



MARINE HULL INSURANCE AND REINSURANCE

Sponsored



Prepared for AfricaRe by the



Marine Hull Insurance and Reinsurance
©London School of Insurance 2019
v1.1 - 17042019

INDEX

Section 1	INTRODUCTION.....	5
1.1	Learning Objectives.....	5
1.2	What is marine hull.....	5
1.3	The need for Marine Hull Insurance.....	5
1.4	The history for Marine Hull Insurance.....	6
1.5	The different types of hulls and cover for Marine Hull.....	6
1.6	The types of craft that can be insured under a Hull policy.....	8
1.7	Who takes out cover for Marine Hull insurance?.....	8
1.8	An example of complexity? Is a yacht a 'boat' hull risk or a 'ship' hull risk?.....	9
1.9	The main markets for marine insurance.....	9
1.10	The main Sea Routes.....	12
Section 2	LEGAL CONSIDERATIONS.....	13
2.1.	Marine Law.....	13
2.2.	Validity of contract.....	15
2.3.	Other important legal considerations.....	17
2.4.	General and Particular average.....	18
2.5.	Warranties.....	18
2.6.	Special provisions in marine insurance contracts.....	18
Section 3	MARINE HULL - THE ESSENTIAL ELEMENTS OF COVERAGE...21	
3.1.	Hull underwriting considerations – information provided by proposer.....	21
3.2.	Risk Factors – information the underwriter needs to know.....	25
3.3.	Fraud.....	27
3.4.	Piracy.....	27
3.5.	Underinsurance.....	28
3.6.	Important Clauses.....	28
Section 4	HULL CLAIMS.....	35
4.1.	Types of claims.....	35
4.2.	The loss investigation process and use of expert third parties.....	35
4.3.	The adjustment and settlement of claims.....	38
4.4.	Case Study – General Average.....	39
4.5.	Loss Prevention.....	40

Section 5	MARINE LIABILITY.....	42
5.1.	The link between Hull and Liability Coverages.....	42
5.2.	A Review of Liability Exposures.....	43
5.3.	Liability Insurers – who are they?.....	43
5.4	Collision Liability.....	44
5.5	Shipyards' Liability Insurance.....	44
5.6	Charters' Liability Insurance.....	45
5.7	Mortgagees' Interest Insurance.....	46
5.8	Terminal /Marina Operators' / Port Package Insurance.....	47
5.9	Stevedore's liability insurance.....	49
5.10	The various basic clauses under liability insurance.....	49
5.11	Dealing with liability claims.....	50
5.12	Loss prevention.....	51
Section 6	MARINE HULL AND REINSURANCE STRUCTURING.....	52
6.1.	The need for marine hull reinsurance.....	52
6.2.	Types of reinsurance and how they can be used in Marine Hull.....	52
6.3.	reaty reinsurance for start-ups versus established cedants.....	52
6.4.	Facultative reinsurance for special covers.....	54
6.5.	Reinsurance for frequency and severity, excess of loss reinsurance.....	54
6.6.	Single loss and event limits under proportional treaties.....	55
6.7.	Catastrophe covers for the combined hull and cargo portfolios.....	55
Section 7	CASE STUDY.....	56
7.1.	Legal considerations.....	56
7.2.	Peracomo Inc. v Telus Communications 2012 FCA 199 2014 SCC 29.....	56
7.3.	Atkinson v Gypsea Rose 2014 BCSC 1017.....	58
7.4.	Policy interpretation.....	59
7.5.	Navigators Insurance Company Limited and others (Respondents) v Atlasnavios-Navegacao LDA (formerly Bnavios-Navegacao LDA) (Appellant) - [2018] UKSC 26.....	60
Section 8	CONCLUSION.....	63
Section 9	TEST.....	64

Section 10	APPENDIX A	66
Section 11	APPENDIX B.....	67
Section 12	APPENDIX C.....	78
Section 13	APPENDIX D.....	81

1. INTRODUCTION

This course “marine hull insurance and reinsurance” is the eleventh in a series of courses.

The reader of this course should have completed at least the introductory course to reinsurance (course 1) prior to reading this manual so that they can be familiar with the (re)insurance terminology, the forms and types of (re) insurance and (re)insurance documentation.

The objective of this course is to introduce marine hull insurance and reinsurance to the reader.

The main sections of this manual are as follows:

1.1. Learning Objectives

Section 1 – Introduction to marine hull insurance

Learning objective: To have a basic knowledge of the origins of marine hull insurance and to understand the main markets for hull insurance and reinsurance.

Section 2 – Legal considerations and principles of insurance applicable to marine insurance.

Learning objective: To appreciate the underlying legal considerations and principles of marine hull insurance.

Section 3 – Marine Hull, the essential elements of coverage.

Learning objective: To have a basic knowledge of the main elements of cover for marine hull.

Section 4 – Marine Hull Claims

Learning objective: To be familiar with the processing of Marine Hull claims.

Section 5 – Marine Liability.

Learning objective: To be familiar with the liability coverage available for ship owners and operators and others involved in the shipping industry.

Section 6 – Marine hull reinsurance structuring

Learning objective: To have a basic knowledge of marine hull reinsurance covers and their interactions.

1.2. What is marine hull

Marine hull insurance covers the physical damage to any kind of vessel, whether it is operated on the seas or on fresh water, such as rivers and lakes. Vessels can include cruise ships, container ships, bulk carriers, fishing vessels, yachts and other boats of any size. Hull insurance is also often combined with machinery insurance covering the different types of machinery that can be in or on a vessel such as engines and cranes. Covers can also be obtained for the liabilities that can result from operating a vessel. There are also more specialised covers available for ship builders and port operators and other professions closely connected with shipping.

1.3. The need for Marine Hull Insurance

One of the greatest barriers to world trade is “friction”. Friction is caused by, for example, import and export ta-

riffs. Goods are delayed by the bureaucratic process, and the costs of the goods increased by the taxes and the cost of the import and export process.

Similarly, a major friction barrier to trade is “risk”. Risk of loss of the ship and its cargo to the perils of the sea, to storm, fire, collision, stranding, piracy. Also, the risks in the various ports around the world, seizure, impounding of the ship and its goods, war, strikes and civil commotion. There is, in addition, to physical loss or damage, the consequent potential loss of future income and the exposure to all the liabilities that can derive from owning and operating a vessel.

Insurance oils the wheels of trade and reduces friction by enabling traders to pass on many of the risks to which they are exposed to insurers, so that goods are available to more people in nearly all areas of the world.

1.4. The history of Marine Hull insurance

Marine insurance is considered one of the first types of insurance to have evolved within some basic parameters. It is said it already existed at the time of the Greek and Roman empires.

The first major formalisation of the concept appears in the Code of Hammurabi, which dates from circa 1754 BC, a legal system created by order of king Hammurabi, the sixth king of Babylon. Amongst the 282 laws included in this code are laws dealing with the terms of a transaction. In the case of ships, a lender might receive an additional amount of money if the lender agreed to forgive the loan if the ship was lost.

A common form of “cover” was the bottomry contract. Under a bottomry contract, loans were given to merchants and if the ship was lost at sea, there was no obligation to repay the loan.

The first formal policy is said to have been a contract which spread a part of the risk between risk takers in the year 1370, when one underwriter, Guilano Grillo, contracted with others, Goffredo Benaira and Martino Sacco to reinsure a cover on a ship on just part of the voyage from Genoa to Bruges. While Grillo covered the ship through the Mediterranean sea, he passed the risk to Benaira and Sacco from Cadiz to Bruges.

A major development occurred again in the seventeenth century AD, when Italian merchants promoted the concept in London, England. They were known as the “Lombards”, possibly after the street in London in which they exercised their profession or simply their Italian origins. It is also possible that the word “policy” came into use at this time, based on the Italian word “Polizza”, itself linked with the word “promise” in Italian. Meetings also took place in a coffee house run by a Mr. Lloyd, being the origin of Lloyd’s of London.

Lloyd’s of London became one of the world’s prominent marine insurers, but cover also became available from marine insurance companies very shortly thereafter, and the concept has now spread to all major trade centres around the world.

Marine insurance is today often included with aviation and cargo transit business, and described by the group acronym of ‘MAT’.

1.5. The different types of hulls and cover for Marine Hull.

Marine Hulls

The hull is the main body of a ship or vessel, including the bottom, deck and sides. It does not include the superstructure or the masts or the rigging or cranes or engines and any other items described as fittings.

This definition of hull should not be confused with “Hull” Insurance which has been defined in 1.2 above and does not cover exclusively the hull.

There are three main forms of hull.

1 - Displacement:

The displacement hull shape is by far the most common and has been used since early times. It is more in the form of a “V” shape and the ship sits lower in the water. The ship is more stable, but also has considerable “drag” as a good portion of the hull is below the water line. (“Drag” is the resistance generated as the ship moves through the water.) It has been a popular shape for cargo vessels as the level of buoyancy is such that they can carry more weight.

2 - Planning:

The planning hull shape is more of a “U” or even three-sided square shape. The vessel sits much higher in the water and most of its hull is above water. There is much less drag, thus the vessel can move more quickly, but is also more unstable.

3 – Semi-displacement:

The third shape is a cut between the two above, trying to combine a reasonable weight capacity with a reasonable speed.

Clearly there will be horses for courses.

For example, a bulk cargo carrier will likely place more emphasis on capacity than speed. On the other hand, a container ship carrying frozen foods or other containers requiring a faster form of travel will need a different form of hull.

Types of hull insurance cover:

Hull Insurance:

The basic form of hull insurance covers, as noted above, not only the ship’s hull, but also all the fixed furniture and fittings. This type of cover is necessary to pay for physical damage to the ship during its operation and use.

Machinery Insurance:

The machinery insurance covers loss or damage to items such as the engine(s) of the vessel, and hoists and cranes.

A common form of cover is a combination of the above covers known as “Hull and Machinery” Insurance. This will be discussed in more detail in Section 3 below.

Protection and Indemnity (P&I) cover and Marine General Liability (MGL):

Traditionally P&I policies cover exposure to liability risks arising from the operation of a vessel, other than risks which would be covered under an employers’ liability policy and those risks covered by the collision clause in a hull policy. As the title of the clause suggests, the collision clause protects the vessel owner for the legal liability that may arise following damage to another vessel caused by a collision.

However, the potential for liability exposures is constantly developing over time, and coverage has been extended to a broader liability coverage that may include, for example, excursion operations, and even the liability arising from selling alcohol.

There are also a number of related activities such as vessel manufacturers, repairers, terminal operators, tug and barge operators and others who may have special needs, and these can be covered under such broader liability policies.

Ancillary covers:

Other types of cover would include:

- War risk insurance: War risk insurance policies cover potential losses resulting from acts of war such as invasion, insurrection, rebellion and hijacking. Piracy may also be covered. When a vessel must necessarily

pass through a war zone, or a zone known for piracy, it will often seek war and/or piracy risk insurance.

- The cover usually extends the types of cover noted above to include war/piracy. Otherwise the above covers habitually exclude these exposures.

- Loss of hire cover – again also offered by the P&I Clubs, which covers an insured's loss of income as a consequence of physical damage to a vessel. It can also include cover against stranding, obstruction of the vessel and the removal of damaged cargo.

- Freight, demurrage and defence (FD&D) Cover: FD&D insurance covers the legal costs that will result from a wide range of maritime activities where a dispute can arise. An insured may be involved in a number of maritime activities such as operating a vessel, collecting freight or demurrage, or disputes with ship repairers, charterers, ship suppliers, etc. The legal costs involved in these disputes can be high, and this type of cover enables the insured to budget income more accurately with a known cost (the premium) for unknown legal costs which could occur during the year. This type of cover may or may not be available on a stand-alone basis depending on the market providing the cover. This cover does not pay any liability sums awarded against the insured, it is designed to cover the costs incurred in the process of the dispute.

-

Policy types:

It is also important to distinguish the different types of policy which can be issued for the various covers.

- Voyage policy – This cover gives more importance to the voyage. That is to say it essentially covers the risk from the point/port of departure to the point/port of destination. Cover ceases once the risk has arrived at its destination.

- Time policy – This policy is issued on the basis of time, usually one year, but a shorter period is also possible. During this time a ship may make a number of voyages, but cover ends at a fixed date.

- Total Loss only (TLO) policy – This policy only pays if the vessel is totally destroyed or the vessel is declared a constructive total loss. As the cover is limited to this extent of damage an insured will pay less than for a standard cover.

1.6. The types of craft that can be insured under a Hull policy

There is really no limit to the types of craft that can be covered under a hull policy. The willingness of the underwriter will doubtless reduce as the level of risk increases unless an insured is willing to pay a very high premium for a very high risk.

Equally some insurers may not want certain types of risk in their portfolio as this would cause an imbalance or increase accumulations in an area where the insurer has already issued a number of policies.

There will also be underwriters who will specialise in certain types of vessel or certain types of coverage. At Lloyd's of London certain underwriters will be known as leads in certain types of marine business and intermediaries will go to those specialists to obtain cover.

1.7. Who takes out cover for Marine Hull insurance?

The main interest that will be covered under a Marine Hull policy is that of the "ship owner". However, many vessels are financed through mortgages, and then the mortgagee will also have an interest in any damage occurring to the vessel.

A problem for mortgagees is that as they would be an "insured", any breach of the policy conditions or any negligence by the owner or its operator could invalidate the policy. Insurers' defences against the owner would be equally valid against the other insureds.

For this reason, there is a special cover available to mortgagees (mortgagees interest insurance) which will pay any insured outstanding loans and interest, as long as the claim would have been valid under the hull insurance,

had there not been a breach of cover, or a breach of warranty or a failure by the shipowner to disclose material facts.

1.8. An example of complexity? Is a yacht a 'boat' hull risk or a 'ship' hull risk?

As has been noted in section 1.6 above, it will generally be possible to cover all types of craft, but care must also be taken when identifying the type of risk to be covered.

It is said that a ship can carry a boat, but a boat can't carry a ship. Ships generally travel the oceans, and boats generally travel smaller inland waterways and/or stay close to the shoreline.

Boats often have very limited navigational equipment, and, depending on local licensing, operators may have limited knowledge or qualification in handling a water craft.

The risks involved are thus very different, and equally different conditions may apply.

Is a yacht a boat or a ship?

There is indeed no clear definition of yacht. It can cover a smaller sail boat for one or more or less knowledgeable operator, up to a large multi-million-dollar motorised vessel owned by a wealthy tycoon with a fully qualified 'ships' crew. The latter may be perfectly equipped to sail the oceans and the former at best equipped to stay very close to the shoreline.

The former may require very limited damage cover at market value and there may well be a restriction in the policy as to how far from shore it is permitted to travel for full coverage to apply. The latter may require an agreed value cover plus full towage, salvage and wreck removal cover with freedom to sail the oceans.

1.9. The main markets for marine insurance

Lloyd's Underwriters

As we have seen above, Lloyd's of London had its beginnings in a coffee house in London in the late 1680s with a primary focus on marine business.

Today, Lloyd's of London is basically an umbrella organisation, a market, providing the infrastructure, control, rules and oversight for syndicates which it allows to operate in its marketplace. Originally syndicates were made up of wealthy individuals, who, as members of a particular syndicate, had unlimited liability to cover any losses the syndicate made. Today a number of syndicates are owned corporately, and while many of these corporations are much wealthier than former individual names, a corporate entity is quite different from an individual name and thus not only the composition but also the character of Lloyd's has changed.

However, as before, syndicates operating in the Lloyd's of London marketplace can only be accessed by admitted "Lloyd's Intermediaries". No insurance company can gain entry to this marketplace and try to place business there. They must use the services of a Lloyd's Intermediary – for more on Lloyd's intermediaries see below – the role of the marine insurance broker.

Lloyd's syndicates can be authorised to carry on both marine and non-marine business. Traditionally Lloyd's syndicates have not carried on life business, and have split their market into marine and non-marine business.

The Lloyd's intermediary understands this special marketplace and knows where best to place the risks it is entrusted with, at the best price, for its client.

Institute of London Underwriters (ILU)

The ILU was originally a trade association set up for the company market but specialising in marine, aviation and transport insurances

It was established in 1884 so that the company market which specialised in marine, aviation and transport insurances could operate in a similar way to Lloyd's.

At the end of 1998 the ILU merged with LIRMA (the London Insurance and Reinsurance Market Association) which was the trade association representing non-marine insurance companies.

The merged organisation is known as the IUA (the International Underwriting Association of London). It was established on 1 January 1999.

National Insurance Companies

National insurance companies exist today in most countries, and even if a country is land-locked, it is likely to have at least a local marine cargo market and could also insure hull as well, if only for fresh water vessels in rivers and lakes. Also 'marine' insurance can involve transport by land, sea or air, and then the distinction between marine and non-marine becomes very fluid.

International Insurance Companies

International insurance companies may have local entities, branches or underwriting facilities in a local market and write business at the local level. Local clients or brokers may place business at a local level with international insurance companies. However marine business (where legally compliant) may also be placed with international companies in their country of establishment. This may be done by a client or a local broker, or it may be done by contacting one of the international broking firms to place the business with the world-wide markets.

The Protection and Indemnity Clubs (P&I Clubs)

"P&I" stands for "Protection and indemnity", and the P&I clubs offer protection and indemnity insurance. P&I clubs are mutual organisations. That is to say they are owned by their members and they offer cover mainly for those risks which are not available at competitive prices in the general insurance market such as marine liability risks arising from the operation of a vessel, but employers' liability is excluded as is cover provided under the collision clause in a hull policy. They also provide ancillary covers such as war risk, and, as noted in section 1.7 above mortgagees interest insurance.

Unlike a traditional insurance company, which is usually a company with shares and shareholders, P&I clubs tend to be mutual. That is to say they operate solely on behalf of their members, who share mutually their fortunes and misfortunes. Each year the P&I club will make a "call" on its members being an amount payable by them estimated to cover the expected losses of the coming year. If the expected losses of the coming year are less than foreseen then members may expect a refund, however if the losses are more than expected, then a further call is made to fully cover all losses for the year. This aspect may mean that members can suddenly be asked for not insignificant amounts of money to make up for large losses and to this extent the "call" or premium amount may not be fully known until a particular year has been closed, which can take a number of calendar years to happen.

Captive companies

Generally, a captive insurance or reinsurance company will concentrate on the risks of its parent, but like all evolving markets some captive companies have considered diversification to be of benefit to them, and they have expanded to write third party risks.

Equally some industries have set up a captive to specialise in risks peculiar to that industry. A good example is Oil Insurance Limited (OIL), a mutual insurance company that insures close to USD 3 Trillion of global assets for its

50+ members.

A captive that concentrates on the risks of its parent is often not authorised to carry on insurance business in all the territories where its parent operates. It thus often seeks a local authorised insurance company to write the risks to its local parent company and then reinsure those risks back to the captive.

In such circumstances the local insurer is said to “front” the risk, ceding it by way of reinsurance to the captive.

Fronting business and insurance/reinsurance business are not the same. A “fronting” ceding company may not be involved in pricing the business, nor in deciding on the terms and conditions. It is thus much more dependent on the ability of the captive to pay losses as they arise (credit risk). Where the ceding company has properly underwritten the business to its usual underwriting standards, and works with reinsurance companies with good ratings the credit risk is usually much lower.

The role of the marine insurance broker

The marine insurance broker represents the client, the prospective insured. The role of that broker is to advise the client on the cover the client will need to properly cover the risks to which it will be exposed, and, subject to the client’s agreement, to obtain that cover at best pricing in the national and (where compliant) in the international insurance market place.

It is also the job of the broker to assess not only the ability of the capacity providers to pay claims, but also their willingness to do so. It is not much good to a client if it has cover but cannot get claims paid!

Marine insurance is also a very complex field, as is the market which writes the business, and the best variation of cover, and the situation of the current competitive risk carriers will vary frequently. It is really only someone who is in constant contact with the market and the market and risk developments that can advise on these matters.

Of particular note is that the Marine Insurance Act of 1906 makes the placing broker liable for the premium to the underwriter, this is not the case when placing non-marine business, so a broker must also assess the credit-worthiness of its client!

Lloyd’s brokers

As has been noted above, marine business can only be placed at Lloyd’s through an approved Lloyd’s broker. The Lloyd’s broker is the only intermediary that has access to Lloyd’s underwriters.

All Lloyd’s brokers are required to comply with the Lloyd’s Intermediaries Byelaw which includes the following requirements:

- Appropriate regulatory approval by the relevant authority in an EU member state or an equivalent overseas regulatory authority.
- Adequate systems and procedures to conduct business in the Lloyd’s insurance market.
- Suitable process in place to secure third-party premiums and claims.
- Professional indemnity insurance that will meet Lloyd’s minimum requirements.
- Support from at least one Lloyd’s managing agent, but no relationships with or shareholdings in Lloyd’s managing agents that do not comply with the Lloyd’s rules.

Claims adjusters

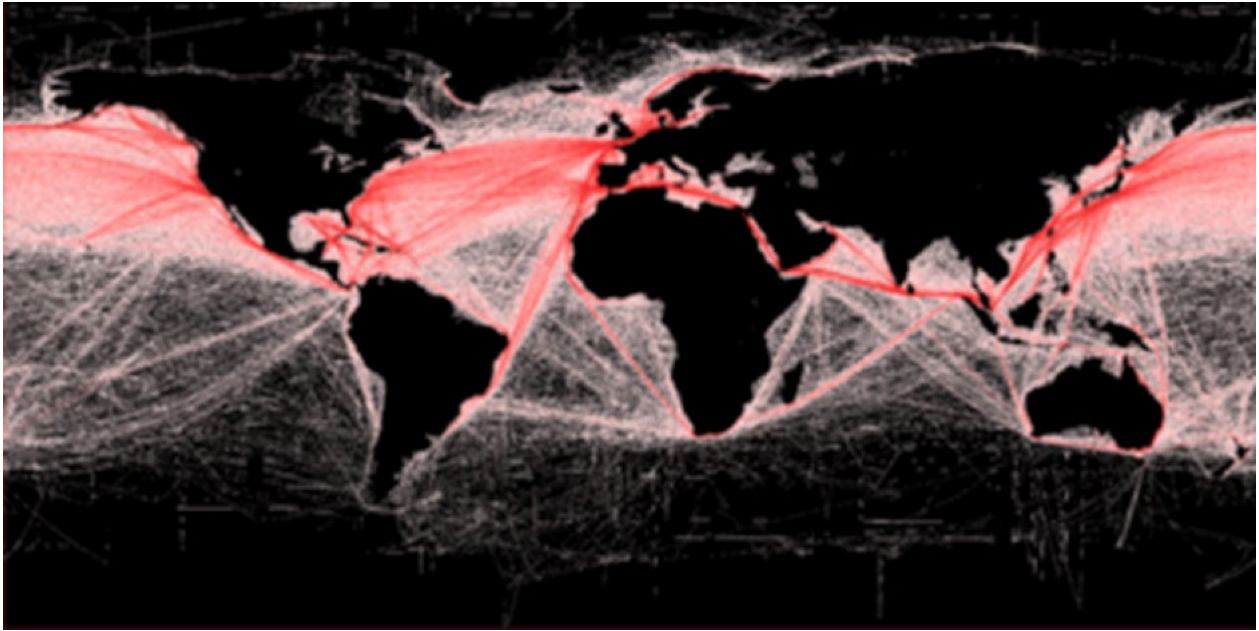
Marine insurance claims adjusters can be hired to investigate and report on marine insurance claims. They will assess whether the damage is covered and the amounts which in their opinion are payable.

