

Release of the M/V “Bascaglia” is Only Part of the Story



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More than two months ago, all 28 crew members of the M/V “Biscaglia” were released unharmed as U.S. attorneys (Seward & Kissel) provide advice and counsel in first negotiation of its kind to be negotiated from the United States. On 29 January, they discussed their experiences with MarEx.

Even as *Industrial Shipping Enterprises Corp.*, a provider of seaborne transportation for chemical cargoes, announced that its vessel, the M/V *Biscaglia*, had been released by Somalian pirates, an equally important aspect of the story was unfolding halfway around the world in New York. The vessel, which was hijacked by Somali pirates as it transited the Gulf of Aden en route to the Mediterranean on November 29th 2008, was released with all 28 crew members unharmed on 22 January. How the vessel’s owners secured that release – and the lessons learned thereof – may be just as important.

In an exclusive interview conducted this week with Seward & Kissel attorneys Larry Rutkowski and Bruce Paulsen, new attention was focused on a previously under-reported aspect of Somalian piracy: *the aftermath of the hijacking and the negotiation process that takes place to eventually free the vessel.* What they had to say may or may not surprise you, but their experience in this matter is clearly of value to any corporation that in the future has to endure the same pain as the owners and crew of the M/V *Biscaglia*. “Piracy has clearly become a business and an industry in Somalia,” says Larry Rutkowski. And, he added, most cases fall into a certain pattern of events and chronology.

Bruce Paulsen told MarEx that most Somalian / Gulf of Aden piracy incidents contain several common denominators. These include, he says, “A target of opportunity, subsequent anchoring in Somalian waters, various demands, negotiations and finally, the release of the vessel and crew, usually within a 45 – to – 60 day period.” He echoed Rutkowski’s adage that the practice had become a virtual cottage industry, saying, “They have almost a code of conduct; whereby they avoid harming the crews in an effort to prevent the various authorities from ramping up in response.” Indeed, it is rare to see an injured crew member in these cases of piracy.

The case of the *Biscaglia* was interesting in more than ways than one. Although technically managed abroad and of foreign flag registry, the vessel was also controlled by U.S. residents and managed by U.S. executive management. Already providing service for the vessel’s owners, *Industrial Shipping Enterprises Corp.*, Seward & Kissel were involved almost from the

outset and immediately became part of the “crisis management team.” In this case, an early decision by the ship’s managers to include counsel at all levels would turn out to be a wise one.

Paulsen and Rutkowski immediately set about to determine the legal aspects of paying ransom from a U.S. corporation and made sure that any transaction by principals would not violate any U.S. laws. Coordinating with U.S. authorities along the way, they were also involved with most aspects of the actual negotiations, the bulk of which took place using ship-to-shore telephone, with the occasional facsimile transmission. Eventually, a ransom was paid – the exact amount of which was not disclosed – and the vessel and crew were released unharmed.

With the vessel now happily clear of Somali waters and berthed in a safe port, there are also lessons to be learned from the incident. Bruce Paulsen told MarEx on Wednesday, “There is value to having counsel involved in these situations. And while we have empathy for both the owners and the crew, we can also approach the matter with a more detached approach.” That kind of clearheaded thinking can translate into a better decision-making process, while cutting through the immediate emotional pain of the situation. But, the Seward & Kissel team had other advice, as well.

Larry Rutkowski insists, “A vessel that trades in the Gulf of Aden has to be prepared. This extends to having the right insurance coverage in place and other measures intended to eliminate the risk of loss of life and/or environmental damage from the vessel or its cargo.” And although he declined to debate the merits of various security arrangements for merchant vessels, he did point out that the *Biscaglia* was attacked by pirates using “AK-47’s and rocket propelled grenades.” Future transits through the Gulf of Aden, he said, could be made less painful with just a little more preparation on the part of the vessel’s operators. These preparations can and should include contingency plans to include experienced negotiators and legal experts in the process.

James Christodoulou, President and CEO of Industrial Shipping Enterprises Corp., said last Friday, “This is a wonderful day for the crew and their families as this ordeal comes to an end with the entire crew in good health and spirits.” Christodoulou, for his part, probably had as much to do with that happy ending as anyone else. Summoning all of the available talent that he could muster, he got in this case, good advice from a seasoned team of attorneys.

For their part, the Seward & Kissel team would add only, “Most of the interesting stuff, we can’t tell you. But, rarely are we placed in a situation where our efforts involve 28 lives in peril. This raised the bar for us enormously.” In the choppy wake of this particular hijacking, however, one thing is perfectly clear: both men are much further down the learning curve in advance of another situation they hope will never come again. And, perhaps, in the absence of a better deterrent to the scourge of piracy in the Gulf of Aden and other similar places, more emphasis will now be placed on events that occur in the aftermath of such an event. - *MarEx*.

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This article first appeared in our 29 January 2009 edition of the MarEx eNewsletter. Since then, the taking of the **Maersk Alabama** has been described by some in the media and other so-called “maritime experts” as a “game changer.” Recently, Larry Rutkowski was interviewed on FOX and CNN, where he discussed his experiences and provided some analysis to the growing problem of piracy in the Gulf of Aden. This week, we spoke to Larry and his partner Bruce Paulsen about what might have change in the wake of the “Maersk Alabama” drama. Rutkowski was quick to say, “While I applaud the result (of the Maersk saga) and marvel at the bravery of the Captain, I also wonder if this will ratchet up the violence in the near term.”

He added, "The insurers are nervous about this."

Rutkowski and Paulson, when pressed, also expressed reservations about the wisdom of arming ship's crews. Says Rutkowski, "In the case of some third world crews, these people tend to be from the lower strata of society." He went on to say, "The arming of ship's crews almost assures the loss of life." In terms of the "Maersk Alabama" being a game changer – as the media likes to call it – the pair was in agreement that it probably was just that. For their part, Paulson and Rutkowski both asserted that the events of the past week now meant that future negotiations (like the one they conducted to obtain the release of the Biscaglia and her crew) would have to be done with what they characterized as "heightened concern for crew safety."

As we wrapped up our most recent talk with these attorneys, they left us with one thought to ponder. Paulson stated, "The latest incident with the American ship did one thing: it moved piracy from the business section to the front page." Perhaps this is one reality which will bring the solution – whatever that may be – to the forefront, as well.