposed to each other, in the rush for security, recovery of their cargo, etc., etc., etc. Likewise Mr. Bonner would rarely be in a position where he would represent both ships in a collision situation.

Mr. Bonner will start out by exploring the immediate steps he would take as counsel for shipowners of the M/V TESTBANK. I will thereafter advise as to what immediate steps I would take representing the cargo interest on the same ship. Thereafter, we will change sides and Mr. Bonner will represent the shipowner on the Singapore flag M/V OIL CARRIER, and I will give a presentation as to steps I would take to protect the rights of the owners of the cargo of oil that has been lost at sea and remains on board the grounded OIL CARRIER, subject to a Lloyds Open Form Cargo Contract, under which Scopic has been invoked.

Following my comments Bruce Dalcher, a fellow member of The Maritime Law Association, who practices in Washington, will comment on the various issues reached in the Scenario from the Government's point of view.

I think you will find our discussion here today to be interesting and, we will, of course, at the end of our presentation, invite your questions and since this is a viewpoints presentation, we would like to have audience participation with suggestions and comments from the Average Adjusters, Salvors, and Coast Guard interests as to what they perceive should occur and what the problems are with respect to each vessel.

Mr. Bonner I invite you to proceed in explaining to the audience the issues you see for the M/V TESTBANK.

MR. BONNER'S SPEECH

The scenario you have before you reminds me of the Tampa Bay oil spill case. In that case, a Maritrans tug and oil barge were entering Tampa Harbor and were in the process of passing a Bouchard tug and oil barge. A cargo vessel was outbound and the cargo vessel collided with the Bouchard unit and continued on and collided with the Maritrans unit. There

MR. BONNER'S SPEECH (cont.)

was a large oil spill from the Bouchard barge and the Maritrans barge caught fire and was a total loss. The Bouchard and Maritrans units were entered in the same P&I Club and the Freehill firm assisted in setting up two teams to represent these owners. I will admit that I had this case in mind when I did the first draft of the scenario.

TESTBANK OWNERS

INSURANCE- If we were called to represent the TESTBANK vessel interests, the first thing I would recommend would be to examine which insurers covered which losses. It appears that the TESTBANK P&I would be involved for the personal injuries and deaths on both vessels and any pollution caused by both vessels. I would check the cargo liability coverage for the TESTBANK to see if this was with P&I also. In addition, I would check to see if there was three fourths running down clause coverage with the P&I or whether hull covered collision damages. Traditionally, there was a three fourths running down clause in the P&I policy which means that P&I covers one quarter of the collision liabilities and usually is the lead underwriter for the collision liabilities. An additional item to check would be the absorption clause in the hull policy. The size of the absorption clause would influence whether or not the vessel owner will be declaring general average.

In this case, I am assuming that the P&I covered cargo liability and that there was a three fourths running down clause in the P&I policy for collision liabilities.

After sorting out the coverages, I would set about getting a team of lawyers involved to handle the various aspects of the case.

ORGANIZATION - Attached is my firm's organization chart for a large casualty. It is geared towards oil spills but can be used in any major incident.

COORDINATION - We would have a senior partner coordinating everything from our offices. The lawyers in the field would report to him and he would be in direct contact with the owner, P&I Club and various Government officials.

The chart is largely self explanatory. In this present collision, we would tweak the organization chart somewhat.

CLEAN-UP - The oil came from the other vessel and the OIL CARRIER interests would be taking the lead on the cleanup. However, since there will be a claim over against the TESTBANK interests, we would recommend retaining an expert to monitor the cleanup of the oil and the natural resource damage assessment dealing with the spill. One would hope that the OIL CARRIER interests would minimize the cost of these items but it will be necessary to have someone representing the TESTBANK to ensure that this is done. This may be especially useful if a major oil company becomes involved in the cleanup. In that case, it is possible that money would be spent polishing the image of the oil company rather than polishing the rocks ashore.

MR. BONNER'S SPEECH (cont.)

I would immediately request that the TESTBANK owners advise of the contents of the 75 containers that went over the side. Depending upon the circumstances, it may be necessary to retain salvage experts to try to recover these containers if they are floating and environmental experts to mitigate the effect of any environmental damage due to certain chemicals being in the containers. Following the ATHOS grounding in the Delaware, I would recommend that the owner do everything possible to recover every container lost over the side. Even if the containers sank, they could present a risk of damaging other vessels or releasing their contents over time possibly causing additional pollution.

