Introduction to P&I –
The background, the rules and the wet stuff

- Part two-

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The rules:

Cargo claims
Some cargoes are more valuable than others...
- and require careful handling
This is the Buran, a Soviet space shuttle
Almost there....
Now, just a few metres more...
Oops!
All Claim Types 1996-2007:
Owners entries at 20 February, 2008 (gross of reinsurance)
Rule 34 | Cargo liability

1. The Association shall cover the following liabilities when and to the extent that they relate to cargo intended to be or being or having been carried on the Ship:

a) liability for **loss, shortage, damage** or **other responsibility** arising out of any breach by the Member, or by any person for whose acts, neglect or default he may be legally liable, of his **obligation properly to load, handle, stow, carry, keep, care for, discharge or deliver** the cargo or out of **unseaworthiness** or unfitness of the Ship;

b) liability for **loss, shortage, damage** or **other responsibility** in respect of cargo carried by a means of transport other than the Ship, when the liability arises under a through or transhipment Bill of Lading, or other form of contract, providing for carriage partly to be performed by the Ship,
Rule 34 | Cargo liability

• **provided** that unless and to the extent that the Association in its discretion shall otherwise decide, the cover under this Rule 34.1 does not include:
  
i) Delivery of cargo without production of negotiable B/L  
ii) Delivery of cargo without production of non-negotiable B/L  
iii) Terms less favorable than Hague or Hague/Visby rules  
iv) Other port than stipulated in contract of carriage  
v) Late arrival at port of loading or failure to load
Rule 34 | Cargo liability

vi) Declared value per unit in excess of USD 2,500 in Ad Valorem B/L
vii) Valuables not notified the Association
viii) Shortage from unexcusable failure to discharge cargo on board
ix) Ante- or post dated B/L
x) Incorrect description of cargo in the B/L
xi) Deviation or departure from contractually agreed voyage
• 2 The Association shall cover liability pursuant to *compulsorily* applicable rules of law for loss caused by *delay* in the carriage of cargo, provided that the Association shall in no circumstances cover liabilities, costs or expenses arising out of the failure to arrive or late arrival of the Ship at the port or place of loading.
Rule 34 | Cargo liability

- Hague Visby rules is the starting point
- Members’ practice often outside cover
- IG standard Letters of Indemnity
Rule 35 | Extra handling costs

- The Association shall cover **extra** costs and expenses, in excess of the costs and expenses which would otherwise have been incurred:
  
- a) **in handling and discharging** cargo where the extra costs and expenses are necessarily consequent upon **damage to the cargo or damage to the Ship** which would have been covered by the **Hull Policies** had the Ship been fully insured on standard terms without deductible;
  b) **in discharging or disposing of cargo which has been rejected** by the consignee,

- **provided** that there shall be no recovery under this Rule 35 of extra costs and expenses which:

- i) the Member has **recourse** to recover from any other party; or
  ii) are excepted from cover under Rule 46(a), or
  iii) form part of the daily running costs and expenses of the Ship.
The rules:

Striking claims
All Claim Types 1996-2007:

Owners entries at 20 February, 2008 (gross of reinsurance)
Rule 36 | Collision with other ships

1 The Association shall cover liability to pay damages to any other person incurred as a result of a collision with another ship, if and to the extent that such liability is not covered under the Hull Policies on the Ship, including:

a) i) one fourth of the liability incurred by the member; or
ii) four fourths, of such liability; or
iii) such other fraction of such liability as may be applicable and have been agreed with the Association;

b) that part of the Member's liability which exceeds the sum recoverable under the Hull Policies solely by reason of the fact that the liability exceeds the sums insured under those policies,

provided that: i) the Member shall not be entitled to recover from the Association any deductible borne by him under the Hull Policies; and
ii) the cover under this Rule shall exclude liability in respect of persons or property on board the Ship.
2 Unless otherwise agreed between the Member and the Association as a term of the Ship's entry in the Association, if both ships are to blame, then where the liability of either or both of the ships in collision becomes limited by law, claims under Rule 36.1 shall be settled upon the principle of single liability, but in all other cases claims under this Rule shall be settled upon the principle of cross-liabilities, as if the owner of each ship had been compelled to pay the owner of the other ship such proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Member in consequence of the collision.
Rule 37 | Damage to fixed or floating objects