Lloyd's agents

Lloyd's has a world-wide network of Lloyd's agents and sub-agents who provide a 24/7 service covering marine surveying and claims adjusting to insurers and their insureds. They act as an important resource to the maritime community providing highly professional and independent reports for their clients.

1.10. The main Sea Routes

It is important to have an understanding of the main sea routes.



The above is a picture downloaded from Wikipedia. There are many such examples to be found on the internet, even proactive examples showing actual traffic.

The above map is designed to show the density of traffic. The redder the imaging the more dense the traffic. Clearly routes of high density have a greater chance of collision with another vessel, and higher risks of accumulation in the event of a catastrophe.

Clearly points such as the Gibraltar strait (a narrow strait that connects the Atlantic Ocean to the Mediterranean Sea), the Suez Canal (connecting the Mediterranean Sea to the Red Sea through the Isthmus of Suez), and the Strait of Hormuz (a strait between the Persian Gulf and the Gulf of Oman) are particular bottlenecks, as is the Panama Canal (an artificial 82 km waterway in Panama connecting the Atlantic Ocean with the Pacific Ocean.). The English Channel is also one of the world's busiest waterways.

An underwriter should appreciate the increased risks where vessels will be mainly trading over routes of high density.



2. LEGAL CONSIDERATIONS

Learning objective: To appreciate the underlying legal considerations and principles of marine hull insurance.

2.1. Marine Law

Introduction

Clearly marine insurance is an international business with ships and cargos travelling to all corners of the earth. Necessarily a ship travelling the oceans will sail into a number of jurisdictions, and will need to be familiar with all legal requirements.

Maritime law, also known as admiralty law, is the law that regulates business and shipping on sea or on other navigable water. As some 70% of the earth's surface is water, maritime law is not unimportant!

It is a law that has developed since ancient times so that no particular nation could arbitrarily apply its local laws as it saw fit in international waters.

In very basic terms, the first 12 nautical miles or 22 kilometres from shore are known as territorial waters, and the law of the country adjoining the shoreline applies. The next 12 nautical miles or 22 kilometres is known as the contiguous zone where the country adjoining the shoreline has jurisdiction in matters of customs, immigration, pollution and taxation. There is then a further stretch of 200 nautical miles or 370 kilometres where the country adjoining the shoreline benefits from an exclusive economic zone (EEZ) to harvest the natural resources. Clearly where valuable natural resources such as oil or gas are in an EEZ and the shoreline curves or countries face each other across a narrow stretch these issues can become very complex.

Beyond the EEZ lie international waters.

Under maritime law all ships must be registered, and in international waters a ship is subject to the laws of the country where it is registered. Thus, in basic terms a ship is either subject to the laws of the territorial waters in which it finds itself or the laws of the country in which it is registered.

Many countries have signed international conventions or have adopted internationally recognised Acts such as the Marine Insurance Act 1906, discussed above, or the Merchant Shipping Acts which range from 1894 to 2017. In the latter case not all parts or amendments will be universally recognised.

An example of an international convention is the Convention and Statute on the International Régime of Maritime Ports, 1923. This is a League of Nations multilateral treaty in which adherents agree that in their ports all ships will be treated equally, regardless of the nationality of the ship.

Other international conventions include:

- Ballast Water Management Convention
- Hague-Visby Rules
- Hamburg Rules
- International Convention on Salvage
- Maritime Labour Convention
- MARPOL – Marine Pollution
- Rotterdam Rules
- SOLAS Convention - Safety of Life at Sea
- STCW - The International Convention on Standards of Training, Certification and Watch-keeping for Seafarers
- UNCLOS - United Nations Convention on the Law of the Sea

The relationship between maritime law and civil law is not always a clear cut one, and can result in complexity.

An example is the *Transport Desgagnes Inc. v. Wartsila Canada Inc.*, 2017 QCCA 1471 case which took place in Canada, in Quebec.

The case involved a latent defect in a ship's engine and who should be liable for the defect and for how much.

The trial judge decided that the supply of engine parts was not subject to maritime law but to the Civil Code of Québec. The Civil Code of Québec, amongst other things, imposed a presumption that a latent defect exists at the time of the sale unless the manufacturer proves that the defect resulted from improper use by the buyer.

On appeal, the appeal court decided that maritime law applied to this claim and, in contrast to civil law, maritime law puts the onus on the buyer to prove that the latent defect was known to the seller or that the seller showed reckless disregard for what it should have known. A very different position.

There are thus a variety of situations in which a ship and its cargo can find itself and much will depend on where the ship or the cargo is and, if within territorial waters or on land, the laws of the particular country in which the situation occurs.

The Marine Insurance Act 1906

In 1906, the United Kingdom enacted The Marine Insurance Act. This act codified existing law to date, and given the importance of London as a trading centre at that time, the legal principles embodied in the act have been adopted by many jurisdictions around the world, and this act still dominates marine insurance and reinsurance today.

The act defines a marine contract as:

Quote

A contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.

Unquote

Marine adventure, and marine perils are defined as follows:

Quote

(1) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular there is a marine adventure where—

(a) Any ship goods or other moveables are exposed to maritime perils. Such property is in this Act referred to as "insurable property";

(b) The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;

(c) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

"Maritime perils" means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detentions of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.

Unquote

The Marine Insurance Act 1906 was an act of codification, a photo of the legal position at that time. That is to say the act summarised the law in the UK on marine insurance to date, taking into account common law, statute law and legal precedent. It did not attempt to foresee or take account of possible future developments, nor did it attempt to remove certain references which had been obsolete for a number of years as regards, for example, bottomry and

respondentia.

The act covers the main sections of marine insurance, that is to say Hull, Cargo and P&I (Protection and Indemnity cover).

The first three sections of the Act define the scope of marine insurance.

Sections 4 to 15 deal with insurable interest, especially the need for insurable interest to exist for there to be a valid insurance policy.

Section 16 covers insurable value, and sections 17 to 21 disclosure and representations. The importance of *uberimae fidei* (utmost good faith) is dealt with in this latter section. Insurable interest and *uberrimae fidei* are dealt with in more detail below.

Sections 22 to 31 deal with the policy and section 32 deals with double insurance.

Sections 33 to 41 cover warranties. This section in particular has been amended by the Insurance Act 2015 – this again is dealt with in more detail below.

Sections 42 to 49 deal with the voyage, and sections 50 and 51 with the assignment of the policy.

Sections 52 to 54 cover the premium.

Sections 55 to 78 cover loss aspects, notably loss and abandonment; partial losses including salvage, and General Average; and measure of indemnity.

Sections 79 to 94 cover other issues such as the rights of the insurer, return of premium, mutual insurance, and supplemental issues.

Of course, the world has not stood still since 1906, and the shipping industry has gone through many changes. These changes are reflected in the vast number of judicial decisions that have necessarily had to take account of this progress. There have equally been calls to update insurance law in general, and the Insurance Act 2015 is an example of this.

2.2. Validity of contract

Validity of contract is covered in the general laws applicable to contracts.

The important factors to make a contract legally enforceable are:

- Insurable Interest
- Legal capacity to enter into the contract
- A clear offer has been made which has been accepted
- Consideration has been exchanged
- There is a meeting of the minds

Insurable interest

As noted above, there was a period when, during the development of Lloyd's of London, it was not clear whether transactions were based on some sort of professional assessment of the risk, or were a pure gamble. This problem was not particular to Lloyd's at the time, it was prevalent in many institutions offering covers at the time. The principle of insurable interest was thus introduced as a prerequisite for any insurance contract to be effective to distinguish that contract from gambling. The United Kingdom was the first country to pass legislation that prohibited insurance contracts if no insurable interest existed. This requirement is contained in the Life Assurance Act of 1774 which renders life insurance contracts illegal if there is no insurable interest, and the Marine Insurance Act 1906, s.4 which renders such contracts void.

Thus, the insured must have an "insurable interest" in the subject matter of the policy, or such policy will be void

and unenforceable as it will be considered gambling.

The Marine Insurance Act 1906 states the following:

Quote

Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

The assured must be interested in the subject-matter at the time of the loss though he need not be interested when the insurance is effected:

Provided that where the subject-matter is insured «lost or not lost,» the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

Unquote

Important points to note in the above extract are that the insured only needs an insurable interest at the time of the loss. However as noted earlier above, for a compliant insurance policy to be effected, the person taking out the policy also needs an insurable interest at the time the policy is effected, even if this is assigned later on.

Equally that a policy can be taken out after a loss has occurred provided that neither party to the contract is aware that a loss has occurred. It might be that based purely on process, the ownership in the property has changed, even if, in the meantime, the property was lost at sea.

Cargo may, of course, have many owners as it is transported from perhaps raw materials, or a semi-manufactured state to the final purchaser. It may go through processes and sellers and buyers and middle-men and agents. Even during a move from its finished state in one country to the final seller in another country it may go through many owners and/or persons responsible for its safe custody. All these companies/persons may have an insurable interest and may have taken out their own insurance policy or they may have requested to be included as insureds in a single policy regarding the transport of that particular item.

It may thus be a more complex process to establish who has an insurable interest at the time of any loss, and which policies may cover the loss.

Hull insurable interests may be more stable, but can nevertheless cover a number of companies/persons. The ship may have been purchased through several mortgagees or investors who many have a financial interest should the vessel come to any harm. Thus banks, companies, individuals may all have an insurance interest in the vessel. Equally if the vessel is leased or used in different ways, the operator may become responsible for any damage or financial loss, and may thus also have an insurable interest in the vessel.

Once again it is important to identify all those who may have an insurable interest at the time of the loss, and all insurance policies which may be affected.

Legal capacity

As noted above, the parties to a contract generally need to be of sound mind and an adult. Although it has also been noted above that there may be restrictions as regards unspent criminal convictions, these do not affect legal capacity but rather the duty of disclosure. Without full disclosure there cannot be a meeting of the minds.

A clear offer has been made which has been accepted

An offer and an acceptance may be verbal or written. Where offers and acceptances are verbal, they may still be legally binding if there has been a meeting of the minds. Generally, all contracts are finalised in writing. Sometimes

in insurance and reinsurance contracts are formalised with slips and cover notes which do not fully reflect the intentions of the parties. There can really only be proof that there has been a meeting of the minds when the full policy wording or contract has been delivered and agreed by both parties.

The Marine Act 1906 notes:

Quote

A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract, although it be unstamped.

Unquote

Consideration has been exchanged

There is an important legal maxim in many jurisdictions that “consideration must be real, but need not be adequate”. A contract can still be legally valid even if one party to the contract has made a bad deal. Where insurers or reinsurers charge inadequate premiums (and there has not clearly been some form of error), they cannot complain later that there was not a legal contract.

There is a meeting of the minds

If an error has occurred – like that noted above – that a calculation has been innocently, but erroneously made. Then there has not been a meeting of the minds.

Equally, as noted above, if there has been a misrepresentation – an arsonist with an unspent criminal conviction, has not disclosed this fact to the insurer – then equally there can be no meeting of the minds.

2.3. Other important legal considerations

Warranties:

Generally, it has been established law that a breach of a warranty in an insurance policy, even if immaterial to the risk insured, would enable an insurer to refuse all liability under the policy as from the date of the breach. This situation was made worse by including ‘basis clauses’ in the policy which turned representations made by the policyholder before the policy was issued into warranties.

In the UK the Insurance Act 2015 has changed this situation. Part 2 of the 2015 Act has created a new ‘duty of fair presentation’ in non-consumer insurance contracts, and while insurers still have effective remedies in the event of non-disclosure, the burden of proof is heavier than before and the remedies are proportionate to the breach. Part 3 of the 2015 Act has banned ‘basis clauses’ from non-consumer insurance contracts. A breach of a warranty no longer simply discharges liability, it only has the effect of suspending liability during the breach, but that liability is then reinstated when the breach is resolved. Equally an insurance company can no longer rely on non-compliance with a warranty, if the non-compliance was not relevant to the loss in question.

Although the situation has changed in the UK, the effect of warranties in other countries may, or may not, have changed and reference needs to be made to the local laws.

Utmost Good Faith

Given that the person or company who offers a risk for insurance knows, or should know, much more about that risk than the party willing to consider providing cover, it is natural that a greater degree of transparency should be

expected than from a party to a simple commercial contract. Thus, there is an obligation on the party seeking the cover to disclose all material facts so that the contract will accurately reflect the actual risk(s) being covered. The principles underlying this rule were stated by Lord Mansfield in the leading case of *Carter v Boehm* (1766) 97 ER 1162, 1164:

«Insurance is a contract of speculation... the special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only: the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstances in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist... good faith forbids either party by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact, and his believing the contrary.»

Equally therefore reinsurance contracts demand the same obligation and the principle of utmost good faith is considered the foundation of reinsurance as well. Essentially this means that the buyer of the cover (the insurance company or ceding company as it is known in reinsurance parlance), or its agent/intermediary, must honestly present the risk(s) to the seller (in this case the reinsurer) and can only make a valid claim if it has in fact suffered a loss.

Thus, if an insured hides material aspects of the risk(s) or falsely declares values, then it will be unable to successfully recover a claim from its insurer.

The Marine Insurance Act 1906 states the following:

Quote

A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

In the absence of inquiry the following circumstances need not be disclosed, namely:

- (a) *Any circumstance which diminishes the risk;*
- (b) *Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know*
- (c) *Any circumstance as to which information is waived by the insurer;*
- (d) *Any circumstance which it is superfluous to disclose by reason of any express or implied warranty.*

Unquote

The principle of indemnity:

The principle of indemnity dictates that an insured or a reinsured should not profit from the cover it buys, but should only be compensated for its actual loss, thus settlement depends on the terms of the contract and the real amount of loss suffered. With some covers, determining the real amount of the loss is relatively easy. It is impossible to evaluate the worth of a human life and thus in life insurance the real amount of the loss is simply the face value of the policy when the insured person dies. Under liability insurance the liability damages rendered in a judgement by the court and the proven legal costs are generally paid out, subject to the policy limit. Calculating the indemnity under a loss of profits cover can be very complex as it is often very difficult to prove what profit the insured might, or might not, have made had the loss not occurred. It must always be clear that moral hazard can occur if an insured or a reinsured is allowed to make a profit out of a loss event, not only because such a situation is clearly against public policy but also because it would materially increase the cost of obtaining cover. Equally an

insured or reinsured cannot collect the same loss from multiple insurance policies or multiple reinsurance covers, even if they were with different parties.

2.4. General and Particular average

General Average

Around 800 BC, what we know today as “General Average” had its beginning in the “Lex Rhodia”. General Average is succinctly described in the judgement *Barnard v Adams* (1850).

Quote

It is not necessary in the examination of this case again to repeat the history of this doctrine of general average, from the early date of the «Lex Rhodia de jactu» through the civil or Roman law, and the various ordinances and maritime codes of European states and cities, down to the present day. The learned opinions delivered in the cases to which we have alluded leave nothing further to be said on that portion of the subject. We shall therefore content ourselves with stating the leading and established principles of law bearing on the point in question, in order that we may have some precise data with which to compare the facts of the present case, and test the value of the arguments with which the instructions of the circuit court have been assailed.

The law of general average has its foundation in equity. The principle, that «what is given for the general benefit of all shall be made good by the contribution of all,» is recommended not only by its equity, but also by its policy, because it encourages the owner to throw away his property without hesitation in time of need.

In order to constitute a case for general average, three things must concur:

1st. A common danger; a danger in which ship, cargo, and crew all participate; a danger imminent and apparently «inevitable,» except by voluntarily incurring the loss of a portion of the whole to save the remainder.

2d. There must be a voluntary jettison, jactus, or casting away, of some portion of the joint concern for the purpose of avoiding this imminent peril, pericula imminents evitandi causa, or, in other words, a transfer of the peril from the whole to a particular portion of the whole.

3d. This attempt to avoid the imminent common peril must be successful.

Unquote

Example

It is a very stormy night and the ship flounders on some rocks. There are five containers on the deck of the ship, and the captain orders that three of them be jettisoned so the ship can be re-floated and saved from further damage or even sinking.

If these five containers were owned by A, B, C, D and E, and the containers of A, C and D are jettisoned to save the ship the principle of General Average applies. That is to say that those whose property was saved (B and E) must contribute to the loss of those whose property was lost (A, C and D) to save the ship.

Particular Average

Particular Average is governed by the Free of Particular Average (FPA) clause.

Unlike General Average where losses are incurred by a premeditated human act, a particular average loss can only be caused by a loss that is accidental and unforeseen. In addition, the clause refers only to partial losses which must be caused by defined perils in the policy.

Thus, in the UK FPA provisions, the insurer is only liable for partial loss when this is the direct result of collision, fire, sinking or stranding. The clause may also include a deductible, that insurers are also only liable where the loss

exceeds a certain value.

An example of an FPA clause is as follows (Source ICC):

Quote

Warranted free from Particular Average unless the vessel or craft be stranded, sunk, or burnt, but notwithstanding this warranty the Underwriters are to pay the insured value of any package or packages which may be totally lost in loading, transshipment or discharge, also for any loss of or damage to the interest insured which may reasonably be attributed to fire, explosion, collision or contact of the vessel and/or craft and/or conveyance with any external substance (ice included) other than water, or to discharge of cargo at a port of distress, also to pay special charges for landing warehousing and forwarding if incurred at an intermediate port of call or refuge, for which Underwriters would be liable under the standard form of English Marine Policy with the Institute Cargo Clauses (W.A.) attached.

This Clause shall operate during the whole period covered by the policy.

Unquote



3. MARINE HULL – THE ESSENTIAL ELEMENTS OF COVERAGE

Learning objective: To have a basic knowledge of the main elements of cover for marine hull.

3.1. Hull underwriting considerations – information provided by proposer

Key points to consider when underwriting hull risks:

Key information would include the following:

THE COMPANY

Company Name:
Responsible person:
Address:
Telephone Number:
Email address:
How long operating in current business:

THE VESSEL

Name:

Previous names, if any:
IMO number:
Vessel type:
Year built: / Main material used in construction:
Gross tons: / Deadweight:
Port of Registry: / Flag:
Owner: / Duration of ownership:
Operator:
Crew:
 Details of the principal officers:
 Crew number / Main language / Fluency
 Does the crew benefit from personal accident / sickness cover

Class:
Shipbuilder:
Measurements:
Details of special surveys:
Details of maintenance: / Expected next dry docking

THE MACHINERY (if the applicant also seeks to cover this)

Main engine(s)/Gearbox

Make / Model / Age / Details of any modifications / Date of last rebuild or maintenance / Number of hours of operation since last rebuild or maintenance
Performance / Power / gearbox

ACTIVITY:

Type of cargo to be transported:

Area of ship operation:

Tramp trade / Freight liner / Charter vessel - Charterer:

Details of any non-standard contracts:

COVER REQUIRED:

Hull: / Machinery: / Hull & Machinery:

Sums insured: Hull: / Machinery: /

Purchase details: Date: / Purchase Price:

Any mortgagee interests? If so details and amount(s) still outstanding:

Liability: P&I: / Other liability cover – Crew – Passenger – Carrier?

Sums insured:

CLAIMS RECORD:

Provide claims history of any person or company who either owns or will operate the vessel. Any claim which has been made against such persons or company, whether insured or not, during the last five years.

Every vessel of a certain size has an IMO (International Maritime organisation) number which is unique to that vessel, and remains with the vessel for its whole life cycle.

In many jurisdictions, vessels must be classified and certified. These documents will be available for the underwriter, as will any relevant surveys of the ship.

The owner and operator of the vessel are also provided. Shipowners and operators will all have their reputations in the market, some will be better than others, and the underwriter will need some knowledge of the market to appreciate these factors.

Other information above will describe the age, dimensions, and capacity of the vessel which may all be relevant depending on its use and where it may travel.

Additional important factors will be documentation regarding the maintenance of the vessel, what types of cargo it is designed to transport, and what types of cargo it will transport, and where it will operate in the world.

Finally, having collated the risk factors, the underwriter needs to understand the cover the applicant for insurance is seeking and the sums insured being requested. These need to be reasonable given the object(s) being insured.

The underwriter may wish to check the information provided by the insurance applicant with information such as an extract from the Lloyd's Register (an example is given directly below) based on the IMO number to check that the data tallies.

A fictitious example of a Lloyd's Register extract is shown below:

Lloyd's Register Extract:		TWOSCOMPANY		
Name:	TWOSCOMPANY	Ship Type:	Shuttle Tanker	
IMO Number:	11AGCD1234	Gross Tons:	66 536	
Year built:	2010	Deadweight:	109 533	
Port of Registry:	Bahamas	Net:	29 571	
Owner:	Threecrowd Corporation, UK	Flag:	France	
Operator:	Good Shipping, Nassau	Shipbuilder:	Samsung Heavy industries, Goeje Yard, Korea	
Class:	Det Norske Veritas	Special Survey:	03/06/2016	
Length Overall:	253.4 BB	Length (BP):	237	
Beam Extreme:	42,38	Beam Moulded:	44,2	
Draught:	16	Depth:	22,6	
Construction Details:	Double Hull; Bulbous Bow			
Arrangement:				
Structure	Sequence	Type	Position	Material
Tank	1	Cargo Tank	Port	Steel
Tank				
Tank				
Manifolds:	Four	Cargo pumps:	4 at 3000 tons/hour each, 4 at 3660 tons/hour each	
Engines:	2 Oil engines MAN-B&W	Total Power:	18 960 kW (25 778 bhp)	
Speed:	14 knots	Fuel Capacity:	HFO : 2 830 t MDO 658 t	
Fuel Consumption: HFO : 45 tons/day when loaded; 38 tons per day when in ballast.		MDO: 3 tons/day at sea; 5 tons/day when working cargo at offshore facility;		
4 tons/day when working cargo alongside a shoreside terminal				

In the extract above there was a special survey on 3rd June 2016 – doubtless the underwriter would be interested to know its contents.

In this extract the class is “Det Norske Veritas”, an international accredited registrar and classification society headquartered in Hovik, Norway.

Builders' risks insurance

The Builders' Risks insurance policy covers a vessel and any related property and materials from the beginning of the construction until there is final delivery to the customer. Both builders and owners can apply for cover. The scope of cover includes physical loss or damage to the vessel, collision liability and P&I cover during sea trials and including delivery.

