

# Risk Management – Cargo Surveying

IIMS UAE Branch – 19 Sep 2016

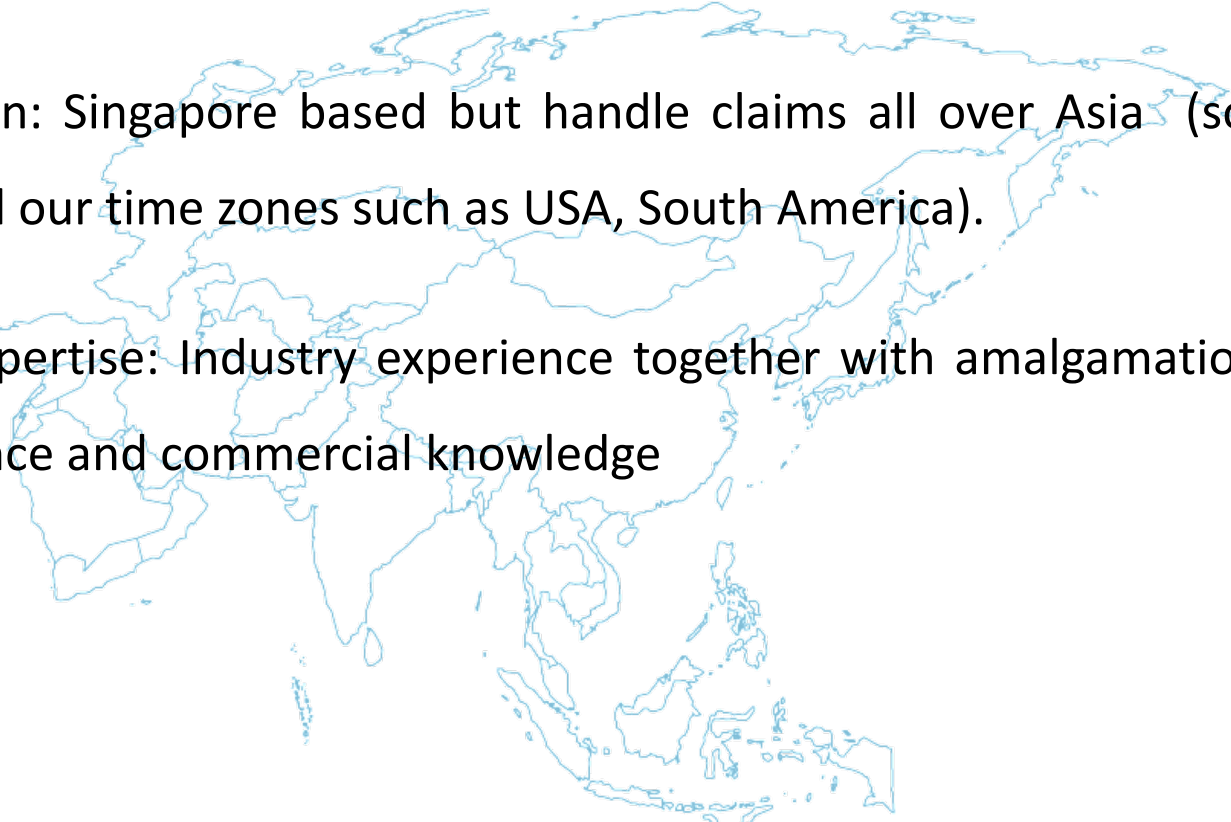
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NAU Pte Ltd



## NAU Pte Ltd

- Adjusters & Maritime Claims Consultants
- Classes of Business
  - Transport Liability including Professional Indemnity
  - Protection & Indemnity
  - Hull & Machinery
- Our quality mantra
  - Practical
  - Economical
  - Win-win solutions

## NAU Pte Ltd

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- Location: Singapore based but handle claims all over Asia (some times beyond our time zones such as USA, South America).
  - Our expertise: Industry experience together with amalgamation of legal, insurance and commercial knowledge

