



## **Trainingscamp IV**

Okt. / Nov. 2010



Präsentiert von / presented by

**Capt. M. Grübler**  
- Claims Manager -





Trainingscamp IV  
Garantieforderungen und Sicherheitsleistungen  
Guarantee Requirements and Securities

**Garantieforderungen und Sicherheitsleistungen**  
Guarantee Requirements and Securities



➤ <b><u>Garantien allgemein:</u></b>	-	<b><u>Guarantees general:</u></b>
➤ Bardepot	-	Cash Deposit
➤ Briefgarantie	-	Letter of Undertaking
➤ Bankgarantie	-	Bank Guarantee
➤ Schiff und Fracht	-	Ship and Freight
➤ Gerichtsstandvereinbarung	-	Jurisdiction Agreement

**Garantieforderungen und Sicherheitsleistungen**  
Guarantee Requirements and Securities



<b><u>Bardepot:</u></b>	-	<b><u>Cash Deposit:</u></b>
➤ relativ selten	-	rather seldom
➤ bindet Kapital	-	capital lockup
➤ verzinst sich	-	interest earnings
➤ dauert relativ lange, da Geld erst kollektiert werden muss	-	takes time for collecting money

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<b><u>Briefgarantie:</u></b>	-	<b><u>Letter of undertaking :</u></b>
➤ relativ häufig	-	rather often
➤ bindet kein Kapital	-	no lockup of capital
➤ kostet kein/wenig Geld	-	no / little additional costs
➤ geht schnell wenn Unterschrift verfügbar ist	-	is soon available / issued
<b>Problem heutzutage:</b>	-	<b>Problems today:</b>
• Akzeptanz der Bonität des Garantors	-	Acceptance of solvency of guarantors



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<b><u>Bankgarantie:</u></b>	-	<b><u>Bank Guarantee :</u></b>
➤ heutzutage häufiger	-	today more often
➤ bindet Kapital	-	binding of capital
➤ kostet z. T. erhebliches Geld	-	considerable additional costs
➤ kann längere Zeit dauern bis Garantie steht	-	can take considerable time until guarantee is given
<b>Problem heutzutage:</b>	-	<b>Problems today:</b>
• Banken zu finden, welche bereit sind, zu garantieren	-	To find banks which are prepared to guarantee

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<b><u>Schiff und Fracht:</u></b>	-	<b><u>Ship and Freight :</u></b>
➤ Wert des Schiffes ???	-	value of the ship?
➤ gibt es andere Besitzstände ?	-	is any other property available ?
➤ gibt es sonstiges Kapital ?	-	is any other capital available ?
<b>Problem:</b>	-	<b>Problem :</b>
• Wert des Schiffes ist geringer als Haftungssumme		Values are less than limitation amount



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**City of London Admiralty Solicitors Group**

Diese Interessengemeinschaft hat sich damit befaßt, eine einheitliche Formulierung von Vereinbarungen zu erstellen.

Die ASG STANDARD WORDINGS können über das Internet abgerufen werden unter:

This group has agreed a standard wording of guarantees and other agreements.

The ASG STANDARD WORDING can be obtained via the internet:

<http://www.admiraltysolicitorsgroup.com/>



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**Admiralty Solicitors Group Standard Documents - (pdf / doc files)**

- ASG List of members
- ASG Introduction and notes
- ASG 1 - Collision Undertaking
- ASG 2 - Collision Jurisdiction Agreement
- ASG 3 - Submission to Arbitration - Salvage Services
- ASG 4 - Common Law Salvage Undertaking
- ASG 5 - LOF Clause 13 Indemnity
- ASG 6 - Submission to Arbitration - Collision
- ASG 7 - Submission to Arbitration - Salvage Services - Documents Only
- ASG 8 - Submission to Arbitration - Collision - Documents Only
- ASG 9 - Cargo Undertaking
- ASG 10 - Surveyors Indemnity
- ASG 11 - Fire Expert Access Agreements
- Appendices

CITY OF LONDON ADMIRALTY SOLICITORS GROUP - STANDARD WORDINGS

ASG 1  
City of London Admiralty Solicitors Group

**ASG COLLISION UNDERTAKING**

To: The owners of the ["AAA"]  
c/o Messrs. [X & Co.]


