

# Implications of the Rotterdam Rules for Shipowners' Liabilities

*Quantitative assessment of the effect of the ratification of a new liability regime*



# Content

Process

Results



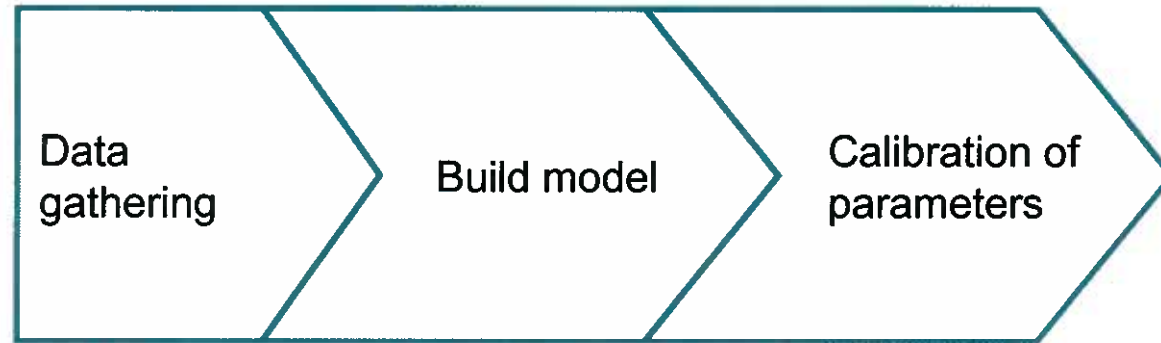
# Content

**Process**

Results



# Process





## Data gathering

Moments of a cargo claim	# of claims	Exposure**
	Share of incidents	Avg. per claim
Seaworthiness	15.8%	97,065
Stowage and handling	7.7%	113,834
General average	0.1%	653,879
Fire	0.3%	2,763,853
Delay	0.2%	110,559
Dangerous goods	8.7%	147,632
Through transport contracts	12.3%	49,473
Deck carriage	0.3%	341,891
Navigation related	0.1%	262,861

**10 years of Gard cargo claims  
1998 – 2008**

*29,688 claims  
USD 786.0 million\**

**\* 100%**

\* Before adjustment for inflation  
\* Adjusted for inflation





# Changes to the rules are split into mutually exclusive and collectively exhaustive bullet points

## Carrier

### Obligations of the carrier

- Continuing duty of seaworthiness
- Wider discretion relating to dangerous goods
- Recognition of free in/out stow

### Liability of the carrier

- Extended basis of liability, incl. delay
- Altered list of exceptions
- Liability for maritime performing parties

### Limits of liability

- Increased limits of liability
- Loss of right to limit under poor personal conduct

### Scope of application

- Extension beyond loading/discharge

### Prov. for particular stages

- Does not deprive of defences/limitation under deviation
- Changes for carriage on deck
- Application for loss outside sea-leg

### Transport documents

- Introduction of electronic documentation

### Time for suit

- Time bar extended from 1 to 2 years

### Jurisdiction

- Wider choice as to jurisdiction
- Freedom of contract through "volume contracts"