- The Association shall cover:
  - a) liability for loss of or damage to any fixed or floating object by reason of contact between the Ship and such object, when not covered under the Hull Policies;
  - b) that part of the Member's liability which exceeds the amount recoverable under the Hull Policies solely by reason of the fact that the liability exceeds the sums insured under those policies,
- provided that there shall be no recovery under this Rule 37 in respect of any deductible borne by the Member under the Hull Policies.
Interface P&I and H&M – Striking claims

- RDC and FFO may be placed with either P&I or H&M
- Definition of “ship” devides RDC and FFO
- Overspill cover under P&I

- RDC cover liability for other vessel’s damages
- H&M cover own vessel’s damages
- Single or cross liability dependant on limitation
- Forum shopping may be an issue in collision cases
The rules:

Pollution claims
All Claim Types 1996-2007:
Owners entries at 20 February, 2008 (gross of reinsurance)
Rule 38 | Pollution

The Association shall cover:

- a) liabilities, costs and expenses (excluding fines) arising in consequence of the discharge or escape from the Ship of oil or any other substance or the threat of such discharge or escape;
- b) liabilities, costs and expenses incurred by the Member pursuant to any agreement approved by the Association for the purpose of this Rule.
Rule 38 | Pollution

• 2 A Member insured in respect of a Ship which is a "relevant ship" as defined in the Small Tanker Oil Pollution Indemnification Agreement, including any addendum to, or variation or replacement of such agreement ("STOPIA") shall, unless the Association otherwise agree in writing, be a party to STOPIA for the period of entry of the Ship in the Association. Unless the Association has agreed in writing or unless the Association in its discretion otherwise determines, there shall be no cover under this Rule 38 in respect of such a Ship so long as the Member is not a party to STOPIA.

• 3 A Member insured in respect of a Ship which is eligible for entry in the Tanker Oil Pollution Indemnification Agreement ("TOPIA") shall, unless the Association otherwise agrees in writing, be a party to TOPIA for the period of entry of that Ship in the Association. Unless the Association has agreed in writing or unless the Association in its discretion otherwise determines, there shall be no cover under this Rule 38 in respect of such a Ship so long as the Member is not a party to TOPIA.
Interface P&I and H&M - Pollution

• H&M excluded pollution liability
• Pollutant must “leave” the vessel...
• or “threaten” to do it
• The Club may also approve the expenditure

• Pollution claims represents a huge variety of costs and expenses which often calls for the involvement of the club
The rules:

Other claims
All Claim Types 1996-2007:
Owners entries at 20 February, 2008 (gross of reinsurance)
Rule 39 | Loss of or damage to property

- The Association shall cover liability for loss of or damage to property not specified elsewhere in Part II of these Rules.

- This is damage other than by contact with the vessel’s hull (RDC rule 36)
  - Wash damage
  - Damage by use of vessel’s equipment
Rule 40 | Liability for obstruction and wreck removal

- The Association shall cover:
  - a) costs and expenses relating to the raising, removal, destruction, lighting and marking of the Ship or of the wreck of the Ship or parts thereof or of its cargo lost as a result of a casualty, when such raising, removal, destruction, lighting and marking is compulsory by law or the costs or expenses thereof are legally recoverable from the Member;
  - b) liability incurred by reason of the Ship or the wreck of the Ship or parts thereof, as a result of a casualty, causing an obstruction,

- provided that:
  - i) recovery from the Association under this Rule shall be conditional upon the Member not having transferred his interest in the wreck otherwise than by abandonment; and
  - ii) the realised value of the wreck and other property saved shall be credited to the Association.
Interface P&I and H&M – Wreck Removal

- Salvage is covered by H&M, wreck removal by P&I
- “Wreck” means Actual or Constructive Total Loss
- Owner declares ATL or CTL – H&M accepts owners declaration – H&M abandons the value of the wreck
- Title to the wreck rests with the owner
- Local authority orders the removal of the wreck
- P&I organizes and pays for the removal but are entitled to the proceeds from the sale of the wreck
Rule 41 | General average

- The Association shall cover:
  
  a) the proportion of general average, special charges or salvage which a Member may be entitled to claim from cargo or from any other party to the marine adventure and which is not legally recoverable solely by reason of a breach of the contract of carriage. Where contributing cargo or any other contributing asset belongs to the Member, the Member shall be entitled to recover from the Association as if that contributing asset had belonged to a third party;
  
  b) the Ship's proportion of general average, special charges or salvage not recoverable under the Hull Policies solely by reason of the value of the Ship being assessed for contribution to general average or salvage at a value in excess of the sums insured under the Hull Policies, provided that cover shall only be available under this Rule 41(b) in any particular case if the Association shall in its absolute discretion so determine.
Interface P&I and H&M – General Average