Key information would include the following:

THE COMPANY

Company Name:

Other parties who may be included in the cover:

Address:

Telephone Number:

Website:

Responsible person:

Email address:

How long operating in current business:

Turnover last two years:

Number of Full-time Employees:

Number of Part-time Employees:

THE VESSEL

Client: Name / Address

Type of Vessel:
Expected Classification:
Construction material: For example - Fiberglass
Details of engine(s): (including whether petrol or diesel – fire hazard!)
Gross Tonnage:
Measurements:
Contract price: Fixed / Adjustable – if so on what basis
Total Values:
Hold harmless /Penalties / Subrogation:
Details of any sub-contracting:
Hold harmless /Penalties / Subrogation:
Timelines:
Testing: Type? Trial Trips? Scope/Distance
Form of delivery: Ex-factory or delivery to client (if delivery to client – full details)

THE CONSTRUCTION YARD

Address:
Construction of building:
Extent of operation: Number of dry docks, sidings, concurrent or consecutive completion of orders, repairs, inside/outside storage.
Security:
 Fire protections – Hydrants, sprinklers, company fire brigade
 Proximity of local fire brigade
 24 hours security: Alarms, security guards, fencing

THE COVER

Specified vessel or open cover?
Hull and machinery:
Sum insured: layered according to progress?
Liability:
Sum insured:
Period of cover: Per vessel / Annual

CLAIMS RECORD:

Provide claims history of any person or company who will be an insured. Any claim which has been made against such persons or company, whether insured or not, during the last five years.

Clearly again there can be a large variety of both construction yards and types of vessel, from very large yards employing thousands of employees working on very large vessels, to a small yard with zero or few employees working on small fresh water boats.

The ISPS Code

The International Ship and Port Facility Security Code (ISPS) came into force on 1st July 2004.

The ISPS sets out specific measures to ensure a high standard of security in the operation of ships and ports. It came about largely due to terrorist attacks, notably the 9/11 attacks in the United States.

ISPS Code requires every ship to have a CSO (Company Security Officer). The CSO works with the SSO (Ship Security Officer) who has full responsibility for the security of the vessel.

The CSO reviews the Ship/Vessel Security Assessment and reports on possible threats to the ship. It is then his

duty to ensure that the SSP (Ship Security Plan) is properly applied and maintained by the SSO.

Like so many “international” codes, the code must be ratified by ISSA members, and thus the requirements may differ country by country, and even within a country.

The full code can be easily downloaded from the internet.

The MARPOL Convention

The MARPOL - International Convention for the Prevention of Pollution from Ships is a 584-page document, again easily downloadable from the internet. MARPOL stands for “Marine Pollution”.

The convention is one of the most important international marine environmental conventions. It was instigated by the International Maritime Organization (IMO) to prevent dumping, oil and air and other pollution of the oceans and seas and also to reduce as far as possible accidental spillage of these harmful substances in order to protect and preserve the marine environment.

By 2018, 156 states had signed up to the convention, representing over 99% of the world’s shipping tonnage.

However, the application of the convention through individual state ratification can produce different levels of enthusiasm to apply the convention and sometimes the response to non-compliance has been disappointing.

Lloyd’s Maritime information services

Lloyd’s maritime intelligence includes the following information on its website: Quote:

Business Intelligence: We’re the world’s leading provider of shipping and insurance data, news and insight, as well as maritime and commercial law intelligence.

Consulting: Bespoke trading and shipping solutions are designed to help you make better strategic decisions, seize opportunities and mitigate risk.

Data and analysis: From best-in-market vessel tracking data to essential maritime and commercial law analysis, we’ll provide all the information you need.

Global Industry experts: With a global network of 130 maritime experts, plus agents in 1,100 ports in more than 200 countries, we supply comprehensive analysis and reports. Unquote

This organisation can provide a lot of services to companies looking for various types of maritime information or for various services to assist them in various parts of the world. It is a subscription service.

3.2. Risk Factors – information the underwriter needs to know

We have seen in section 3.1 above examples of the information an underwriter would require from an applicant insured in order to review the risk.

There are also other risk factors that the underwriter must be aware of, but which the applicant insured is not required to provide.

Risks at sea

Weather: For example, typhoons, hurricanes, freezing conditions

Obstacles: For example, rocks, sandbanks, icebergs, mines

Bottlenecks: For example, the Panama and Suez Canals

Hull, machinery or equipment failure: For example, breakdown, electronic failure

Types of vessels and cargos

Types of vessel:

As has already been noted there are an infinite variety of vessels ploughing the seas today, and bigger and more sophisticated vessels are being built all the time, but some broad categories of vessel would be as follows:

Cargo vessels:

Bulk Carriers – Bulk carriers are designed to transport heavy mass cargos such as cement, coal, grain, ore and rocks. They are likely to have their own loading and unloading equipment, but this may depend on whether they are intended to serve particular ports that have such equipment or smaller ports without such facilities.

Container vessels – These are more modern vessels which have been designed to carry all kinds of cargos, but cargos “wrapped” inside a metal container. Bigger and bigger container vessels are being built. For example, the OOCL Hong Kong has a capacity of 21,413 TEU (1 TEU = 1 20-foot equivalent container unit). These are huge vessels and generally require specialised ports for efficient loading and unloading. The paperwork required to identify all the various cargos in all the various containers also needs to be well organised to avoid long delays at import and customs facilities. It is hoped that new technologies such as “Blockchain” will help here.

Crude carriers – These vessels are also known as “Super Tankers”, very large crude carriers (VLCCs) and ultra large crude carriers (ULCCs). They are said to be the largest “transporters” built by man, and many cannot enter port and must be loaded and unloaded from offshore facilities. A famous vessel in this category is one that started its life as the Knock Nevis, it was just over 458 meters long. (The Eiffel Tower in Paris is ‘only’ 324 meters to its tip). There are also other forms of ‘Liquid Carrier’ vessel, for example, wine or other liquid cargo.

General Cargo vessels – The general cargo vessel is the classical historic vessel which transported goods around the world. Cargo could be of all sorts stored in various holds, and loaded and unloaded using a variety of methods including the crew, stevedores, derricks, slings and cranes. Such vessels were also known as “liners” where they regularly carried cargos between the same several ports, and were known as “tramps” when they went wherever the business took them.

Liquefied Gas Carriers – also known as LNG (Liquified Natural Gas) and LPG (Liquified Petrol Gas) carriers, they are specially designed to carry these cargos. Being highly combustible cargos, these are particularly hazardous cargos to transport.

Multi-purpose vessels – These are vessels that can transport both dry and liquid cargos.

Reefer vessels – These are vessels designed to carry refrigerated cargos. Once the vessels have been loaded, the holds are sealed and temperature controlled.

Roll-on, roll-off vessels – Also known as Ro-Ros, these vessels are designed for vehicles to drive on and off easily, and are used especially in ferrying different types of vehicles – lorries, coaches, private cars and their passengers from one port to another, or even across lakes and larger rivers.

Passenger vessels:

Cruise liners – These vessels are designed to carry large numbers of passengers for leisure purposes. Once again, these vessels are being built ever larger. For example, the Symphony of the Seas can carry 6,680 passengers.

Ferries – A ferry generally carries both passengers and cargo over small distances. They are notorious for being overloaded and when misfortune befalls them there is often considerable loss of life.

There are also a number of other types of vessel, especially smaller ones such as fishing vessels, and barges, tow boats and sailing ships. Finally, there are a whole raft of pleasure vessels such as yachts, speed boats, rowing boats, different types of racing boats right down to one-man canoes.

Cargos:

Cargos can also come in all shapes and sizes, and some of the main cargo classifications would be as follows:

Bulk cargos - Beans and seeds in sacks, coal, sand, cereals

Dangerous goods - Gases and explosives, corrosive and infectious goods

General cargos - Cars, machines, textiles

Liquid cargos - Oils, chemicals and spirits

Live animals - Race horses, zoo animals

Perishable goods - Fresh fruits, dairy products and vegetables

Temperature controlled goods - Frozen fish and meat

Other descriptions - There are raw, semi-finished, and finished products. New and used products.

3.3. Fraud

From a legal perspective, as we have seen in section 2.3 above, marine insurance contracts are based on utmost good faith. Thus, if an applicant does not present all the material facts to the insurer, the insurer is entitled, under a number of instances, to avoid the contract.

However certain distinctions apply. If an applicant does not disclose material facts inadvertently, or possibly even with a certain degree of negligence, this is misrepresentation rather than fraud.

Fraud is the intentional concealment of material facts, or the false declaration of material facts.

Fraud can also occur at the time of making a claim. The worst example may be when the insured deliberately “sinks” or “scuttles” its own ship. Other examples would include setting fire to the vessel or its cargo, deliberately running aground or overvaluing the loss to make profit.

It may be difficult for an insurer to decide whether to dispute the claim or not. Some claimants may honestly perceive a higher value in certain property. They honestly consider the market value to be higher, or they take a value which is not the current market value.

Others may deliberately exaggerate. At the end of the day it is a question of honesty and the insurer must take a view of whether the insurance application/claim is being made honestly or not.

3.4. Piracy

Piracy comes in many forms, today the illegal copying of software and DVDs is known as piracy, as is the unlicensed transmission of music. However, in the maritime context piracy is criminal violence, the attacking and robbing of vessels at sea.

Piracy has a long and colourful history, and sometimes there was a very thin line between trading and piracy. There are also colourful characters in history such as Sir Walter Raleigh, in England a favourite of Queen Elizabeth 1, but also known as a famous pirate, especially by other nations.

Modern piracy however holds no hint colour, and is more akin to the horrors of war. There are certain areas in the world especially vulnerable to piracy such as the strait of Malacca, and it is important that a marine underwriter be aware of the latest news in this respect before cover is given for vessels which could be exposed to this risk.

There is some lack of clarity regarding the coverage of piracy. The ICC Time Clauses – Hull 1983 include piracy in the standard cover provided - but in many markets piracy is considered as a war risk, and it is necessary to take out war risks cover to have this exposure insured.

The west coast of Africa is considered the worst area for piracy. The International Chamber of Commerce (ICC)

provides a map updated quarterly of piracy events around the world.

For example, of the 10 recent events (first two months of 2019), 6 occurred on the west coast of Africa. The root of the problem remains Nigeria. Most acts of piracy are committed in Nigerian waters, by Nigerian criminals.

If marine hull and/or cargo piracy covers are required for these waters, great care should be taken in understanding the level of risk being carried by the insurer.

3.5. Underinsurance

As has been seen in Section 3.3 above, marine insurance is subject to Utmost Good Faith and thus any deliberate act to underinsure may be considered as fraud.

In addition, the Marine Insurance Act 1906 specifically deals with underinsurance in section 81 as follows:
“Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance”.

Thus, if the correct value of a ship is \$ 100,000, but the insured has only taken out insurance for \$ 80,000 then the insured will only receive 8/10ths of the amount due for any approved claim. The application of average is automatic in marine policies and it reduces the claim in direct proportion to the undervaluation of the insured property.

3.6. Important Clauses

There are a large number of clauses that will apply to various types of hull cover and it is not possible in a work of this nature to cover them all, however certain important clauses are dealt with below.

General average

A basic general average clause would be as follows:

General Average. All claims for general average to be settled according to the York/Antwerp Rules 1994 and any amendments thereof.

The current version of the York/Antwerp rules is the 2016 version. These rules can be downloaded from the internet.

There are rules A to G and rules I-XXII.

For example, rule A:

Quote

“1- There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

2- General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.”

Unquote.

The above is self-explanatory.

For example, rule VIII

Quote

“Expenses Lightening a Ship when Ashore, and Consequent Damage

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and any loss or damage to the property involved in the common maritime adventure in consequence thereof, shall be allowed as general average.”

Unquote.

Essentially the objective is to arrive at the actual net benefit received by each party as a result of the General Average act, to calculate each party's proportion. There will be expenses incurred during the General Average act, and a good example is rule VIII above where various cargos may have to be off-loaded so that damage to the ship can be repaired, and the expenses and any losses incurred in that act can be deducted from a party's actual net benefit.

The basic principle of General Average is that a party to the venture who has suffered loss to save the property belonging to other parties to the same venture has the right of compensation for its loss from ALL parties to the venture who have benefited from that sacrifice.

An example might be a container ship becoming stranded on a sandbank. A storm is brewing and unless the ship is re-floated, it risks to be destroyed in the storm. The vessel has three containers on board belonging to A,B and C, and the ship belongs to D.

The container belonging to A is very heavy and by throwing it overboard it is possible to lighten the ship and release it from the sandbank.

In this case the sacrifice of A's container has saved the property belonging to the other parties namely B, C and D and A has a right of compensation from those parties.

Salvage

Marine salvage is the act of trying to save all or parts of a ship and its cargo after a maritime casualty such as a shipwreck or grounding. Historically there is an obligation at sea for a passing vessel to provide assistance to save lives. Today there are also specialised companies who provide salvage services.

A ship in trouble can refuse an offer of assistance, however if it accepts to be assisted a contract of salvage is considered to have automatically been made and the salvor is entitled to a reward. In such cases the parties will sign a Lloyd's open form of salvage agreement (LOF agreement) clearly setting out the terms of the agreement.

Marine salvage is governed by the International Convention On Salvage, 1989 sponsored by the International Maritime Organization (IMO) and the entity that has successfully saved all or parts of a ship and its cargo is entitled to a reward, a proportion of the value of the ship and its cargo, as decided by a maritime court in accordance with articles 13 and 14 of the International Salvage Convention 1989.

If nothing can be saved, then the principle of “no cure, no pay” applies. Nevertheless, where there may be environmental concerns such as pollution after damage to, for example, an oil tanker, salvors today can receive payment under the 1989 convention.

The International Convention on Salvage can be downloaded from the Internet.

Sue and Labour

The Sue and Labour is a standard clause in a marine policy which in non-marine policies would simply be labelled – The insured's duties in the event of a loss.

An example is as follows (Source ICC):

Quote

13 DUTY OF ASSURED (SUE AND LABOUR)

13.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.

13.2 Subject to the provisions below and to Clause 12 the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. General average, salvage charges (except as provided for in Clause 1 3,5) and collision defence or attack costs are not recoverable under this Clause 13.

13.3 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

13.4 When expenses are incurred pursuant to this Clause 13 the liability under this insurance shall not exceed the proportion of such expenses that the amount insured hereunder bears to the value of the Vessel as stated herein, or to the sound value of the Vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value, Where the Underwriters have admitted a claim for total loss and property insured by this insurance is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value.

13.5 When a claim for total loss of the Vessel is admitted under this insurance and expenses have been reasonably incurred in saving or attempting to save the Vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regarded as having been incurred in respect of the Vessel; but if the Vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance.

13.6 The sum recoverable under this Clause 13 shall be In addition to the loss otherwise recoverable under this insurance but shall in no circumstances exceed the amount insured under this insurance in respect of the Vessel.

Unquote

Subrogation

A subrogation clause would be along the following lines:

Subrogation

The Insurer shall be vested with all the rights of the Insured to the extent of any indemnity paid under this policy, once such payment has been made by the Insurer.

The Insured undertakes, as and when required by the Insurer, to confirm such transfer of rights.

Where an insured suffers loss through the fault of another, it will have two options. It can make a claim against the party at fault, or it can claim against its insurer if the loss is covered by an insurance policy.

Thus, if the vessel's hull was damaged through the fault of a third party (for example a collision through the fault of the other party), the owner can make a claim direct against the faulty party or can claim under its hull policy from the insurer.

If the insurer pays the claim, then the insurer has the legal right to substitute itself for the insured, with the same rights and remedies, and make a claim against the party who is liable for the loss, in the example above, against the vessel at fault. This is known as subrogation, where an insurer who has paid a loss claims as if it were the insured.

Naturally the insurer cannot claim for more than it has paid. It cannot make a profit from the subrogation. Nevertheless, if the insured has had to pay itself a large deductible, it may still have an interest in the proceedings to

recover the deductible.

Thus, where there is clearly a third party at fault, and the insured decides to claim against its insurer, it is very important that the insurer protects its legal position and its ability to subrogate the loss.

Where a claims adjuster/surveyor is being used to investigate the loss, it will be important that it has been instructed to take into account the potential interest of the insurer as well.

The Institute Time Clauses - Hull

There are three principle sets of Marine Hull clauses:

The Institute Time Clauses – Hulls 1/10/83;

The Institute Time Clauses – Hulls 1/11/95;

The International Hull Clauses (01/11/03).

The most popular remain the 1983 clauses and appear to provide cover which is acceptable to both buyer and seller.

These clauses can all be downloaded from the Internet, and the 1983 clauses – also attached as appendix B, are summarised as follows:

The first five sections cover Navigation, Continuation, Breach of Warranty, Termination and Assignment. These refer to how the vessel may be used (Navigation), the duration of cover (Continuation and Termination), exceptions of Breach of Warranty and the conditions of acceptable assignment.

Section 6 deals with the perils which are covered as follows:

6 PERILS

6.1 This insurance covers loss of or damage to the subject-matter insured caused by

6.1.1. perils of the seas rivers lakes or other navigable waters

6.1.2 fire, explosion

6.1.3 violent theft by persons from outside the Vessel

6.1.4 jettison

6.1.5 piracy

6.1.6 breakdown of or accident to nuclear installations or reactors

6.1.7 contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbour equipment or installation

6.1.8 earthquake volcanic eruption or lightning.

6.2 This insurance covers loss of or damage to the subject-matter insured caused by

6.2.1 accidents in loading discharging or shifting cargo or fuel

6.2.2 bursting of boilers breakage of shafts or any latent defect in the machinery or hull

6.2.3 negligence of Master Officers Crew or Pilots

6.2.4 negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder

6.2.5 barratry of Master Officers or Crew provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

6.3 Master Officers Crew or Pilots not to be considered Owners within the meaning of this Clause 6 should they hold shares in the Vessel.

© Copyright The Institute of London Underwriters

It is important that the extent of cover is appreciated. Barratry – appearing in clause 6.2.5 is an old-fashioned word and means that the Master, officers or crew commit fraud or are grossly negligent towards the owner(s) or operator(s) of the vessel.

Clause 7 covers damage resulting from a risk of pollution provided it has been caused by a governmental authority and has not resulted from an assured's negligence.

Clause 8 covers collision liability – thus these clauses cover both damage (clauses 6 and 7) and also provide a limited liability cover (clause 8).

Clause 9 deals with the situation where collision or salvage occurs with another ship belonging to the same owner.

Clauses 10 to 14 deal with the treatment of claims, General Average, Salvage, and Sue and Labour, all of which, have been discussed above.

Clause 15 to 18 deal with what is covered and not covered under the policy regarding Bottom Treatment, Wages and Maintenance, Agency Commission and Unrepaired Damage.

Clause 19 deals with Constructive Total Loss. Constructive total loss is the decision to consider whether there has been a total loss under the policy even if the damage is not 100% because to save, retrieve or salvage the vessel, and the cost of repairs, would exceed the sum insured.

Clause 20 – Freight Waiver. Under the Marine Insurance Act 1906, underwriters have the right to freight in the course of being earned, and which is earned once claims have been paid. To avoid additional complexity, in this clause, underwriters give up these rights.

Clause 21 – Disbursement Warranty. Under the Marine Insurance Act hull insurance covered the market value of the ship and any cover in excess of this was not allowed. It was thus necessary, as justifiable needs of the shipowners evolved, that provision was made in policies to cover the “excess”, termed “Hull Interest” or “Increased Value”. In clause 21 this is limited to 25% of the sum insured, but it is common in several jurisdictions to issue an additional waiver to the insured to cover amounts in excess of 25%, should the insured provide valid reasons for doing so.

Note: In clause 21.2 PPI is short for ‘Policy Proof of Interest’, and FIA for ‘Full Interest Admitted’.

Clause 22 refers to return premiums in the event of lay-up of the vessel and cancellation.

Clauses 23 to 26 cover exclusions. As these are important, they are set out below:

23 WAR EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by

23.1 war civil war revolution rebellion insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power.

23.2 capture seizure arrest restraint or detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat.

23.3 derelict mines, torpedoes bombs or other derelict weapons of war.

24 STRIKES EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by

24.1 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions.

24.2 any terrorist or any person acting from a political motive.

25 MALICIOUS ACTS EXCLUSION

In no case shall this insurance cover loss damage liability or expense arising from

25.1 the detonation of an explosive

25.2 any weapon of war

and caused by any person acting maliciously or from a political motive.

26 NUCLEAR EXCLUSION

In no case shall this insurance cover loss, damage, liability or expense arising from any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

© Copyright The Institute of London Underwriters

It is important to note under clause 23 that ‘barratry’ and ‘piracy’ are excepted.

The Institute War and Strikes Clauses

These clauses can be downloaded from the Internet, and the 1983 clauses – also attached as appendix C, are summarised as follows:

1 PERILS – the cover is broad as follows:

Subject always to the exclusions hereinafter referred to, this insurance covers loss of or damage to the Vessel caused by

1.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

1.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat

1.3 derelict mines torpedoes bombs or other derelict weapons of war

1.4 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

1.5 any terrorist or any person acting maliciously or from a political motive

1.6 confiscation or expropriation.

(1/10/83 - CL281 © Copyright The Institute of London Underwriters)

It covers War, Terrorism, and Strikes and generally confiscation and expropriation.

2 INCORPORATION – This clause incorporates various of the Institute Time Clauses – Hull “*as far as they do not conflict with the provisions of these clauses*”.

3 DETAINMENT – This simply states that after a continuous period of 12 months ‘detainment’ the vessel will be considered a constructive total loss.

4 EXCLUSIONS – There are still several exclusions:

This insurance excludes

4.1 loss damage liability or expense arising from

4.1.1 any detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter, hereinafter called a nuclear weapon of war

4.1.2 the outbreak of war (whether there be a declaration of war or not) between any of the following countries:

United Kingdom, United States of America, France,

the Union of Soviet Socialist Republics,

the People’s Republic of China

4.1.3 requisition or pre-emption

4.1.4 capture seizure arrest restraint detainment confiscation or expropriation by or under the order of the government or any public or local authority of the country in which the Vessel is owned or registered

4.1.5 arrest restraint detainment confiscation or expropriation under quarantine regulations or by reason of infringement of any customs or trading regulations

4.1.6 the operation of ordinary judicial process, failure to provide security or to pay any fine or penalty or any financial cause

4.1.7 piracy (but this exclusion shall not affect cover under Clause 1.4),

4.2 loss damage liability or expense covered by the Institute Time Clauses-Hulls 1/10/83 (including 4/4ths Collision Clause) or which would be recoverable thereunder but for Clause 12 thereof,

4.3 any claim for any sum recoverable under any other insurance on the Vessel or which would be recoverable under such insurance but for the existence of this insurance,

4.4 any claim for expenses arising from delay except such expenses as would be recoverable in principle in Engli-

5 TERMINATION – It is important to note that the war cover automatically terminates if a nuclear device is detonated, or there is war between certain named countries, or the vessel is requisitioned or the policy is cancelled.

Hull v Yacht clauses

The Institute Yacht clauses can be downloaded from the Internet, and are also attached as appendix D.

It is not intended to conduct an exhaustive comparison of the clauses in a work of this nature, but some specific highlights will be noted, as the underwriting of yacht covers is different from that of typical cargo vessels.

As with all other types of vessel, yachts can come in a variety of shapes and sizes. They can also be very individual depending on the wealth of the owner and incorporate highly sophisticated technology and high value works of art.

A very important aspect of the differences in the clauses, is that the Yacht clauses also cover liability to third parties. Depending on agreed cover, they may also cover anyone operating the yacht. This is much broader cover than that provided under standard Hull and Machinery covers.