["AAA"] - Collision with ["BBB"] [7 May 2000]

IN CONSIDERATION of your releasing and/or refraining from arresting, or otherwise detaining, or re-arresting at any time hereafter the ["BBB"] or any other vessel or property in the same or associated ownership, management, possession or control for the purpose of obtaining security in respect of your claim arising out of the above collision we hereby undertake to pay you on demand such sum or sums as may be due to you from the owners of the ["BBB"] in respect of your said claim either by agreement between the parties or by final **unappealable** judgment of the English Courts provided always that our liability hereunder inclusive of interest and costs shall not exceed the sum of [figures and words].

This undertaking shall be governed by English law and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the English Courts.

Signed .....


Dated this [ ] day of [ ] 20[ ]



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## Garantieforderungen und Sicherheitsleistungen

### Guarantee Requirements and Securities



## Garantieforderungen und Sicherheitsleistungen

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CITY OF LONDON ADMIRALTY SOLICITORS GROUP - STANDARD WORDINGS

#### NOTES TO ASG 1 COLLISION UNDERTAKING

1. This undertaking (which in many cases will be given by the P&I or hull and machinery underwriters of the vessels involved in the collision) provides security to the recipient in respect of its claims arising from the collision. The form has been designed to be used in conjunction with the ASG Collision Jurisdiction Agreement (ASG 2).
2. Whereas ASG 2 is designed as an agreement between the respective shipowners (usually signed on their behalf by solicitors), ASG 1 is a guarantee given on behalf of one of those shipowners by a third party to the other shipowner.
3. The intention is that ASG 2 is a flexible document capable of easy adaptation to suit the circumstances of a particular case, whereas ASG 1 should not need adaptation.
4. Attention is drawn to the fact that the stated consideration for provision of security has been extended. The beneficiary of the guarantee now agrees to refrain not only from arresting but also from re-arresting. This change arises from 1999 Civil Procedure Rules which by Part 6.7(3) now gives the claimant the right to re-arrest should his original security prove to be insufficient. If the words in parenthesis dealing with re-arrest are not deleted, the claimant may forfeit the right to re-arrest.



## Garantieforderungen und Sicherheitsleistungen

### Guarantee Requirements and Securities

## Gerichtsstandsvereinbarung / Jurisdiction Agreement

ASG COLLISION JURISDICTION AGREEMENT  
["AAA"] Collision with ["BBB"] [7 May 2000]

IT IS HEREBY AGREED between the owners of the above vessels as follows:-

- A. The claim of each party, including the question of limitation of liability, shall be determined exclusively by the English Courts in accordance with English law and practice.
- B. The undersigned will accept service of the other party's proceedings (including any limitation proceedings) on behalf of their respective clients/principals.
- C. Each party will provide security in respect of the other's claim in a form reasonably satisfactory to the other. [Each party agrees to waive its right to re-arrest granted under any statutory enactment of the Arrest Convention 1999.]
- D. The owners of the ["AAA"] hereby warrant that the registered owners of the ["AAA"] at the time of the collision were [insert owners name] of [insert owners registered address] and that the ["AAA"] was not demise chartered out at such time.
- E. The owners of the ["BBB"] hereby warrant that the registered owners of the ["BBB"] at the time of the collision were [insert owners name] of [insert owners registered address] and that the ["BBB"] was not demise chartered out at such time.
- F. This agreement shall be governed by English law and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the English Courts.

Signed ..... Signed .....

Solicitors ..... Solicitors .....

For and on behalf of the owners of ["AAA"] For and on behalf of the owners of ["BBB"]

Dated this [ ] day of [ ] 20[ ].

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**Garantieforderungen und Sicherheitsleistungen**  
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**Ursprüngliche Forderungen von MS „ASTERIX“:**  
Initial claims of MV „ASTERIX“:

WITHOUT PREJUDICE BREAKDOWN OF CLAIMS		
		\$
1.	Ship loss	= 6,000,000
2.	Cargo in 100 containers @ average \$25,000 per container	= 2,500,000
3.	100 containers @ \$2,000	= 200,000
4.	20 reefer containers @ \$20,000	= 400,000
5.	Salvage/wreck removal	= 3,000,000
6.	Oil pollution	= 1,000,000
7.	Losses, consequential losses, salvage etc. by Port Authorities	= 2,000,000
8.	Article 14 salvage	= 1,000,000
9.	Total	= <b>16,100,000</b>