## Shipper

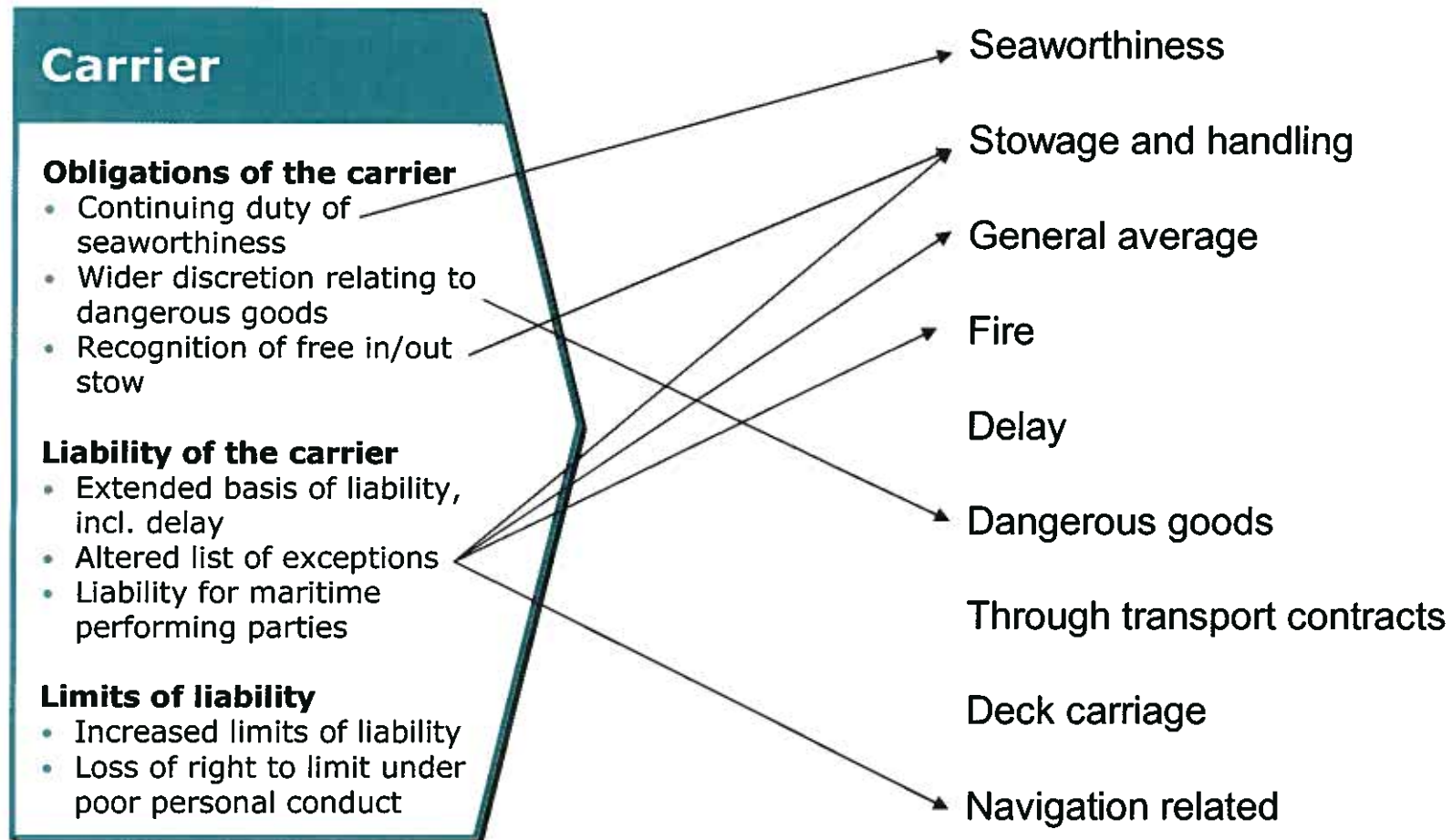
### Obligations of the shipper

- Increased number of obligations
- Provisions for dangerous goods





# Build model





# Calibration of parameters

**Carrier**

**Obligations of the carrier**

- Continuing duty of seaworthiness
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- Recognition of free in/out stow

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- Altered list of exceptions
- Liability for maritime performing parties

**Limits of liability**

- Increased limits of liability
- Loss of right to limit under poor personal conduct

- Seaworthiness
- Stowage and handling
- General average
- Fire
- Delay
- Dangerous goods
- Through transport contracts
- Deck carriage
- Navigation related