Usually, the lawyer assigned to clean up stays in the command center and deals with the Federal On Scene Coordinator, usually the Captain of the Port. In addition, this lawyer would be the main contact to the public relations expert who would be hired as soon as possible after the casualty. The lawyer would vet any PR releases and assist in responding to Coast Guard inquiries and directives relating to the casualty.

INVESTIGATIONS - We would send a number of lawyers out to interview the crew on the TESTBANK as soon as possible and to begin preparations for the Coast Guard hearings. We would also retain a navigation expert and an angle of blow expert to assist in the preparations and in the hearings. They would also assist in developing a claim against the OIL CARRIER.

We would task a lawyer with determining whether any of the crewmembers of the TESTBANK had any personal injuries or were considering asserting claims against the TESTBANK owners. It is very difficult to defend a collision case if some of the crewmembers involved are claiming that your vessel is unseaworthy. Once they hire lawyers to assert Jones Act and unseaworthiness claims, the prosecution of the collision case becomes much more difficult. If it appears that any of the men were injured or have legitimate claims, I would recommend settling with them as soon as possible.

CLAIMS - It will be necessary to hire surveyors and salvage experts to deal with the containers onboard that were damaged due to the flooding.

One would expect that there would be cargo claims from the cargo interests on the TESTBANK and also on the OIL CARRIER. No doubt both would threaten arrest. On behalf of the TESTBANK, we would be drafting and filing a Limitation of Liability petition at the earliest possible time. This could involve a race to the courthouse to establish jurisdiction. The Limitation petition must be filed in any district in which the vessel has been arrested on a claim associated with the collision. If the vessel has not been arrested, the petition must be filed in the district where the owner has been sued with respect to any such claim. If the vessel has not been arrested and the owner has not been sued yet, the petition must be filed in the district where the vessel is located. If this was an actual case, I expect that the draftsman at Hill Rivkins and Freehills might be racing each other to get their papers filed. More likely, we would simply talk to each other on the phone and agree that the petition would be filed in either the Eastern or Southern Districts of New York or the District of New Jersey.

MR. BONNER'S SPEECH (cont.)

Depending upon the size of the absorption clause, the owner would be considering whether to declare general average. In a casualty of this size, it is expected that general average would be declared. We would have someone working with the broker on this process and insuring that the required security was collected. We would have a lawyer working on all the general average legal issues.

In addition to a claim from the cargo on the TESTBANK, there would also be a cargo claim from cargo on the OIL CARRIER. Under the American Rule in collision cases, cargo may recover from the non-carrying vessel 100% of its damages for lost cargo, physical damage or diminution of value due to delay. Cargo may also recover in full from the non-carrying vessel its expenses paid in general average as well as the lost amount of pre-paid freight. The damages paid by the non-carrying vessel become part of its total damages that it will be claiming against the other vessel involved in the collision, the carrying vessel. Thus, at an early stage, it will be necessary to ascertain the value of the cargo that was lost and the other damages of the cargo on the OIL CARRIER.

There will be many third-party pollution claims asserted against the owners of the OIL CARRIER and the OIL CARRIER will seek indemnity for these claims. Thus, it would be prudent to have someone monitor the progress of the payment of these third-party claims. The OPA limitation fund of the OIL CARRIER is \$48 million. The gross tonnage of the TESTBANK is 5,629 so her OPA limitation figure is \$3.4 million. There are many legal issues involved here in connection with sole fault, Limitation amounts, OPA- 90 and State law and the right to limit. It sounds like this will be a both to blame collision so we may avoid some of the issues relating to sole fault but there will be considerable legal research going on once the facts of the incident are known. On behalf of the TESTBANK, we would have someone monitoring the total amount paid out on the pollution claims and damages so we would know when we are approaching the limitation figures. At that point, it may be possible to negotiate with the OIL CARRIER and the National Pollution Fund Center about funding of the remaining claims.

SALVAGE - It will be necessary to have an attorney assist in the solicitation and consideration of the bids for salvage and re-floating the TESTBANK. In addition, that attorney would be involved in drafting and revising the salvage contract. For the Limitation petition, security must be posted with the Court equaling the value of the vessel after the casualty. In some cases, one can deduct the salvage and repair costs from the fair market value of the vessel prior to the collision. However, in this case, I think we would be filing the Limitation petition as soon as possible and it might not be possible to wait to ascertain the cost of repairing the damages and re-floating the vessel. I would assume that we would use the fair market value of the vessel prior to the casualty as the basis for posting security with the Court. Courts generally accept P&I Club Letters of Undertaking and we would seek to file such a letter with the Limitation of Liability petition.