**Garantieforderungen und Sicherheitsleistungen**  
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**Einigung mit MS „ASTERIX“ - Agreed with MV „ASTERIX“**  
(represented by Holman Fenwick & Willan)

**Briefgarantie / Letter of Undertaking**

**Garantiesumme / Guarantee amount : USD 15,0 Mio.**

für / for

- Schäden an MS „ASTERIX“ / Damage to MV „ASTERIX“
- Bergung des Schiffes / Salvage of vessel
- Nutzungsverlust / Loss of use claim
- Ladungsschäden ca. 100 Container / Cargo claims for about 100 containers
- Ölverschmutzung / Oil pollution

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## Garantieforderungen und Sicherheitsleistungen

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SECURITAS Versicherungen Postfach 101707 28078 Bremen

To: The Owners of MV "ASTERIX" and those parties identified in Schedule A hereto  
 c/o Holman Fenwick & Willan  
 Marlow House  
 Lloyd's Avenue  
 LONDON EC3N 3AL  
 Ref.: JCG/AJ/387

The Insured / Die Versicherten: All: in Zeichen: No. / Anzahl: Datum:

#### COLLISION UNDERTAKING

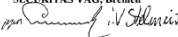
Dear Sirs,

Re: MV "ASTERIX" - Struck by MV "OBELIX" 19<sup>th</sup> September 1998

IN CONSIDERATION of your releasing and/or refraining from arresting or otherwise detaining the MV "OBELIX" or any other vessel or property in the same or associated ownership, management, possession or control for the purpose of obtaining security in respect of your claims arising out of the above collision we hereby undertake to pay you on demand such sum or sums as may be due to you from the owners of the MV "OBELIX" in respect of your said claims either by agreement between the parties or by final judgement of the English Courts **provided always** that our liability hereunder inclusive of interest and costs shall not exceed the sum of

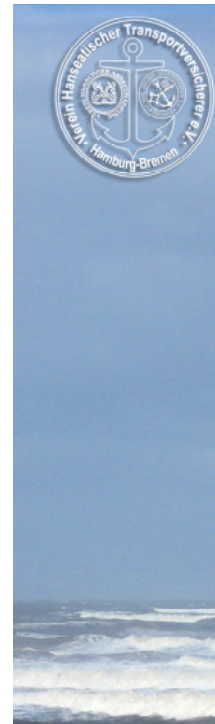
**US\$ 15,000,000,-**  
 (say in words: United States Dollars fifteen million)

This undertaking shall be governed by English law and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the English Courts.

Yours faithfully,  
 The leading underwriter  
**SECURITAS VAG, Bremen**  


Bremen, 28<sup>th</sup> September 1998

SECURITAS  
 Bremer Allgemeine Versicherungs-AG  
 Am Markt 21 - 28195 Bremen - Telefon 0421 33 25-0  
 Telex: ANVERS DE 21 191 205 - Telefax 0421 33 25-100  
 SE Bremen - 484 4740  
 Aufsichtsrat: Dr. G. Meißner, Vorsitzender  
 Vorstand: Dr. G. Meißner, Vorsitzender  
 Frank Heide, Hans-Joachim Christ, Günter Schwick  
 Geschäftsbereich: Bremer AG  
 Bremen 182 2 80 100 4000-Ar 4134 42305  
 Postfach Hamburg 102 100 100/200-Kontak Nr. 100 61 202