### Calibration using expert-input

**Impact on frequency**

**Impact on severity**







# Calibration of parameters – Carrier

	Description	Involved claims	Impact	
			Frequency	Exposure
<b>Obligations of the carrier</b>				
Continuing duty of seaworthiness	<ul style="list-style-type: none"> <li>• Similar, but extended period</li> <li>• Wider discretion in relation to dangerous goods</li> </ul>	Seaworthiness	5%	10%
Recognition of free in/out stow	<ul style="list-style-type: none"> <li>• Allows shipper to perform loading/handling</li> </ul>	Dangerous cargo Stowage and handling	-2% -2%	-2% -1%
<b>Liability of the carrier</b>				
Basis of liability	<ul style="list-style-type: none"> <li>• Extended basis</li> </ul>	10% of all claims	2%	10%
Altered list of exceptions	<ul style="list-style-type: none"> <li>• Burden of proof: more to be proved by claimant</li> </ul>	3% of all claims	-1%	-1%
	<ul style="list-style-type: none"> <li>• More exceptions than in H-V</li> </ul>	3% of all claims	-3%	-1%
	<ul style="list-style-type: none"> <li>• Exceptions subject to overriding due diligence obligation</li> </ul>	3% of all claims	2%	2%
	<ul style="list-style-type: none"> <li>• Sacrifice exempts carrier from liability</li> </ul>	General average	0%	0%
	<ul style="list-style-type: none"> <li>• Removal of exception for error in navigation</li> </ul>	Navigation related	2%	5%
	<ul style="list-style-type: none"> <li>• Fire exemption no longer refers to carrier's fault</li> </ul>	Fire	-1%	-1%
Joint liability resulting from delay	<ul style="list-style-type: none"> <li>• No liability if caused by party acting for cargo interests</li> </ul>	Stowage and handling	-1%	0%
	<ul style="list-style-type: none"> <li>• Can be held liable for loss caused by delay</li> </ul>	Delay	3%	3%
Liability for acts of Maritime performing parties (MPP)	<ul style="list-style-type: none"> <li>• Liability for acts/omissions by MPP</li> </ul>		0%	0%
	<ul style="list-style-type: none"> <li>• Claimant may commence proceedings against MPP</li> </ul>	3% of all claims	-3%	-1%
	<ul style="list-style-type: none"> <li>• MPP may seek recovery from Carrier</li> </ul>	3% of all claims	2%	1%
<b>Limits of liability</b>				
Increased limits	<ul style="list-style-type: none"> <li>• Per package SDR 875 (H-V: 667; H: 835)</li> </ul>	10% of all claims	0%	31%
	<ul style="list-style-type: none"> <li>• Per kilo SDR 3 (H-V: 2; H: 2.5)</li> </ul>	10% of all claims	0%	50%
Higher cap for pure economic loss	<ul style="list-style-type: none"> <li>• 2.5 times freight (w/ overall cap from limits)</li> </ul>	10% of all claims	0%	20%
Loss of right to limit	<ul style="list-style-type: none"> <li>• Enhanced focus on personal conduct</li> </ul>	2% of all claims	0%	10%

Impact on number of claims

Impact on claims costs





# Calibration of parameters – Shipper

	Description	Involved claims	Impact	
			Frequency	Exposure
<b>Obligations of the shipper</b>				
Increased number of obligations	<ul style="list-style-type: none"><li>• E.g. handing over goods in fit condition</li></ul>	Seaworthiness	-2%	-4%
Contains provisions on dangerous goods	<ul style="list-style-type: none"><li>• Widened definition from UN Orange book may cause some owners not to declare particular cargos</li></ul>	Dangerous cargo	0%	-3%