CRIMINAL - We would have criminal lawyers standing by if the local authorities instituted a criminal investigation. In the past, it was less likely that there would be a criminal investigation if two or more ships are involved than if one vessel is involved in a grounding,

MR. BONNER'S SPEECH (cont.)

fire or stranding. However, there could be loss of life here and a large oil spill so it is likely that the authorities would look into the collision. In such a case, we would recommend having a criminal lawyer for the vessel owner and separate criminal lawyers for the each of the involved crewmembers. I expect that the crewmembers would assert their Fifth Amendment rights and this could stymie any Coast Guard or NTSB investigation into the cause of the casualty. In addition, I expect the crew members and others at risk would assert their Fifth Amendment rights if their depositions were noticed in any civil case.

OIL CARRIER OWNERS -

In representing the OIL CARRIER owner, we would be doing many of the same tasks as if we were representing the TESTBANK owner. However, there would be much more work dealing with the oil spill and wreck removal.

INSURANCE - We would go through the same exercise of identifying all of the insurers. We would also investigate the relationship between the vessel owner and owner of the cargo on the vessel. We would have to determine which cargo policy covers the loss of the liquid cargo. There would be other considerations relating to the relationship between the vessel owner and charterer/cargo owner also.

COORDINATION - We would have a similar set up with a senior partner coordinating everything in the office and various lawyers in the office and in the field performing various tasks. For the OIL CARRIER, the removal of the oil will be the first priority and due to the number of oil spill cases we have handled, we have a good bank of research on OPA 90.

CLEANUP - We would have at least one attorney at the command center full time dealing with cleanup issues. He would be reviewing all contracts with all cleanup contractors looking closely at price, add-ons and indemnity issues. I found that one of the most difficult problems in the early stages of an oil spill is sorting out all the indemnity clauses and finding out what is acceptable to the Clubs and what is not.

The attorney at the command center will be the primary liaison with the Federal On-Scene Coordinator and will be answering to him. This lawyer will also be vetting all press releases and dealing with the many issues that arise when the cleanup is going full bore.

Since an oil company may be involved, this attorney has to be mindful of what is being done by the oil company and what will be recoverable from the insurer.

As there will be a claim against the TESTBANK interests and perhaps the National Pollution Fund, this attorney must ensure that there are adequate records of all expenses. If there is a claim against the National Pollution Fund Center, there may be an issue about what expenses dealt with oil removal and what expenses dealt with the removal of the vessel after the oil was all released. Again, someone must ensure that there are adequate records to back up all the claims.

MR. BONNER'S SPEECH (cont.)

INVESTIGATIONS - The same type of investigation would be held into the cause of the collision. The same experts would be retained. In the early stages, the Coast Guard may try to speak to crewmembers in the guise of preparing for the oil spill response. An attorney should be present if there is such an attempt and should make sure the crewmembers understand their rights.

Since the OIL CARRIER flew the Singapore flag, we assume that the crewmembers are not Americans. Someone would have to review the employment contracts and assist with the payoff and repatriation, if possible, of surviving, uninjured crewmembers.

Some of the seafarers were lost and there may be an issue of what steps should be taken to try to locate the bodies. This was an issue in a recent case I was involved in and it was necessary to assess whether it was reasonable to send a diver into the heavily damaged vessel which had sank to search for bodies when all indications were that all of the crewmembers got into the water.

The same considerations as I mentioned earlier about settling any personal injury claims in order to avoid an adversarial relationship with the crewmembers applies to foreign flag vessels also.

The investigation team should prepare for the Coast Guard hearings although it may be unlikely that any crewmember would agree to testify.

CLAIMS - There will be many third-party claims and a lawyer should be assigned to oversee the claims operation. We expect that a claims handling organization would be hired and someone would oversee the payment of the claims. In addition, we would have to draft or amend the notice that would have to be printed in a local newspaper designating the source of the oil spill. We would have to ensure that an 800 number is set up and set up parameters for settling claims quickly and reasonably.

Since the OIL CARRIER interests will be claiming against the TESTBANK interests and perhaps the National Pollution Fund Center, great care would have to be taken to document all claims and all settlements. One would have to decide if the TESTBANK should be included on all releases.

