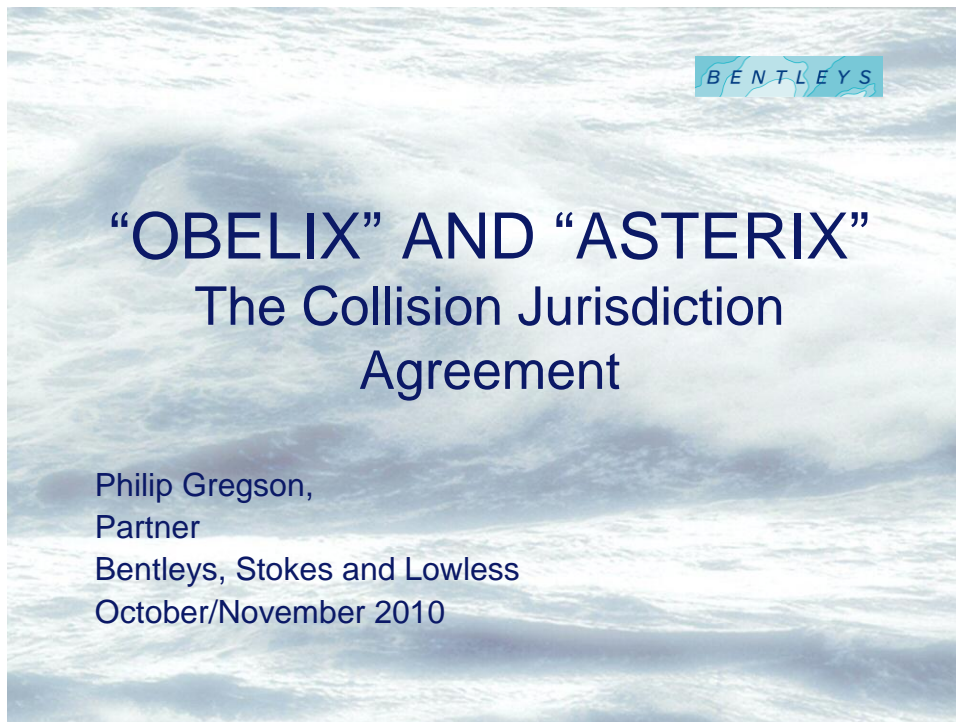


## Trainingscamp IV

Oct. / Nov. 2010



presented by

Philip Gregson  
- Partner -

Bentleys Stokes & Lowless

Trainingscamp IV  
Collision Jurisdiction Agreement

Collision Jurisdiction  
Agreement

BENTLEYS

- Owners of ASTERIX represented by London lawyers.
- Instructed by London market H&M underwriters and London based P&I Club on behalf of Owners.
- ASTERIX “interests” included Owners, Bareboat charterers, time charterers, slot charterers, cargo and container owners – 28 in total

Collision Jurisdiction  
Agreement

BENTLEYS

- OBELIX given choice of:
  - English law and jurisdiction but with a separate US\$15million fund in respect of ASTERIX claims only - or
  - Sri Lankan law and jurisdiction with no clear right to limit liability.
  - Threat of arrest of OBELIX if no agreement.

## Collision Jurisdiction Agreement

BENTLEYS

- Sri Lankan law and jurisdiction:
  - No automatic right to limit liability
  - Lack of settled law and judicial experience in complex maritime cases.
  - Delays inevitable.
  - Proceedings could take many years to conclude

## Collision Jurisdiction Agreement

BENTLEYS

- English law and jurisdiction:
  - Limitation of Liability available -1976 Limitation Convention
  - Well established law and procedures.
  - Specialist Admiralty Court with own Judge and Registrar for procedural hearings.
  - Court monitors proceedings to avoid long delays.

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Collision Jurisdiction Agreement

Collision Jurisdiction  
Agreement

BENTLEYS

- Negotiations with ASTERIX interests proceeded on the basis of the Collision Jurisdiction Agreement published by Admiralty Solicitor's Group in London.
- "ASG 2" wording.
- Standard wording which can be easily amended to take account of any particular circumstances.
- Significant amendments in this case.

Collision Jurisdiction  
Agreement

BENTLEYS

- Clause A.
- All claims - contract, tort, bailment.
- Claims determined by English Courts according to English law and practice.
- Expressly includes the right to limit liability
- In this case ASTERIX interests identified by reference to "Schedule A" claimants.

## Collision Jurisdiction Agreement

BENTLEYS

- Clause B - provision for lawyers to accept service of legal proceedings.
- Avoids need to apply for permission to serve collision proceedings out of the jurisdiction
- English law requires party seeking to limit liability to serve originating proceedings within the jurisdiction.
- Limitation proceedings can be served on Owner of other ship via London lawyers.

## Collision Jurisdiction Agreement

BENTLEYS

- Clause C – Security
- Dominant position of ASTERIX interests allowed them to demand exclusion from limitation of liability provisions.
- Not subject to provisions of 1976 Limitation Convention under English law.
- Obtained a separate “Initial Limitation Fund” of US\$15 million for settlement of their claims.