- H&M contributes for the value of the vessel
- Cargo insurers contribute for the value of the cargo
- Time charterer’s insurers contribute for value of bunkers

- P&I contribute irrecoverable contributions due to owner’s breach of contract of transportation
Rule 42 | Salvage

- The Association shall cover liability for special compensation awarded to a salvor.
- a) pursuant to Article 14 of the International Convention on Salvage 1989; or
- b) pursuant to Article 14 of the International Convention on Salvage 1989, as incorporated into **Lloyd's Open Form** of Salvage Agreement (1980, 1990, 1995 or 2000), or into any other salvage contract approved by the Association; or
- c) pursuant to Special Compensation P&I Clubs Clause (**SCOPIC**) as incorporated into Lloyd's Open Form of Salvage Agreement or any other 'No cure - No pay' salvage contract approved by the Association.
Interface P&I and H&M – Salvage

- H&M cover Art. 13 awards
- P&I cover Art. 14 awards

- P&I cover SCOPIC costs less what is awarded under Art. 13
Rule 43 | Towage

1 The Association shall cover liabilities, costs and expenses arising out of the towage of the Ship, or out of the towage of a vessel by the Ship, **provided** that such liabilities, costs and expenses are:

   a) within the cover available under any other Rule; and
   b) not excluded by Rules 43.2 or 43.3.

2 The Association shall not cover liabilities, losses, costs or expenses incurred under or pursuant to the terms of a contract for the towage of the Ship other than:

   a) a contract entered into for the purpose of entering or leaving port, or manoeuvring within the port, during the ordinary course of trading; or
   b) a contract entered into in the ordinary course of trading for the towage of such ships as are habitually towed from place to place; or
   c) a contract which has been approved by the Association.
Rule 43 | Towage

3 The Association shall not cover liability for loss of or damage to or wreck removal of a vessel or other floating structure towed by the Ship or the cargo or other property on such tow (together with costs and expenses associated therewith), save insofar as:

a) the towage or attempt thereat is made for the purpose of saving or attempting to save life or property at sea; or

b) the Ship is entered as a tug or otherwise on the basis that it will engage in towing in the ordinary course of business, and the tow is undertaken on contractual terms approved by the Association (whether or not the Member is a party to the contract); or
Rule 43 | Towage

- Notes: 1 The following standard terms of contracts are approved by the Association, provided they are not materially amended:
  (a) UK, Netherlands or Scandinavian standard towage conditions;
  (b) "Towcon" or "Towhire";
  (c) Lloyd's Standard Form of Salvage Agreements.
2 The Association will otherwise expect the contract to incorporate a term under which each Party is responsible for any loss or damage to its own property or equipment and for loss of life or personal injury to its own personnel, without any recourse against the other.
- c) cover has been agreed with the Association prior to the commencement of the towage.
Rule 44 | Legal costs

- The Association shall cover legal costs and expenses relating to any liability, loss, cost or expense which, in the opinion of the Association, is (or, apart from any applicable deductible, would be) likely to result in a claim on the Association, but only to the extent that such legal costs and expenses have been incurred with the agreement of the Association.
Rule 45 | Enquiry expenses

- The Association shall cover **costs and expenses** incurred by a Member in defending himself or in protecting his interests before a formal enquiry into the loss of or casualty involving the Ship, in cases in which, in the opinion of the Association, a claim upon the Association is likely to arise, but only to the extent that such costs and expenses have been incurred with the **agreement** of the Association.
Rule 46 | Measures to avert or minimize loss

• The Association shall cover:

• **a) extraordinary** costs and expenses **reasonably incurred** on or after the occurrence of a casualty or event for the purpose of avoiding or minimising any liability on the Association, **other than**:
  i) costs and expenses claimable in general average;
  ii) costs and expenses relating to the Ship being overloaded or the cargo being incorrectly stowed;
  iii) costs and expenses resulting from measures that have been or could have been accomplished by the Crew or by reasonable use of the Ship or its equipment;
  iv) costs and expenses resulting from making the Ship seaworthy for receiving cargo;
• **b) losses, costs and expenses incurred at the direction** of the Association.
Rule 47 | Fines