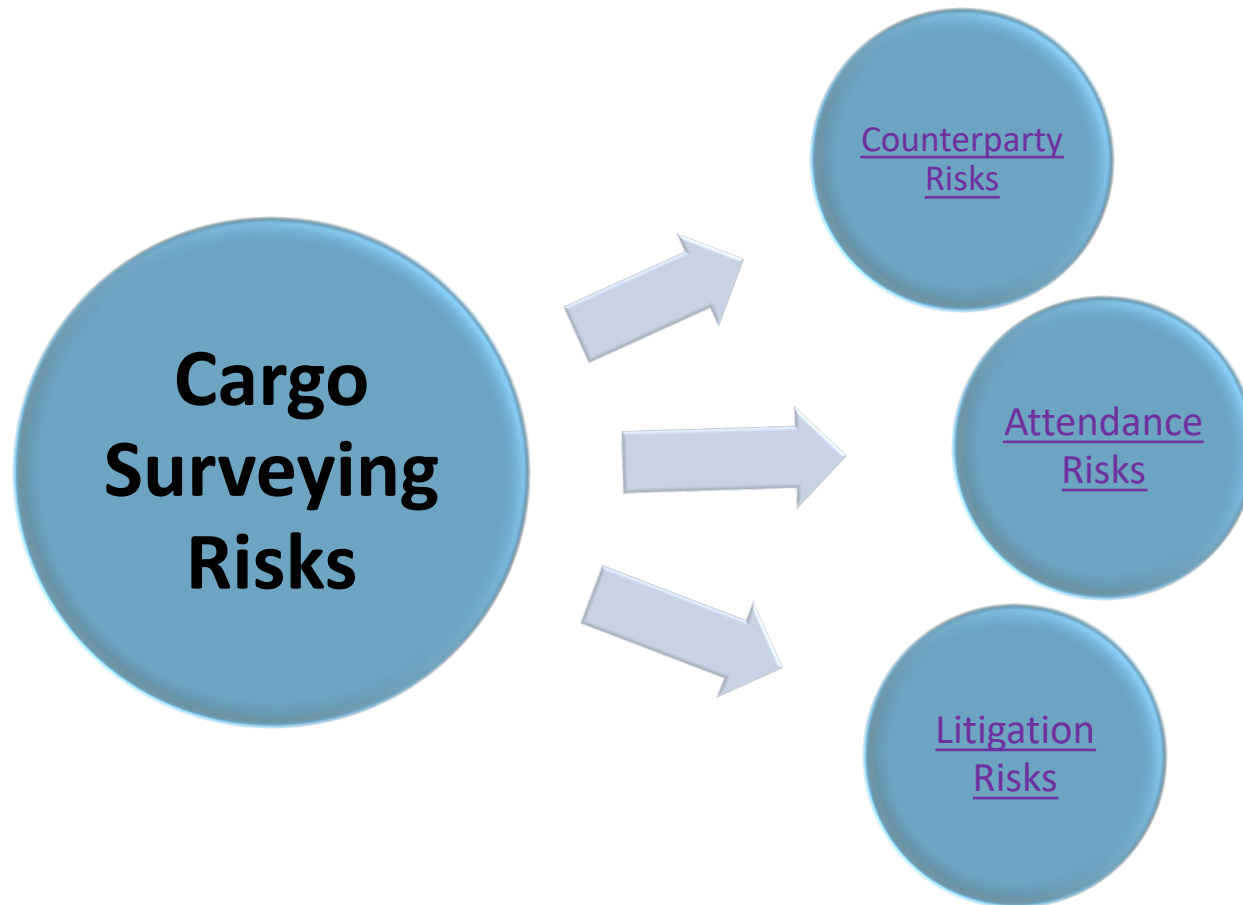
# Risk Management – Cargo Surveying

- Cargo Surveyor:
  - a person who conducts inspections, surveys or examinations of marine cargoes to assess, monitor and report on their condition
  - “eyes” and “ears”
- Employed by various parties
  - Cargo interests (Shippers, Consignee’s and Cargo Insurers)
  - Carriers and their Insurers
  - Other interested party – say port authority, municipal authority, etc.
- Independent professional parties to provide evidence in support of damage claims