There will also be cargo claims from the cargo interests on the OIL CARRIER and TESTBANK. Again, we would draft a Limitation of Liability Petition at the earliest possible time. There would be additional issues about where to file Limitation, the United States, Singapore or perhaps elsewhere. I expect that at the end of the day, the petition would be filed in the United States but we may want to assert Singapore law due to the size of the Limitation fund and other considerations. Under U.S. law, the value of the OIL CARRIER would be nil so we probably would not have to face the security issue. I believe the Limitation amount under Singapore law is based on tonnage. I covered the possible fora in the U.S. for filing the Limitation Petition earlier.

MR. BONNER'S SPEECH (cont.)

If oil was salvageable, we would look into the absorption clause and consider whether to recommend to the owner that it declare General Average. This assumes that some of the cargo was pumped into barges and the cargo was delivered to its final destination. As the vessel was inbound to IMTT Bayonne, one would assume that any cargo that was pumped off would be barged to Bayonne.

The apportionment of the various costs among General Average, charges on cargo, oil pollution and perhaps wreck removal would keep somebody in this room busy for a while.

There would be the same limitation issues I referred to earlier regarding OPA 90. The oil pollution claims would not be subject to the Limitation Petition that the OIL CARRIER owner may be filing in Federal Court pursuant to the Limitation Act. OPA has its own limitation amount for pollution-related claims.

Under U.S. law, the death and personal injury claims would have a supplemental fund under the Limitation Act. The amount of the fund would be \$420 per gross ton or about \$28 million. The Limitation Fund for other claims, other than OPA 90 claims, would be nil. We would check on the amount under Singapore law and this would be a further consideration about filing limitation in Singapore or arguing that the Singapore limitation amount should be applied in the New York limitation proceeding. This is a complicated area of the law based in part on whether the Singapore Limitation law would be considered substantive or procedural. This would be a research issue for the law clerks.

As mentioned earlier, someone would be monitoring the amount paid out in pollution-related claims as we approach the OPA limitation, whatever that is.

SALVAGE - A lawyer would have been involved in negotiating the Scopic LOF contract. The owner would have a special casualty representative present and I do not think there would be much for the lawyers to do after the Scopic contract was signed.

MR HAYDEN'S SPEECH AFTER MR. BONNER

Well ladies and gentlemen; Mr. Bonner has just announced that all his witnesses are going to take the Fifth Amendment. I will presume that his client, the vessel owner, will admit liability for cargo's claims and agree to settle without any further questions.

That sounds good doesn't it? Never has happened and never will happen. So let us proceed with what steps I would recommend to cargo interests, whose cargo is on the TESTBANK, take to insure their interests are protected.

In the very first instance we have to recognize that some of the cargo, if not all of the cargo, may be owned by foreign interests, particularly the cargo of acid. We will come back to the

MR HAYDEN'S SPEECH AFTER MR. BONNER (cont.)

issue of ownership later. The first issue to address representing cargo on the TESTBANK is to insure jurisdiction against the foreign flag, oil polluting M/V OIL CARRIER. It would be in the TESTBANK's interest to immediately establish jurisdiction in the United States in light of favorable rulings by our courts where an innocent cargo owner can recover 100% of their losses from non-carrying vessels where two colliding ships are subject to United States law and are not both subject to the Collision Convention of 1910.

The point that is important here is that under the 1910 Collision Convention where the flag state of each ship are signatories to the Convention, cargo on either ship, or each vessel can only recover from the other ship in proportion to the ships proportion of fault or percentage of blame. That is opposite to United States law where innocent cargo can recover 100% of damages from the offending non cargo carrying vessel in a collision situation.

It is also important to ensure that American law will apply in order that cargo gain the benefit of the Pennsylvania Rule that causes vessel owners to have to prove secure that any violations of the International Rules or conventions could not have contributed to the losses incurred whereas under the 1910 Collision Convention a violation of a statute creates no presumption of fault.

It is of course, important to note that in light of the severe damage caused by the M/V OIL CARRIER and the pollution which has occurred that the M/V OIL CARRIER will more likely than not quickly petition to limit its liability to the value of the ship and its pending freight at the end of the voyage. Now, will there be a rush to the courthouse, as suggested by Mr. Bonner? I am not certain of that. His firm is located in New York; my firm is located in New York and being the gentleman that I am, I will call his office and say: "Pat let us do this in the most economical way for our clients and reach an agreement as to where litigation will be handled". A Limitation Petition can be filed wherever a suit has been filed against the ship and he might suggest that I file a Pro Forma suit in New York to enable him to file his petition here and not leave him open to authorities suggestion that he might be "cherry picking" for a preferred jurisdiction, i.e. New York as opposed to New Jersey.

