

The Role of Protection and Indemnity (P&I) Clubs

by

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During the mid nineteenth century shipowners found themselves with liabilities which their traditional hull underwriters (Lloyds) were unable or unwilling to cover. In order to solve the problem groups of shipowners formed themselves into mutual associations and agreed to share each other's claims. These early organisations have now developed into thirteen Mutual Insurance Associations or so-called P&I Clubs, which between them insure the liabilities of some 95% of the world's ocean going tonnage.

Mutual

The P&I Clubs all operate on a mutual or non-profit basis aiming to call up only sufficient money in each year to meet costs, expenses and claims for that year. There are no shareholders and the shipowner members of the Association insure each other.

The International Group of P&I Clubs

The thirteen P&I Clubs co-operate in two important areas. First the Clubs themselves share claims with each other and buy high levels of reinsurance on a collective basis. This enables each Club to provide much higher levels of cover than are normally available in the commercial market. The insurance thus operates in three tiers, firstly the Club will pay claims of up to USD5m, secondly the Pool of all Clubs will pay the next USD25m and thirdly the claims excess of USD30m (5 + 25) are reinsured as one collective contract which is said to be the biggest liability reinsurance contract in the world.

The second area of co-operation is in matters of common interest, such as new legislation or discussions at the International Maritime Organization (IMO) or standard shipping contracts.

The Cover

The P&I Clubs provide cover for a shipowner's liabilities, not the fabric of the ship itself. The risks covered will usually include:-

1. Death and personal injury of
 - Seamen
 - Passengers
 - Third parties
2. Liabilities in respect of stowaways or persons saved at sea.
3. Liabilities arising from collisions.
4. Liabilities arising from groundings.
5. Liabilities arising from damage to fixed and floating objects.
6. Liabilities arising from pollution.
7. Liabilities arising from wreck removal.
8. Liabilities arising from towage operations.
9. Liability to cargo.

together with other legal and other costs associated with dealing with these claims.

The Service

A P&I Club operates as a mixture of an insurance company, a law firm and a loss adjuster. This means that a Club should be able to assist a shipowner in dealing with every aspect of a casualty from finding experts and contractors to deal with the immediate casualty through to legal advice and paying claims.

The P&I Club exists in order to help the shipowner and pay his liability claims. Almost always the shipowner and his Club will work together in order to solve the problems and it is very rare that a Club will be in dispute with a shipowner over cover.

The Clubs are unique organisations in that they provide not only insurance cover, but also claims handling (legal) advice and a casualty response service. In managing a shipowner's liabilities a Club may have to deal with the loss of two bags of rice or the total loss of a fully loaded VLCC. The Club's reaction therefore needs to be highly flexible and geared to the particular incident.

The Clubs have access to a high quality network of specialist technical advisers, maritime lawyers and local commercial correspondents. Correctly used, that network should ensure that the shipowner and his Club will be properly advised on the essential elements of the claims which arise out of a casualty. The shipowner can expect to be told whether or not he is liable for the claim, how much it may cost, whether he is entitled to limit his liability and whether he may expect to recover all or part of his loss from some other party who may also be to blame.

The Role of the P&I Clubs in Oil Spills

The International Group of P&I Clubs will between them insure almost all internationally trading tankers. The Clubs will therefore have a role to play in nearly every oil spill of any consequence. Although in Civil Liability Convention (CLC) countries the clean-up operation will be conducted by government agencies and in the USA by the shipowner, the Club will almost always be closely involved, even if only to approve expenditure.

Insurance Guarantor

In the context of an oil pollution incident the Club will almost always have provided the insurance guarantee, the Civil Liability Convention Certificate. In the USA, which has its own Oil Pollution Act (OPA 90), there are separate guarantors, but they rely on the Clubs to provide the actual cover and service.

Liaison with International Oil Pollution Compensation Fund (IOPCF)

In larger oil spills where the IOPCF may be involved the P&I Club will liaise with the IOPCF, both so as to keep them informed and so as to ensure that there is a smooth flow of funding without different views being taken on the recoverability of expenditure at different levels. In practice the clean-up costs (which come at

the beginning) are usually the concern of the Club and the IOPCF will only become involved in payments at higher levels for third party claims.

Source of Funds

Very few shipowners can afford the cash flow needed to fight a major oil pollution incident and even the oil companies do not like to be out of pocket for too long. The Club will therefore expect to act as banker for the clean-up operation and third party compensation payments. This means that it is important to agree expenditure in principle in advance of incurring it so that disputes can be avoided.

Legal Advice

This falls into two parts, the overall issues of liability and details of particular claims. In both areas the Club (using outside legal advice where appropriate) would expect to assist the shipowner.

Casualty Response

The Club will not itself conduct a clean-up or salvage operation but it will be in a position to find appropriate advisers, surveyors and through them contractors capable of doing the work.

Tanker Casualties

Some aspects of a casualty are reasonably predictable. For example, a sizeable oil spill is likely to involve a large clean-up operation. There will probably also be third party claims from fishermen, boat owners and the owners of shore-side property. There may be thousands of individual claimants. Each claim must be sifted and assessed.

In other types of casualty different considerations will apply. A collision could involve death and injury claims, and probably salvage issues.

Casualty response is essentially about practicalities. It is based upon systems which can be adapted for use in any type of casualty in any location.

Where does the Club fit in?

The Club needs to be adaptable to deal with a casualty on any scale involving a ship of any type in any place. To achieve this the approach needs to be both flexible and simple.

For example, an oil company owner will have a highly developed response plan which is driven and manned by the oil company often operating from its own building with its own staff. In such a case, the Club will usually interact with the oil company, providing advice and comment. Only rarely will the Club be expected to take the lead.

At the other end of the scale is a shipowner who owns a few ships operated from a remote corner of the world and who simply does not have the manpower or resources to deal with a major casualty. In that case, the Club will be expected to play a prominent role in organising the response on behalf of the shipowner and may be called upon to provide a response centre and staff. Many shipowners have trained their own personnel to handle media enquiries but, for those owners who have not, the Club will be able to assist.

International Tanker Owners Pollution Federation (ITOPF) and the Clubs

The Clubs rely heavily on ITOPF in many of these areas. ITOPF's technical expertise and breadth of experience is unrivalled and ITOPF will normally be asked to assist in any oil spill of significance, be it from a tanker or non-tanker, wherever it may occur.

The Federation's practical experience of oil spill clean-up methods, environmental damage assessment and restoration techniques is invaluable in delivering common sense advice based upon sound scientific principles – principles which, all too often, are not uppermost in the minds of government authorities.

ITOPF's ability to deliver objective and practical advice on pollution issues is invaluable in two ways. Firstly, in helping those responsible for clean-up and damage assessment to respond more effectively and on a realistic scale. Secondly, having established its credibility as an objective technical adviser, by providing government agencies and private contractors with help in spill response planning. Once working relationships of this sort have been

established, there will usually be a marked improvement in the technical efficiency of subsequent response activities as well as in the level of practical co-operation.

Conclusion

In every oil spill of any consequence there is likely to be a P&I Club involved at least in the critical area of approving and funding expenditure and most often in a wide ranging advisory and organisational role.

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