## Garantieforderungen und Sicherheitsleistungen

### Guarantee Requirements and Securities



**SLPA (Sri Lanka Port Authorities)**

**Bankgarantie SLPA / Bank Guarantee SLPA**

Forderung / Claim: **USD 10,0 Mio.**

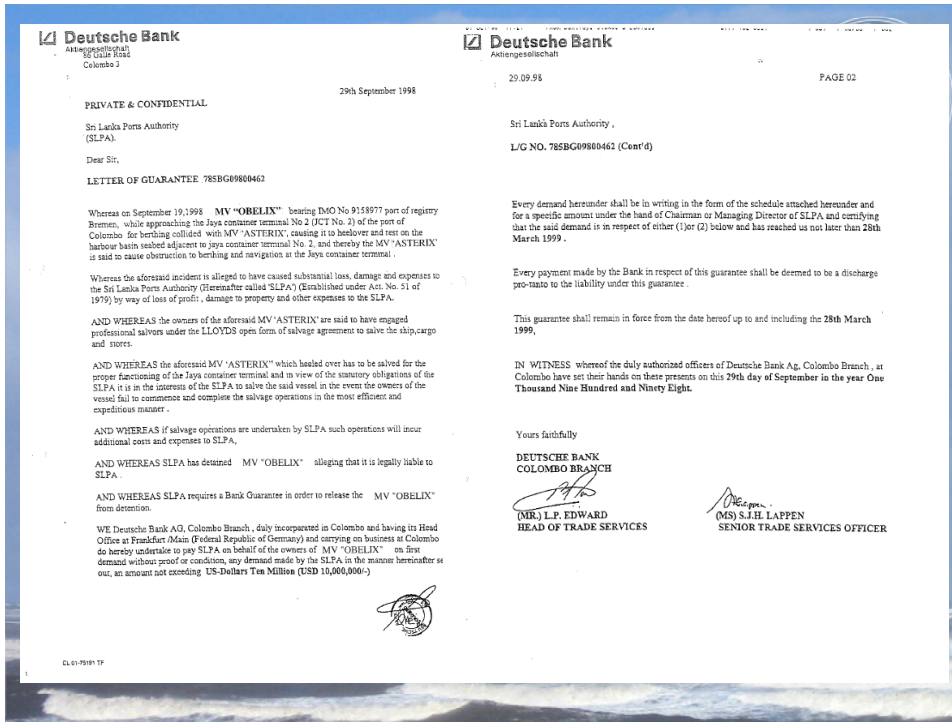
für / for

- Schäden an der Pier / Damage to the jetty
- Bergung des MS „ASTERIX“ / Salvage ASTERIX
- Bergung verlorene Ladung / Container / Salvage of lost Cargo and Containers
- Nutzungsverlust Liegeplatz Pier # 2 / Loss of use claim of Jetty # 2
- Ölverschmutzung im Hafen / Oil pollution in the port

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## Garantieforderungen und Sicherheitsleistungen

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**Garantieforderungen und Sicherheitsleistungen**  
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**Bankgarantie SLPA / Bank Guarantee SLPA**  
Entscheidender Wortlaut / Important Wording:

WE Deutsche Bank AG, Colombo Branch, ~~duly incorporated in Colombo~~ and having its Head Office at Frankfurt/Main (Federal Republic of Germany) and carrying on business at Colombo do hereby undertake to pay SLPA on behalf of the owners of MV "OBELIX" on first demand without proof or condition, any demand made by the SLPA in the manner hereinafter set out, an amount not exceeding US-Dollars Ten Million (USD 10,000,000/-)

Every demand hereunder shall be in writing in the form of the schedule attached hereunder and for a specific amount under the hand of Chairman or Managing Director of SLPA and certifying that the said demand is in respect of either (1) or (2) below and has reached us not later than 28th March 1999 .

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**Bankgarantie SLPA / Bank Guarantee SLPA**  
Besonderheit / Particularity:  
Agreement of Understanding

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THIS AGREEMENT made and entered into between the Sri Lanka Ports Authority a statutory body established under the Sri Lanka Ports Authority Act No. 51 of 1979 (hereinafter called and referred to as "the SLPA")

AND

Schiffahrtsgesellschaft MS „Blue Sky mbH & Co. KG of Bremen owners of MV "OBELIX" (hereinafter called and referred to as "the Owners") for and on behalf of themselves and/or MV "OBELIX" (hereinafter referred to as "the Ship).

Whereas on September 19, 1998 the Ship bearing IMO No. 815897 Port of Registry Bremen, while approaching the Jaya Container Terminal No.2 (JTC No.2) of the Port of Colombo for berthing collided with MV "ASTERIX", causing it to heel over and rest on the harbour basin seabed adjacent to JCT No. 2 and thereby the "ASTERIX" is said to cause obstruction to berthing and navigation at the Jaya Container Terminal.

