

Controlling risks at sea

--- Indications of mutual insurance upon safety onboard

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Abstract: A lot of efforts have been made to improve maritime safety by means of enhancing safety legislation and verifying the compliance thereof. However, with the development of mutual insurance, it is contributing more and more to better maritime safety. The P& I clubs to be discussed in the paper are now not only exercising controls and providing guidance in event of emergencies, but also keeping close and continuous monitoring over safety operations and conditions of those vessels entered, through their world-wide network and advanced communication, and by professional accident-handling teams.

In view of this, it is necessary to discuss the roles of commercial shipping and the close linkage between it and onboard safety practices. The paper looks at first basic principles in maritime insurance, and then focuses on the rules and activities of P&I clubs and their implications upon shipboard operations.

Key words: safety management, risk, P& I clubs, mutual insurance, maritime insurance

1. Introduction

The reasons why the significance of maritime insurance particularly mutual insurance upon shipboard operations is emphasized are, firstly, because the controlling of the subject matter and the performance of the insurance contracts rely on greatly crewmembers onboard. Ships sail always away from their homeland and their owners. Only when the crewmembers thereon know of the key points of maritime insurance can they perform well their duties onboard, protect the benefits of their owners, and finally minimize damages and losses at sea. Secondly, because the objective of maritime insurance is to deal with risks at sea, which is the same as the risk management currently being actively introduced into maritime circle, although the difference is there between those two, i.e. the former prevents maritime accidents by means of permitting ships to be operated within acceptable risks, and the scheme of indemnity and compensation, while the latter uses risk management techniques such as risk management analysis and risk decision-making to handle risks. Thirdly, because P& I clubs themselves are involved directly into safety management onboard by activities like ship visits, issuing various loss prevention reports, publishing operational guidance and booklets, etc.,

Among the types of insurance provided by the maritime industry, what is important for shipowners is the hull insurance and protection & indemnity (mutual) insurance. But the latter links shipboard operations closer. It mainly covers shipowners' liabilities to the third party in respect of personnel injuries and illness, cost, pollution, removal of wrecks, towage, etc.. In its organization, correspondents shall be familiar by crewmembers ---- those staying in major ports and providing various maritime

services to shipowners and crewmembers. As to the scope of cover, the following has closer relationship with shipboard operations: the personnel injuries, illness, repatriation and replacement of employees, loss of belongings of crewmembers, displacement of stowaways and refugees, fines, etc.,

The essay describes the influences of mutual insurance upon shipboard operations in a sequence of ship's normal operations, suffering risks covered, sustaining accident covered, and post-stage of the accident-handling.

2. Direct involvement in safety management

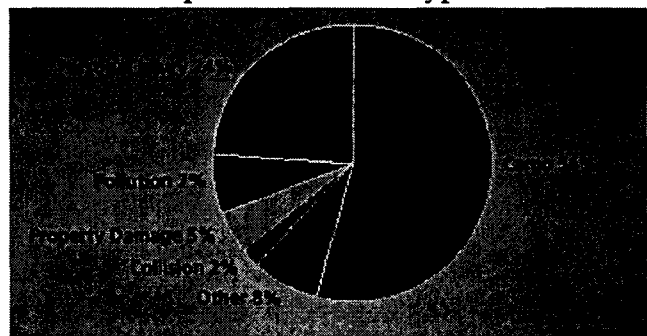
The P & I clubs are much experienced in handling maritime disputes and claims. Benefiting from their good communication network, their professional experience enables them to provide shipowners good recommendations and technical guidance on safety management, emergency-handling, and legal assistance, etc,. For instance, one of the largest clubs, the UK P&I club, has 7 offices and 13 representatives in Asia and more than 400 correspondents worldwide. It owns a strong and professional team, keeping watch 24 hours a day to handle various emergencies in which its shipowners may be involved.

