

AA Talk

Oil Pollution Claims: Who Pays - Liability or Property

Insurers?

This was the subject of a workshop at the seminar held in Nansha in November, 2013 as mentioned in the last issue. The editor, who sat on the panel would like to share some note-worthy points for readers' easy reference.

- “A shipowner’s hull and machinery insurance is designed primarily to protect the assured against losses to his vessel whereas protection and indemnity insurance seeks to indemnify an owners in respect of discharge of legal liabilities he has incurred in operating his vessel.” (“P&I Clubs Law and Practice” by Steven J Hazelwood).
- Liability Insurance (P&I Club)
 - Subject to terms and conditions of the cover.
 - Often questions to ask:
 - Do the costs or liabilities incurred come within the definition of “pollution risks” covered under the Club Rules?
 - If the costs or liabilities do come within the pollution risks cover, are they nonetheless excluded by the Club Rules as sums insurable under hull policies?
 - Normal P&I pollution coverage:
 - Liability for loss, damage or contamination
 - Costs of any measures reasonably taken to avoid or minimize pollution and
 - Liability for loss or damage to property caused by measures so taken
 - Cost and liability incurred as a result of compliance with an Order or Direction by any government or authority there being 2 caveats, namely:
 - Not a requirement for salvage or repair of the ship
 - Not covered under Hull Policy.
 - Relevant exclusions:
 - General Average Exclusion
(Note coverage for cargo’s proportion of General Average by reason of breach of contract)
 - Hull Policy Exclusion

- Entered Ship exclusion
- Double Insurance Exclusion
- War and Nuclear Exclusion.
- Property Insurance
Subject to terms and conditions of the Policies, e.g.:
 - Hull & Machinery
ITC-Hulls, subject to English law and practice, cover
 - Particular Average – where the costs form part of the reasonable cost of repairs;
 - Ship’s proportion of General Average, Salvage &/or Salvage Charges (reduced in respect of any under-insurance).
 - Cargo
ICC, subject to English law and practice, cover
General Average and Salvage Charges, adjusted according to....
 - Freight
ITC-Freight, subject to English law and practice, cover
Freight’s proportion of General Average, Salvage and/or Salvage Charges (reduced in respect of any under-insurance).
- Since the P&I clubs would only consider expenses if they are not recoverable under a Hull & Machinery policy in normal form, it is suggested to find out how liabilities would become part of General Average and the position for Particular Average claims.
- General Average
 - Subject to GA clause in contract of affreightment (York-Antwerp Rules being widely used), in absence of which to law and practice of the destination.
 - Pre 1994 YAR – Direct consequence of GA would be allowable as GA.
 - At Sydney CMI Conference 1994 – “pollution compromise” – whilst pollution liabilities resulting from GA act are excluded from GA, the costs incurred by the parties to the adventure to prevent or minimize such liability can, in certain circumstances, be allowable.
 - YAR 1994 provide the following in respect of pollution-related allowances:
 - Any expenditure incurred must be reasonable (Rule Paramount)
 - No allowance can be made for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape/release of pollutants (Rule C)
 - An Article 13 salvage award that is enhanced by a salvor’s efforts to prevent or minimize damage to the environment is allowable

- in full in GA (Rule VI)
- As exceptions to Rule C the cost of preventing or minimizing damage to the environment is allowable in GA, under Rule XI(d):
 - As part of an operation for the common safety that would come within an Article 13 award if performed by a salvor
 - As a condition of entry to a port of refuge
 - As a condition of staying in a port of refuge, but excluding additional measures resulting from an actual spill
 - In connection with cargo movement admissible as GA.
 - Particular Average – reasonable cost of repairs
 - When a vessel effects repair it is often necessary to remove oil and clean tanks and there can be no dispute that such items form part of the cost of reasonable repairs – see also Rules of Practice D-6 of the Association of Average Adjusters.
 - Cost of cleaning the drydock and/or preventing damage to the drydock
 - Where it is foreseen that some pollution may occur in the drydock despite precautions, it is submitted that the pollution clean-up costs be regarded as a necessary incident of the drydocking and would follow the treatment of the cost of drydocking;
 - Where there is an accident giving rise to pollution whilst the vessel is in the drydock, it cannot be said that the pollution flows directly from the necessity to drydock the vessel and the cost of the clean-up is therefore disallowed in the claim against Hull & Machinery Underwriters.
 - Editor's Note:- Some questions will be raised and discussed in the next issue.

YORK-ANTWERP RULES

In issue No.102 we reported that the IWG (International Working Group) on General Average appointed by CMI to carry out a general review of the York-Antwerp Rules had prepared a questionnaire with the first question concerning the “abolition” of General Average. The IWG has now reported that, there being no support for “abolition” of the principles, the subject of abolition will be dropped and not discussed further.