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**Agreement of Understanding / Bank Guarantee SLPA**

Das „Agreement of Understanding“ steht in direktem Zusammenhang mit der Bankgarantie (letztere ist ein Anhang dazu) und macht sehr umfangreiche und präzise Angaben zu den Parteien des „Agreement“, nämlich SLPA und die Eigner von MS „OBELIX“

The „Agreement of Understanding“ is directly connected to the bankguarantee (the latter is an attachment thereto) and it provides extensive and precise information to the parties of this „Agreement“ which are SLPA and the owners of MV „OBELIX“

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**Es umfaßt:**


- Kurze Beschreibung, was passiert ist,
- dass SLPA erheblichen Sachschaden / Kosten / Nutzungsverlust erlitt,
- dass MS „ASTERIX“ angeblich eine Bergung von Schiff , Ladung etc. veranlasst hat auf Basis LOF,
- dass „ASTERIX“ gekentert ist und geborgen werden muss und der Liegeplatz am JCT wieder funktionsfähig wird

**It contains:**

- a brief prescription, what had happened,
- that SLPA suffered extensive material damages / costs / loss of use,
- that MV „ASTERIX“ has allegedly arranged for the salvage of the ship and cargo etc. on basis of a LOF,
- that „ASTERIX“ is capsized and has to be salvaged and the berth at the JCT must be free again

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**Weiterhin umfaßt es:**

- dass dieses von SLPA in eigener Regie veranlasst, falls die Bemühungen seitens „ASTERIX“ scheitern sollten
- dass zusätzliche Kosten entstehen, falls SLPA die Bergung veranlasst ,
- dass SLPA das MS „OBELIX“ arretiert hat und man davon ausgeht, dass es gegenüber SLPA verantwortlich ist

**Furthermore it contains:**

- That SLPA will act on their own if all efforts of „ASTERIX“ interests fail ,
- that additional costs will arise if SLPA will arrange the salvage,
- that SLPA has arrested MV „OBELIX“ and it is assumed that this ship is fully liable for all losses suffered by SLPA,

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**Schließlich beinhaltet es auch noch:**


- dass SLPA eine Bankgarantie fordert, um das Schiff aus dem Arrest zu entlassen,
- dass die Eigner von „OBELIX“ bereit sind, eine Bankgarantie zu stellen, ohne Präjudiz einer Haftungsanerkennung für den Unfall und ohne Aufgabe von irgendwelchen Rechten,
- und dass man nach diesen und aus sonstigen guten Gründen weitere Detailvereinbarungen trifft.

**Finally it also contains:**

- that SLPA requires a bankguarantee to release the vessel from arrest,
- that the owners of MV „OBELIX“ are prepared to provide a bank guarantee without prejudice to liability and waiving of any rights,
- and that according to these and other good reasons further detailed agreements can be made.

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IN WITNESS WHEREOF the SLPA and the Owners have caused their respective authorised representatives to sign this agreement and one other identical counterpart on this twenty ninth (29<sup>th</sup>) day of September 1998.

<p>For and on behalf of the Sri Lanka Ports Authority</p> <p><i>[Signature]</i> Admiral Mahan Semasinghe Chairman - SLPA</p> <p><i>[Signature]</i> Mr. Hinguregoda Arachchige Wijagunawardhana Managing Director - SLPA</p> <p>Witnesses</p> <p>1. <i>[Signature]</i> P. D. M. L. Jayasinghe</p> <p>2. <i>[Signature]</i> S. KARIYAWASAM</p>	<p>For and on behalf of the MV "OBELIX" and her Owners</p> <p><i>[Signature]</i> J.H.P. Ratnayake Attorney-at-Law</p> <p>Witnesses</p> <p>1. <i>[Signature]</i> Mr. Frank Hutchings</p> <p>2. <i>[Signature]</i> Capt. Manfred Knoblich</p>
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**Garantieforderungen und Sicherheitsleistungen**  
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**Bankgarantie SLPA / Bank Guarantee SLPA**

**Zeitablauf / Time sequences:**

- **Datum der Havarie / Date of Collision: 19.09.1998**
- **Stellung der Bankgarantie / Bank guarantee provided: 29.09.1998**
- **Reduzierung auf USD 5,0 Mio. / Reduction to USD 5.0 Mio: 14.01.1999**
- **Teilbetrag US\$ 3,92 gezogen / Part amount USD 3.92 Mio drawn: 21.04.1999**
- **Rückerstattung US\$ 3,185 / Reimbursement USD 3.185 Mio: 12.02.2001**

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**Problemstellung** / **Problem:**

In der Garantie für MS „ASTERIX“ und in der Bankgarantie an die SLPA beanspruchten beide einen „Fond“ für Bergungskosten. Insoweit waren die Bergungskosten für das Schiff doppelt berechnet.