The clubs also conduct many activities for safety management and risk control purposes such as executing ship visits, publishing loss prevention bulletins and videos (shipboard emergency plans, hatch cover maintenance, human factor analysis, ship survey reports, etc.,), providing seafarers' health reports, making statistics on the emergencies and accidents that its members were sustained. For instance, the UK P&I Club made statistics for all damages and losses which were suffered by its members' ships of different size, tonnage, age, flag. All these information is valuable for better safety management onboard. (see tables as follows).

(Table-1) Principal cause of pollution



(Table-2) Ship failure and risk types



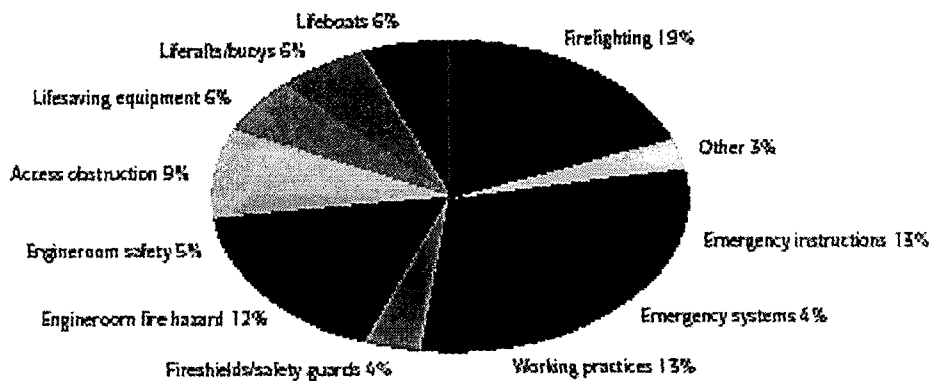
Source: UK P&I Club, 1999

P&I clubs pay more attention than hull underwriters to the daily operations of the ships entered. Currently, the most important activity affecting shipboard operations is the ship visit, for which the ship and crewmembers shall provide full co-operations. P&I UK launched the program from 1989/1990 with aim to maintain high quality of the ships entered, to target sub-standard ships, to inspect the operations of ships entered, and to encourage the adoption of higher standards, etc,. More than 6000 visits have been executed since its first introduction. Meanwhile, more than 500 ship visits each year are taking place, enabling the club to monitor effectively the conditions and performance of the ships entered.

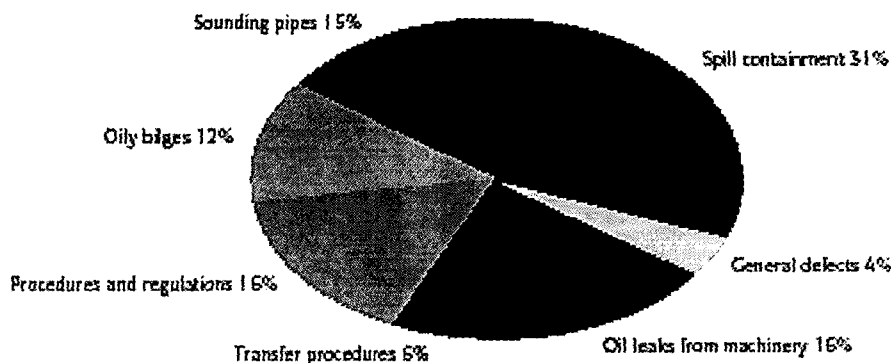
Ship visit can be carried out by three steps normally: 1). Education: let crewmembers know the roles of the club, causes of maritime accidents and usual ways to handle them; 2). Loss prevention: discuss and analyze claims in the past and at present, reduce and prevent future claims by means of providing recommendations; 3). Inspection: independent surveyors will inspect the ships and assess the cargo-worthiness, safe manning, services and maintenance, safety standards (particularly the crewmembers' safety experiences), pollution prevention measures, operational performance of the ship.

Through such activities, individual shipowner can make comparisons with other members in respect of safety level. The observations, recommendations and assessments after survey will be divided into major items and minor items. The former will give rise to the attention of all members in the club while the latter will be dealt only with crewmembers. A final report of such survey will be made showing the outcomes as table-3 and 4 and circulated to members to raise their attention. Usually the visit takes about 4 hours. But in case the surveyor thinks it necessary to conduct a more detailed inspection for the ship in question, the club could decide a sound condition survey. Additionally, port state control inspector and the surveyors engaging in routine cargo inspections could initiate such a visit as well.