If Mr. Bonner's firm files for limitation of liability they would by necessity, under the United State Limitation of Liability laws, be required to post a bond, or if approved by the Court, a P & I Club Letter of Undertaking in the amount of the value of the wreck and pending freight. Once that is done I would no longer be able to attach the vessel for security. If Limitation isn't filed, while I still would want security, I would never seize the M/V OIL CARRIER while it was aground spilling oil. I would not want to assume any liability for what was happening. I would wait until the vessel was salvaged and in a position of safety before moving to attach the vessel to obtain security. I would, however, institute suit to obtain jurisdiction.

Remember that I am now representing cargo on the TESTBANK, that I have an immediate concern with insuring jurisdiction and security from the M/V OIL CARRIER. This is because the M/T OIL CARRIER is a foreign flag and should it be repaired and sail away,

MR HAYDEN'S SPEECH AFTER MR. BONNER (cont.)

without my having established jurisdiction, I will probably lose the initiative that I gained once jurisdiction is established.

I can tell you that within hours of being retained, I would also go after, either by subpoena, and/or by agreement with Mr. Bonner representing the M/V OIL CARRIER, the vessel's records, and obtain an agreement that the testimony of the crew members who I deemed could have some responsibility and/or knowledge of what happened onboard the M/V OIL CARRIER be taken. In all likelihood I would probably, also as a matter of protecting my position, have subpoenas issued in the suit I have filed or in the limitation proceeding instituted by M/V OIL Carrier's owners, and have the subpoenas served on each member of the crew to insure that the P&I Club does not hustle them out of jurisdiction of the United States in order to avoid their testifying. As part of the request for documents I would, either by agreement or Court Order, request permission to place an expert onboard to review the conditions onboard the vessel; the angle of blow, etc., before changes could be made to equipment or conditions change as a result of salvage operations.

As I mentioned earlier, many times the P&I Clubs' vessel owners or the vessels' agents will attempt to send foreign crew members out of the country (home) in order to avoid their having to testify in legal proceedings or at Coast Guard hearings. The Government, however, or the Coast Guard or the Department of Justice can insure that crew members do not leave the United States prior to testifying, should they so desire. I have on occasion asked the assistance of the Immigration and Naturalization Services to assist in stopping foreign crew members from leaving once a subpoena has been issued for their attendance at an examination in support of my case.

In addition to moving to secure the evidence, I would serve an owner's counsel with a Notice to Produce all the owners and vessel records concerning the operation and maintenance of the vessel, in particular the malfunctioning radio. In connection with the Coast Guard hearings to commence on Monday, I would ask the United States Coast Guard to allow me, as a representative of cargo interests to participate in the hearing.. While I will not be allowed to be a party in interest, I would be interested in participating as an interested party, which will allow me limited participation at the hearing, and I would ask the lead investigator to have me designated as such. Mr. Dalcher will comment further on this point.

Now with all of the notes I have been giving you, I have been reflecting as counsel for cargo interests onboard the M/V TESTBANK as insurers of cargo damaged as a result of the collision, i.e., 75 containers overboard and those that have been water damaged as a result of the flooding in two of the M/V TESTBANK's holds.

Mr. Bonner spoke of several containers of acid that had been lost overboard and may have to be recovered. Now, for purposes of this discussion I am going to assume that they were foreign owned and insured. I would, of course, immediately recommend that the owners and insurers stay on the side lines and not make any claims and not appear in any proceedings here in the United States until it is determined whether or not the Government will force the removal

MR HAYDEN'S SPEECH AFTER MR. BONNER (cont.)

of those containers containing acid from the sea. If they are U.S. owned or insured cargo, the story may be entirely different.

Mr. Bonner may have other problems with those containers which fell overboard. He may be concerned that they remain a hazard to navigation and I will leave that to him. I, as owner of one of the pieces of equipment (a heavy lift) might also demand that he salvage that valuable piece that would not be damaged by immersion in water and that would also cause his client to have heart burn and I leave that to him also to explain why.

