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

- Part one-

Nordisk Institutt for Sjørett
23.4.2009
Andreas Brachel
Gard
Background:

How did P&I Clubs come about?
Insurance history

215 BC Concept of protection against maritime perils (*Romans*)

1347 First marine insurance policy (*Lombards*)

1688 First known reference to Edward Lloyd’s coffee house in Tower Street

1836 Collision liability - case *Vaux v Salvador*

1855 First P&I club, now called Britannia

1870 Cargo liability – case *Westenhope*

1899 Creation of International Group of P&I clubs

1906 English Marine Insurance Act
Introduction and Background

- Hull Underwriters were the first “modern day” marine insurers.
- The first “Protection Societies” were created during the mid 1800s as an adjunct to the Hull Clubs because of increased exposure to risk.
  
  - One-quarter damage to hull
  
  - Cargo liabilities
  
  - Passenger liabilities (Lord Campbell’s Act)
Interface H&M and P&I

- The P&I Clubs have expanded their scope of cover over the last 150 years.

- How?
- H&M clubs have narrowed their scope of cover over the same period by excluding certain risks with which they have lost money.
- The shipping industry responds by adding these risks to the named risk insurance products offered by P&I Clubs.

- P&I insurance is meant to provide a **seamless cover** with the H&M insurance
- The interface between H&M and P&I is of great practical importance for several types of claims
## Coverage

<table>
<thead>
<tr>
<th></th>
<th>Marine</th>
<th>P&amp;I</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hull and Machinery (H&amp;M):</td>
<td>Protect the value of property</td>
<td>Protection and Indemnity (P&amp;I): Protects the owner against third party claims</td>
</tr>
<tr>
<td>Increased value (IV)</td>
<td></td>
<td>Freight, Defence &amp; Demurrage (FD&amp;D)</td>
</tr>
<tr>
<td>War Risks:</td>
<td>Covers H&amp;M and P&amp;I Risks caused by war risks</td>
<td></td>
</tr>
<tr>
<td>Loss of hire (LoH):</td>
<td>Protects the owner against loss of income</td>
<td></td>
</tr>
<tr>
<td>Strike</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **Marine:**
  - Hull and Machinery (H&M): Protect the value of property
  - Increased value (IV)
  - War Risks: Covers H&M and P&I Risks caused by war risks
  - Loss of hire (LoH): Protects the owner against loss of income
  - Strike

- **P&I:**
  - Protection and Indemnity (P&I): Protects the owner against third party claims
  - Freight, Defence & Demurrage (FD&D)
P&I Clubs as a Legal Entity

The Corporate Structure of P&I Clubs

- Mutual associations – owned by the members (the insureds) for the members
- Operated on a not for profit basis meaning in practice that the claims and operating costs in a policy year shall be covered by the premium and investment income in that year
- Any surplus will be allocated to the reserves
- No external capital owners involved expecting a return on their investments
- Mutual insurance means insurance at cost – no profit is ceded to external capital owners
The International Group of P&I Clubs

The IG consists of 13 Clubs covering 90% of the world’s merchant fleet

- Norway: Gard, Skuld
- UK/Bermuda: UK Club, Britannia, Standard, Steamship, West of E, North of E, London Club, Shipowners
- Sweden: Swedish Club
- Japan: Japan Club
- USA: American Club
Co-operation between P&I Clubs

- London Group of P&I Clubs established in 1899 for the purpose of agreeing a claims sharing arrangement

- Renamed the International Group when non-English Clubs became members

- Collective purchase of market reinsurance since 1951
Co-operation between P&I Clubs (IG)

• Functions
  – Claims sharing
  – Collective purchase of market re-insurance cover
  – Pressure group acting on shipowners’ behalf

• Legal Framework
  – Pooling Agreement (governing claims sharing and purchase of market re-insurance)
  – International Group Agreement (securing the discipline required to operate the Pool)

• Club Rules
  – Terms of entry agreed between the P&I Club and the Member; must include exemptions and exclusions in the Pooling Agreement
Claims Handling

• The Pooling Agreement for P&I claims does not “kick in” until the claim has reached the USD 7 million level (net of deductible), so the vast majority of claims never go into the Pool (or above).

• In the normal course, the Member notifies the Club of an incident, the file is registered and a reserve is set on the file.

• The reserve is based on the estimated liability exposure (including costs and expenses) and the deductible.

• Further handling involves information gathering and settlement negotiations.
The rules:
The starting point
Rules

- Rules 3 to 5 – Entries and duration of cover
- Rules 6 to 9 – Conditions of cover
- Rules 23 to 26 - Termination and cesser
- Rules 27 to 50 – P&I cover
- Rules 51 to 63 – Limitations etc. on P&I cover
- Rules 71 to 77 – General limitations
- Rules 80 to 88 – Claims etc.
The scope of the P&I cover

As a pre-requisite to any named risk P&I cover, the insured’s liability has to arise from the operation of the ship.