# Risk Management – Cargo Surveying

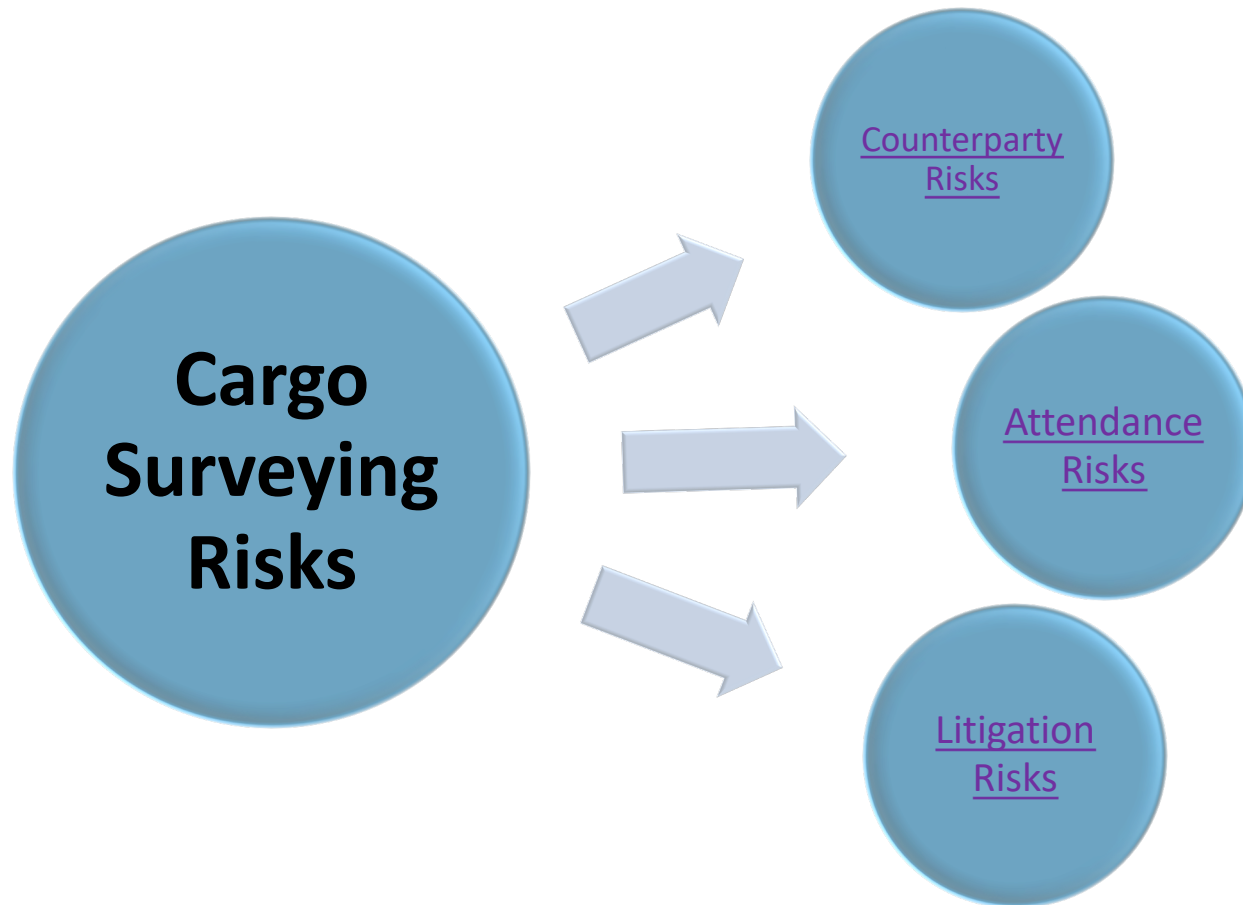
## ➤ Duty of Cargo Surveyor:

- Ascertain nature, cause and extent of loss
- Assist in mitigation of loss
  - Unbiased reports – should be factual and report the matter as it appears
  - Issues – Further engagement?