The Yacht clauses also have much more restrictive use of the vessel both in respect of area of operation, when used during the year, and speeds.

Typically, a yacht will be restricted to a certain area and it will be necessary to get underwriters' permission to move from one area to another. If, for example, the area is the Caribbean, there may well be a time restriction to prohibit use during the hurricane season.

Clause 5 of the Yacht clauses requires the insured to warrant that the yacht cannot exceed a speed of 17 knots. If the yacht exceeds this limit, then clause 5 needs to be removed and Clause 19 included.

As in all aspects of maritime risk, each type of cover requires a certain expertise, and in this case the insurer must also consider the considerable increase in liability exposures as compared to the more 'traditional' risks.



4. HULL CLAIMS

Learning objective: To be familiar with the processing of Marine Hull claims.

The general claims process, both at basic and advanced levels is also considered in courses 6 (basic) and 7 (advanced).

It is always important to remember when dealing with claims that what for the insurer may be a routine claim process, can be the most dramatic incident in the life of the insured, and the way the insurer treats the insured can have a profound influence both on their future relations and the amount payable by the insurer.

4.1. Types of claims

Annual claims reviews are available from a number of sources on the internet. The source used here is the AGCS Shipping review 2018.

This analyses losses by region, by major losses, by types of vessel, by cause, and total losses in all regions.

As regards types of claims, the report provides the following information – the five top causes of total loss were:

- Vessels foundered (sunk or submerged)
- Vessels wrecked/stranded (grounded)
- Fire/Explosion
- Machinery damage/Failure
- Collision

Clearly there are umpteen parts of a ship that can be damaged – the keel, the hull (bow, stern), the bulwarks, the cabins, the holds, the engine, the machinery, the propeller, the rigging, the rudder, the sails, the superstructure, the lifeboats – and expertise will be required to decide if the loss is covered and to adjust these losses.

Equally there are challenges which are not so common on land. If a vessel sinks in deep waters it may be difficult or impossible to recover it, and equally to inspect it. There may be days, weeks or even months before a damaged vessel reaches a port where it can be inspected and/or repaired.

Pollution can also be extensive where very large vessels release their contents which can be carried by the wind and waves to distant shores and create major environmental incidents.

4.2. The loss investigation process and use of expert third parties

Completion of claim form and collecting the details:

Most of the following information will be necessary to adjust the claim:

INSURED:

Name of Insured:

Contact person if other than insured:

Address: Street /Residence Number /Postcode /Place /Country/Email /Mobile /Home & work telephone numbers.

POLICY:

Policy No:

Sum Insured:

Details of any broker involved:

Basic contact details are necessary of the insured, and basic policy details, plus the involvement of a broker/agent, if any. The sum insured under the policy may give an indication as to size of vessel involved and perhaps the urgency to assess the damage.

VESSEL:

Name of vessel:

Classification / Registration number / Year / Date purchased / Mortgage details, if any

Full details of the vessel are necessary to appreciate its size and condition, intended use, and any parties who may have a financial interest in it.

DETAILS OF LOSS

Use of the vessel at the time of the loss: / Speed

Date & Time of the loss:

Place of the loss:

Details of loss: including any Photographs, relevant documents – invoices, police reports, other reports, communications from third parties, receipts

Who was in control of the vessel at the time of the loss: / Attach controller vessel licence where relevant

Details of damage to vessel: Amount of loss / Steps taken to minimise the loss:

Have the authorities been involved / Enclose any relevant reports

Where can the vessel be inspected:

Has a complaint been lodged in respect of any third party involved: / Details / Copy communications

Can fault be determined / Claimant or third party

In case of collision with another vessel: Name of vessel: / Classification / Registration number, owners name, address, email, mobile (if available) / Name of Insurer / Policy No / Claim No / details and extent of damage

It is important to obtain as many details as possible of the loss incident while it may still be fresh in everyone's mind. It is also important to ascertain if the vessel was being used according to its intended usage, whether the speed was reasonable, whether the operator was duly qualified, and the extent of any damage. Also, if any authority has been involved.

A very important aspect is if any third party is involved – either as liability insurer, or under the collision liability exposure in the Hull policy. Details of third parties and generally of any injured parties is necessary to build up a first estimate of loss.

PERSONS INVOLVED

Details of any injured person(s) – Name / Address / Email / Mobile / Whether Visitor/Crew/Third Party

Details of any doctors who attended the scene / any hospital treating an injured party

Details of any witnesses

Details of the crew of insured vessel: Specify who was on board at the time of the loss.

Details of crew of any Third party:

Having the ability to communicate quickly with many of the parties involved can help not only in the overall estimation of the loss, but also to control the perhaps unnecessary involvement of a myriad of legal counsel to represent parties who feel they may not be getting the attention and compensation they deserve.

Details of any other insurances, for example, other liability policies or any P&I cover which may also cover any part or parts of the losses/claims enumerated above.

Ascertaining coverage:

The standard form of cover is fairly clear, see section 3.6 above – The Institute Time Clauses – Hulls. It will also be necessary to see if the insured has taken out any additional covers that could be relevant to the claim. If the insurer also covers more than just the limited hull collision exposure, then other liability factors and exposures will need to be taken into account. These liability factors are dealt with in more detail under section 5 below.

Use of Experts / Counsel:

As has been noted, the loss investigation of hull claims can be more complex than that of, for example, a property loss concerning a fixed site on land. Damage can occur in the remotest of places and vessels may simply disappear in the sea. Large ports can represent a web of close-knit groups and union members where establishing the true facts may be a difficult task. The damage may even be in areas where the rule of law is tenuous, or in territories torn apart by war or civil strife.

The Lloyd's Agency network

For these reasons many insurers make use of the Lloyd's Agency network. The Lloyd's web site describes the Lloyd's Agency network as follows:

The Lloyd's Agency network provides 24 hour, year round independent marine surveying and claims adjusting services to the global insurance industry and its customers. With over 260 Lloyd's Agents and a similar number of Sub Agents, covering major ports and commercial centres around the world, the Lloyd's Agency network forms the world's most extensive surveying and adjusting network.

Clearly the Lloyd's Agency network has its competitors, but few insurers will have a similar network in place, and most will require the services of third parties to investigate and adjust any loss where the economics dictate that an investigation and adjustment will be necessary.

Surveyors / Loss Adjusters

Surveyors/Loss Adjusters are used in a wide area of marine insurance. They will produce reports on the seaworthiness of vessels and will also certify compliance with international standards for a safe voyage.

To this extent there should be documentation that the vessel was compliant for a safe voyage and if, for example, the cargo was to blame for the loss, that the vessel was properly loaded and the cargo properly packed and stored. It should also be possible to ascertain if any dangerous cargo was on board, or if routing was out of the ordinary.

If all this documentation is available it may be sufficient to adjust a claim without further extensive third-party support.

While there are claims that "blockchain" will considerably help in the effecting of complete and correct documentation, currently human error can be prevalent in missing or incorrect documentation and while survey reports should be available, they are not for one reason or another and it will be necessary to use a surveyor yet again for the investigation and adjustment of the claim.

Attorneys

If claims are disputed, legal support may also be required. This area can be complicated by the various jurisdictions that may be involved. For example, the damage may have occurred in international waters, or in sovereign waters and perhaps a lawyer specialised in these areas may be necessary. The issue may arise under an insurance

policy which is subject to the jurisdiction of the insured or the insurer, and thus legal advice relevant to this jurisdiction may also be necessary. If the dispute goes to Arbitration, there may be a further set of laws which are to be applied by the Tribunal. It is not hard to imagine the legal costs which can be generated when all these various lawyers perhaps need to assemble for a conference call to sort the differences.

4.3. The adjustment and settlement of claims

As has been noted above, it is very common when adjusting larger claims in marine insurance to appoint an average adjuster. Instructions may be given by either party to the insurance contract as the average adjuster is required to remain both independent and impartial.

As with many aspects of marine insurance the Association of Average Adjusters has issued rules of practice which must be followed by all members of the association. These rules can be downloaded from the internet, and various aspects of the claims handling by the adjuster can be monitored and controlled, where necessary, by reference to these rules.

A more detailed discussion of the process is given in the case study immediately below on General Average.

Once the cause of the loss has been established, and a decision made as to the extent of cover, the amount of the loss must be calculated.

There are three main kinds of loss:

1) Actual Total Loss (ATL)

According to the Marine Insurance Act, section 57, an Actual Total Loss is *“where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof there has been an actual total loss”*. *“In case of an actual total loss no notice of abandonment need be given”*.

Thus ATL is clearly defined in the Marine Insurance Act.

2) Constructive Total Loss (CTL)

According to the Marine Insurance Act, section 60, a Constructive Total Loss is *“where the subject matter is reasonably abandoned to the insurer, because:*

- a. Actual total Loss appears to be unavoidable*
- b. It cannot be saved without expenditure exceeding its value”*

Thus, for example, if a ship is so badly damaged it cannot be successfully towed to a port of refuge, or the cost involved exceeds the current value of the vessel, then it may be considered a CTL.

Where the insured wishes to claim a CTL it must tender a notice of abandonment to insurers. The insured has the option to do this, as it may prefer to sustain heavier costs, if, for some reason, it wishes to preserve and repair the vessel.

If the insured tenders a notice of abandonment, the insurer must decide if it wishes to accept this or not. This is not necessarily a simple, straight-forward decision. If the insurer accepts the notice of abandonment, then it becomes owner of the vessel. For example, if the vessel is very badly damaged and leaking huge volumes of crude into the sea with the prospect of enormous environmental damage, a Hull and Machinery insurer may not wish to become liable for the pollution as owner of the vessel.

3) Partial Loss

A partial loss is often defined as a “Particular Average Loss” where Hull claims are concerned and the Marine Insurance Act, section 64, gives a definition of a Particular Average Loss:

“A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.”

It also provides in section 69 guidance on how a particular average loss is to be adjusted:

“Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows:

(1) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty:

(2) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above:

(3) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.”

Clearly an important aspect here is what will be ‘reasonable’, and an insurer and an insured may have different views on this. However as noted above, an average adjuster is more often than not involved, and their impartial decision will doubtless have a material influence on both parties to the insurance contract.

4.4. Case Study – General Average

The scope of General Average has been discussed in section 2.4 above.

In this section we will go through an example of a General Average loss.

The ship the “Good Hope” is sailing from Port A to Port C. It runs aground on the second day and it is decided that it will be cheaper in the circumstances to jettison some heavy cargo so that the ship can re-float and continue to a port of refuge.

Three containers are jettisoned to effect the re-floating and the ship is able to sail under its own power to Port B.

At Port B the shipowner instructs John Hazards (JH) as average adjuster.

JH reviews the circumstances of loss and decides the event falls under the definition of General Average.

The cargo owners are also happy to instruct JH as well.

It is necessary to give notice of loss under the Hull and Machinery Policy of the shipowner and notice of loss under the respective cargo policies.

JH feels that the security of at least one of the parties is such that General Average Security should be collected from the cargo parties.

JH then needs to reconstruct the sequence of events and the values to adjust the loss.

The Good Hope has a sound value per certificate of \$45,000,000. All cargo on board had a CIF value of \$63,000,000. The cargo was owned as follows:

The New Age Art company \$40,000,000

Jee Antiquities company \$18,000,000

Hayes trading company \$5,000,000

When the Good Hope ran aground, 3 containers were jettisoned belonging to the New Age Art company. The value of those containers was \$1,700,000.

In re-floating the Good Hope there was further damage to the hull amounting to \$450,000.

When the ship reached the port of refuge – Port B – expenses totalled \$130,000.

It was necessary to discharge cargo to effect repairs to the ship and during unloading a container was badly damaged causing a loss of 170,000.

JH then sets out the adjustment to calculate the General Average contribution of the parties:

Contributory Value					
					\$
Good Hope Sound Value per certificate					45 000 000
All cargo on board CIF value					63 000 000
					108 000 000
Summary of General Average Act Disbursements					
Loss of 3 containers belonging to New Age Art (Rule II)					1 700 000
Refloating damage (Rule II)					450 000
Port of refuge expenses (Rule X)					130 000
Damage to cargo caused by forced discharge, storage and reloading (Rule X)					170 000
				Total	2 450 000
Apportionment of General Average			\$		
Ship	45 000 000	pays	42%		1 020 833
New Age Art	40 000 000	pays	37%		907 407
Jee Antiquities	18 000 000	pays	17%		408 333
Hayes Trading	5 000 000	pays	5%		113 426
	108 000 000		100%		2 450 000

Based on these calculations, the shipowner is liable for 42% of the GA loss or \$1,020,833. The New Age Art company is liable for 37% of the GA loss or \$907,407, the Jee Antiquities company is liable for 17% of the loss or \$408,333 and the Hayes Trading company is liable for 5% of the GA loss or \$113,426.

4.5. Loss Prevention

One of the advantages of working in an international arena such as marine insurance is that most of the risks have been around for tens, even hundreds, of years, and as new risks emerge, they must be faced by the international community and thus many qualified experts around the world will be reviewing how to minimise these risks and international organisations and Governments will be making rules to protect life, property and the environment.

Most Governments require all vessels of any size to be certified, and that certification must be renewed on a regular basis. Certification will include many aspects from the materials which have been used to build the ship to engine emissions to the safety measures incorporated. Seafarers must be registered and certified for various operations they may carry out on a particular vessel.

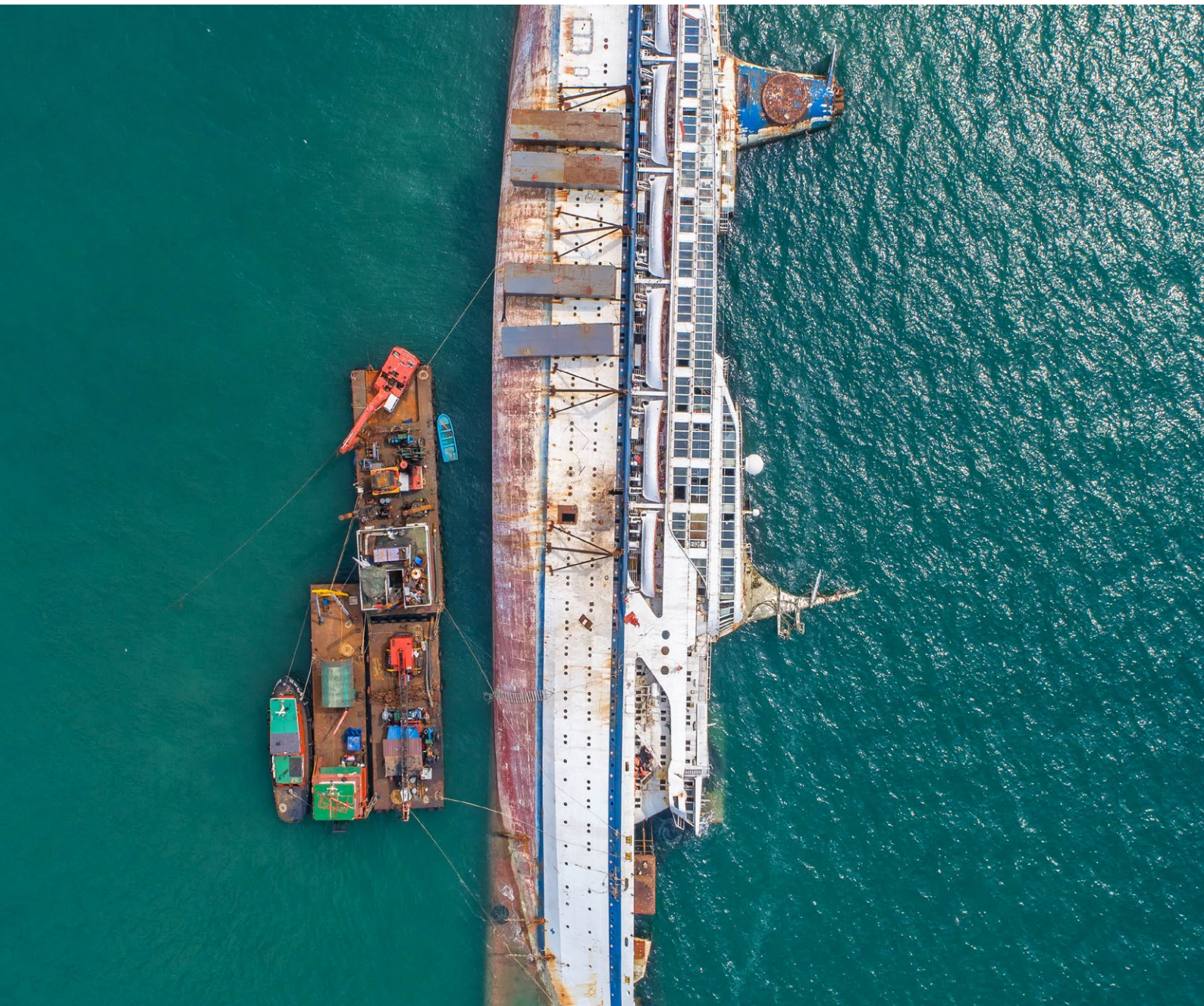
There are many, many rules relating to the packaging and safe transport of goods, including the necessary rules of loading, stowage and unloading.

Compliance with the rules will already ensure a significant aspect of loss prevention. Nevertheless, developing and maintaining a strong risk prevention culture in an organisation, and working with organisations known to promote the same, will definitely enhance loss prevention and further minimise the probability of losses.

A number of organisations issue publications relating to loss prevention on vessels. For example, the Swedish Club has a library of documents on loss prevention that can be freely downloaded from the internet.

A good risk culture however, must be created from the top down in any organisation, and all the publications available cannot help if an organisation or corporation does not have the culture to properly apply the rules and actively seek to prevent losses.

This can be especially important in an ocean-going vessel where the ship may be many kilometres from any form of assistance. Good measures to prevent fire and engine damage, properly stowed and stacked cargo are essential to ensure a safe voyage.



5. MARINE LIABILITY

Learning objective: To be familiar with the liability coverage available for ship owners and operators and others involved in the shipping industry.

5.1. The link between Hull and Liability Coverages

As has been noted above the Institute Time Clauses – Hulls 1.10.83 provides a liability cover for collision under clause 8 – 3/4ths Collision Liability as follows:

8.1 The Underwriters agree to Indemnify the Assured for three-fourths of any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable by way of damages for

8.1.1. loss of or damage to any other vessel or property on any other vessel

8.1.2 delay to or loss of use of any such other vessel or property thereon

8.1.3 general average of, salvage of, or salvage under contract of, any such other vessel or property thereon, where such payment by the Assured is in consequence of the Vessel hereby insured coming into collision with any other vessel.

8.2 The indemnity provided by this Clause 8 shall be in addition to the indemnity provided by the other terms and conditions of this insurance and shall be subject to the following provisions:

8.2.1 Where the insured Vessel is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, the indemnity under this Clause 8 shall be calculated on the principle of cross-liabilities as if the respective Owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision,

8.2.2 In no case shall the Underwriters' total liability under Clauses 8.1 and 8.2 exceed their proportionate part of three-fourths of the insured value of the Vessel hereby insured in respect of any one collision.

8.3 The Underwriters will also pay three-fourths of the legal costs incurred by the Assured or which the Assured may be compelled to pay in contesting liability or taking proceedings to limit liability with the prior written consent of the Underwriters.

Exclusions

8.4 Provided always that this Clause 8 shall in no case extend to any sum which the Assured shall pay for or in respect of

8.4.1 removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever

8.4.2 any real or personal property or thing whatsoever except other vessels or property on other vessels

8.4.3 the cargo or other property on, or the engagements of, the insured Vessel

8.4.4 loss of life, personal injury or illness

8.4.5 pollution or contamination of any real or personal property or thing whatsoever (except other vessels with which the insured Vessel is in collision or property on such other vessels).

As can be noted from the above, cover is limited to collision with another vessel and subject to a number of exclusions. It also has a maximum sum insured of 3/4ths of the insured value of the vessel and only 3/4ths of the legal costs.

It is common that the balance of the cover, i.e. 1/4th is covered by P&I Insurance – see below.

This aspect is the main link between the Hull and the Liability coverages an insured will require.

Otherwise Hull and Liability coverages generally require different criteria.

On the Hull side the criteria are:

Is the damage covered by the policy?

If so:

What is the amount of the damage?

On the liability side, if the insured is held liable by a court, then if the liability policy covers such acts, the insurer is liable up to the sum insured under the policy. This subject is dealt with in more detail in the case study at the end of this course.

5.2. A Review of Liability Exposures

Any individual of legal age who makes a physical act or turns a decision into action is liable for the results. A family visiting a port will be liable for the acts they commit or those of their children. A crane operator, a stevedore, a member of crew, an officer, a ship owner, a cargo owner, anybody taking decisions and turning those into an action is liable for the results.

In some countries negligent acts resulting in minor damage or injury may simply be forgotten or seen as a simple mistake and passed over. The same decision/act in a country where liabilities are an opportunity to make large sums of money for those affected and their lawyers may result in multi-million-dollar suits and ruin a person or a company where adequate insurance has not been taken out.

It is an individual choice for a person or a company to go uninsured where liability insurance is not required by law. There may be countries where one is less exposed to suit and potential ruin. Large corporations are usually required to obtain adequate liability insurance as a matter of course, as they have responsibilities to their shareholders. Thus shipowners, shipbuilders, ship operators, port operators, anyone involved in marine trade will likely need liability insurance. In many countries, insurance will be required by law, in others clients may only work with those involved in the transport of their goods or the building and operation of their ships if those parties are properly insured.

A trader expects to be financially recompensed if their goods are lost through the negligence of a third party. A ship owner expects recompense if their ship is not built on time or is damaged by a third party. Equally these parties don't want to take the risk that the defaulting third party has no money to pay. Hence, they will require proof of insurance and will likely check that the insurer in question is financially stable and both able and willing to pay.

5.3. Liability Insurers – who are they?

As we have seen above, a part of the marine liability exposures is covered under the Institute Time Clauses – Hulls, and thus any insurer who underwrites Hull business will, in effect, also be a liability insurer for the liability exposures resulting from collision.

Whether an insured is better off placing its short-tail property exposures such as Hull and Machinery with the same insurer as its liability exposures is always a matter of debate. Some insurers will have experts in both areas, some may offer better terms and have a better understanding in just one of these areas. The situation may also be different in different markets and legal jurisdictions.

Many parties seeking insurance take advice from intermediaries and other experts who understand the needs of such clients and know the best insurance markets to obtain optimum terms.

In the marine insurance market some large composite insurers will offer a full range of marine insurance policies

covering all aspects of marine risks. In others marine insurers may only cover part of the risks, and an insured will have to seek others to fulfil its requirements.

A particular aspect of the marine market is the P&I Clubs – these have been discussed in section 1 under ‘Markets’. Many of these clubs have a long-standing expertise in marine liabilities and have expanded both the range of their covers and their services to their insureds, covering in addition aspects such as loss prevention and risk analysis.

A selection of the various types of liability covers available are discussed below.