# Calibration of parameters – Other

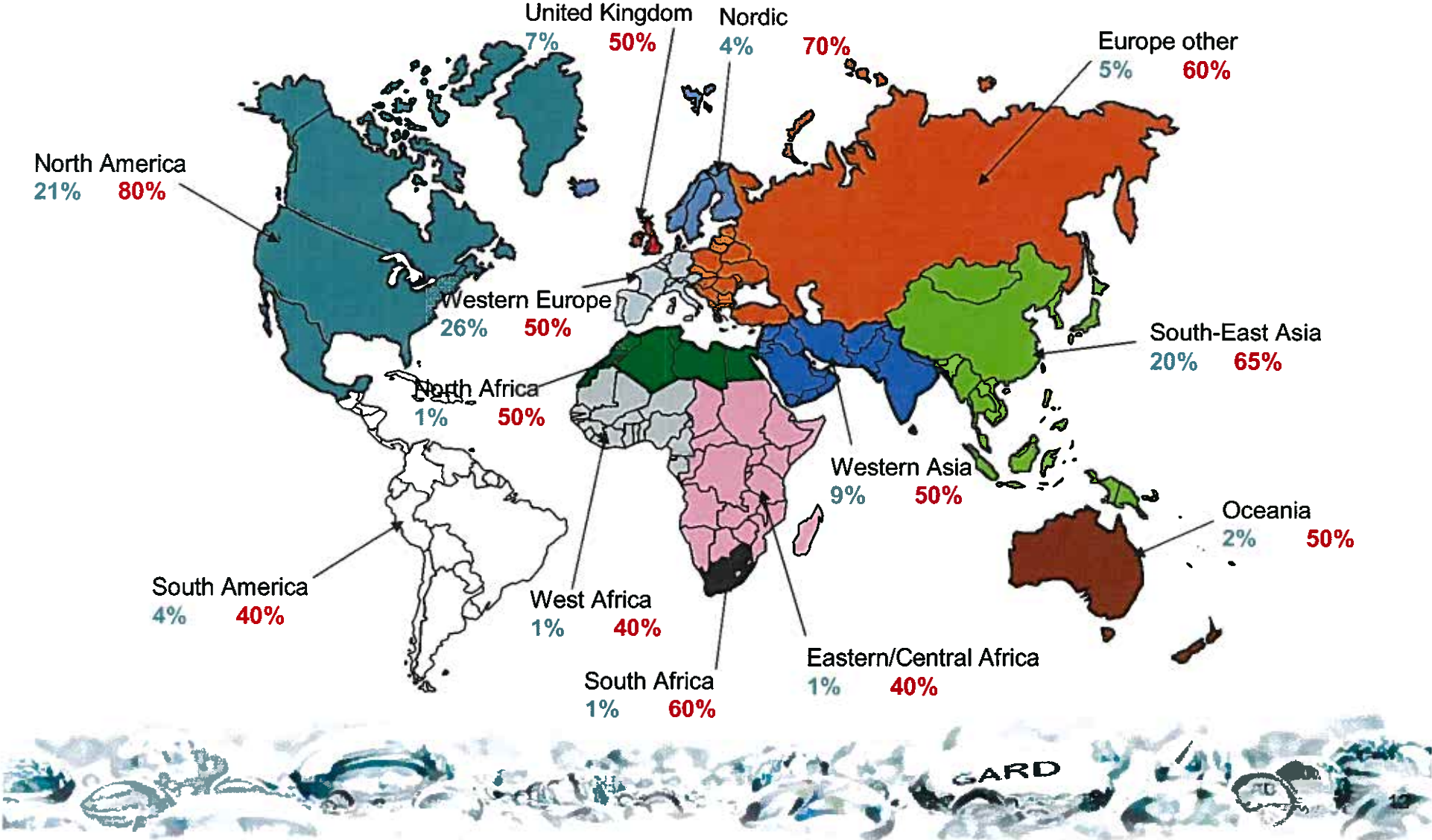
	Description	Involved claims	Impact	
			Frequency	Exposure
<b>Scope of application</b>				
Expansion beyond loading/discharge	<ul style="list-style-type: none"> <li>• Recognition of through transp. contracts</li> </ul>	Through transp.	20%	0%
<b>Prov. for particular stages</b>				
Application for loss outside sea-leg	<ul style="list-style-type: none"> <li>• Unless other compulsory int'L convention</li> </ul>	10% of all claims	3%	2%
Deviation	<ul style="list-style-type: none"> <li>• Does not deprive of defences/limitation</li> </ul>	3% of all claims	-5%	-2%
Carriage on deck	<ul style="list-style-type: none"> <li>• Carrier deprived of defences/limitation if unauthorized</li> </ul>	Deck carriage	0%	0%
	<ul style="list-style-type: none"> <li>• Unduly complex rules, e.g. prov. for letters of credit</li> </ul>	Deck carriage	0%	0%
	<ul style="list-style-type: none"> <li>• Reduced liability arising from nature of risk of carriage on deck</li> </ul>	Deck carriage	0%	0%
	<ul style="list-style-type: none"> <li>• Transport documents: lack of evidence</li> </ul>	Deck carriage	0%	5%
<b>Transport documents/records</b>				
Negotiable documents	<ul style="list-style-type: none"> <li>• Easier for carrier to avoid issue of negotiability</li> <li>• Introduction of electronic documentation</li> </ul>	10% of all claims	0%	0%