In both guarantees to the owners of MV „ASTERIX“ and to SLPA a certain fund was included for the salvage costs of the vessel. Thus the security for the salvage was double charged.

**Lösung:** Eine separate Garantie mit dem Berger

**Solution:** A separate guarantee with the salvor

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**Bergungsgarantie MV „ASTERIX“** / **Salvage Guarantee MV „ASTERIX“**

Aufgrund der doppelten Forderung einer beträchtlichen Sicherheit für die Bergung des Schiffes - sowohl seitens der Reederei als auch seitens der SLPA - wurde zwischen

- der Reederei MS „ASTERIX“
  - der Bergungsfirma MASTER MARINER / SMIT und den
  - Eignern, Kaskoversicherern und dem UK P&I-Club von MS „OBELIX“
- das sogenannte **TRI-PARTITE-AGREEMENT** vereinbart und eine separate Garantie gestellt über

**USD 5,0 Mio.**

(Mehr dazu noch später)

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Salvage Guarantee MV „ASTERIX“

Due to the double claim for a considerable security for the salvage of the vessel from the owners of the vessel as well as also from the SLPA

- the Owners of MV „ ASTERIX“
- the salvage companies MASTER MARINER / SMIT and
- Owners, H+M Underwriters and the UK P&I-Club of MV „OBELIX“

agreed the so called **TRI-PARTITE-AGREEMENT** with a separate guarantee in the amount of

**USD 5,0 Mio.**

(Some more hereto later)

**Garantieforderungen und Sicherheitsleistungen**  
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Briefgarantie MV „ASTERIX“ / Letter of Undertaking MV „ASTERIX“

Zeitablauf / Time sequences:

- Datum der Havarie / Date of Collision: **19.09.1998**
- Briefgarantie USD 15,0 Mio. gestellt / LOU provided USD 15.0 Mio: **28.09.1998**
- Reduzierung auf USD 12,0 Mio. / Reduction to USD 12.0 Mio: **20.11.1998**  
(nach Vereinbarung, die Bergung zu zahlen / after agreement to pay the salvage costs)
- Erhöhung auf USD 15,0 Mio / Increasing to USD 15,0 Mio: **18.02.2000**  
(Nachdem Seetüchtigkeit in Frage gestellt wurde / After seaworthiness was disputed)



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**Sonstige Garantien** / Other Guarantees

Für Ladungsinteressen / For Cargo interests:

Es sei an dieser Stelle auch noch erwähnt, dass das MS „OBELIX“ im Februar 2000 nochmals von Ladungsbeteiligten in Südafrika arretiert worden ist („forum shopping“), wo Bankgarantien über ca. USD 5,6 Mio. für Ladungsansprüche gestellt werden mussten.

At this stage it must be mentioned that the MV „OBELIX“ had been arrested again in February 2000 in South Africa by cargo interests (“forum shopping”) when bank guarantees of total USD 5.6 mio had to be provided.

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**Zusammenfassung aller Garantien** / Summary of all Securities provided

Insgesamt wurden Garantien ausgestellt in Höhe von:  
In total guarantees were provided in the amount of:

**USD 47.882.469,-**

bei einer kumulierten Versicherungssumme von USD 33.0 Mio. + DM 15.0 Mio.  
at an insured value of USD 33.0 Mio. + DM 15.0 Mio. (average r.o.e. 1,5 ) say

**USD 43.000.000,-**

bei schwankendem \$-Kurs reduzierte/erhöhte sich die VS entsprechend  
the daily changing r.o.e caused an alteration up/down to the insured value

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**Rückbürgschaften der Mitbeteiligten der Kaskopolicy /**  
Backletters from participants of the H+M policy

Nachdem der führende Versicherer für die vorgebrachten Ansprüche von allen Parteien im eigenen Namen zu 100% Garantien gestellt hatte, wurden alle an der Kaskopolicy mitbeteiligten Versicherer vom damaligen VBS gebeten, für ihre jeweiligen Anteile Rückbürgschaften zu geben.