Gard Rule 2(4)(a):

A Member is only covered in respect of liabilities, losses, costs and expenses incurred by him which arise in direct connection with the operation of the ship.
Claims related to ship operations

- ‘People’ claims - Rules 27-33
- Cargo claims - Rules 34 & 35
- ‘Striking’ claims - Rules 36 & 37
- Pollution claims - Rule 38
- GA and salvage - Rules 41 & 42
- Other claims/liabilities

Remember: P&I is a legal liability insurance. ‘Commercial’ payments are not covered.
The rules:

Personal injury and crew claims
P&I Claims Related to Persons

- What people are on board a ship?
  - crew Rule 27
  - passengers Rule 28
  - others carried on board Rule 29
  - people not carried on board Rule 30
  - stowaways, refugees etc. Rule 32
All Claim Types 1996-2007:

Owners entries at 20 February, 2008 (gross of reinsurance)
Rule 27 | Liabilities in respect of Crew

1 The Association shall cover:

a) liability to pay hospital, medical, maintenance, funeral and other costs and expenses incurred in relation to the injury to, or illness or death of, a member of the Crew, including costs and expenses of repatriating the member of the Crew and his personal effects, or sending home an urn of ashes or coffin and personal effects in the case of death, and costs and expenses necessarily incurred in sending a substitute to replace the repatriated or dead man;

b) liability to repatriate and compensate a member of the Crew for the loss of his employment caused in consequence of the actual or constructive total loss of the Ship or of a major casualty rendering the Ship unseaworthy and necessitating the signing off of the Crew;
Rule 27 | Liabilities in respect of Crew

c) liability to pay compensation or damages in relation to the injury to, or illness or death of, a member of the Crew;

d) liability for costs and expenses of travelling incurred by a member of the Crew when the travelling is occasioned by a close relative having died or become seriously ill after the Crew member signed on, and costs and expenses necessarily incurred in sending a substitute to replace that Crew member;

e) liability for wages payable to an injured or sick member of the Crew or on death to his estate;

f) liability in respect of loss of or damage to the personal effects of a Crew member.
Rule 27 | Liabilities in respect of Crew

Provided:

- Where the liability is contractual (e.g. sick wages), the terms of contract (e.g. CBA) are previously approved by the Club.
  - Reviewing CBA’s is a large part of the job in the Crew Department!
- Reference to “personal effects” excludes valuables and non-essential items.

Exclusions:

- **No recovery** for liability arising under a contract of indemnity or guarantee between the Member and a third party. *E.g. a shipyard*
- **No recovery** arising out of the carriage of specie, bullion, precious or rare metals or objects, plate, bank notes, negotiable instruments, etc. unless previously agreed to with the Club.
2 The Association shall cover:

a) **costs and expenses** which are not recoverable under Rule 27.1 and which are necessarily incurred in sending a substitute to replace a member of the Crew who has been left behind; (deserters)

b) **costs and expenses** which are not recoverable under Rule 27.1, which are necessarily incurred under a statutory obligation in repatriating a member of the Crew of the Ship and in sending a substitute to replace him and which would not have been incurred had there been no such statutory obligation; and

c) **costs and expenses** incurred as a direct consequence of complying with an order for the deportation of a member of the Crew and in sending a substitute to replace him ...
Evaluating risk: crew contracts and CBAs

- **The contract will be checked for the following benefits:**

- **A) Medical Treatment:** Treatment at the shipowner’s account. Often subject to a time limit (120 days), or, where there is no time limit, a permanent disability assessment clause.

- **B) Sick wages:** Usually equivalent to a % of the basic wage.
  
  Often subject to time limits (POEA 120 days maximum), but could have no limit (ITF injury).
Evaluating risk: crew contracts and CBAs

- **C) Disability Compensation** – usually in case of injury, but also occupational illness may be included (ITF/AMOSUP).

  POEA also covers work-related illness cases. Usually found as a Table in the Appendix of the CBA.

- **Note!** Most contracts have maximum amounts ranging from USD 50,000 (POEA) to USD 175,000.

- **D) Death Compensation:** Usually payable for any reason while under contract. However, some CBAs exclude compensation for suicide.

  Range from USD 50,000 to 250,000 depending on rank and CBA. Often includes payment to children under 21 years old (max. 3 or 4 children).
Evaluating risk: crew contracts and CBAs

- **E.) Personal Effects.**
  Compensation payable following a maritime casualty such as a sinking, grounding, etc.,
  The maximum payment is usually USD 3,000.

- **F.) Compensation for Termination of Employment**
  In cases of grounding, sinking, fire, etc...
  It is usually 2 months basic wages.