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Collision Jurisdiction Agreement

Collision Jurisdiction  
Agreement

BENTLEYS

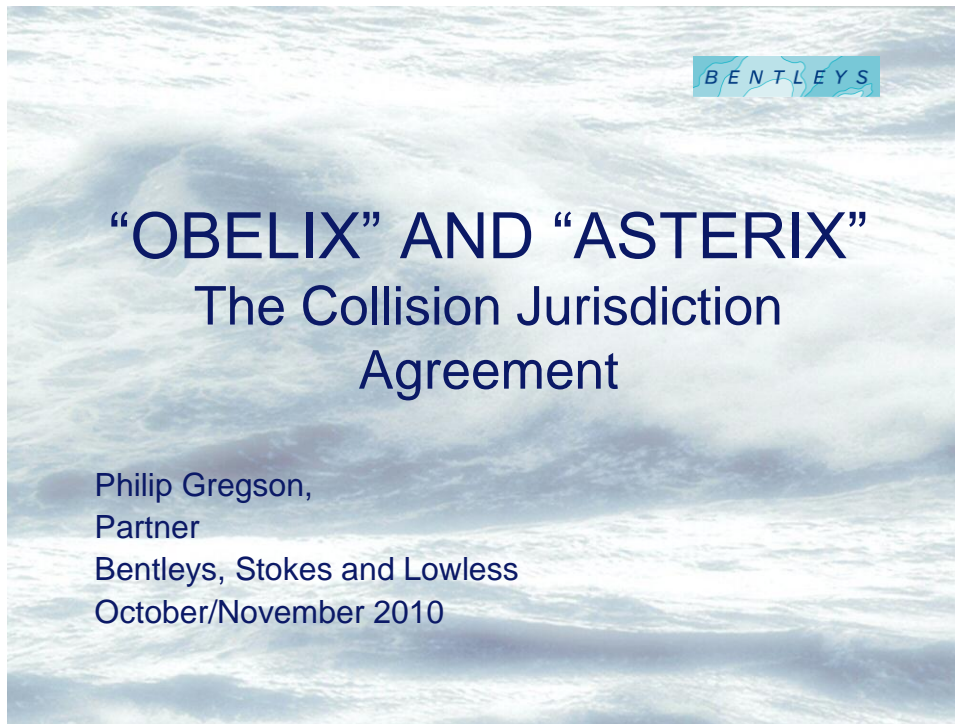
- Provision for a “Subsequent Limitation Fund” should value of claims decrease.
- Allows for reduction in value of security.
- Letter of Undertaking provided on amended “ASG 1” wording – US\$15 million - provided by H&M underwriters.
- Subsequent reduction to US\$12 million but later demand for increase to US\$15 million.

Collision Jurisdiction  
Agreement

BENTLEYS

- Jurisdiction Agreement signed end of September – 10 days after collision.
- Some later disagreements about precise operation of “Initial Limitation Fund” provisions but these were eventually dealt with amicably.
- Jurisdiction Agreements with other parties, particularly time-charterers, did not provide for access to a separate limitation fund.

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**Collision Jurisdiction Agreement**



**Enclosure**

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Collision Jurisdiction Agreement

**COLLISION JURISDICTION AGREEMENT  
"ASTERIX" – STRUCK BY "OBELIX" AT COLOMBO**

**IT IS HEREBY AGREED between the parties as follows :**

- A. All claims whatsoever (whether in contract, tort, bailment or otherwise) of the parties set out in Schedule A ("the ASTERIX Interests") against the Owners of the "OBELIX" and 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. It is agreed between the parties hereto that the principal amount of the limitation fund of "OBELIX" in respect of the claims of the ASTERIX Interests shall be US\$15m (the "Initial Limitation Fund") or such other lower amount as may in the future from time to time be agreed by the parties in writing (the "Subsequent Limitation Fund") and not the sum to which the Owners of the "OBELIX" would otherwise be entitled to limit their liability by virtue of the provisions of the 1976 Convention on Limitation of Liability as incorporated into English law.
- D. The Initial Limitation Fund is a figure less than the amounts of the claims of the ASTERIX Interests as estimated by them. In the event that it is clear to the parties that the value of claims of the ASTERIX Interests is less than the Initial Limitation Fund then the amount of the Initial Limitation Fund will be adjusted accordingly and shall be the Subsequent Limitation Fund, provided always that in the event of a subsequent increase in the claims of the ASTERIX Interests then the Subsequent Limitation Fund will similarly be increased up to a maximum value of the Initial Limitation Fund.



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**Collision Jurisdiction Agreement**

- E. The Owners of "OBELIX" will provide security in respect of the claims of the ASTERIX Interests to the ASTERIX Interests as per attached specimen ("the Undertaking") which shall in the first instance cover the initial Limitation Fund.
- F. Upon agreement of any subsequent Limitation Fund the ASTERIX Interests shall return the Undertaking then outstanding to the Owners of the "OBELIX" in exchange for an undertaking with identical terms covering the Subsequent Limitation Fund.
- G. The Owners of the "ASTERIX" hereby warrant that the registered Owners of the "ASTERIX" at the time of the collision were MS ASTERIX NTH Schiffahrts GmbH & Co. KG of (full address), Germany and that the "ASTERIX" was demise chartered out at such time to Asterix Shipping Company Limited of Antigua.
- H. The Owners of "OBELIX" hereby warrant that the registered Owners of the "OBELIX" at the time of the collision were Schiffahrtsgesellschaft MS "OBELIX" mbH & Co. KG, (full address) Germany and that the "OBELIX" was not demise chartered out at such time.
- I. 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 ASTERIX Interests	For and on behalf of the Owners of "OBELIX"