Difficulty in establishing delay	<ul style="list-style-type: none"> <li>• Neither date of delivery or place of delivery/receipt</li> </ul>	Delay	7%	4%
Easier qualification of information for carrier	<ul style="list-style-type: none"> <li>• Adverse consequences for shippers for claims and letters of credit</li> </ul>		0%	0%
<b>Time for suit</b>				
Time bar extended	<ul style="list-style-type: none"> <li>• Extended from 1 to 2 years</li> </ul>	Notification > 320 days	100%	0%
<b>Jurisdiction</b>				
Freedom of contract	<ul style="list-style-type: none"> <li>• Wider freedom of choice of jurisdiction</li> </ul>	Exposure > USD 0.5 m	0%	20%
	<ul style="list-style-type: none"> <li>• Freedom of contract through "volume contracts"</li> </ul>	Exposure > USD 0.5 m	0%	5%
	<ul style="list-style-type: none"> <li>• Prejudice to small shippers by establishing exclusive jurisdiction</li> </ul>	Exposure > USD 0.5 m	0%	-5%
	<ul style="list-style-type: none"> <li>• Forced to withdraw action seeking non-liability/forum-selection</li> </ul>	Exposure > USD 0.5 m	0%	10%
Forum-selection				
<b>Other</b>				
Land-based expertise	<ul style="list-style-type: none"> <li>• Require new legal expertise</li> </ul>	10% of all claims	0%	5%
Conflict with CMR and CIM	<ul style="list-style-type: none"> <li>• Conflict will be left to national law</li> </ul>	10% of all claims	0%	5%





