

## Seward & Kissel Partner Speaks on Addressing Piracy Issues

By Sarah Noonan, [Official Guide to Ship & Yacht Registries](#)

In conjunction with the recent release of the film [Captain Phillips](#), based on the 2009 real-life rescue of US crews aboard the *Maersk Alabama* from Somali pirates, [Seward and Kissel](#) partner [Bruce Paulsen](#) spoke with the OGSR regarding his experience handling approximately 40 piracy cases over the past five years. In our conversation, Paulsen outlines the issues involved in ensuring the safe release of crewmembers from pirates, from proceeding with negotiations without violating U.S. laws to executing the safe delivery of ransom payments to a hijacked ship.

**Bruce Paulsen (BP):** BP: *Captain Phillips* brings issues of piracy to the forefront, even though the *Maersk Alabama* was different from most other piracies that happened off the coast of Somalia.

**OGSR:** How was it different?

**BP:** It was a US-flagged ship, and the majority of ships that have been taken by pirates have been foreign-flagged - not backed by the strength of the US Navy or US intelligence services. So what happened with the *Maersk Alabama*, with the Navy ship and the Navy seals, didn't happen with anybody else. In most cases, a shipowner would get a call from a master saying that pirates have taken the ship, and for non-US flagged vessels there's really no one else to call. There is a naval presence off the coast of Somalia, but they are patrolling 2+ million square miles of ocean, and the ability of a naval ship to intervene in a piracy is limited. So you can call your flag state – and everybody gets notified, from the insurers to the owners and banks as soon as this sort of thing happens. But the only way that help truly comes is through the negotiation of a ransom, and not through snipers.

**OGSR:** Can you tell me a little bit more about this process, how you advise clients that come to you and say, “My ship has been hijacked by pirates?”

**BP:** The first piracy that I was involved in involved a Marshall Islands-registered company that was based in Stamford that owned a Liberian-flagged ship, the *MV Biscaglia* that was taken off Somalia. In that case, the question was, “We're here in the United States, can a U.S. based company pay a ransom to Somali pirates and not offend any US laws?”

And there are other questions like, “Does our insurance cover this?” and in that case, the company has done a very good job of gaining coverage including kidnap and ransom. So there are legal questions involving that, legal questions involving sourcing the cash for the ransom. But the big initial question is, “Can we legally do this?” And the answer is “Yes.” But in 2010, the White House issued an [Executive Order](#) that had been in the works for about a year at the State Department, where there was concern that the United States needed to do something about piracy, and so this order was issued on April 13<sup>th</sup> 2010 after a year of percolating through the State Department which essentially ordered that US persons, meaning individuals or companies within the US, were prohibited from making any kind of payment to those on a list of persons or entities in Somalia.

On that list were two pirates. And those two pirates were fairly well-known and had self-identified themselves as pirates at the time of the *Maersk Alabama* incident. That was in 2009, and I expect that the US government knew of many more pirates at the time. So why they didn't put more on the list, I don't know, and my personal opinion is that they wanted to be seen as doing something about piracy, but not necessarily get in the way of the payments of ransom, because there was a realization I think, a humanitarian realization that if you prohibited shipowners from paying ransoms, the people who would suffer would be the crews. And at one point before the Executive Order came out, Hillary Clinton said something like, "We know how to separate terrorists from their money, maybe we should be doing the same thing for pirates." Fortunately the State Department did not do that, and I spoke extensively on the topic at the time with the view that if you treat pirates as terrorists, which would make the payment of ransom illegal, then all you do is mug the victim, the seafarers can't be freed.

**OGSR:** How do owners make these payments without being in violation of the US laws?

**BP:** Well, what happens is the ship is taken, and the pattern for these has changed, though right now, piracy is down to almost nothing, largely because shipowners have started shooting at the pirates by carrying armed guards, and no ship with armed guards has been taken, ever, so that has proven effective in stemming the tides of piracy. But in its heyday, the business model of piracy changed somewhat. The length of time the vessels were detained extended during that time. When we first got involved in late 2008, the average detention period for a ship was about two months. At the end of the "piracy boom" in 2011, the average detention was almost a year. So, the pirates had changed their tactics over time in order to extract higher and higher ransoms with the average going from a million or a million and a half in 2009, up to 4 or 5 million in 2011. So there's a pattern to these things, and it's not necessarily a rational one.