5.4. Collision Liability

Collision liability has been discussed above, both in terms of the scope of cover provided under the standard Institute Time Clauses – Hull and the exclusions.

However, we have also seen that the cover provided is limited, and additional cover can be sought from the P&I clubs. Additional cover will depend on the actual cover a shipowner already has. Usually collision cover only covers liability regarding collision with another ship – this is often referred to as RDC cover (Running Down Clause). However sometimes cover can also include liability for colliding with something other than a vessel such as a fixed or floating object, for example an iceberg or a wreck. This cover is often referred to as FFQ cover (Fixed and Floating Objects).

Once the existing extent of cover under the Hull and Machinery policy is known, supplementary cover can be tailored to the shipowners needs.

As has been noted above, legal liability will vary according to “waters” and hence legal jurisdiction in which the vessel finds itself at the time of the collision, thus it will be important to appreciate in which waters the vessel will trade.

5.5. Shipyards’ Liability Insurance

Shipyards are involved in the construction, conversion and repairing of ships and boats. They thus need cover for a variety of liability exposures such as:

Their liability to third parties for the loss of or damage to the ships and boats under their care or control, and related machinery and equipment. Also, their liability for any consequential losses.

- Their liability assumed under contract for their products and the quality of their work.
- Their liability for any designs and plans or advice given (Professional Indemnity).
- Their liability for any damage to hired, leased or chartered property.
- Their liability to third parties in general for bodily injury and property damage.
- Their liability should they cause any pollution or be liable for removal of wreck costs.
- Their legal expenses and defence costs.

An example application form has already been discussed in section 3.1 above.

A typical cover summary might be as follows:

“The insurer covers the insured during the policy period as shown in the policy schedule for the amounts that the insured may become legally liable to pay for damage to vessels in their control and for any personal injury to third parties which may result in connection with the insured’s Ship Repair Business.

The maximum amount payable under this policy for any one occurrence or in the aggregate shall not exceed the maximum sum insured shown in the schedule.”

Typical exclusions, many subject to inclusion at an extra premium, could include:

- Any work on aircraft and hovercraft.
- Any building reconstruction or conversion except as provided for in the policy or otherwise agreed by the insurer in writing.
- Any damage/liability resulting from the activity of diving, whether for commercial or recreational purposes.
- Any damage/liability resulting from work on or near to oil or petrol tanks or vessels carrying explosives or other flammable liquids.
- Any damage/liability resulting from salvage operations.
- Any damage/liability resulting from towing.
- Any damage/liability resulting from the storage of vessels.
- Any damage/liability resulting to underground or underwater services.
- Any damage/liability resulting from magnetism/ damage to data media.

Other, more general exclusions, are discussed under “various basic exclusions under marine liability insurance” below.

5.6. Charters’ Liability Insurance

There are various types of charter.

Under a time charter the ship is hired for a specific time period. The charterer can decide the various destinations and pays the expenses, but the shipowner will still operate the vessel.

Under a voyage charter the ship is hired from a specific port where the cargo is loaded to a specific port where the cargo is unloaded. The charterer pays the freight. The Charterer is also liable for demurrage – the cost of any delay that occurs during loading or unloading thus delaying the vessel with consequential costs.

Under a space or slot charter, the charterer just takes a part of the ship and pays for the time or the freight.

The Charterer’s Liability:

The liability of the charterer will vary depending on the type of charter, and cover can include the following - liability for:

- Cargo owners’ liability,
- Collision and Contact,
- Contractual liability extension,
- Consequential loss,
- Death and personal injury,
- Diversions and related costs,
- Employers liability,
- Extra cargo handling costs
- Freight, demurrage and defence (FD&D),
- Legal and associated costs,
- Loss of, or damage to the chartered vessel,
- Obstruction,
- Pollution,
- Property liability,

- Quarantine and disinfection costs and fines,
- Salvage and General Average,
- Stowaways and related costs,
- Third party cargo,
- Wreck removal.

Exclusions

Exclusions would include many of the standard exclusions to which ship operators and cargo handlers may be subject, depending on the type of charter. Typical exclusions would be:

- Loss of or damage to specie or other cargo exceeding a value of \$ x
- Loss of or damage to oversized, heavy or hazardous cargo
- Loss, shortage, damage or delay occurring prior to loading subject to a delay of x days at the port of loading
- Failure to load or delay in loading any particular cargo in the Vessel, except where a bill of lading has been previously issued,
- Costs which are necessary to make the Vessel seaworthy and load the cargo,
- Costs which are normal to operate the vessel
- Costs to pack, repack, or any other measures taken to comply with international standards or any normal obligations under the contract of carriage or which result from the Vessel being incorrectly loaded
- Deviation, delay or departure from the contractually agreed voyage or adventure where the insured can no longer rely on its contractual defences or normal legal rights
- Failure to arrive or late arrival of the Vessel at the port of loading, except where a bill of lading has been previously issued,
- Loss, shortage, damage or delay occurring whilst the cargo is under the care of another carrier or during lightering operations except in a port where lightering is customary,
- Losses resulting from defective, antedated, post-dated or known as fraudulent bills of lading
- Carriage of cargo on terms less favourable than the Hague or Hague-Visby Rules,
- Carriage of cargo under a contract where transport will be partly in the Vessel and partly in another type of transport,
- Discharge of the cargo at a port or place other than the port or place provided for in the contract of carriage,
- Negligent failure to discharge all the cargo on board and loss, shortage, damage or delay occurring on land after unloading subject to a delay of x days at the port of unloading
- Costs which are claimable in general average or where the insured has a right of recovery against another party,
- Costs which result from the storage or disposal on land of any cargo or other substance previously carried on the Vessel.
- Costs which the Assured knows or should know that such costs would be incurred.

5.7. Mortgagees' Interest Insurance

Mortgagees' Interest Insurance (MII) is taken out by the mortgagee to cover the risk that, due to a breach of the Hull insurance contract by the insured (usually the ship owner), the Hull policy fails to respond.

Thus, for example, bank A lends ship owner M \$25,000,000 to purchase a ship. Some months later, ship owner M deliberately sets fire to the ship and it sinks. The insurers under M's Hull policy refuse to pay as the loss is a deliberate act of the insured. Thus bank A may be unable to recover the loan as the collateral has ceased to exist.

If bank A has purchased an MII, then it can recover a sum up to the current amount due under the loan.

Thus, cover would be along the following lines:

This insurance is to cover, subject to the conditions stated hereunder, the interest of the Insured as mortgagee of the vessel named herein for a period not exceeding 12 months.

The insurance may be purchased by the mortgagee and debited to the mortgagor's account, or may be purchased by the mortgagor (in this case the ship owner) for the benefit of the mortgagee.

The Institute mortgagees' interest clauses – Hulls – exclusions are set out below

EXCLUSIONS

In no case shall this policy cover:

3.1 any loss or expense arising from or as a result of

3.1.1 the relevant Owners' Policies and Club Entries having been terminated or cancelled or cover suspended or non-payment of claims by the Underwriters or insurance brokers thereof due to non-payment of premium or call,

3.1.2 insolvency or financial default of any of the Underwriters of the Owners' Policies and Club Entries,

3.1.3 inability of any party to transmit funds,

3.1.4 any fluctuation in exchange rates,

3.1.5 the operation of any franchise deductible or provision for self-insurance.

3.2 loss or damage directly or indirectly caused by or contributed to by or arising from:

3.2.1 ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from combustion of nuclear fuel,

3.2.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof,

3.2.3 any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

It is relatively rare that insurers will seek to deny cover under the Hull / Hull and Machinery policy due to a breach of warranty or a deliberate act of the insured, but wise lenders/mortgagees will take out this cover so that their risks are minimised.

5.8. Terminal /Marina Operators' / Port Package Insurance

Marinas, ports, and terminals can have a number of different operations co-existing in the same area. Apart from loading and unloading (essentially ports and terminals), these operators may also carry out conversions and repairs, sell various marine related products, offer various catering facilities, and provide professional services such as loss adjusting and certification.

They may also be exposed to risks arising from the importation or exportation of cargo, immigration, internal security, work place safety, pollution, marine traffic control and pilotage and other activities.

To cover all these various aspects package policies can be purchased from a number of insurers with one or another benefit added to the package as may be required by a particular insured.

Thus, for example, the policy will cover the operator

"for amounts that it is legally liable to pay as compensation for third party personal Injury and/or property damage which occurs in connection with the operator's business as defined in the policy."

The policy may also include, for example:

- Catering,
- Chandlery/Incidental Marine Sales,
- Fines and penalties
- Incidental Watercraft Repair Work,
- Inspections and Valuations — Errors and Omissions,
- Loss of earnings,
- Loss of use, delay or demurrage,
- Material Damage to piers, pontoons, floating quays, jetties and docks,
- P & I Endorsement,
- Pollution liability,
- Salvage/removal of wreck,
- Workers Compensation.

Given the wide range of possible covers, the basic cover would likely include the following exclusions some of which would be removed as the package of covers is extended:

- A default judgment entered against the insured by reason of failure to defend the claim
- Any commercial operations not defined in the policy
- Any damage/liability occurring outside the territorial limits of the policy
- Asbestos and silica
- Assault and battery
- Building and rebuilding of any watercraft, chandlery, rigging or painting.
- Consequential loss, loss of use and penalties - payments under penalty clauses in any contract for services
- Contractual liability
- Cyber - the use or operation of any computer, computer system, computer software programme, or any other electronic system.
- Defamation, libel and slander and other personal injury
- Delay
- Design errors, known faults and rectification of faults
- Diving
- Employer's liability
- Failure to use standard terms - as agreed with Insurer - in any contract
- Infectious Diseases
- Lawful seizure
- Motor Vehicles - operation of any licensed mechanically propelled Vehicle; or any unlicensed mechanically propelled Vehicle outside the insured's location.
- Normal Losses and/or lack of maintenance, wear and tear, gradual deterioration or erosion / corrosion, Mould, Fungus/Fungi,
- Operation of any Watercraft
- Ownership or operation of an aircraft, hovercraft, helicopter, or seaplane
- Participation in any sport, exercise or activity including but not limited to racing, competitive water sports and water skiing.
- Penalties, liquidated damages, punitive, exemplary and/or aggravated damages
- Personal Injury, unless the Personal Injury occurred on a Watercraft on water or boarding or alighting from the Watercraft.
- Pollution/dumping of spoil
- Product defect

- Product recall
- Professional liability
- Property in the insured's physical or legal control.
- Property owned by or leased or rented to the insured
- Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons
- Repairs to Ships/Watercraft
- Salvage operations
- Smoking
- Strike, lockout, labour disturbance
- Terrorism
- The failure of the Insured's products to meet the level of performance, quality, fitness or durability as represented
- Underground or underwater services
- War
- Wilful, deliberate acts or failure to take appropriate care

5.9. Stevedore's liability insurance

Stevedoring is defined as the process of loading or unloading cargo from ships or other vessels.

Stevedoring thus has a liability exposure for damage or bodily injury arising from the cargo being loaded or unloaded, including any collateral damage or physical injury to persons or objects in the vicinity of the cargo loading or unloading, including other vessels and the terminal/docks, caused by the negligent acts of their employees.

Cover will be very similar in terms and conditions to those above, with similar exclusions and any extensions depending on the actual operations of a particular stevedoring operation. Stevedoring might include ancillary operations such as chandlery or catering.

5.10. The various basic clauses under liability insurance

Generally, when an insurer issues a liability policy, it will cover the following issues:

Additional benefits – The insurance may include additional benefits automatically in the cover, or it may be necessary, as may be required by the insured, to include them with additional premium.

- Alteration to risk – The process to change the risk must be clear to both parties.
- Assignment
- Breach of condition or Warranty
- Cancellation notice / Cancellation rights under the Policy
- Claims / How to make a claim / Failure to notify
- Contact for assistance – this aspect is important, when an insured has a claim or a query it is important they can easily get through to the relevant person/department by telephone, in writing or by email.
- Cover – it is important that cover is clearly described in the policy, just as it is important to be clear under the exclusions as to what is not covered.
- Discharge of Liabilities/Claims Control Clause – it is important that the insurer can take over the management of a claim, especially where an insured is not able to cope with all the intricacies of a claim to ensure its position is protected or that the claim is resolved in an optimum way.
- Disclosure
- Dispute resolution process – if there is disagreement with an insured, it is important that, at least

initially, there is a cost-effective process in place to resolve disagreement. In some jurisdictions it is also required that the insurer inform the insured how to proceed if the insured is not satisfied with the outcome of this process.

- Duty of Disclosure
- Excess – any franchise or deductible the insured must pay in the event of a claim.
- Exclusions
- Fraudulent claims
- Governing law and jurisdiction
- If this insurance has been issued through an insurance intermediary – it is important if an intermediary is involved how the process of communication will flow.
- Inspections
- Limit of Liability – it is important that the insurer clearly states the maximum amounts it will pay under the policy.
- Obligation to comply with the Policy terms and conditions
- Optional benefits
- Other insurance – if the insured has taken out other insurances which also cover the same risks, it is necessary to explain how each cover will be applied to the payment of any losses.
- Premium / Premium adjustment / Returns for cancellation
- Prohibited Cover and/or Payments / sanctions – sanctions have become an important aspect of all insurances. If the insured or any connected party is the subject of sanctions insurers must refuse any claims payment.
- Reasonable care and maintenance
- Renewal procedure
- Subrogation and waiver of subrogation rights
- Words with special meaning – Any words which do not have a normal every-day meaning in the policy must be clearly defined and then used with a capital letter so it is clear to the reader of the policy that they have a meaning as defined in the policy.

5.11. Dealing with liability claims

Dealing with liability claims is dealt with at length in courses 6 (Introduction to insurance and reinsurance claims) and 7 (Advanced insurance and reinsurance claims management) and reference should be made to those courses for detailed examples.

The basic process is as follows:

- The initial contact with the claimant:
 - o This may be by telephone, through a claim portal on the insurance company's web site, or via written means – an email or even a letter.
 - Establish a claims record.
 - The first set of actions required is to collect all the necessary information – by way of a claims form, or active questioning of the insured, and to have the insured confirm this information formally.
 - This will enable the company to confirm the policy details and also verify the initial information provided by the insured when the risk was offered to the company.
 - In marine insurance, marine claims adjusters are often employed by one or both parties as claims may be complicated by local laws, or in areas where it will be difficult for the insurer to have access.
- Is the claim valid?
 - o If the claim is not valid why?
 - Is there an issue of avoidance because of a divergence of material facts with the original completed proposal form?
 - Is there suspicion of fraud?
 - Is the claim simply not covered by the policy?

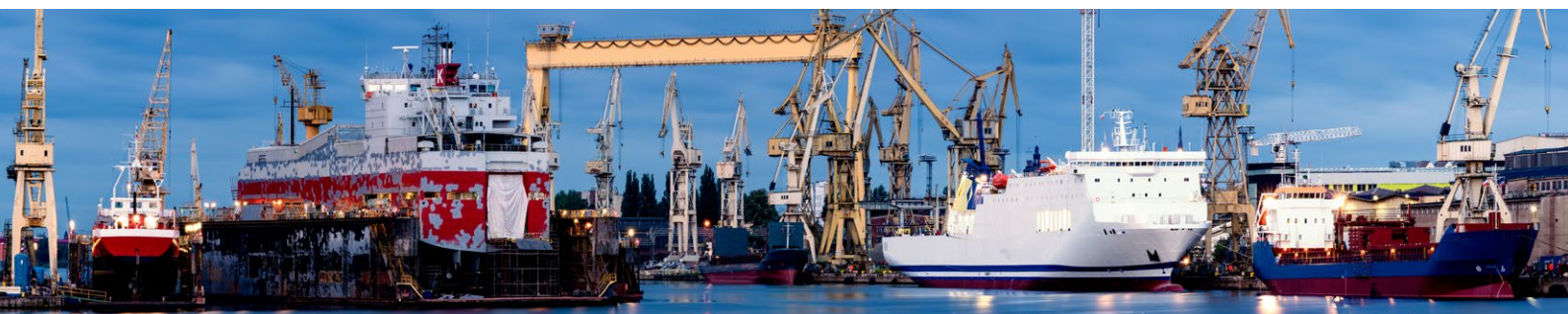
- The need to inform the insured.
- Does the insured accept denial of the claim?
- Can the claim be closed or will it be necessary to further review the decision or go through a complaints process?
- o If the claim is valid
 - Is there sufficient information to already calculate a first estimate of loss?
 - Are there any clauses or circumstances that may reduce the amount of the loss?
 - Subrogation rights
 - An excess or a deductible payable by the insured
 - Underinsurance
 - A limit or sub-limit in the policy
 - Are there any obligations to involve or advise reinsurers at this time?
- Is there sufficient information to settle the loss?
 - o If there is sufficient information
 - Clearly explain to the insured the proposed basis of settlement, including an easy to follow table of how the proposed payment has been calculated.
 - Does the insured accept the claim proposal?
 - Can the claim be settled, the file closed, and any reserve revised?
 - If the insured does not agree to the settlement, will it be possible to further review the decision or will it be necessary to go through a complaints process?
 - o If there is insufficient information
 - What further resources or information is required?
 - Company inspection
 - Assessors
 - Legal input
 - Once again it is important to emphasise that in marine insurance particular aspects such as general average and salvage may apply, and such complexities are often best solved by using a local qualified marine claims adjuster.
 - o Once there is sufficient information the process can be completed as described.

5.12. Loss prevention

As has been noted in section 4.5 under loss prevention, one of the advantages of working in an international arena such as marine insurance is that most of the risks have been around for tens, even hundreds, of years, and many qualified experts around the world will be reviewing how to minimise these risks and international organisations and Governments will be making rules to protect life, property and the environment.

However, liability laws and the culture to sue for even the slightest damage or injury can vary enormously from country to country. It will make a great deal of difference as to which risks the insurer is exposed to if a vessel trades locally in Africa or will enter US jurisdictions or be exposed to crews domiciled in the US. Depending on such matters, the insurer will need to take much greater care as to the loss prevention culture of a particular insured.

As already noted, a good risk culture must be created from the top down in any organisation, and all the publications available cannot help if an organisation or corporation does not have the culture to properly apply the rules and actively seek to prevent losses.



6. MARINE HULL REINSURANCE STRUCTURING

Learning objective: To have a basic knowledge of marine hull reinsurance covers and their interactions.

6.1. The need for marine hull reinsurance

The need for reinsurance is dealt with fully in courses 1 (Introduction to reinsurance) and 2 (Intermediate reinsurance). Here, therefore, only a summary will be provided.

Generally, reinsurance is necessary for smaller and medium sized companies. They simply cannot afford the large losses which can arise through loss severity (for example, a very large single fire or explosion) or loss frequency (a large number of small losses caused by a single natural disaster such as an earthquake or storm). These companies need to control loss volatility to provide their stakeholders with stable results. Too much volatility can cause share prices to fall and for investors to turn to more stable insurance companies to invest their money.

Another reason that reinsurance may be necessary is to provide a form of “soft capital”. An insurance company may need to increase its capacity to write marine business to be considered a valid player in its marketplace. Rather than increase its paid-up capital to finance a larger premium income it can purchase reinsurance to achieve its premium objectives (subject to local regulations).

6.2. Types of reinsurance and how they can be used in Marine Hull

The types and forms of reinsurance are dealt with fully in courses 1 (Introduction to reinsurance) and 2 (Intermediate reinsurance). Here, therefore, only a summary will be provided.

As a brief recap.

Reinsurance can be placed in one of two forms – Facultative or Treaty.

Facultative Reinsurance	Obligatory Reinsurance
<ul style="list-style-type: none">▪ Facultative reinsurance is reinsurance for INDIVIDUAL RISKS on a case by case basis▪ Practically, the direct insurer is free to choose which individual risks it wants to reinsure, and the reinsurer is free either to accept or refuse any risk offered to it: Hence the term FACULTATIVE.	<ul style="list-style-type: none">▪ Obligatory reinsurance is reinsurance for the ENTIRE PORTFOLIO on an automatic basis.▪ Practically, the direct insurer is obliged to cede a contractually agreed share of the risks and the reinsurer is obliged to accept that share: Hence the term OBLIGATORY

Both the Facultative and Treaty forms can be placed as either Contributory or Proportional Reinsurance, or Non-Contributory or Non-Proportional Reinsurance.

There are two main types of reinsurance - Contributory or Proportional Reinsurance, and Non-Contributory or Non-Proportional Reinsurance.

Proportional Reinsurance

- This type of Reinsurance is based on **RISKS**.
- The reinsurer will receive the premium and will have to pay the losses in proportion to its participation in the sum insured of the original risk: Hence the term **PROPORTIONAL**.

Non-Proportional Reinsurance

- This type of Reinsurance is based on **LOSSES**.
- The reinsurer will have to pay only if an actual loss for a risk or number of risks exceeds the deductible, and then only up to the cover limit as contractually agreed. As price for the cover, the reinsurer gets a negotiated portion of the original premium

Under Contributory or Proportional Reinsurance the insurance company or cedant passes or cedes a proportion of its liability on an individual risk or number of risks to a reinsurer and pays the reinsurer the same proportion of the original premium for the risk or risks. In the event of a claim, the reinsurer in return will reimburse the insurer with the same proportion of the claim or claims.

Thus, if you review a reinsurance cover and find that the reinsurance cession is calculated as a function of the sum insured, then you are looking at a contributory or proportional reinsurance.

Non-Contributory or Non-Proportional Reinsurances apply not to specific risks but to losses. They limit the amount of loss an insurance company or cedant can suffer under any one claim or event.

Unlike contributory or proportional reinsurance, the cedant does not cede risks to the reinsurer but the reinsurer agrees to pay the amount of a loss over and above, or in excess of, a fixed amount referred to as the cedant's "retention", or "deductible", or "priority". The portion payable by the reinsurer is referred to as the "cover". Thus, the cover relates to losses rather than individual risks forming the ceding company's portfolio.

As noted above reinsurance is bought to either reduce volatility or as "soft capital".

Volatility is caused by unexpected loss severity or by unexpected loss frequency.

Good portfolio management dictates that there must be a certain homogeneity of risks in the hull portfolio, thus a wise insurer will decide a maximum limit it will accept any one risk and will use proportional or non-proportional facultative reinsurance to cede the risks above that limit.

6.3. Treaty reinsurance for start-ups versus established cedants

As we have noted above, reinsurance can be purchased to reduce volatility and also for "soft capital".

Start-ups generally have limited capital and need to build their portfolio from scratch. It may be very difficult at the beginning to build a homogenous portfolio, and it may also be necessary to "buy" one's way into the market by accepting business that is more competitively priced or affords wider cover.

Reinsurers are aware of these challenges and may set tougher conditions for start-ups to take account of the likely lower quality business.

Nevertheless start-ups, given also their limited capital, are best served with a quota share treaty, perhaps taking only 10% or 15% for themselves to give them both capacity, experienced reinsurers to help them with the more challenging risks, and to enable them to remain comfortably below the required solvency margin.

Established cedants may not require a reinsurer's experience except for a few exceptional risks, and may have

sufficient capital to cover their hull capacity needs in the markets in which they operate.

