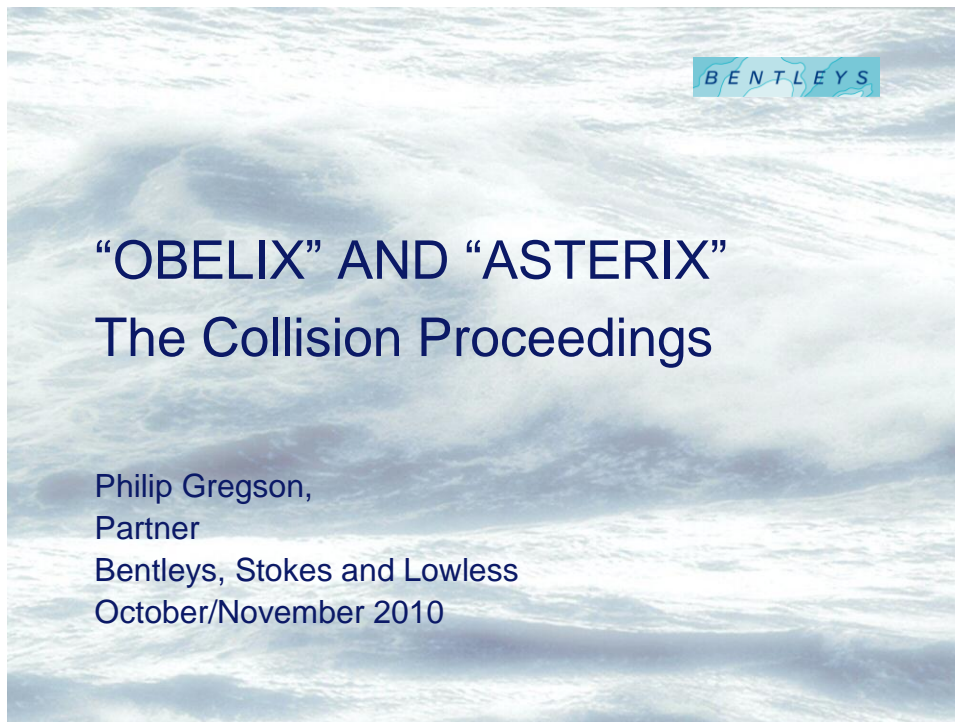


## **Trainingscamp IV**

Oct. / Nov. 2010



presented by

**Philip Gregson**  
- Partner -

**Bentleys Stokes & Lowless**

## The Collision Proceedings

BENTLEYS

- Collision Jurisdiction Agreement – 28.09.1998
- ASTERIX commenced proceedings in Admiralty Court in London – 28.10.98
- Claimed damages for all losses caused by negligent navigation and or management of OBELIX
- Claim in tort – negligent actions/behaviour of Owners and/or Master.

## The Collision Proceedings

BENTLEYS

- March 1999 – ASTERIX presents claim for US\$6.14m and demands Immediate payment of US\$5m.
- No supporting documents or evidence of claim.
- Refused to provide any ship's plans or other documents until US\$5m paid.
- OBELIX continued to investigate seaworthiness of ASTERIX – without access to ASTERIX technical/Class documents.
- Serious concerns about condition of ASTERIX.

## The Collision Proceedings

BENTLEYS

- As a result of limited investigations owners/underwriters of OBELIX did not want to admit 100% liability for losses.
- Clear evidence OBELIX would be liable for at least part of damage.
- Decided to make partial admission of liability.
- Leave the door open for more detailed investigations into condition of ASTERIX and possibility of counter-claim to recover third party-claims paid by OBELIX.

## The Partial Admission of Liability

BENTLEYS

*“Our clients now admit liability for the collision between the OBELIX and the ASTERIX. However, our clients do not admit liability for the damage which resulted from the collision, with the exception of the immediate consequences of the collision,*

- the physical damage to the side shell in way of hold No.1,*
- the damage to the cargo in that hold, and*
- any salvage liability associated with that damage alone.”*

## The Partial Admission of Liability

BENTLEYS

*“Depending upon expert opinion, which our clients have commissioned, they may argue that the damage for which they deny liability was caused not by the collision, but by the intervening cause of the ASTERIX’S unseaworthiness and/or by the negligent failure of her crew to respond properly to the collision”.*

- Admission avoided further argument on liability and the immediate consequences of the collision -
- BUT would allow OBELIX interests time to conduct further investigations.

## The Collision Proceedings

BENTLEYS

- ASTERIX refused to provide plans/drawings to assist investigations.
- Application to Court in February 2000 to ask Judge to order disclosure of ship’s plans and allow physical inspection of Classification Society’s records.
- Once documents obtained and Class records inspected OBELIX’s naval architect in London able to make detailed evaluation of flooding and capsizing of ASTERIX.
- Eventually, also gained access to repaired ASTERIX (new owner/new name) to make further inspections of repaired watertight bulkheads.

## The Collision Proceedings

BENTLEYS

- March 2001 went back to Court to agree a procedural timetable leading to a trial – Case Management Conference
- Mediation discussed and ordered by the Court
- Agree mediator, mediation terms, preparation for mediation, and hold mediation by July 2001.
- Mediation took place on 6/7 July.
- Broad measure of agreement BUT -

## The Collision Proceedings

BENTLEYS

- ASTERIX unable to make a final agreement at mediation – underwriter's person with authority to settle not contactable and Owner's representative left to return to Germany before completion.
- Mediation ended without final agreement.
- Negotiations continued for several months.
- ASTERIX making additional demands and initially refusing to provide "hold harmless".
- Compromise was finally reached and a settlement agreement signed – March 2002.



Trainingscamp IV  
**The Collision Proceedings**

The logo for Bentleys, consisting of the word "BENTLEYS" in a light blue, sans-serif font, enclosed within a darker blue rectangular box with a slightly distressed or torn-edge effect.

**“OBELIX” AND “ASTERIX”**  
**The Collision Proceedings**

Philip Gregson,  
Partner  
Bentleys, Stokes and Lowless  
October/November 2010