(Table-3) Shortcomings in safety standards and equipment



(Table-4) Pollution control



Source: ship survey report, 1995, UK P&I Club

2. The impacts of key principles of maritime insurance

The 1906 English Maritime insurance act is influential for maritime insurance legislations and practices in many countries. As one of the branch of maritime insurance, those principles thereof certainly apply

to the mutual insurance, just as indicated by the UK P&I club rules (2004) that *“These Rules and all contracts of insurance made by the Association shall be subject to and incorporate the provisions of the Marine Insurance Act, 1906, of the United Kingdom and any statutory modifications thereof... (paragraph L, rule 5 , 2004 UK P&I rules)”*

There are some important principles defined by the act. One of them is the Utmost Good Faith principle. It requires each party involved in the maritime contract has the duty to perform most faithfully in the whole period starting from the first stage of entering into the contract to its completion. In detail, it includes duty of disclosure, description and warranty, etc.. The former two are relatively simple ---- simply disclose all information to the insurer that the assured know or should know. But it is worthwhile to discuss the warranty, , which is significant for shipboard operations. There are several types of warranties, seaworthiness warranty, navigation warranty, class warranty, etc.. Since all of them are included in hull insurance, and mutual insurance is mainly a complement to hull insurance, class warranty is emphasized in mutual insurance.

Ship’s class indicates technical conditions, furthermore the capability of a ship coping with risks at sea, for which the clubs stress on it critically. In this case, provisions are laid down in the club’s rules which read: 1). *The ship must be and remain throughout the period of entry classed with a Classification Society approved by the Managers of the Society (referring to Manager hereinafter), and;* 2). *Any incident or condition in respect of which that Classification Society might make recommendations as to repairs or other action to be taken by the Owner must be promptly reported to that Society;* 3). *The Owner must comply with all the Rules, recommendations and requirements of the Society...;* 4). *The Owner authorizes the Managers to inspect any information, relating to the maintenance of class of the entered ship, in the possession of any Classification Society..., and will where necessary authorize such Classification Society or Societies to disclose and make available that information to the Managers...;* 5). *The Owner must immediately inform the Managers if,... the Classification Society is changed and advise the Managers of all outstanding recommendations, requirements or restrictions specified by any Classification Society relating to that ship as at the date of such change. (paragraph K, Rule 5, 2004 UK P&I rules)*

All crewmembers including the master shall perform correctly such warranty to make sure possible claims could be handled smoothly and successfully. The case *“The Caribbean Sea” (Lloyd’s Rep.338,1980)* indicates the importance of observing such warranty. Vessel *“Caribbean Sea”* (classed by BV, the French classification society) grounded then slightly during her voyage from port A to B, and then sank several days after leaving port B. According to the BV regulations, she was deemed to have lost her class at the moment of grounding even it was just a slight touching, but she was allowed to maintain her class until arriving at port B. To maintain her classed by the society and covered by the insurer in and after port B, the shipmaster in this case should invite surveyors of the society to inspect the ship and obtain a seaworthiness certificate if everything is to the satisfaction of the surveyors. Luckily the master of the *“Caribbean Sea”* did so.

The problem is that, many masters and their senior crewmembers pay little attention in reality to their society regulations, even those relating to the suspension, termination, withdrawing of the ship’s class. This may cause them unable to respond properly to accidents, and correspondingly their owner great risks of failure to be compensated for damages and losses sustained. And the further question is that they may be sometimes unwilling to take the above-mentioned remedies even they know the

regulations, when they call at small ports where classification society surveyors are not easily available and the damages to the ship are very small.

4. The impacts of stipulations on on-scene accident handling

The aforesaid are the efforts made by the insurers (including clubs) to prevent maritime accidents. Additionally, certain clauses in P & I Club rules are set out to stipulate the owner's responsibilities in respect of accident handling, which are also useful for the reduction of damages and losses, and are meaningful for shipboard operations.