They may not need a quota share treaty and may prefer to retain their business, especially if it is very profitable, for themselves. Once again if they find they are requiring too many facultative placements they may opt to place a surplus treaty.

However, no wise company is likely to retain its catastrophe exposure as going without cover in this highly volatile area will normally expose its balance sheet to potentially damaging variations from results promised to shareholders. A really embarrassing large loss is likely to cause “heads to roll”.

6.4. Facultative reinsurance for special covers

Facultative reinsurance can also be very helpful to deal with non-standard vessels – that is to say vessels that are outside the scope of the insurer’s usual underwriting criteria or which represent an unusually heavy risk and one which might unbalance the treaty portfolio. Thus, if the insurer is faced with extremely large bulk oil vessels or vessels transporting many thousands of containers where the insurer may have limited experience, it can effect facultative reinsurance and can be guided as to rating and suitable wordings by an experienced reinsurer.

In this way the hull portfolio can be, on average, reasonably rated and loss severity regarding single losses controlled.

6.5. Reinsurance for frequency and severity, excess of loss reinsurance

Frequency

This leaves the portfolio exposed as a whole to frequency and catastrophe losses.

Frequency losses arise where there is an unexpected number of losses during any one year, simply lots of hull risks suffer loss or damage and the insurer must pay out much more than expected. This is best addressed through a quota share reinsurance treaty. In this way the insurer retains a fixed percentage of the portfolio and cedes the balance to reinsurers.

If an insurer feels it is faced with too many facultative cessions above its retention, it may opt to place a surplus treaty to reduce its administration. Thus, while quota share treaties are more common, placing a surplus treaty is also possible.

Severity

The last remaining issue is that of catastrophe losses, and this is where excess of loss reinsurance is applicable and is one of the most difficult areas to address.

Here one must distinguish between hull and machinery covers and collision and other liabilities.

Worst case scenarios may be easier to address for hull and machinery which will be limited by the sums insured. Equally the collision risk under a hull and machinery cover is limited to a percentage of the sum insured for hull and machinery.

However marine liability in general is an altogether different matter and may likely cover difficult areas such as personal injury and pollution.

Pollution is an especially difficult area. In January 2019 the MSC Zoe, capable of carrying up to 19,000 TEU, spilled 270 containers into the sea following a storm. Three of the containers contained dangerous peroxides, while others became a collision hazard, especially when floating just below the surface of the water, and a number spilled out their contents over a chain of islands and shores along the northern coasts of Europe. The result was a various assortment of pollution types from dangerous liquids to broken artefacts including broken glass. (Imagine having to

clean miles of sandy beaches from small particles of broken glass!)

How does one try to calculate the cost of this type of loss? Equally one can imagine if the vessel had lost 1,000 containers instead of 270, or 10,000.

The insurer must try to understand its portfolio and create realistic disaster scenarios which reflect the types of losses it could suffer and the possible extent of those losses.

With these types of guesstimates an insurer can estimate where its maximum catastrophic severity limit may be and the stretch of non-proportional cover it may require between its retention net of proportional covers and this limit.

It may get optimum pricing by layering this stretch and will likely take advice from its reinsurance intermediary to best structure its reinsurance requirements.

6.6. Single loss and event limits under proportional treaties

Reinsurers also have a big problem to understand and control their accumulations, especially as they are one step removed from the data the insurer will collect.

The reinsurer may thus want to limit the extent of cover under a proportional treaty by introducing a limit per policy or shipment or per vessel. There may even be an 'event limit' should a catastrophe occur.

This can present a problem for the ceding company, as then the ceding company cannot be sure if it has sufficient cover or not. If, for example, the reinsurer imposes a limit of 200% of the maximum policy limit per shipment, how can the insurer control that it does not have more exposure on that particular vessel?

This is a typical situation where the insurer and reinsurer have conflicting interests and it will be a matter of negotiation as to how much cover the insurer can obtain.

This is a good example where the quality of data can assist both parties in understanding their respective potential accumulations and how best to share them for an optimum cost/benefit ratio.

6.7. Catastrophe covers for the combined hull and cargo portfolios

Covering the hull and cargo portfolios on a combined basis for catastrophe protection is simply a question of the outcome of a pros and cons analysis.

If an insurer has a large cargo and a large hull portfolio it will need to review pricing on a separate and a combined basis and also the impact a loss might have on future pricing. If the insurer has a certain claims frequency in cargo or hull it may be better to isolate the respective portfolios to maintain a more beneficial pricing for the portfolio that has a good claims record. It may even be a negotiation tactic to place some of the cream with the portfolio with a poorer loss record to improve terms.

On the other hand, if the insurer has a large cargo portfolio, but a small hull portfolio, the hull portfolio may be considered as "incidental" to the whole and it may be possible to get a combined catastrophe cover for little more than the cost of a catastrophe cover just for the cargo portfolio.

Once again advice from a competent reinsurance intermediary or trusted experienced reinsurer may provide the best solution.

7. CASE STUDY

7.1. Legal considerations

While deciding whether damage is covered under a standard hull and machinery policy and, if covered, assessing the amount of the damage, will follow roughly similar guidelines in most countries, the same cannot be said for liability coverages.

We have seen above examples of the application of general average. A ship runs aground or is threatened by a natural peril or it hits a floating object and damage occurs. Cargo on the ship is jettisoned resulting in further loss. The ship is able to re-float and heads for a port of refuge for temporary repairs.

Generally, an average adjuster will be appointed, and they will review the circumstances of the loss and decide if the event falls under the definition of General Average. The definition of General Average is relatively clear, as are the rules of apportionment. The adjustment of the loss can proceed.

However, assessing liabilities and apportioning blame in a court of law is a wholly different scenario. There are so many variations of individual circumstances, each sides' case may be presented by more or less capable lawyers. The art of sophistry, even the ability to clearly express a point of view in written or spoken words can depend on the individuals involved and even the relationship between those individuals.

There is no certainty in a court of law and legal exams are rarely succeeded by those who decide that any issue is completely clear-cut.

7.2. Peracomo Inc. v Telus Communications 2012 FCA 199 2014 SCC 29

This judgement can be down loaded as a word document from the internet.

The description / result is cited as follows:

V, a crab fisherman and sole shareholder of P (vis: Peracomo), was fishing in the St. Lawrence River when one of his anchors snagged a cable lying on the river bottom. He adverted to the risk that the cable could be in use but formed the belief that it was not. This belief was based on a handwritten note on some sort of map that he had seen for a few seconds the year before on a museum wall. V made no further inquiries to confirm or dispel his belief and proceeded to cut the cable. The cable was, in fact, a live fiber-optic cable co-owned by or used by a number of the respondents. The result was almost \$1 million in damage.

In the Federal Court, V, his company and its vessel were found to be jointly and severally liable for the damage. The trial judge held that because V had cut the cable on purpose, the appellants were not entitled to limit their liability to \$500,000 pursuant to the Convention on limitation of liability for maritime claims, 1976 because the damages cap on maritime liability imposed by that Convention does not apply where a loss has been caused by a person's intentional and reckless conduct. Further, the appellants' insurance policy was found to be inapplicable because cutting the cable constituted "wilful misconduct", a statutory exclusion from marine liability insurance set out at s. 53(2) of the Marine Insurance Act. An appeal to the Federal Court of Appeal was unsuccessful.

Held (Wagner J. dissenting in part): The appeal should be allowed in part.

Per McLachlin C.J. and Rothstein, Cromwell and Karakatsanis JJ.: The limit on liability under the Convention applies and the appellants' liability is capped at \$500,000, but the loss is excluded from their insurance coverage. V may be held personally liable for the damage.

While the exclusions set out in the Convention and the Marine Insurance Act are related, there are important differences between them, both in purpose and text, which drive the result in this case. The Convention imposes a higher standard of fault than does the insurance exclusion. In order to bar the benefit of the Convention's

limitation on maritime liability, it must be proven that the loss resulted from an act or omission committed either with the intent to cause such loss or recklessly and with knowledge that such loss would probably occur. For its part, the Marine Insurance Act, excludes marine insurance coverage for losses resulting from “wilful misconduct”, a standard of fault which includes not only intentional wrongdoing but also conduct exhibiting reckless indifference in the face of a duty to know.

It is insufficient to break the limit on liability under art. 4 of the Convention that V intended to cut the cable. Rather, in order to break that limit, it must be proven that he intended to cause the loss that actually resulted or that he acted recklessly and with knowledge that the loss would probably occur. The trial judge found that V thought the cable was useless. In cutting the cable, he did not intend to cause the loss incurred by the respondents or know that it was a probable consequence of his actions. It was therefore an error of law for the lower courts to conclude that V intended to cause a loss, or was reckless knowing that such loss would probably occur, within the meaning of art. 4 of the Convention.

Although V's conduct does not meet the very high level of fault so that he loses the benefit of the Convention's limit on liability, it does constitute wilful misconduct for insurance purposes. V had a duty to be aware of the cable and he failed miserably in that regard. His acts were so far outside the range of conduct to be expected of him in the circumstances as to constitute misconduct. The trial judge's findings make clear that his misconduct was willful. For insurance purposes, the fact that V believed that the cable was not in use is beside the point. V knew that what he was cutting was a submarine cable. He adverted to the risk that it could be in use but failed to make further inquiries in order to confirm or dispel his belief that the cable was abandoned and useless. His conduct exhibited a reckless indifference to the possible consequences of his actions of which he was actually aware. He thus committed an act of wilful misconduct: he ran an unreasonable risk with subjective knowledge of that risk and indifference as to the consequences.

Per Wagner J. (dissenting in part): The appellants can both limit their liability and benefit from coverage under their insurance policy.

Even though the provisions do not have the exact same wording, the provision of the Marine Insurance Act at issue must be read harmoniously with the Convention's provisions. Both of them require proof of the same fact: that the insured had knowledge of the harmful consequences of his or her act, and intended or was reckless with regard to those consequences. Section 53(2) of the Marine Insurance Act, like art. 4 of the Convention, establishes a subjective criterion: an act cannot be characterized as wilful misconduct unless it is proven that the insured intended the result of his or her act or was reckless in that regard.

“Wilful misconduct” requires either a deliberate act intended to cause the harm, or such blind and uncaring conduct that one could say that the person was heedless of the consequences. Conduct exhibiting reckless indifference in the face of a duty to know cannot be characterized as wilful misconduct unless it is proven that at the time of the wrongful act, the person who committed it had subjective knowledge of the loss that would result. Proving conduct exhibiting reckless indifference in the face of a duty to know is but the first step, as it must then be proven that this misconduct was wilful. If after considering the possible consequences of an act, an insured sincerely, although erroneously, believes that the act will cause no loss, his or her misconduct cannot be characterized as wilful.

The fact that a reasonable person ought to have known, or that a person had a duty to know, does not suffice to justify a finding that an act has the characteristics of wilful misconduct: it is also necessary to establish that the person intended to cause the loss, and to prove gross negligence or misconduct in which there is a very marked departure from the conduct of a reasonable person.

This definition clearly does not apply to V's conduct. He sincerely believed the cable was not in use. Nothing in the record supports a finding that V actually knew or had any suspicion that the cable was in use. Nor is there any support in the record for a conclusion that V had knowledge of the loss that would result, let alone that he intended to cause such a loss. This shielded him from being deprived of coverage under his liability insurance policy while at the same time enabling him to limit his liability.

Thus, this case was first heard in a Federal Court, then by the Federal Court of Appeal, then by the Supreme Court of Canada.

As quoted above:

The trial judge held that because V had cut the cable on purpose, the appellants were not entitled to limit their liability to \$500,000 pursuant to the Convention on limitation of liability for maritime claims, 1976 because the

damages cap on maritime liability imposed by that Convention does not apply where a loss has been caused by a person's intentional and reckless conduct. Further, the appellants' insurance policy was found to be inapplicable because cutting the cable constituted "wilful misconduct", a statutory exclusion from marine liability insurance set out at s. 53(2) of the Marine Insurance Act. An appeal to the Federal Court of Appeal was unsuccessful.

The above is a clear statement by the Federal Court and the Federal Court of Appeal, yet the Supreme Court decided differently:

The limit on liability under the Convention applies and the appellants' liability is capped at \$500,000, but the loss is excluded from their insurance coverage. V may be held personally liable for the damage.

It is also interesting to note:

While the exclusions set out in the Convention and the Marine Insurance Act are related, there are important differences between them, both in purpose and text, which drive the result in this case. The Convention imposes a higher standard of fault than does the insurance exclusion.

Once again the use of words can result in important differences when a case gets into the courts and wordings are examined in detail by both sides to the dispute and the judges.

7.3. Atkinson v Gypsea Rose 2014 BCSC 1017

For example, there is a presumption under maritime law that when a moving ship hits a stationary ship, the moving ship is at fault.

In the case of Atkinson v Gypsea Rose 2014 BCSC 1017, two vessels were involved. (The full judgement can be downloaded from the internet).

The introduction to the judgement reads as follows:

Quote:

INTRODUCTION

[1] Two small pleasure boats collided on Lake Okanagan on the afternoon of June 30, 2008. Both were driven by experienced drivers. The 26.5 foot Campion vessel, Gypsea Rose, which was driven by Cory Skidmore and owned by his mother Maridee Skidmore, hit the starboard side of the bow of the 20 foot Searay vessel ("the Searay") which was owned and operated by Norman Atkinson.

[2] Mr. Atkinson's wife, Kathe, their three children, the three children of family friends and those children's grandmother, June Dawn Boys, were on the Atkinson vessel at the time of the collision.

[3] Three maritime law actions arise from this collision. In Action No. S087644, Kathe Atkinson and her daughter Ashleigh by her guardian ad litem are plaintiffs in the action In Rem against the vessel Gypsea Rose and In Personam against Cory Skidmore, Maridee Skidmore and Maridee Skidmore as executor of the estate of Lloyd Skidmore ("the Atkinson Action").

[4] Ms. Boys is a plaintiff in Action No. S104438 along with her son-in-law, James Perry as guardian ad litem, on behalf of her three grandchildren who were in the Atkinson vessel. The defendants include the defendants in the Atkinson Action as well as the Searay and Mr. Atkinson ("the Boys Action").

[5] The third action is commenced by Norman Atkinson for property loss against the owners and all others interested in the Gypsea Rose. This Action No. S087642, will be referred to as the "Norman Atkinson Action".

[6] Cory Skidmore, his mother, Maridee Skidmore, personally and as executor of the estate of Lloyd Skidmore, the owners and all others interested in the Gypsea Rose and the Gypsea Rose are defendants in all actions. Mr. Atkinson and his vessel the Searay are defendants in the Boys Action. Mr. Atkinson, in addition to being a defendant in the Boys Action, is the sole plaintiff in the Norman Atkinson

Action.

Atkinson (Guardian ad litem of) v. Gypsea Rose (Ship) et al. Page 4

[7] Cory Skidmore admitted negligence and liability during the trial. The actions were defended on behalf of Ms. Skidmore, the Gypsea Rose, Mr. Atkinson and the Searay.

[8] This trial was limited to the In Personam actions and only liability was in issue.

Unquote.

The operator of the Gypsea Rose (the moving boat) did not have the permission of the owner to use the boat. The owner of the boat had a strict rule about the consumption of alcohol whilst operating a boat. The operator of the boat had been refused permission to operate the boat on previous occasions because of alcohol consumption, and hence was now operating the boat without permission.

The Searay boat had been stationary for some 30 minutes while the operator was attempting to untangle a tow line from the propeller.

The Gypsea Rose at the time had the wrong propeller in place, so that the bow lifted out of the water preventing the operator from seeing what was in front of the boat. Thus, the operator could not see the Searay boat in front of him.

A passenger in the Searay boat saw the Gypsea approaching, alerted other passengers, waved her arms and screamed out, but was not seen or heard by the Gypsea. The Gypsea collided with the Searay resulting in damage and injury.

Based on the above facts who would you hold liable for the damage and injury?

The decision: Among other factors, the operator of the Gypsea was held only 80% liable, and the operator of the Searay was held 20% liable ... *he was not keeping a proper lookout and did not instruct the other adults to keep a look out.*

Such a decision might be questioned given a passenger on the Searay ... *alerted other passengers, waved her arms and screamed out.* Without reading the full script of the pleadings and the presentations before the judge it is difficult to make further comment, save that what appears, on the face of it, to be a clear case ... turns out differently in the court of law.

7.4. Policy interpretation

The ICC Time Clauses – Hulls are attached hereto as appendix B and have been discussed in detail in section 2 of this manual. The claims process has been discussed in detail in section 4, and the liability issues in section 5.

In cases such as those above there are two principal issues:

- Damage and
- Liability

Regarding damage, is the damage covered by one of the defined perils? This is a question of referring to section 6 of the Time Clauses – Hulls.

Regarding liability, only liability in the event of a collision is covered by these Time Clauses, and this is covered in section 8 – but only to a maximum of 3/4ths. An insured would need top-up cover, which today may be an additional cover obtained from the same underwriter or it may be included in covers purchased from a P&I Club.

There is also a clear process for the insured to follow in the event of a claim – see sections 10 and 12. If the insured does not adhere to these requirements they risk rejection of their claim.

7.5. Navigators Insurance Company Limited and others (Respondents) v Atlasnavios-Navegacao LDA (formerly Bnavios-Navegacao LDA) (Appellant) - [2018] UKSC 26.

This is a case which came before the Supreme Court in the UK and led to a judgement on 22 May 2018.

Once again, the issues are quite complex but it is a good example of the issues that can arise under the Institute War Clauses. The judgement is downloadable from the internet.

Introduction

Quote:

1. In August 2007, the vessel "B Atlantic", owned by the appellant, was used by unknown third parties in an unsuccessful attempt to export drugs from Venezuela. After her consequent detention by the Venezuelan authorities and the expiry of a period of more than six months, the owners treated the vessel as a constructive total loss. The issue is whether the vessel sustained a loss by an insured peril, entitling the owners to recover the vessel's insured value from the respondents, her war risks insurers.

2. The war risks insurance policy was for a year commencing 1 July 2007. According to section A, it afforded hull and machinery cover

"including strikes, riots and civil commotions, malicious damage and vandalism, piracy and/or sabotage and/or terrorism and/or malicious mischief and/or malicious damage, including confiscation and expropriation."

The cover afforded was on the terms of the Institute War and Strikes Clauses Hulls-Time (1/10/83). These provide as follows:

"1. PERILS

Subject always to the exclusions hereinafter referred to, this insurance covers loss of or damage to the vessel caused by

1.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

1.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat

1.3 derelict mines torpedoes bombs or other derelict weapons of war

1.4 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

1.5 any terrorist or any person acting maliciously or from a political motive

1.6 confiscation or expropriation.

2. INCORPORATION

The Institute Time Clauses-Hulls 1/10/83 (including 4/4ths Collision Clause) except Clauses 1.2, 2, 3, 4, 6, 12, 21.1.8, 22, 23, 24, 25 and 26 are deemed to be incorporated in this insurance in so far as they do not conflict with the provisions of these clauses.

...

3. DETAINMENT

In the event that the Vessel shall have been the subject of capture seizure arrest restraint detainment confiscation or expropriation, and the Assured shall thereby have lost the free use and disposal of the Vessel for a continuous period of 12 months then for the purpose of ascertaining whether the Vessel is a constructive total loss the Assured shall be deemed to have been deprived of the possession of the Vessel without any likelihood of recovery.

...

4. EXCLUSIONS

This insurance excludes

4.1 loss damage liability or expense arising from

4.1.2 the outbreak of war (whether there be a declaration of war or not) between any of the following countries: United Kingdom, United States of America, France, the Union of Soviet Socialist Republics, the People's Republic of China

4.1.3 requisition or pre-emption

4.1.4 capture seizure arrest restraint detainment confiscation or expropriation by or under the order of the government or any public or local authority of the country in which the Vessel is owned or registered

4.1.5 arrest restraint detainment confiscation or expropriation under quarantine regulations or by reason of infringement of any customs or trading regulations

4.1.6 the operation of ordinary judicial process, failure to provide security or to pay any fine or penalty or any financial cause

4.1.7 piracy (but this exclusion shall not affect cover under Clause 1.4),

4.2 loss damage liability or expense covered by the Institute Time Clauses-Hulls 1/10/83 (including 4/4ths Collision Clause) or which would be recoverable thereunder but for Clause 12 thereof ...”

The period of 12 months in clause 3 was by agreement reduced to six months.

3. The appeal turns on the inter-relationship of the perils identified in clauses 1.2, 1.5 and 1.6 with clause 3 and with the exclusions identified in clause 4.1.5.

Unquote

Conclusion

Quote:

55. For these reasons, I would conclude:

i) First, (contrary to the common ground between the parties in the courts below) the vessel's loss was not caused by “any person acting maliciously” within the meaning of clause 1.5 of the Institute Clauses. It was caused simply by detainment, which entitled the owners to invoke clauses 1.2 as well as clause 3, but which, since the detainment itself arose by reason of infringement of customs regulations, also brought the exception in clause 4.1.5 into operation.

ii) Second, if it had been possible to view the loss as caused by a person acting maliciously within clause 1.5, it would still have been excluded by clause 4.1.5 as arising, at least concurrently, from detainment by reason of infringement of customs regulations.

I arrive therefore at the same result as the Court of Appeal, though by different reasoning. The appeal should be dismissed.

Unquote.

The issues in this case centred around coverage (clause 1.5 noted above) and whether, in any event, exclusion 4.1.5 above still applied – which in the event it did.

Once again it should be noted that the way a policy is constructed can be subjected to very detailed scrutiny, and each court the issue passes through can result in a different interpretation.

There is never a clear path to a definitive interpretation of the words in a policy.

7.6. Summary

There are many thousands of cases in many countries decided under various laws and various international rules, but the law is never 100% certain.

It is dangerous to assume a conclusion with 100% certainty. Indeed, it will be most difficult to find any lawyer who is 100% certain its client's case will succeed.

At best perhaps an 80% chance, thus a 1 in 5 it may fail!

There are also so many soft factors that can influence taking a case to the courts.

For example.

- The insurer/reinsurer has not had a good financial year and its results will look really bad if it has to pay out this large claim.

Given the potential legal fees to be earned from the dispute, it is not difficult to find a lawyer who gives a 50/50 chance that the insurer's/reinsurer's case could well succeed in court.

The insurer/reinsurer is thus able to significantly reduce the current reserve in its books in the current financial year ... and leave the full impact of the loss ... if the case does not go in its favour, for the next financial

period.

- Similarly, the insured may find there are short term financial advantages to going to court rather than taking a hit in the current financial year. (Clearly in the “Peracomo” case above the liability was finally capped at \$500,000).
- “Going to court” may be simply considered as another business opportunity. If a party considers it has a 20% chance to reduce damages from \$10,000,000 to \$7,000,000 and the legal costs involved are \$500,000, the upside and downside may be worth considering.
- One party may not have the financial means of the other party, but may still not be entitled to financial aid. Fear of the large costs involved may force it to seek a compromise.
- The prospect of large fees to be earned from taking cases to court is likely to encourage the prospective earners to be optimistic rather than pessimistic.
- Emotional factors may be involved that will cloud a more rational appraisal that life is not always fair.