1 The Association shall cover fines or other penalties imposed upon a Member (or, imposed upon a third party whom the Member is legally obliged to reimburse or whom the Member reimburses with the Agreement of the Association) in respect of the Ship by any court, tribunal or other authority of competent jurisdiction for or in respect of any of the following:

- a) short- or over-delivery of cargo, or failure to comply with regulations concerning the declaration of goods, or documentation of cargo, provided that the Member is insured by the Association for cargo liability under Rule 34;
- b) breach of any immigration law or regulations;
- c) the accidental escape or discharge of oil or any other substance or threat thereof, provided that the Member is insured for pollution liability by the Association under Rule 38, and subject to the applicable limit of liability under the P&I entry in respect of oil pollution risk;
- d) smuggling or any infringement of any custom law or regulation other than in relation to cargo carried on the Ship.
Rule 47 | Fines

2 The Association may, in its sole discretion, cover in whole or in part a fine or penalty other than those listed in Rule 47.1 above imposed upon the Member (or imposed upon a third party whom the Member is legally obliged to reimburse), provided the Member has satisfied the Association that he took such steps as appear to the Association to be reasonable to avoid the event giving rise to the fine or penalty.

3 The Association shall be under no obligation to give reason for its decision pursuant to Rule 47.2 above.
Other rules to consider

- Rules 3 to 5 – Entries and duration of cover
- Rules 6 to 9 – Conditions of cover
- Rules 23 to 26 - Termination and cesser
- Rules 51 to 63 – Limitations etc. on P&I cover
- Rules 71 to 77 – General limitations
- Rules 80 to 88 – Claims etc.
Cover quiz:

Cargo, striking, pollution and other claims
“The emergency dredging incident”

- The M/T Arendal was a product tanker entered in a first class P&I club and had H&M insurance on Norwegian terms including 4/4 RDC and FFO cover.

- While approaching the berth at the Shell Pernis terminal in Rotterdam, the M/T Arendal lost all propulsion power due to an untimely engine black out and drifted with excessive speed towards the berth. In order to stop the vessel, the Master intuitively released the starboard anchor, let go the appropriate length of the chain and dragged the anchor to a full stop of the vessel in time to avoid the contact with the quay. As the maneuver was made upstream, the M/T Arendal soon drifted back and stayed put anchored luckily out of the way of other traffic.

- A few minutes later the master was called up on the VHF by two tugs nearby offering to assist in getting the vessel the short distance to its berth. They were asking for the master’s agreement to the Lloyd’s Open Form salvage contract. The master called his employer’s operation department who in turn called the vessel’s P&I Club.

- How would you consider the matter as a P&I claims executive?
“The emergency dredging incident” continued

- Approximately one hour later, the Master was called up again on the VHF and this time it was the traffic control. They had been approached by a chemical plant nearby which suddenly had lost power from an important high voltage power cable which according to the draft was crossing the river bed at the place of M/T Arendal’s anchored position. It was soon established that this cable got broken when the M/T Arendal dragged anchor. The chemical plant experienced a production stop for two weeks until their supply of high voltage electricity had been safely restored.

- How would you consider the matter as a P&I claims executive?
The M/V BLUE and the M/T RED

- In the morning of 23.03.2009 while entering the traffic separation scheme in the international waters of the English Channel, the M/V BLUE was struck by the M/T RED. The M/V BLUE immediately took in water and started sinking in 20 meters of water. Bunkers from a damaged tank started leaking out.

- The M/V BLUE is a 10,871 GT general cargo vessel covered in Gard for P&I risks with RDC and FFO risks included 4/4

- The M/T RED is a 79,652 GT LNG carrier covered in Gard for P&I risks with RDC and FFO risks excluded (covered by H&M 4/4)
The M/V BLUE and the M/T RED continued

• Allocation of liability
  • 75 % with M/T RED
  • 25 % with M/T BLUE

• Damages
  • M/T RED: USD 1 million DTH
  • M/T RED: USD 1 million pollution
  • M/V BLUE: USD 4 million DTH
  • M/V BLUE: USD 1 million pollution

• Allocation between insurers (cross)
  • M/T RED P&I pays
  • M/T RED H&M (RDC)pays
  • M/V BLUE P&I (RDC) pays

• In single liability one party pays the balance of claims