As to their tactics, the pirates operate with small skiffs using AK47 machine guns and rocket-propelled grenades or RPG's, and they'll shoot at the ship and scare the crew and blow out the bridge windows, for instance. They would carry with them big aluminum ladders with hooks on the end and throw them over the deck and climb up.

And there are all sorts of non-lethal methods that ship owners have used over the years like acoustic devices, and water cannons and barbed wire, hardening the ship against the pirate attack, including building a citadel where crew can operate the ship and be safe from gunfire even if the pirates come aboard, and all of that had some success. But, if a ship is taken, and brought to the coast of Somalia, the pirates will then usually let silence reign for a few days and then communicate using the ship's satellite phone or with cell phones, and contact the shipowner and either by phone, or by fax, make a ransom demand, and that's when the game begins. And pretty much every prudent shipowner, either paying out of their own pocket or by getting them through K&R insurance, will have response consultants - professional hostage negotiators - who would work with the shipowner to negotiate a ransom through the ship. These are experienced negotiators who have often been involved in things like Mexican kidnappings and other such things which have happened around the world for a long time. But it was all kind of new to the shipping business. Negotiation would then commence.

In the first situation I was involved in, the negotiation was handled by the shipowner, by CEO James Christodolou, who operated under a pseudonym “Gus”, and the pirates he dealt with whose names were Hassan and Abb, probably also pseudonyms. My understanding is that the pirates would utilize their best English speakers to do the negotiations. And there’s sort of a rank and priority among the pirates – once the ransom is paid, they get paid according to what they did; the highest paid would be the ones who got on board the ship first. And the negotiators would also get a very big piece of the pie. And at the low-end would be those who guard the crewmembers while they’re detained. And there could be varying degrees of violence committed by the guards and there are always threats of violence as part of the negotiation. That’s very scary for the crew members but also for the families, and an important part of what the shipowner needs to do when the ship is first taken is work with communications firm as part of their response teams to make sure that the messaging to the families is correct and compassionate and complete, so that one, they feel like the situation is at hand, and two, the pirates read the newspapers and that sort of thing and that the messages can get out in the press and that can damage the negotiations and harm seafarers.

**OGSR:** How do you see these trends continuing to evolve in the future?

**BP:** Well the good news is the business model that the Somali pirates invented and made a ton of money with \$300 million a year in 2010-11, that has been more or less shut down, happily, by the use of armed guards and other factors. But as I mentioned before, there is still risk out there, and we are beginning to see different pirate models pop up for instance, in West Africa. So piracy hasn’t gone away, and for instance, [the] Somali model almost requires a failed state and the fact that the Somali government is more or less getting its act together a little has been helpful. It is something that could pop up anywhere and threaten maritime commerce. So it’s important that the lessons learned be retained and that nobody thinks that this problem is gone forever.

**OGSR:** How is the West African model different?

**BP:** Well, you see things like cargo theft, and instead of holding the seafarers for ransom, they can be killed and the ship looted and things taken – cargo, equipment. A more violent species of piracy.

**OGSR:** Have you been consulted about constructing solutions to these issues?

**BP:** I don’t think that we’ve gotten to that point yet. Perhaps it needs to come to a head, or maybe it won’t. Dealing with the Somali situation did create something of a cottage industry for the lawyers and consultants involved in it. It resulted in issues for banks and insurers that had to pay ransoms, and I should also mention is that the 2010 Executive Order prevented the payment of money not only the pirates, but groups like [Al Shabaab](#). What we would do as lawyers in those cases was, when the time came for ransom to be paid, contact the Department of the Treasury, the Office of Foreign Assets Control (OFAC), the same people that administer the [sanctions programs](#) in the shipping space. You would go to OFAC and advise them, in writing, that you had no reason to believe that the payment of ransom would be to any of the people on the list. And they would not approve payment and they do not even give you a non-objection.

But they stet advise you that they had received the information, and that would give enough comfort, for instance, to the banks that source the cash, to put it on a plane and drop in the ocean for pirates to pick up. The ransom would then be dropped with a parachute into the ocean near the ship, and pirates would ship out to pick up the money. The drop would only be done after the pilot had done a head count of the crew on deck for proof of life. There would be a pirate paymaster onboard the ship, with a counting machine, who would count it out and then divvy up the money according to the ranking that I described, and the ship be free to go. This is the most dangerous time in any piracy, because all that cash is there in front of two pirates.

*The OGSR thanks Mr. Paulsen for taking the time to speak with us and welcome any others interested in doing so to contact us.*

Visit our [archives](#) for previous coverage of issues related to piracy and piracy prevention.