When faced with a decision whether to go to court or not there are really no hard and fast rules. It is a case of trying to bring together experts in the matter who will not be influenced by internal politics and/or their potential fees and/or short term gains at the cost of the long term.

Not an easy challenge.



8. CONCLUSION

Marine insurance is a fascinating subject as it covers so many aspects of world trade and a very large number of countries and legal jurisdictions. A marine underwriter will likely become familiar with many parts of the world, even remote areas, following the business needs of its clients.

However, there is a limit to any one person's knowledge and in a business that can literally cover the world an underwriter needs to be particularly careful where they are not absolutely sure of the risk they are underwriting.

Seas may become ice in winter, calm waters in one season may produce hurricane force winds in another. Parts of the oceans may be crowded with marine traffic, while others are much safer to navigate. Icebergs may drift and cause a danger in a different location every week. Some waters may be subject to mines, war and/or pirates.

The size and capacity of ships is ever-changing, as is the technology to operate them. New shipbuilding techniques for structures and displacement and new computer algorithms to operate and navigate may or may not be appropriate or without fault.

Marine insurance is thus an area where the concept of "team" may be more appropriate than in some other spheres of the risk business. Understanding local conditions may require reference to a local Lloyd's agent or other specialist. Equally understanding the dangers of new types of ship or new types of operating mechanism may again require expert input.

If it is felt the cost of these consultations is high, it is nevertheless insignificant when compared to a full loss under the policy and there is really no substitute for properly assessing and understanding the risk to be underwritten.

Also, many reinsurers and intermediaries have a variety of specialist expertise which is often given without cost, but may require increased relationship management.

A manual of this nature can only cover so much in its pages, but there is a wealth of information available today on the internet to increase knowledge in a specific area, or to generally expand that knowledge from books, to articles, to proposal forms and policy forms, to international rules and regulations.



9. TEST

1) Which if the following statements is correct:

- a. War risks are part of the standard hull and machinery cover for ocean-going vessels.
- b. Demurrage is part of maintenance to keep the keel free of encrustations.
- c. A Time Policy is usually for a one year duration.
- d. A Time Policy usually covers a vessel from the point of departure for the time to the point of destination.

2) Which if the following statements is correct:

- a. Only brokers who are members can place business with a P&I Club.
- b. P&I Clubs are usually mutual organisations.
- c. P&I Clubs specialise in first party damage for ship owners.
- d. P&I Clubs were specially set up to protect the rights of ship crews.

3) Which if the following statements is correct:

- a. Only insurable interest is necessary for a marine insurance policy to be valid.
- b. Particular average is a loss that affects only the ship owner or one cargo owner.
- c. General average is a sudden and unforeseen event that results in a loss to the ship owner.
- d. Every boat has an IMO number.

4) Which if the following statements is correct:

- a. Reefer vessels are specially built for deep sea fishing.
- b. Roll-on, roll-off vessels are specially designed for the quick loading and unloading of containers.
- c. LNG are special vessels for the transport of crude oil.
- d. The ISPS code is short for the international ship and port facility security code.

5) Which if the following statements is correct:

- a. Sue and Labour is a special cover to protect shipowners should they be sued by a third party.
- b. Sue and Labour is a special cover to protect ships crews.
- c. Sue and Labour are the duties of an insured in the event of a loss.
- d. Sue and Labour is a code of practice for stevedores.

6) Which if the following statements is correct:

- a. The Institute Time Clauses – Hull standard cover includes malicious acts.
- b. The Institute Time Clauses – Hull standard cover includes restraint and/or detainment of the vessel.
- c. The Institute Time Clauses – Hull standard cover includes war provided it does not involve the UK, US, France, Russia or China.
- d. The Institute Time Clauses – Hull standard cover includes barratry and piracy.

7) Which if the following statements is correct:

- a. One of the top causes of hull losses is vessels sinking.
- b. One of the top causes of hull losses is damage when cargo is being loaded and unloaded.
- c. If a General Average incident occurs which only results in a cargo loss, then the loss is shared only by all owners of cargo on board the ship.
- d. If a General Average incident occurs which only results in hull damage, then the loss only concerns the ship owner.

8) Which if the following statements is correct:

- a. Full marine liability cover is today available under the normal hull and machinery policy.
- b. Collision liability cover only concerns floating objects.
- c. Under a time charter the ship owner will still operate the vessel.
- d. Under a time charter the charterer is liable for the operation of the vessel.

9) Which if the following statements is correct:

- a. A mortgagees' interest insurance covers default by the ship owner.
- b. A mortgagees' interest insurance covers the potential liability of a mortgagee in the event of a collision.
- c. A mortgagees' interest insurance protects the mortgagee if the ship owner breaches a warranty or duty under its hull and machinery policy.
- d. A mortgagees' interest insurance protects the mortgagee in the event the hull and machinery policy is cancelled.

10) Which if the following statements is correct:

- a. Large and unusual hull risks are best covered by a non-proportional treaty.
- b. It is beneficial for a cedant to have a loss and an event limit in their proportional treaties.
- c. Large and unusual risks are best covered through proportional facultative reinsurance.
- d. A large hull portfolio is best covered by non-proportional catastrophe treaties

10. APPENDIX A

Answers to test questions.

- 1) c
- 2) b
- 3) b
- 4) d
- 5) c
- 6) d
- 7) a
- 8) c
- 9) c
- 10) c

11. APPENDIX B – ICC TIME CLAUSES - HULLS

ICC Time Clauses – Hull 1983

Institute Time Clauses - Hulls 1.10.83

This insurance is subject to English law and practice

1 NAVIGATION

1.1 The Vessel is covered subject to the provisions of this insurance at all times and has leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or craft in distress, but it is warranted that the Vessel shall not be towed, except as is customary or to the first safe port or place when in need of assistance, or undertake towage or salvage services under a contract previously arranged by the Assured and/or Owners and/or Managers and/or Charterers. This Clause 1.1, shall not exclude customary towage in connection with loading and discharging,

1.2 In the event of the Vessel being employed in trading operations which entail cargo loading or discharging at sea from or into another vessel (not being a harbour or inshore craft) no claim shall be recoverable under this insurance for loss of or damage to the Vessel or liability to any other vessel arising from such loading or discharging operations, including whilst approaching, lying alongside and leaving, unless previous notice that the Vessel is to be employed in such operations has been given to the Underwriters and any amended terms of cover and any additional premium required by them have been agreed.

1.3 In the event of the Vessel sailing (with or without cargo) with an intention of being (a) broken up, or (b) sold for breaking up, any claim for loss of or damage to the Vessel occurring subsequent to such sailing shall be limited to the market value of the Vessel as scrap at the time when the loss or damage is sustained, unless previous notice has been given to the Underwriters and any amendments to the terms of cover insured value and premium required by them have been agreed. Nothing in this Clause 1.3 shall affect claims under Clauses 8 and/or 11.

2 CONTINUATION

Should the Vessel at the expiration of this insurance be at sea or in distress or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

3 BREACH OF WARRANTY

Held covered in case of any breach of warranty as to cargo, trade, locality towage, salvage services or date of sailing, provided notice be given to the Underwriters immediately after receipt of advices and any amended terms of cover and any additional premium required by them be agreed.

4 TERMINATION

This Clause 4 shall prevail notwithstanding any provision whether written typed or printed in this insurance inconsistent therewith.

Unless the Underwriters agree to the contrary in writing, this insurance shall terminate automatically at the time of

4.1 change of the Classification Society of the Vessel, or change, suspension, discontinuance, withdrawal or expiry of her Class therein, provided that if the Vessel is at sea such automatic termination shall be deferred until arrival at her next port. However where such change, suspension, discontinuance or withdrawal of her Class has resulted from loss or damage covered by Clause 6 of this insurance or which would be covered by an insurance of the Vessel subject to current Institute War and Strikes Clauses Hulls-Time such automatic termination shall only operate should the Vessel sail from her next port without the prior approval of the Classification Society.

4.2 any change, voluntary or otherwise, in the ownership or flag, transfer to new management, or charter on a bareboat basis, or requisition for title or use of the Vessel, provided that, if the Vessel has cargo on board and has already sailed from her loading port or is at sea in ballast, such automatic termination shall if required be deferred, whilst the Vessel continues her planned voyage, until arrival at final port of discharge if with cargo or at port of destination if in ballast. However in the event a requisition for title or use without the prior execution of a written agreement by the Assured, such automatic termination shall occur fifteen days after such requisition whether the Vessel is at sea or in port.

A pro rata daily net return of premium shall be made.

5 ASSIGNMENT

No assignment of or interest in this insurance or in any moneys which may be or become payable thereunder is to be binding on or recognised by the Underwriters unless a dated notice of such assignment or interest signed by the Assured, and by the assignor in the case of subsequent assignment, is endorsed on the Policy and the policy with such endorsement is produced before payment of any claim or return of premium thereunder.

6 PERILS

6.1 This insurance covers loss of or damage to the subject-matter insured caused by

6.1.1. perils of the seas rivers lakes or other navigable waters

6.1.2 fire, explosion

6.1.3 violent theft by persons from outside the Vessel

6.1.4 jettison

6.1.5 piracy

6.1.6 breakdown of or accident to nuclear installations or reactors

6.1.7 contact with aircraft or similar objects, or objects falling therefrom, land conveyance,

dock or harbour equipment or installation

6.1.8 earthquake volcanic eruption or lightning.

6.2 This insurance covers loss of or damage to the subject-matter insured caused by

6.2.1 accidents in loading discharging or shifting cargo or fuel

6.2.2 bursting of boilers breakage of shafts or any latent defect in the machinery or hull

6.2.3 negligence of Master Officers Crew or Pilots

6.2.4 negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder

6.2.5 barratry of Master Officers or Crew provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

6.3 Master Officers Crew or Pilots not to be considered Owners within the meaning of this Clause 6 should they hold shares in the Vessel.

7 POLLUTION HAZARD

This insurance covers loss of or damage to the Vessel caused by any governmental authority acting under the powers vested in it to prevent or mitigate a pollution hazard, or threat thereof, resulting directly from damage to the Vessel for which the Underwriters are liable under this insurance, provided such act of governmental authority has not resulted from want of due diligence by the Assured, the Owners, or of the Vessel or any of them to prevent or mitigate such hazard or threat. Master, Officers, Crew or Pilots not to be considered Owners within the meaning of this Clause 7 should they hold shares in the Vessel.

8 3/4THS COLLISION LIABILITY

8.1 The Underwriters agree to Indemnify the Assured for three-fourths of any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable by way of damages for

8.1.1. loss of or damage to any other vessel or property on any other vessel

8.1.2 delay to or loss of use of any such other vessel or property thereon

8.1.3 general average of, salvage of, or salvage under contract of, any such other vessel or property thereon, where such payment by the Assured is in consequence of the Vessel hereby insured coming into collision with any other vessel.

8.2 The indemnity provided by this Clause 8 shall be in addition to the indemnity provided by the other terms and conditions of this insurance and shall be subject to the following provisions:

8.2.1 Where the insured Vessel is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, the indemnity under this Clause 8 shall be calculated on the principle of cross-liabilities as if the respective Owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision,

8.2.2 In no case shall the Underwriters' total liability under Clauses 8.1 and 8.2 exceed their proportionate part of three-fourths of the insured value of the Vessel hereby insured in respect of any one collision.

8.3 The Underwriters will also pay three-fourths of the legal costs incurred by the Assured or which the Assured may be compelled to pay in contesting liability or taking proceedings to limit liability with the prior written consent of the Underwriters.

Exclusions

8.4 Provided always that this Clause 8 shall in no case extend to any sum which the Assured shall pay for or in respect of

8.4.1 removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever

8.4.2 any real or personal property or thing whatsoever except other vessels or property on other vessels

8.4.3 the cargo or other property on, or the engagements of, the insured Vessel

8.4.4 loss of life, personal injury or illness

8.4.5 pollution or contamination of any real or personal property or thing whatsoever (except other vessels with which the insured Vessel is in collision or property on such other vessels).

9 SISTERSHIP

Should the Vessel hereby insured come into collision with or receive salvage services from another vessel belonging wholly or in part to the same Owners or under the same management, the Assured shall have the same rights under this insurance as they would have were the other vessel entirely the property of Owners not interested in the Vessel hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the Assured.

10 NOTICE OF CLAIM AND TENDERS

10.1 In the event of accident whereby loss or damage may result in a claim under this insurance, notice shall be given to the Underwriters prior to survey and also, if the Vessel is abroad, to the nearest Lloyd's Agent so that a surveyor may be appointed to represent the Underwriters should they so desire.

10.2 The Underwriters shall be entitled to decide the port to which the Vessel shall proceed for docking or repair (the actual additional expense of the voyage arising from compliance with the Underwriters' requirements being refunded to the Assured) and shall have a right of veto concerning a place of repair or a repairing firm.

10.3 The Underwriters may also take tenders or may require further tenders to be taken for the repair of the Vessel. Where such a tender has been taken and a tender is accepted with the approval of the Underwriters, an allowance shall be made at the rate of 300fo per annum

on the insured value for time lost between the despatch of the invitations to tender required by Underwriters and the acceptance of a tender to the extent that such time is lost solely as the result of tenders having been taken and provided that the tender is accepted without delay after receipt of the Underwriters' approval. Due credit shall be given against the allowance as above for any amounts recovered in respect of fuel and stores and wages and maintenance of the Master Officers and Crew or any member thereof, including amounts allowed in general average, and for any amounts recovered from third parties in respect of damages for detention and/or loss of profit and/or running expenses, for the period covered by the tender allowance or any part hereof. Where a part of the cost of the repair of damage other than a fixed deductible is not recoverable from the Underwriters, the allowance shall be reduced by a similar proportion.

10.4 In the event of failure to comply with the conditions of this Clause 10 a deduction of 15% shall be made from the amount of the ascertained claim.

11 GENERAL AVERAGE AND SALVAGE

11.1 This insurance covers the Vessel's proportion of salvage, salvage charges and/or general average, reduced in respect of any under-insurance, but in case of general average sacrifice of the Vessel the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.

11.2 Adjustment to be according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject: but where the contract of affreightment so provides the adjustment shall be according to the York-Antwerp Rules.

11.3 When the Vessel sails in ballast, not under charter the provisions of the York-Antwerp Rules, 1974 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.

11.4 No claim under this Clause 11 shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against.

12 DEDUCTIBLE

12.1 No claim arising from a peril insured against shall be payable under this insurance unless the aggregate of all such claims arising out of each separate accident or occurrence (including claims under Clauses 8, 11 and 13) exceedsin which case this sum shall be deducted. Nevertheless the expense of sighting the bottom after stranding, if reasonably incurred specially for that purpose, shall be paid even if no damage be found. This Clause

12.1 shall not apply to a claim for total or constructive total loss of the Vessel or in the event of such a claim, to any associated claim under Clause 13 arising from the same accident or occurrence.

12.2 Claims for damage by heavy weather occurring during a single sea passage between two successive ports shall be treated as being due to one accident. In the case of such heavy weather extending over a period not wholly covered by this insurance the deductible to be applied to the claim recoverable hereunder shall be the proportion of the above deductible that the number of days of such heavy weather falling within the period of this insurance bears to the number of days of heavy weather during the simple sea passage, The expression «heavy weather» in this Clause 12.2 shall be deemed to include contact with floating ice.

12.3 Excluding any interest comprised therein, recoveries against any claim which is subject to the above deductible shall be credited to the Underwriters in full to the extent of the sum by which the aggregate of the claim unreduced by any recoveries exceeds the above deductible.

12.4 Interest comprised in recoveries shall be apportioned between the Assured and the Underwriters, taking into account the sums paid by the Underwriters and the dates when such payments were made, notwithstanding that by the addition of interest the Underwriters may receive a larger sum than they have paid.

13 DUTY OF ASSURED (SUE AND LABOUR)

13.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.

13.2 Subject to the provisions below and to Clause 12 the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. General average, salvage charges (except as provided for in Clause 13.5) and collision defence or attack costs are not recoverable under this Clause 13.

13.3 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

13.4 When expenses are incurred pursuant to this Clause 13 the liability under this insurance shall not exceed the proportion of such expenses that the amount insured hereunder bears to the value of the Vessel as stated herein, or to the sound value of the Vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value, Where the Underwriters have admitted a claim for total loss and property insured by this insurance is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value.

13.5 When a claim for total loss of the Vessel is admitted under this insurance and expenses have been reasonably incurred in saving or attempting to save the Vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regarded as having been incurred in respect of the Vessel; but if the Vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance.

13.6 The sum recoverable under this Clause 13 shall be In addition to the loss otherwise recoverable under this insurance but shall in no circumstances exceed the amount insured under this insurance in respect of the Vessel.

14 NEW FOR OLD

Claims payable without deduction new for old.

15 BOTTOM TREATMENT

In no case shall a claim be allowed in respect of scraping gritblasting and/or other surface preparation or painting of the Vessel's bottom except that

15.1 gritblasting and/or other surface preparation of new bottom plates ashore and supplying and applying any «shop» primer thereto,

15.2 gritblasting and/or other surface preparation of:

the butts or area of plating immediately adjacent to any renewed or refitted plating damaged during the course of welding and/or repairs, areas of plating damaged during the course of fairing, either in place or ashore,

15.3 supplying and applying the first coat of primer/anticorrosive to those particular areas mentioned in 15.1 and 15.2 above,

shall be allowed as part of the reasonable cost of repairs in respect of bottom plating damaged by an insured peril.

16 WAGES AND MAINTAINANCE

No claims shall be allowed, other than in general average, for wages and maintenance of the Master Officers and Crew, or any member thereof except when incurred solely for the necessary removal of the Vessel from one port to another for the repair of damage covered by the Underwriters, or for trial trips for such repairs, and then only for such wages and maintenance as are incurred whilst the Vessel is underway.

17 AGENCY COMMISSION

In no case shall any sum be allowed under this insurance either by way of remuneration of the Assured for time and trouble taken to obtain and supply information or documents or in respect of the commission or charges of any manager, agent, managing or agency company or the like, appointed by or on behalf of the Assured to perform such services.

18 UNREPAIRED DAMAGE

18.1 The measure of indemnity In respect of claims for unrepaired damage shall be the reasonable depreciation in the market value of the Vessel at the time this insurance terminates arising from such unrepaired damage, but not exceeding the reasonable cost of repairs.

18.2 In no case shall the Underwriters be liable for unrepaired damage. In the event of a subsequent total loss (whether or not covered under this insurance) sustained during the period covered by this insurance or any extension thereof.

18.3 The Underwriters shall not be liable in respect of unrepaired damage for more than the insured value at the time this insurance terminates.

19 CONSTRUCTIVE TOTAL LOSS

19.1 In ascertaining whether the Vessel is a constructive total loss, the insured value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

19.2 No claim for constructive total loss based upon the cost of recovery and/or repair of the Vessel shall be recoverable hereunder unless such cost would exceed the insured value. In making this determination, only the cost relating to a single accident or sequence of damages arising from the same accident shall be taken into account.

20 FREIGHT WAIVER

In the event of total or constructive total loss no claim to be made by the Underwriters for freight whether notice of abandonment has been given or not.

21 DISBURSEMENT WARRANTY

21.1 Additional insurances as follows are permitted:

21.1.1. Disbursements, Managers' Commissions, Profits or Excess or increased Value of Hull and Machinery. A sum not exceeding 25% of the value stated herein.

21.1.2 Freight, Chartered Freight or Anticipated Freight, insured for time. A sum not exceeding 25% of the value as stated herein less any sum insured, however described, under 21.1.1.

21.1.3 Freight, or Hire, under contracts for voyage. A sum not exceeding the gross freight or hire for the current cargo passage and next succeeding cargo passage (such insurance to include, if required, a preliminary and an intermediate ballast passage) plus the charges of insurance. In the case of a voyage charter where payment is made on a time basis, the sum permitted for insurance shall be calculated on the estimated duration of the voyage, subject to the limitation of two cargo passages as laid down herein. Any sum insured under 21.1.2 to be taken into account and only the excess thereof may be insured, which excess shall be reduced as the freight or hire is advanced or earned by the gross amount so advanced or earned.

21.1.4 Anticipated Freight if the Vessel sails in ballast and not under Charter. A sum not exceeding the anticipated gross freight on next cargo passage, such sum to be reasonably estimated on the basis of the current rate of freight at time of insurance plus the charges of insurance. Any sum insured under 21.1.2 to be taken into account and only the excess thereof may be insured

21.1.5 Time Charter Hire or Charter Hire for Series of Voyages. A sum not exceeding 50% of the gross hire which is to be earned under the charter in a period not exceeding 18 months. Any sum insured under 21.1.2 to be taken into account and only the excess thereof may be insured, which excess shall be reduced as the hire is advanced or earned under the charter by 50% of the gross amount so advanced or earned but the sum insured need not be reduced while the total of the sums insured under 21.1.2 and 21.1.5 does not exceed 50% of the gross hire still to be earned under the charter. An insurance under this Section may begin on the signing of the charter.

21.1.6 Premiums. A sum not exceeding the actual premiums of all interests insured for a period not exceeding 12 months (excluding premiums insured under the foregoing sections but including, if required, the premium or estimated calls on any Club or War etc. Risk insurance) reducing pro rata monthly.

21.1.7 Returns of Premium. A sum not exceeding the actual returns which are allowable under any insurance but which would not be recoverable thereunder in the event of a total loss of the Vessel whether by insured perils or otherwise.

21.1.8 Insurance irrespective of amount insured against:

Any risks excluded by Clauses 23, 24, 25 and 26 below.

21.2 Warranted that no insurance on any interests enumerated in the foregoing 21.1.1 to 21.1.7 in excess of the amounts permitted therein and no other insurance which includes total loss of the Vessel P.P.I., F.I.A., or subject to any other like term, is or shall be effected to operate during the currency of this insurance by or for account of the Assured, Owners, Managers or Mortgagees, Provided always that a breach of this warranty shall not afford the Underwriters any defence to a claim by a Mortgagee who has accepted this insurance without knowledge of such breach.

22 RETURNS FOR LAY-UP AND CANCELLATION

22.1 To return as follows:

22.1.1 Pro rata monthly net for each uncommenced month if this insurance be cancelled by agreement.

22.1.2 For each period of 30 consecutive days the Vessel may be laid up in a port or in a lay-up area provided such port or lay-up area is approved by the Underwriters (with special liberties as hereinafter allowed)

(a) per cent not under repair

(b) per cent under repair

If the Vessel is under repair during part only of a period for which a return is claimable, the return shall be calculated pro rata to the number of days under (a) and (b) respectively.

22.2 PROVIDED ALWAYS THAT

22.2.1 a total loss of the Vessel, whether by insured perils or otherwise, has not occurred during the period covered by this insurance or any extension thereof.

22.2.2 in no case shall a return be allowed when the Vessel is lying in exposed or unprotected waters, or in a port or lay-up area not approved by the Underwriters but, provided the Underwriters agree that such lay-up area is deemed to be within the vicinity of the approved port or lay-up area, days during which the Vessel is laid up in such lay-up area may be added to days in the approved port or lay-up area to calculate a period of 30 consecutive days and a return shall be allowed for the proportion of such period during which the Vessel is actually laid up in the approved port or lay-up area.