# Cargo Surveying Risks

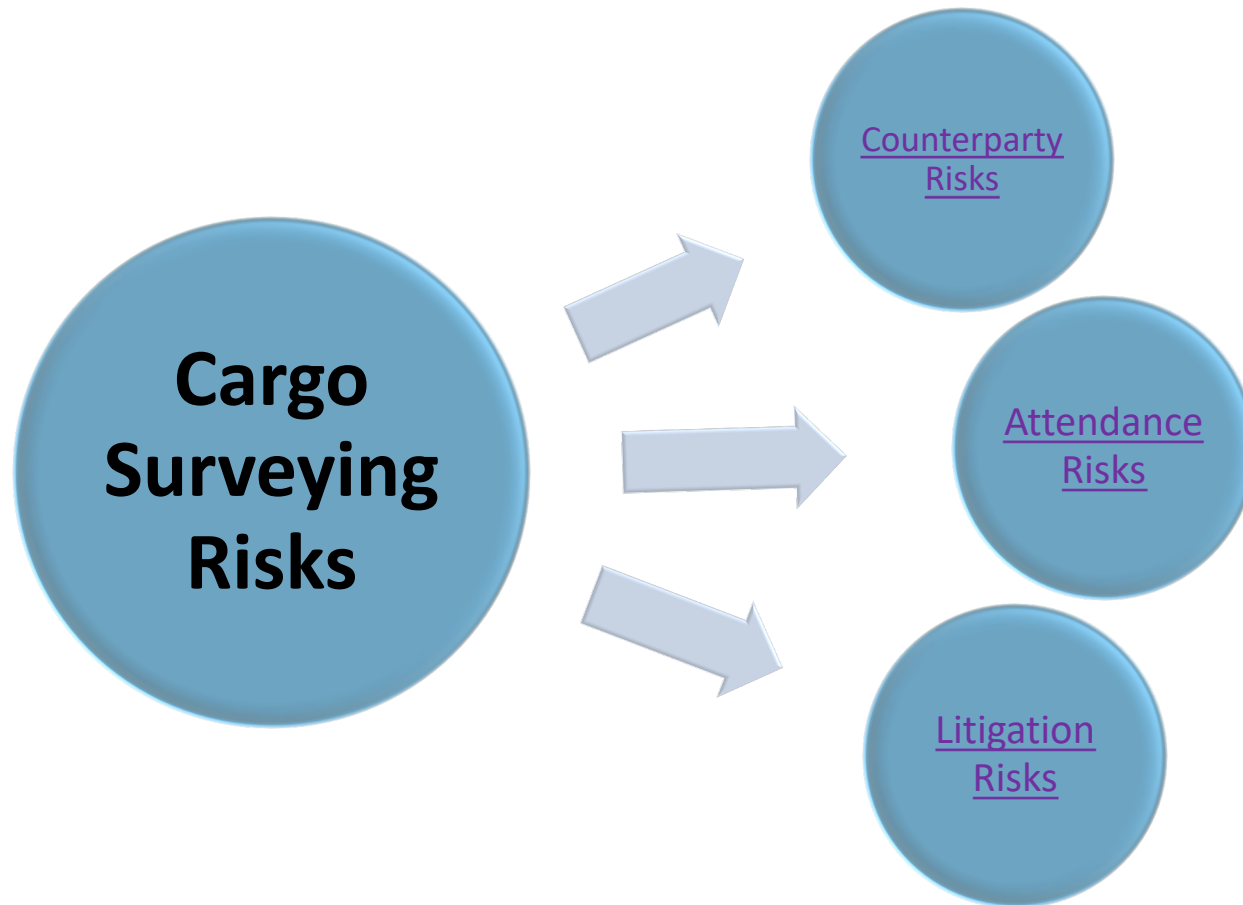
- Counterparty Risks
  - Generally engaged by Insurers/Insured
  - KYC
  - Payment terms and recovery





# Cargo Surveying Risks

- Attendance Risks
  - Knowledge of the specific product
  - Sub-contracting to 3<sup>rd</sup> party
  - Health & Safety of surveyors – protective equipment
  - Indemnity Provisions, if any
  - Improper / unfinished reports
  - Cyber Liability



## Risks in action - 1

- Surveyor engaged by Charterer to attend the loading of a cargo and to report on any damage caused by the stevedores.
- Instructions from charterer contained the following provisions:
- “We hereby order the following: supervision of the loading/preloading survey; reporting of eventual damages to the coating or the material - and time of damage; reporting of negligence while handling the material and loading; detailed documentation, with photos, of the loading operations; no continuous supervision will be necessary, only during the important moments (commencement of loading operations - change of shift – securing of the cargo).”