# The world has been split into politically homogeneous regions

Share of claims (no./USD)  
Probability of adoption



# Content

Process

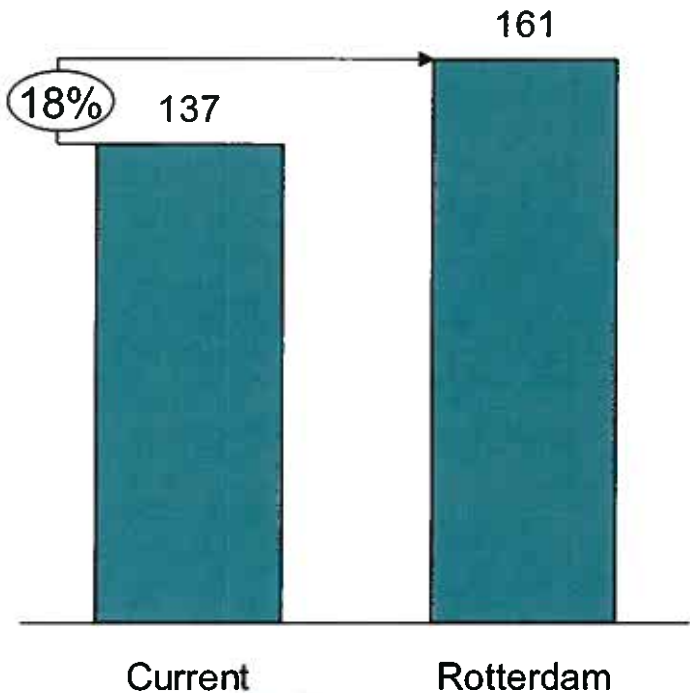
**Results**



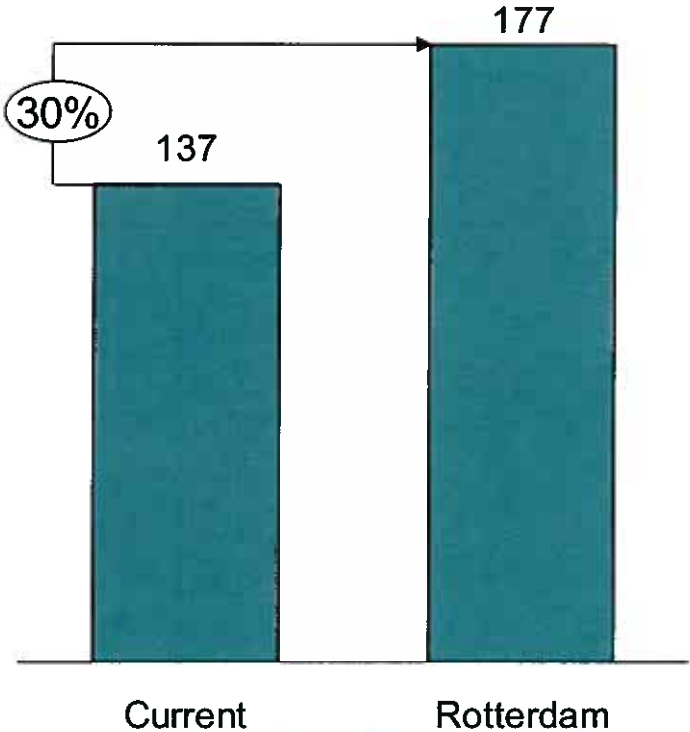
# Claims costs under the Rotterdam Rules are expected to increase by 18%

USD million, gross claims paid, adjusted for inflation

Probability weighted\*



Not probability weighted



\*The probability weighted result reflects the fact that not all countries are likely to adopt the Rotterdam Rules.

# Wider freedom of choice of jurisdiction is the single most significant change

Wider freedom of contract, e.g. jurisdiction

Possibility to require withdrawal of actions seeking non-liability or forum selection

Extended time bar

Increased limits of liability

Expanded scope of application (beyond loading/discharge)

Stricter requirements to seaworthiness

Recognition of electronic documentation

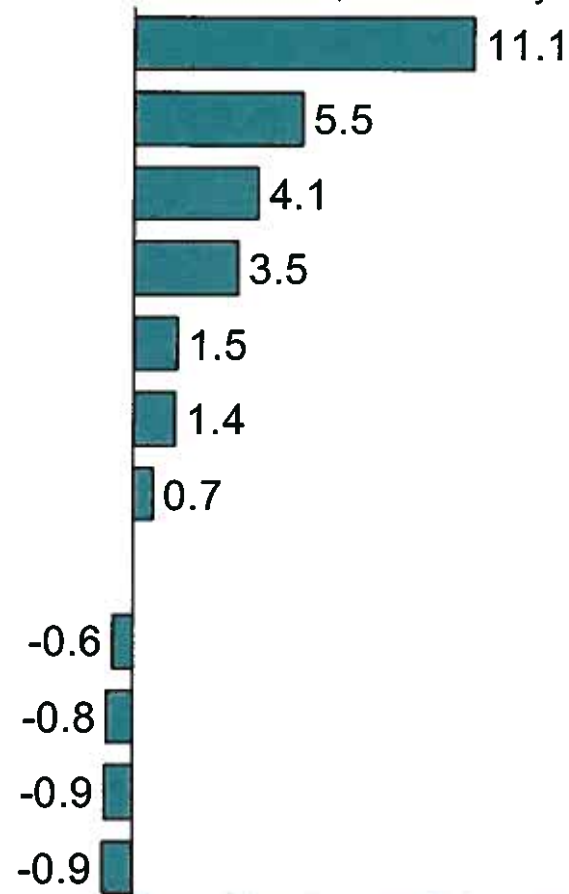
Recognition of free in/out of stow

Increased number of shipper obligation

Freedom in respect of goods that may become a danger

Provisions for dangerous goods

Change in gross claims paid  
USD million, inflation adjusted



Note: Changes with an impact below USD 500,000 are not shown

GARD

# Summary

- Systematic approach based on expert-input
- Expect considerable increase in cargo liability exposure for owners and charterers
- Allow for a testing-period for the industry to learn and test the rules





**Thank you!**

