



International Group of P&I Clubs

Piracy and Armed Robbery at Sea – How Best to Protect Seafarers

PIRACY and P&I INSURANCE

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The International Group:

- comprises 13 non-profit-making mutual insurance associations
- which insure **third party liabilities** arising out of the use and operation of ships
- and insure over 90% of world ocean-going tonnage – around 700 million tons and in excess of 50,000 vessels
- and insure over 95% of ocean-going tankers

Third party liability: pollution, collision, cargo loss



Third party liability – property damage, general average



Third party liability – crew claims



Examples of third party liabilities

- **Crew injury / illness / death**
- **Cargo liability**
- **Cargo's proportion of general average**
- **Pollution**
- **Collision**
- **Property damage**
- **Wreck removal**
- **Fines**

Current principal underwriting Group members:

- American Steamship Owners Mutual Protection and Indemnity Association, Inc
- Assuranceforeningen Gard
- Assuranceforeningen Skuld
- The Britannia Steam Ship Insurance Association Limited
- The Japan Ship Owners' Mutual Protection & Indemnity Association
- The London Steam-Ship Owners' Mutual Insurance Association Limited
- The North of England Protection and Indemnity Association Limited
- The Shipowners' Mutual Protection and Indemnity Association (Luxembourg)
- The Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Limited
- The Steamship Mutual Underwriting Association (Bermuda) Limited
- The Swedish Club
- United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited
- The West of England Ship Owners Mutual Insurance Association (Luxembourg)

THE INTERNATIONAL GROUP OF P&I CLUBS



Club structure:

- Owned by the shipowner members
- Board of directors or committee – elected from shipowner members and set club policy
- Club managers-handle day-to-day operational matters including:
 - underwriting
 - claims
 - investments
 - accounting
 - safety and loss prevention
 - compliance with regulatory requirements
- Club correspondents and representatives – worldwide network covering 680 commercial ports

PIRACY

- Defined in the UN Convention on the Law of the Sea as:
 - illegal acts of violence or detention or depredation
 - committed for private ends, by a private ship against another
 - on high seas outside the jurisdiction of any State
- For insurance purposes, not limited to acts outside the jurisdiction of a State. Acts within Somali waters included as well as those on the high seas.
- Can result in injury, illness or death of crew or passengers, or loss of their effects; damage to or loss of ship, pollution, wreck removal, damage to or loss of cargo, delay, wasted time and expense.

DO P&I CLUBS COVER PIRACY?

- Not as a named risk
- P&I Clubs cover liabilities, as set out in a 'risks covered' rule.
- P&I liabilities that could potentially arise from piracy include injury/illness/death of crew (or passengers), crew repatriation and substitution, crew/passenger loss of effects.
- P&I liabilities could also extend to pollution, wreck removal, and liability to cargo for loss/general average contribution.
- No exclusion of these risks based on causation by piracy.

IF 'PIRACY' NOT AN EXCLUSION, ARE THERE OTHER RELEVANT EXCLUSIONS ?



- Yes. P&I cover is subject to an exclusion of liabilities arising from loss caused by certain defined 'war risks', including:
- “....any act of terrorism”
- “Mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war...”

WAR RISK EXCLUSIONS

- Act of terrorism? – No.
 - Key distinction is in motivation and objectives. No current indication that attacks off Somalia are other than for private gain.
 - Exclusion reflects desire of reinsurers to separately price the risk.
- “Mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war...”
 - All types of explosives. Clause would be construed against the insurer to limit the scope of the exclusion. Not applicable to use of guns.

WHAT TYPE OF P&I CLAIMS HAVE ARISEN FROM PIRACY?



- Historically pirate attacks directed towards valuables, money and crew effects, giving rise to crew death, serious injury and property claims.
- Pirate attacks where crew are restrained have left ships navigating without anyone in charge.
- Somalia - Relatively few P&I claims.
- Somalia - Ships, cargoes and crews returned relatively unharmed, as part of pirate 'business model' to obtain ransoms.
- Somalia - crew death claims. Some crew injury claims, including gunshot wounds. Some compensation claims under crew contracts, (with increased compensation scale applicable under some contracts). Crew repatriation and substitution claims. Some crew personal effects claims. Claims for ex gratia payments.

P&I VIEWS ON USING UNARMED GUARDS

- No cover restriction or prohibition
- Clubs recognise that appropriately trained and competent personnel can assist with enhancing security
- Security personnel may be treated as supernumeraries for purpose of normal club cover
- No international standards or accreditation
- Shipowner's care and diligence in selection of security company and personnel may have a bearing on liability issues
- Shipowners need to check that additional personnel do not breach requirements of SOLAS safety equipment certificate
- Clubs have joined industry in discouraging use of armed guards

ARMING GUARDS – P&I CLUBS POLICY

- Use of armed guards discouraged because:
 - inherent risks in use of arms in a civilian context
 - risk of escalated attacks with heavier weapons, leading to increased risk of crew injury or death. Threats to US flag ships and crews have followed shooting of Maersk Alabama pirates
 - where guards use weapons, potential difficulty to show imminent threat to life and proportionality of response
 - risk of shipowner being held vicariously responsible
 - risk of shipowner breaking laws of flag state, or of port states, in placing arms on board

P&I COVER WHERE ARMED GUARDS USED

- No general prejudice to cover, but necessary to look at causation on case-by-case basis
- Potential prejudice to cover if armed guards used in breach of Flag or Port state prohibition
- Contract terms. No automatic cover for contractual liability to guard company. Clubs will expect, as a minimum, reciprocal indemnities for negligence, or a knock-for-knock agreement
- Contract – who is in charge?

P&I COVER AND RANSOM

- Not a liability – an expense
- Not covered by P&I as of right
- Not expressly excluded (save for one Club)
- Shipowner could ask Board for discretionary cover – very few such requests made
- Desire to be able to price the risk has resulted in moves to shift piracy back from hull to war risks policies.
- Desire for certainty of cover fuels demand for K & R insurance

RANSOM AND GENERAL AVERAGE

- *“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. General average sacrifices and expenditures shall be borne by the different contributing interests as the basis hereinafter provided” York Antwerp Rules 1994; Rule A*
- Ransom can be adjusted in G/A if ship carrying cargo. More difficult if in ballast – no ‘common maritime adventure’.
- No primary contribution to G/A from Clubs – because not involved with property
- If ransom adjusted in G/A and if cargo declines to pay because ship unseaworthy (insecure) – cargo’s proportion of ransom covered by P&I Club.

WHY DON'T CLUBS DIRECTLY CONTRIBUTE IN G/A TO RANSOMS?



- G/A traditionally apportioned to property interests
- G/A always involves threat to life, because involves a threat to safety of ship and therefore to those dependant on ship
- But not normally requiring contribution from P&I, being expense, not liability
- And not requiring unsatisfactory comparison of value of life against value of cargo and ship

PIRACY AND P&I LOSS PREVENTION



- All Clubs provide extensive advice on measures to protect against piracy through their websites
- All support the industry Best Management Practices – including registration with MSCHOA
- Clubs have prepared and released PIRACY FAQ to disseminate the points made in this presentation.



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MARINE INSURANCE AND PIRACY

Thank you for listening!