## Risks in action - 1

- Loading and lashing of cargo completed and vessel sailed.
- Few days later - loud noise from cargo hold and the ship developed a severe list.
- Master reduced list by ballasting and diverted to
- Cargo discharged, sorted, reloaded, lashed and secured
- Some damaged cargo left
- Vessel resumed voyage

## Risks in action - 1

- Owners pursued Charterers for damages for a substantial sum
- Subsequently, Charterers pursued both the surveyor and the stevedores as jointly liable
- Surveyors Insurers successively defended the action – but costs of defense substantial!!!

## Risks in action - 2

- Surveyor instructed by Shippers to certify holds of a vessel fit for loading of grains
- Surveyor issued a certificate of fitness and cargo loaded
- At discharge port, Authorities ordered to stop discharge as cargo suspected of “heat damage”
- Investigation revealed that cargo was contaminated by de-laminating paint, rust, dirt etc from the ships hold
- Consignee’s negotiated a reduction in price from the shippers

## Risks in action -2

- Shippers claimed from the Ship owners and Surveyor (for failure to properly inspect the vessel and provide the certificate)
- Surveyor was fortunately insured
- Expert evidence suggested that damage may have been caused by the equipment used during cargo discharge.
- Limitation of Liability available in Surveyors contract but not validly incorporated
- Surveyor settled on negotiated terms on wp basis!

## Risks in action -3

- Cargo damage noted in reefer container at the time of discharge
- Cargo surveyor attended and provided report showing the extent of damage and alleged that the loss was due to equipment outage (without providing any evidence)
- Subrogated insurers pursued carriers for recovery where it was found that the cargo damage was due to a combination
  - Cargo not being loaded in the correct temperature
  - improper stowage
- Carriers denied liability and defended successfully
- Subrogated Insurers could have pursued surveyors for recovery



## Risks in action -4

- Surveyors undertook a survey of a shipment of Corpra Extraction Pellets in bulk to determine the cargo condition, temperature and quality of the shipment.
- At discharge port, cargo found to contain “burnt cargo”.
- Allegations of negligence against the surveyor that the burn cargo found should have been noted during attendance
- Cargo value reduced by 30% - approx USD 200 K
- Surveyors appointed by buyer but paid by seller including instructions for survey



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## Risks in action -4

- No STC's incorporated
- Commercial settlement but issues with recovery under the Insurance policy

## Legal Issues

- Tort of Negligence: A civil wrong which causes harm to another person
- Duty of care –
  - written agreements,
  - professional holding himself or herself to have particular expertise and advising the client may be assuming duties towards the client
- Breach of Duty: “ Bolam” Test: A failure to demonstrate the degree of skill & care which is ordinarily exercised by reasonably competent members of the profession”
  - NB: If another member of the same profession, with same level of qualifications & skills, testifies that he could have done the same thing, then the act or omission may be held to be an “error of judgment” and not professional “negligence”.

## Legal Issues

➤ Duty of care to whom:

- Donoghue v. Stevenson : “... persons who are so closely & directly affected by my act that I ought reasonably to have them in contemplations... when I am directing my mind to the [negligent] act of omission.”

➤ Includes clients and other parties in close proximity as well as the 3<sup>rd</sup> party whose cargo may have been damaged

# Risks Management

- Be Professionally Qualified and accept engagements for core competencies
- Incorporate Standard Trading Conditions into your terms of engagement
  - Defense : Exclusions of liability, limitation of liability, time limits and law and jurisdiction and mode of dispute resolution.
  - Offence: payment terms, indemnities, defining the brief, termination, law and jurisdiction
- Obtain PI Insurance



## Conclusion

- Better to be safe than sorry
- Professionalism always pays
- Work with the Industry to attain high standards both in quality of work and expectations

# THANK YOU