22.2.3 loading or discharging operations or the presence of cargo on board shall not debar returns but no return shall be allowed for any period during which the Vessel is being used for the storage of cargo or for lightening purposes.

22.2.4 in the event of any amendment of the annual rate, the above rates of return shall be adjusted accordingly.

22.2.5 in the event of any return recoverable under this Clause 22 being based on 30 consecutive days which fall on successive insurances effected for the same Assured, this insurance shall only be liable for an amount calculated at pro rata of the period rates 22.1.2 (a) and/or (b) above for the number of days which come within the period of this insurance and to which a return is actually applicable. Such overlapping period shall run, at the option of the Assured, either from the first day on which the Vessel is laid up or the first day of a period of 30 consecutive days as provided under 22.1.2 (a) or (b), or 22.2.2 above.

The following clauses (23-26) shall be paramount and shall override anything in this insurance inconsistent therewith

23 WAR EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by

23.1 war civil war revolution rebellion insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power.

23.2 capture seizure arrest restraint or detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat.

23.3 derelict mines, torpedoes bombs or other derelict weapons of war.

24 STRIKES EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by

24.1 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions.

24.2 any terrorist or any person acting from a political motive.

25 MALICIOUS ACTS EXCLUSION

In no case shall this insurance cover loss damage liability or expense arising from

25.1 the detonation of an explosive

25.2 any weapon of war
and caused by any person acting maliciously or from a political motive.

26 NUCLEAR EXCLUSION

In no case shall this insurance cover loss, damage, liability or expense arising from any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

© Copyright The Institute of London Underwriters

12. APPENDIX C - ICC WAR AND STRIKES CLAUSES

INSTITUTE WAR AND STRIKES CLAUSES

Hulls-Time

This insurance is subject to English law and practice

1 PERILS

Subject always to the exclusions hereinafter referred to, this insurance covers loss of or damage to the Vessel caused by

1.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

1.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat

1.3 derelict mines torpedoes bombs or other derelict weapons of war

1.4 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

1.5 any terrorist or any person acting maliciously or from a political motive

1.6 confiscation or expropriation.

2 INCORPORATION

The Institute Time Clauses-Hulls 1/10/83 (including 4/4ths Collision Clause) except Clauses 1.2, 2, 3, 4, 6, 12, 21.1.8, 22, 23, 24, 25 and 26 are deemed to be incorporated in this insurance in so far as they do not conflict with the provisions of these clauses.

Held covered in case of breach of warranty as to towage or salvage services provided notice be given to the Underwriters immediately after receipt of advices and any additional premium required by them be agreed.

3 DETAINMENT

In the event that the Vessel shall have been the subject of capture seizure arrest restraint detainment confiscation or expropriation, and the Assured shall thereby have lost the free use and disposal of the Vessel for a continuous period of 12 months then for the purpose of ascertaining whether the Vessel is a constructive total loss the Assured shall be deemed to

have been deprived of the possession of the Vessel without any likelihood of recovery.

4 EXCLUSIONS

This insurance excludes

4.1 loss damage liability or expense arising from

4.1.1 any detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter, hereinafter called a nuclear weapon of war

4.1.2 the outbreak of war (whether there be a declaration of war or not) between any of the following countries:

United Kingdom, United States of America, France,
the Union of Soviet Socialist Republics,
the People's Republic of China

4.1.3 requisition or pre-emption

4.1.4 capture seizure arrest restraint detainment confiscation or expropriation by or under the order of the government or any public or local authority of the country in which the Vessel is owned or registered

4.1.5 arrest restraint detainment confiscation or expropriation under quarantine regulations or by reason of infringement of any customs or trading regulations

4.1.6 the operation of ordinary judicial process, failure to provide security or to pay any fine or penalty or any financial cause

4.1.7 piracy (but this exclusion shall not affect cover under Clause 1.4),

4.2 loss damage liability or expense covered by the Institute Time Clauses-Hulls 1/10/83 (including 4/4ths Collision Clause) or which would be recoverable thereunder but for Clause 12 thereof,

4.3 any claim for any sum recoverable under any other insurance on the Vessel or which would be recoverable under such insurance but for the existence of this insurance,

4.4 any claim for expenses arising from delay except such expenses as would be recoverable in principle in English law and practice under the York-Antwerp Rules 1974.

5 TERMINATION

5.1 This insurance may be cancelled by either the Underwriters or the Assured giving 7 days notice (such cancellation becoming effective on the expiry of 7 days from midnight of the day on which notice of cancellation is issued by or to the Underwriters). The Underwriters agree however to reinstate this insurance subject to agreement between the Underwriters and the Assured prior to the expiry of such notice of cancellation as to new rate of premium and/or conditions and/or warranties.

5.2 Whether or not such notice of cancellation has been given this insurance shall TERMINATE AUTOMATICALLY

5.2.1 upon the occurrence of any hostile detonation of any nuclear weapon of war as defined in Clause 4.1.1 wheresoever or whensoever such detonation may occur and whether or not the Vessel may be involved

5.2.2 upon the outbreak of war (whether there be a declaration of war or not) between any of the following countries:

United Kingdom, United States of America, France,
the Union of Soviet Socialist Republics,
the People's Republic of China

5.2.3 in the event of the Vessel being requisitioned, either for title or use.

5.3 In the event either of cancellation by notice or of automatic termination of this insurance by reason of the operation of this Clause 5, or of the sale of the Vessel, pro rata net return of premium shall be payable to the Assured.

This insurance shall not become effective if, subsequent to its acceptance by the Underwriters and prior to the intended time of its attachment, there has occurred any event which would have automatically terminated this insurance under the provisions of Clause 5 above.

1/10/83

CL281 © Copyright The Institute of London Underwriters

13. APPENDIX D – INSTITUTE YACHT CLAUSES

Institute Yacht Clauses (1/1/85)

This insurance is subject to English Law and Practice

1 VESSEL

Vessel means the hull, Machinery, boat(s), gear and equipment, such as would normally be sold with her if she changed hands.

2 IN COMMISSION AND LAID UP

2.1 The Vessel is covered subject to the provisions of this insurance

2.1.1 While in commission at sea or on inland waters or in port, docks, marinas, on ways, gridirons, pontoons, or on the hard or mud or at place of storage ashore including lifting or hauling out and launching, with leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or crafts in distress, or as is customary, but it is warranted that the Vessel shall not be towed, except as is customary or when in need of assistance, or undertake towage or salvage services under a contract previously arranged by Owners, Masters, Managers, or Charterers

2.1.2 While laid up out of commission as provided for in Clause 4 below, including lifting or hauling out and launching, while being moved in shipyard or marina, dismantling, fitting out, overhauling, normal maintenance or while under survey, (also to include docking and undocking and periods laid up afloat incidental to laying up or fitting out and with leave to shift in tow or otherwise to or from her lay-up berth but not outside the limits of the port or place in which the vessel is laid up) but excluding, unless notice to be given to the Underwriters and any additional premium required by them agreed, any period for which the Vessel is used as a Houseboat or is under major repair or undergoing alteration.

2.2 Notwithstanding Clause 2.1 above the gear and equipment, including outboard motors, are covered subject to the provisions of this insurance while in place of storage or repair ashore.

3 NAVIGATING AND CHARTER HIRE WARRANTIES

3.1 Warranted not navigating outside the limits stated in the Schedule to the policy or, provided previous notice to be given to the Underwriters, held covered on terms to be agreed.

3.2 Warranted to be used solely for private pleasure purposes and not for hire charter or reward, unless specially agreed by the Underwriters.

4 LAID UP WARRANTY

Warranted laid up out of commission as stated in the schedule to the policy, or held covered

on terms to be agreed provided previous notice to the given to the Underwriters.

5 SPEED WARRANTY

5.1 Warranted that the maximum designed speed of the Vessel, or the parent Vessel in the case of a Vessel with boat(s), does not exceed 17 knots.

5.2 Where the Underwriters have agreed to delete this warranty, the conditions of the speedboat Clause 19 below shall also apply.

6 CONTINUATION

Should the Vessel at the expiration this insurance be at sea or in distress or at a port of place of refuge or of call, she shall, provided prompt notice be given to the Underwriters, be held covered at a premium to be agreed until anchored or moored at her next port of call in good safety.

7 ASSIGNMENT

No assignment of or interest in this insurance or in any moneys which may be or become payable there under is to be binding on or recognized by the Underwriters unless a dated notice of such assignment or interest signed by the Assured, and by the assignor in the case of subsequent assignment, is endorsed on the policy and the policy with such endorsement is produced before payment of any claim or return of premium there under.

8 CHANGE OF OWNERSHIP

This Clause 8 shall prevail notwithstanding any provision whether written typed or printed in this insurance inconsistent herewith.

8.1 Should the Vessel be sold or transferred to new ownership, or where the Vessel is owned by a company, should there be a change in the controlling interest(s) of the company, then, unless the Underwriters agree in writing to continue the insurance, this insurance shall become cancelled from the time of such sale, transfer, or change, and a pro rata daily net return of premium be made calculated on the premium charged for the in commission and/or laid up period.

8.2 If however, the Vessel shall have left her moorings or be at sea at the time of sale or transfer such cancellation shall if required by the Assured, be suspended until arrival at port or place of destination.

9 PERILS

Subject always to the exclusions in this insurance

9.1 This insurance covers loss of or damage to the subject matter insured caused by:

9.1.1 Perils of the seas, rivers, lakes, or other navigable waters

9.1.2 Fire

9.1.3 Jettison

9.1.4 Piracy

9.1.5 Contact with dock or harbor equipment of installation, land conveyance, aircraft or similar objects or objects falling there from

9.1.6 Earthquake Volcanic eruption or lightning

9.2 and, provided such loss or damage has not resulted from want of due diligence by the assured Owners or Managers, this insurance covers

9.2.1 Loss of or damage to the subject matter insured caused by

9.2.1.1 Accidents in loading, discharging or moving stores, gear, equipment, machinery or fuel

9.2.1.2 Explosions

9.2.1.3 Malicious Acts

9.2.1.4 Theft of the entire Vessel or her boat(s) or outboard motor(s) provided it is securely locked to the vessel or her boat(s) by an anti-theft device in addition to its normal method of attachment, or following upon forcible entry into the Vessel or place of storage or repair, theft of machinery including outboard motor(s), gear or equipment

9.2.2 Loss of or damage to the subject matter insured, excepting motor and connections (but not strut, shaft or propeller), electrical equipment and batteries and connections, caused by:

9.2.2.1 Latent defects in hull or machinery, breakage of shafts or bursting of boilers (excluding the cost and expense of replacing or repairing the defective part broken shaft or burst boiler)

9.2.2.2 The negligence of any person whatsoever, but excluding the cost of making good any defect resulting from either negligence or breach of contract in respect of any repair or alteration work carried out for the account of the assured and/or the Owners or in respect of the maintenance of the Vessel,

9.3 This insurance covers the expense of sighting the bottom after stranding, if reasonable incurred especially for that purpose, even if no damage is found.

10 EXCLUSIONS

No claim shall be allowed in respect of any:

10.1 Outboard motor dropping off or falling overboard

10.2 Ship's boat having a maximum designed speed exceeding 17 knots, unless such boat is specially covered herein and subject also to the conditions of the speedboat Clause 19 below, or is on the parent Vessel or laid up ashore

10.3 Ship's boat not permanently marked with the name of the parent Vessel

10.4 Sails and protective covers split by the wind or blown away while set, unless in consequence of damage to the spars to which sails are bent, or occasioned by the Vessel being stranded or in collision or contact with any external substance (ice included) other than water

10.5 Sails, masts, spars or standing and running rigging while the Vessel is racing, unless the loss or damage is caused by the Vessel being stranded, or sunk burnt, on fire or in collision or contact with any external substance (ice included) other than water

10.6 Personal effects

10.7 Consumable stores, fishing gear or moorings

10.8 sheating, or repairs thereto, unless the loss or damage has been caused by the Vessel being stranded, sunk, burnt, on fire or in collision or contact with any external substance (ice included) other than water

10.9 Loss or expenditure incurred in remedying a fault in design or construction or any cost of expense incurred by reason of betterment of alteration in design or construction

10.10 Motor and connections (but not strut shaft or propeller) electrical equipment and batteries and connections, where the loss or damage has been caused by heavy weather, unless the loss or damage has been caused by the Vessel being immersed, but this clause 10.10 shall not exclude loss or damage caused by the Vessel being stranded or in collision or contact with another vessel, pier or jetty.

11 LIABILITY TO THIRD PARTIES

This clause only applies when a sum is stated for this purpose in the schedule to the policy.

11.1 The Underwriters agree to indemnify the assured for any sum or sums which, the assured shall become legally liable to pay and shall pay, by reason of interest in the insured Vessel and arising out of accidents occurring during the currency of this insurance, in respect to:

11.1.1 Loss of or damage to any other vessel or property whatsoever

11.1.2 Loss of life, personal injury or illness, including payments made for life salvage, caused on or near the Vessel or any other vessel

11.1.3 Any attempted or actual raising, removal or destruction of the wreck of the assured Vessel or the cargo thereof or any neglect or failure to raise, remove or destroy same.

11.2 LEGAL COSTS

The Underwriters will also pay, provided their prior written consent has been obtained:

11.2.1 The legal costs incurred by the assured or which the assured may be compelled to pay in contesting liability or taking proceedings to limit liability

11.2.2 The costs for representation at any coroner's inquest or fatal accident enquiry.

11.3 SISTERSHIP

Should the vessel hereby insured come into collision with or receive salvage services from another vessel belonging wholly or in part to the same Owners or under the same management, the assured shall have the same rights under this insurance as they would have were the other vessel entirely the property of Owners not interested in the Vessel hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the assured.

11.4 NAVIGATION BY OTHER PERSONS

The provisions of the Clause 11 shall extend to any person navigating or in charge of the insured Vessel with the permission of the assured named in this insurance (other than a person operating, or employed by the operator of, a shipyard, marina, repair yard, slipway, yacht club, sales agency or similar organization) and who while navigating or in charge of the Vessel shall in consequence of any occurrence covered by this Clause 11 become liable to pay and shall pay any sum or sums to any person or persons, other than to the assured named in this insurance, but indemnity under this Clause shall insure above, at the written request of and through the agency of the assured. Nothing in this extension shall increase the underwriters' liability beyond the limitation of liability imposed by Clause 11.8 below and this extension shall be subject to all other terms conditions and warranties of this insurance.

Nothing in this Clause 11.4 shall be deemed to override the provisions of Clause 3.2 above.

11.5 REMOVAL OF WRECK EXTENSION

This insurance also to pay the expenses, after deduction of the proceeds of the salvage, of the removal of the wreck of the insured Vessel from any place owned, leased or occupied by the assured.

11.6 LIABILITIES SECTION EXCLUSIONS

Notwithstanding the provisions of the Clause 11 this insurance does not cover any liability cost of expense arising in respect of:

11.6.1 Any direct or indirect payment by the Assured under Workmen's Compensation or Employers' Liability acts and any other statutory or common law liability in respect of accidents to or illness of workmen or any other persons employed in any capacity whatsoever by the Assured or by any person to whom the protection of this insurance is afforded by reason of the provisions of Clause 11.4 above, in on or about or in connection with the Vessel hereby insured or her cargo, materials or repairs

11.6.2 Any boat belonging to the Vessel and having a maximum designed speed exceeding 17 knots, unless such boat is specially covered herein and subject also to the conditions of the speedboat Clause 19 below, or is on the parent Vessel or laid up ashore

11.6.3 Any liability to or incurred by any person engaged in water skiing or aquaplaning,

while being towed by the Vessel or preparing to be towed or after being towed until safely aboard or ashore

11.6.4 Any liability to or incurred by any person engaged in a sport or activity, other than water skiing or aquaplaning, while being towed by the Vessel or preparing to be towed or after being towed until safely on aboard or ashore

11.6.5 Punitive or exemplary damages, however described

11.7 WATER – SKIERS LIABILITIES

Should Clause 11.6.3 and/or Clause 11.6.4 above be deleted, the liabilities mentioned in such clause(s) shall be covered hereunder, subject always to the warranties, conditions and limits of this insurance.

11.8 LIMIT OF LIABILITY

The liability of the Underwriters under this Clause 11, in respect of any one accident or series of accidents arising out of the same event, shall in no case exceed the sum stated for this purpose in the Schedule of the policy, but when the liability of the assured has been contested with the consent in writing of the Underwriters, the Underwriters will also pay a like proportion of the costs which the Assured shall thereby incur or be compelled to pay.

12 EXCESS AND DEDUCTIBLE

12.1 No claim arising from a peril insured against shall be payable under this insurance unless the aggregate of all such claims arising out of each separate accident or occurrence (including claims under Clauses 11, 14 and 15) exceeds the amount stated for this purpose in the schedule to the policy, in which case this sum shall be deducted. This Clause 12.1 shall not apply to a claim for total or constructive total loss of the Vessel or, in the event of such a claim, to any associated claim under Clause 15 arising from the same accident or occurrence.

12.2 Prior to the application of Clause 12.1 above and in addition, thereto, deductions new for old not exceeding one-third may be made at the Underwriters' discretion in respect of loss of or damage to:

12.2.1 Protective covers, sails and running rigging

12.2.2 Outboard motors whether or not insured by separate valuation under this insurance.

13 NOTICE OF CLAIM AND TENDERS

13.1 Prompt notice shall be given to the Underwriters in the event of any occurrence, which may give rise to a claim under this insurance, and any theft or malicious damage shall also be reported promptly to the Police.

13.2 Where loss or damage has occurred, notice shall be given to the Underwriters prior to survey and, if the Vessel is abroad, also to the nearest Lloyd's Agent so that a surveyor may be appointed to represent the Underwriters should they so desire.

13.3 The Underwriters shall be entitled to decide the port to which the Vessel shall proceed

for docking or repair (the actual additional expense of the voyage arising from compliance with Underwriters' requirements being refunded to the assured) and have a right of veto concerning a place of repair or a repairing firm.

13.4 The Underwriters may also take tenders or may require tenders to be taken for the repair of the Vessel.

14 SALVAGE CHARGES

Subject to any express provision in this insurance, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

15 DUTY OF ASSURED

15.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimizing a loss which would be recoverable under this insurance.

15.2 Subject to the provisions below and to Clause 12 the Underwriters will contribute to charges properly and reasonably incurred by the Assured, their servants or agents for such measures. General average, salvage charges, collision defense or attack cost and costs incurred by the Assured in contesting liability covered by Clause 11.2 are not recoverable under this Clause 15.

15.3 The Assured shall render to the Underwriters all possible aid in obtaining information and evidence should the Underwriters desire to proceed at their own expense and for their own benefit in the name of the Assured to recover compensation or to secure an indemnity from any third party in respect of anything covered by this insurance.

15.4 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

15.5 The sum recoverable under this Clause 15 shall be in addition to the loss otherwise recoverable under this insurance but in no circumstances shall amounts recoverable under Clause 15.2 exceed the sum insured under this insurance in respect of the Vessel.

16 UNREPAIRED DAMAGE

16.1 The measure of indemnity in respect of claims for un-repaired damage shall be the reasonable depreciation in the market value of the Vessel at the time this insurance terminates arising for such un-repaired damage, but not exceeding the reasonable cost of repairs.

16.2 In no case shall the Underwriters be liable for un-repaired damage in the event of a sub-

sequent total loss (whether or not covered under this insurance) sustained during the period covered by this insurance or any extension thereof.

16.3 The underwriters shall not be liable in respect of un-repaired damage for more than the insured value at the time this insurance terminates.

17 CONSTRUCTIVE TOTAL LOSS

17.1 In ascertaining whether the Vessel is a constructive total loss, the insured value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

17.2 No claim for constructive total loss based upon the cost of recovery and/or repair of the Vessel shall be recoverable hereunder unless such cost would exceed the insured value. In making this determination, only the cost relating to a single accident or sequence of damages arising from the same accident shall be taken into account.

18 DISBURSEMENTS WARRANTY

Warranted that no amount shall be insured policy proof of interest or full interest admitted for account of the Assured, Mortgages or Owners on disbursements, commission, profits or other interests or excess or increased value of hull of machinery however described unless the insured value of the Vessel is over \$50,000.00 and then not to exceed 10 percent to the total amount insured in respect of the Vessel as stated in the Schedule to the policy. Provided always that a breach of this warranty shall not afford the Underwriters any defense to a claim by a Mortgage who has accepted this insurance without knowledge of such breach.

19 SPEEDBOAT CLAUSE

WHERE THIS CLAUSE 19 APPLIES IT SHALL OVERRIDE ANY CONFLICTING PROVISIONS IN THE CLAUSES ABOVE.

19.1 It is a condition of this insurance that when the Vessel concerned is underway the Assured named in the schedule to the policy or other competent person(s) shall be on board and in control of the Vessel.

19.2 No Claim shall be allowed in respect of loss of or damage to the Vessel or liability to any third party or any salvage services.

19.2.1 caused by or arising from the Vessel being stranded sunk swamped immersed breaking adrift while moored or anchored unattended off an exposed beach or shore.

19.2.2 Arising while the Vessel is participation in racing or speed tests, or any trials on connection therewith.

19.3 No claim shall be allowed in respect of rudder strut shaft or propeller

19.3.1 under Clauses 9.2.2.1 and 9.2.2.2

19.3.2 For any loss or damage caused by heavy weather, water or contact other than with another vessel pier or jetty, but this Clause 19.3.2 shall not exclude damage caused by the Vessel being immersed as a result of heavy weather.

19.4 If the Vessel is fitted with inboard machinery no liability shall attach to this insurance in respect of any claim caused by or arising through fire or explosion unless the vessel is equipped in the engine room (or engine space) tank space and galley, with a fire extinguishing system automatically operated or having controls at the steering position and properly installed and maintained in efficient working order.

20 CANCELLATION AND RETURN OF PREMIUM

This insurance may be cancelled by the Underwriters at any time subject to 30 days notice to the assured or by mutual agreement, when a pro rata daily net return of premium shall be made calculated on the premium charged for the in commission and/or laid up period.

THE FOLLOWING CLAUSES SHALL BE PARAMOUNT AND SHALL OVERRIDE ANYTHING CONTAINED IN THIS INSURANCE INCONSISTENT THEREWITH.

21 WAR EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by:

21.1 War civil war revolution rebellion insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power

21.2 Capture seizure arrest restraint or detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat

21.3 Derelict mines torpedoes bombs or other derelict weapons of war.

22 STRIKES AND POLITICAL ACTS EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by:

22.1 Strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

22.2 Any terrorist or any person acting from a political motive.

23 NUCLEAR EXCLUSIONS

In no case shall this insurance cover loss damage liability or expense caused by:

23.1 Any weapon of war employing atomic or nuclear fission and/or other like reaction or radioactive force or matter.

23.2 Ionizing radiations from or contamination by radioactive from any nuclear fuel or any

nuclear waste from the combustion of nuclear fuel

23.3 The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly component thereof.

© Copyright The Institute of London Underwriters