DECLARATION OF GENERAL AVERAGE

Inasmuch as the M/V TESTBANK is seriously damaged and that contract salvage has been awarded, I would suspect that salvors/vessel owners may attempt to collect Salvage/GA security.

I would first want to obtain from the shipowner advice as to whether or not there was a GA Absorption Clause under the TESTBANK's coverage and the dollar limits of the coverage. If it appeared that the Salvage/GA charges against the sound cargo would be less than that due as cargoes proportionate share of salvage and/or GA, I would ask that they not collect security from the sound cargo. If GA security was required I would make certain that the owners of the sound cargo and their underwriters be prepared to give at the appropriate time the required security as we would not want the cargo to be stranded in a port of refuge when the M/V TESTBANK or its cargo is raised and brought to a position of safety.

Finally, I must point out that I would also be filing a suit against the TESTBANK, my carrying vessel, for the damage sustained to cargo on the grounds that the carrying vessel was unseaworthy on departure from Port Newark. This particularly being so in light of the fact the 75 containers that went overboard had not been lashed because the owners did not want to expend the necessary money to lash the containers for a short voyage along the coast to the entrance to the Chesapeake while enroute to Baltimore. Furthermore, I note that the M/V TESTBANK is probably unseaworthy as a result of the extra tier of boxes placed in rows of 7 – 13 which blocked the forward view from the bridge.

Let us shift ships and let us talk about representing the M/V OIL CARRIER and the cargo on the M/V OIL CARRIER.

First I am going to assume that the cargo is of single ownership and that the loss of cargo exceeds 2 million dollars. I would immediately communicate with counsel for the vessel owners and review with them their intended course of action against the M/V TESTBANK. I would also let them know I was going to ask for demand/security for our loss from both the M/V TESTBANK and the M/V OIL CARRIER basing my demand against the M/V TESTBANK on the basis of its fault for the collision and the case against the M/V OIL CARRIER on the fact that the vessel was unseaworthy at the time of leaving the last port, particularly the fault of departing with a malfunctioning radio. I would attempt to have the

MR HAYDEN'S SPEECH AFTER MR. BONNER (cont.)

M/V OIL CARRIER agree to jurisdiction in New York, just as I earlier asked Mr. Bonner when he was representing the M/V TESTBANK to agree to New York jurisdiction. If agreement could not be reached, I would simply file suit and serve its agent in New York.

While demanding the posting of security I would not immediately seize the M/V TESTBANK and as with the M/V OIL CARRIER, I would wait until she was in a position of safety after she was raised by the contract salvors.

Noting that the M/V OIL CARRIER was aground, spilling oil on the New Jersey shore, and being salvaged under the Lloyd's Open Form and Scopic having been invoked, I would demand the right to appoint a special cargo representative on behalf of cargo interests. This would allow me to have a cargo representative attend the salvage operation to observe and report on the operation under the terms of Appendix B& C of the Appendix to Lloyds' Open Form.

In addition, after obtaining information from counsel for the M/V OIL CARRIER about any GA Absorption Clause which was part of the vessel's insurance policy, I would make all necessary arrangements for posting of GA security and security with Lloyds for salvage.

A recent Texas case EnSCO Offshore v. Titan Marine, 370 F Supp. 2nd at 594, raises the question about the affect of the London Arbitration Clause under the Lloyds Open Form, where the service was performed in or around U.S. Territorial and United States citizens are invoked. In that case defendant sought to invoke the London Arbitration Clause, but the plaintiff sought a declaration that the Arbitration Clause was unenforceable by reason of Sec. 202 of 9 USC Convention on Recognition and Enforcement of Foreign Arbitral Awards. The Court ruled that London Arbitration could not be enforced.

I would, of course, as representing owners of the cargo be deeply concerned about the pollution emanating from the M/V OIL CARRIER and would take every step I could to cooperate and insure that the vessel was taking all required steps to halt the pollution and cleanup the pollution along the coast. I would also do everything in my power to be certain that the responsibility for the cleanup was that of the vessel owner and operator and not the consignees of the cargo. I am left in dilemma here as owners of the cargo, and possibly the charterer of the vessel. The New Jersey Spill Compensation and Control Act contains a very broad definition of "responsible party" which includes anyone who "in any responsible for any hazardous substance". In the past they held a charterer responsible under the Act, and where there is insufficient funds or the vessel owners ability to pay is in question, New Jersey will go against the charterer and/owner of the cargo. As cargo owner I would be concerned that I might be at risk.