After the leading Underwriter had provided 100% securities in his own name the former VBS had contacted all participating Underwriters of the H+M policy to ask for and to collect backletters for their respective shares.

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**Konsequenzen / Consequences**

Infolge der Überschreitung der Versicherungssumme bei den insgesamt gestellten Garantien, wurden die Versicherer der Kollisions-Excedenten Police angesprochen und es wurde von dort eine angemessene Rückbürgschaft eingeholt, für den Fall, dass die Versicherungssumme(n) unter der Kaskopolicy nicht ausreichen würde(n).

Due to the fact that the total amount of all guarantees provided to claimants were in excess of the insured value(s) of the third party claims under the H+M policy, the Increased Value (IV) insurers were approached and provided a back letter to the leading H+M Underwriter in an appropriate amount.

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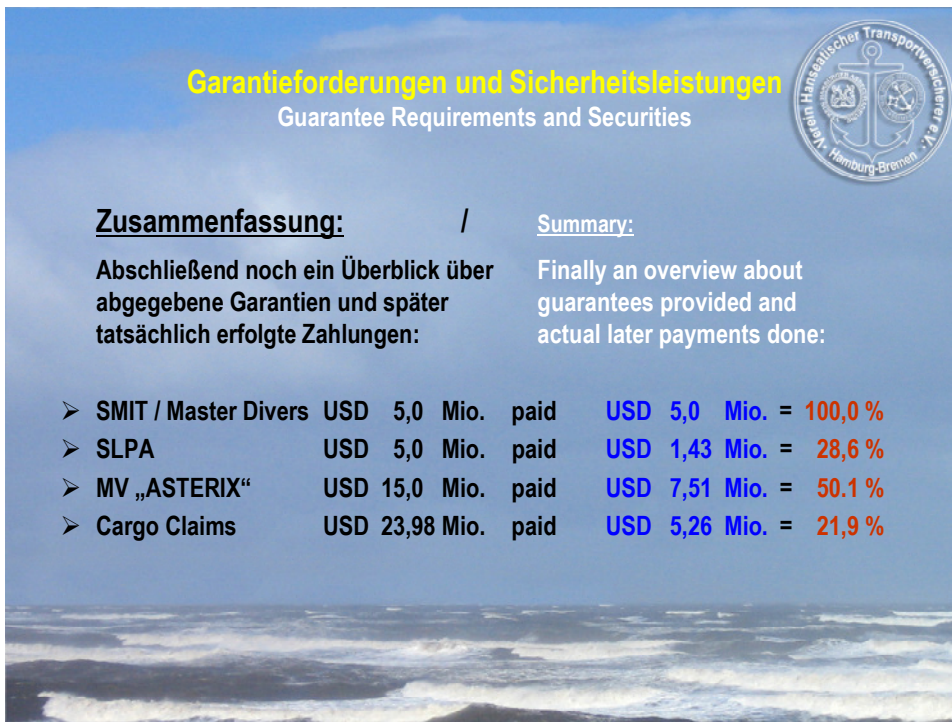
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**Weitere Maßnahmen** / Further measurements taken:

Für den Fall, dass mitbeteiligte Versicherer an der Kaskopolicy bis zum Abschluss der Bearbeitung dieses Schadensfalles zahlungsunfähig werden könnten, wurde seitens des führenden Versicherers, der alle Garantien zu 100% in seinem Namen gestellt hatte, eine Ausfallversicherung abgeschlossen.

As a preventive measurement the leading underwriter who had given the securities for 100% has signed a bad debts insurance in case that participating underwriters of the H+M policy might get bankrupt until the finalization of this collision case and respective fulfilment of obligations.



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**Zusammenfassung:** / Summary:

Abschließend noch ein Überblick über abgegebene Garantien und später tatsächlich erfolgte Zahlungen: / Finally an overview about guarantees provided and actual later payments done:

➤ SMIT / Master Divers	USD 5,0 Mio.	paid	USD 5,0 Mio.	= 100,0 %
➤ SLPA	USD 5,0 Mio.	paid	USD 1,43 Mio.	= 28,6 %
➤ MV „ASTERIX“	USD 15,0 Mio.	paid	USD 7,51 Mio.	= 50,1 %
➤ Cargo Claims	USD 23,98 Mio.	paid	USD 5,26 Mio.	= 21,9 %

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