The P & I clubs usually incorporate "*Obligations with regard to claims*" in their rules. Those obligations are also required by the Utmost Good Faith actually. The shipowners are requested by those clauses to: 1). Promptly notify the Managers of every casualty, event or claim upon him which is liable to give rise to a claim upon the Club, and of every event or matter which is liable to cause the Owner to incur liabilities, costs or expenses for which he may be insured by the Club; 2). Promptly notify the Managers of every survey or opportunity for survey in connection with a matter referred to under the above.

Another major responsibility that shipowner shall bear with is "*Obligation to sue and labor*", requiring the owners to take and to continue to take all such steps as may be reasonable for the purpose of averting or minimizing any expense or liability in respect whereof he may be insured by the Club, upon the occurrence of any casualty, event or matter liable to give rise to a claim by an Owner upon the Club.

It could be summed up based on the above that the shipowners usually owe duties to the club: 1). Duty of notification when risks increase; 2). Duty of notification when dangers incur; 3). Duty of sue and labor. Although there are no express regulations requiring crewmembers onboard are directly responsible, the performance of those duties rely greatly on those crewmembers staying onboard with the ship and cargoes in the same risks. Additionally, the correct performance of the above is essential for P & I Clubs to make professional and instant decisions as to the handling of emergencies. The safety of ships can thus secured. Therefore it is very important for crewmembers to bear in their mind those duties and perform them properly.

5. The impacts of stipulations on claims after an accident

Those stipulations relating to the handling of claims after an accident may not directly affect the technical operations onboard. But they are still useful.

5.1 Survey of ships and handling claims

The processes of handling a claim are usually very much complicate. But the formality relating most closely to shipboard operations is simple, i.e., the survey of ship. It aims to ascertain the damages to or losses of the ship and cargo onboard. In detail, it includes the investigation on the extent of damages and/or losses, causes of the accident, salvage and sue and labour, collection of evidences, make survey report, etc.. All of these affect the shares of losses and responsibilities that each party shall take.

Therefore, the rules of P & I clubs stipulate that the Managers may appoint a surveyor or such other person at any time in their discretion as they may think fit to inspect an entered ship on behalf of the Club. The Owner shall afford such facilities as may be required for such inspection, and comply with such recommendations as the Managers may make following such inspection. Usually such a survey is carried out by the insurer or his agent soon after receiving the notification from the owners, but in case

of accident occurred abroad, by the agent of insurer. The crewmembers shall provide co-operations therefor.

However, due to the complexity of the international maritime legal and contractual relationship, the parties involved in an accidents could be very much complex. For inspection purposes, many surveyors and investigators may present on behalf of different interests, such as salvage association surveyors, P&I surveyor, MSA officers, classification society surveyors, etc.. It is difficult in many cases for crewmembers onboard to identify who is who. This will undoubtedly lead to difficulties and misunderstandings in claim handling. But the P&I Clubs are reliable for crewmembers in these cases since the clubs themselves are gathered by the owners voluntarily, and all decisions made are for the owners' benefits.

5.2 Further claims to third party

The P & I club will make further claims at the later stage after it has made compensation to the owner if a third party is reliable for the accident. To facilitate this to be done successfully, the owner shall provide assistance to the club. He should at all times promptly notify the Managers of any information, documents or reports in his or his agents' possession, power or knowledge relevant to such casualty, event or matter.... He shall copy at the request of the Managers all the relevant documents relevant to the accident, and he shall facilitate the interview conducted by the Managers with all relevant personnel as well.

In a word, the club has the right to use all the evidences collected by the owner. However, this relies on the crewmembers particularly the masters and senior officer onboard. Theoretically, they have many advantages over other investigators such as the court and MSA to collect various evidences properly, especially those before and after the accident, because they are on the scene of the accident and they can collect all kinds of evidences professionally, widely and timely, just as understood by the Nautical Institute "the master and senior officers onboard can play independent and decisive roles in collecting evidences."

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