- **G.) Jurisdiction Clause.**
  Jurisdiction is most often subject to the courts and laws of the seafarer’s domicile.
Rule 28 | Liabilities in respect of passengers

- The Association shall cover:
  - **a)** liability for **injury** to, or **illness** or **death** of, or loss of or **damage to the effects** of passengers and hospital, medical or funeral expenses incurred in relation to such injury, illness or death;
  - **b)** liability to pay damages or compensation to passengers on board the Ship where such liability arises in consequence of a **casualty**, including any liability to return passengers to their port of departure or to forward them to their port of destination and to pay for their maintenance ashore;
  - **c)** liability pursuant to **mandatory rules of law** for loss caused by **delay** in the carriage of passengers and their effects;
  - **d)** costs and expenses incurred as a direct consequence of complying with an **order** for the deportation of a passenger which would not have been incurred had no such order been made,
Rule 28 | Liabilities in respect of passengers

- **provided** that:
- **i)** the Association's liability under paragraphs (a) and (b) above shall not exceed what it would have been had the passage contract **relieved** the Member of liability to the maximum extent permitted by applicable law;
- **ii)** the Association's liability under paragraph (d) above shall be subject to the provisos to Rule 27.2; and
- **iii)** the cover shall be subject to proviso (iii) to Rule 27.1.
- **iv)** for the purpose of Rule 28(b) above a casualty shall be defined as an incident involving either collision, stranding, explosion, fire or other cause rendering the Ship incapable of safe navigation to its intended destination or a threat to the life, health or safety of passengers.
Rule 29 | Liability for other persons carried on board

1. The Association shall cover liability arising out of the injury to, or illness or death of, or liability for loss of or damage to the effects of persons carried on board other than Crew or passengers provided that:
   i) in the case of a person other than a close relative of a member of the Crew, the Association has approved the presence of such persons on board;
   ii) the cover shall be subject to proviso (iii) to Rule 27.1.

2. The Association shall cover costs and expenses incurred as a direct consequence of complying with an order for the deportation of any such other person carried on board which would not have been incurred had no such order been made, subject to the provisos to Rule 27.2.
Rule 30 | Liability for persons not carried on board

- The Association shall cover liability resulting from the injury to, or illness or death of persons, other than Crew, passengers and other persons carried on board, provided that where the liability arises under the terms of a contract or indemnity and would not have arisen but for those terms, the liability shall only be covered when and to the extent that those terms have been approved by the Association.
Rule 31 | Diversion expenses

- The Association shall cover extra costs of fuel, insurance, wages, stores, provisions and port charges attributable to a diversion, over and above the costs that would have been incurred but for the diversion, where these are incurred solely for the purpose of securing treatment for an injured or sick person on board, or for the purpose of searching for a person missing from the Ship, or necessarily incurred while awaiting a substitute for such person, or for the purpose of saving persons at sea.
Rule 32 | Stowaways, refugees or persons saved at sea

- The Association shall cover costs and expenses directly and reasonably incurred in consequence of the Ship having stowaways, refugees or persons saved at sea on board, but only to the extent that the Member is legally liable for the costs and expenses or they are incurred with the approval of the Association. The cover does not include consequential loss of profit or depreciation.
Rule 33 | Life salvage

- The Association shall cover sums legally due to third parties by reason of the fact that they have saved or attempted to save the life of any person on or from the Ship, but only if, and to the extent that, such payments are not recoverable under the Hull Policies or from cargo owners or underwriters.
Cover quiz:

Personal injury and crew claims
“The drunken sailor”

- Senior Engineer Augusto Costa was given 12 hour land leave in Boston, Massachusetts and took the opportunity to visit a bar in the harbor area together with some of the other crewmembers from the ship on which he was employed. After a few hours, they were all intoxicated with alcohol to various extents. What happened next is unclear, but Mr. Costa got at some stage involved in a fight and was stabbed with a knife.

- Due to his injuries, Mr. Costa was hospitalized for three weeks in Boston before being repatriated back to his home in the Philippines.

- Mr. Costa’s employment contract which was based on a CBA had a clause excluding any recovery or payments for “self-inflicted wounds”.

- How would you consider the matter as a P&I claims executive?
While attending a two weeks cruise out of Southampton, UK Mr. John Roberts arrived in the port of Oslo, Norway. In the cruise terminal at Festningskaia Mr. Roberts noticed a poster advertising a sightseeing bus trip with a local sightseeing company. The ticket was to be paid on the bus which left regularly from the cruise terminal. While visiting the Operahouse, Mr. Roberts fell from a structure on the roof, broke his neck and died. Mr. Robert’s relatives claimed the cruise line for damages.

How would you consider the matter as a P&I claims executive?