

AA Talk

HULL INSURANCE CLAUSES -

Scope of Insurance (I)

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(As noted in Issue 122 the Editor of this column advised he would visit ITC-Hulls 1/10/83 with the assistance of the book "ITC HULLS 1.10.83" which was written by Mr. D. John Wilson who kindly allowed the Editor copyright on his book for any future editions.)

Clause 1 NAVIGATION

This clause is in the nature of an underwriting clause (as distinct from claims), and sets out certain limits on what the ship may – or may not – do for the annual premium charged. It opens in positive form by stating what the ship is permitted to do, but then continues with the negative provisions.

***1.1** The Vessel is covered subject to the provisions of this insurance at all times and has leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or craft in distress, but it is warranted that the Vessel shall not be towed, except as is customary or to the first safe port or place when in need of assistance, or undertake towage or salvage services under a contract previously arranged by the Assured and/or Owners and/or Managers and/or Charterers. This Clause 1.1 shall not exclude customary towage in connection with loading and discharging.*

The wording of the clause 1.1 relating to Towage deserves some explanation. The risks to which a vessel is exposed while under tow – or towing – are greater than when she is proceeding alone under her own power. Although Underwriters are willing to accept those extra risks:

- (a) On humanitarian grounds, when other vessels or crafts are in distress,
- (b) When it is customary for the insured vessel to be towed, i.e. in confined waterways or when entering, leaving or shifting within a port, or
- (c) When she has suffered a machinery breakdown or other accident and needs towage into a port of refuge,

they are not prepared to allow the vessel to undertake towage or salvage services on a purely commercial basis (or distinct from emergency assistance on humanitarian grounds) under a contract previously arranged by the Assured etc.

With regard to (c) above, when the insured vessel is herself in need of assistance after a machinery breakdown or other accident, it will be noted that the clause wording permits towage only to "the first safe port or place". It is submitted that "the first safe port or place" may not necessarily be the nearest in mileage terms and should be construed as being the suitable port or place with adequate facilities for receiving the vessel under the prevailing circumstances.

In practice, it is not uncommon after a machinery breakdown for the vessel to be towed, not to a nearby port of safety, but for a much longer voyage, either to the port of

destination or to a cheaper or more suitable port of repair. On such occasions, Underwriters will usually charge an additional premium for the extra risks to which the vessel will be subject, certainly if the expense of the towage (including extra premium) is likely to be treated as general average to which Cargo Interests will contribute.

1.2 *In the event of the Vessel being employed in trading operations which entail cargo loading or discharging at sea from or into another vessel (not being a harbour or inshore craft) no claim shall be recoverable under this insurance for loss of or damage to the Vessel or liability to any other vessel arising from such loading or discharging operations, including whilst approaching, lying alongside and leaving, unless previous notice that the Vessel is to be employed in such operations has been given to the Underwriters and any amended terms of cover and any additional premium required by them have been agreed.*

Where vessels are too large – or too deep in the water – for them to enter the ports for which their cargo is intended, the whole or part of the cargo is customarily off-loaded into small vessels or ocean going barges in deep water at sea off the port of discharge. The risk of the two vessels colliding, or ranging against each other in heavy swells during such discharging or loading operations, is quite considerable, and any damage so sustained – or liability incurred – is not payable by Underwriters unless previous notice has been given to them and any additional premium required or amended conditions of insurance be agreed.

The clause 1.2 does not apply to normal lightering within a harbour or in inland waterways to small barges or similar harbour or inshore craft, nor to emergency operation following a casualty, e.g. jettison, transshipment or lightening a stranded ship.

1.3. *In the event of the Vessel sailing (with or without cargo) with an intention of being (a) broken up, or (b) sold for breaking up, any claim for loss of or damage to the Vessel occurring subsequent to such sailing shall be limited to the market value of the Vessel as scrap at the time when the loss or damage is sustained, unless previous notice has been given to the Underwriters and any amendments to the terms of cover, insured value and premium required by them have been agreed. Nothing in this Clause 1.3 shall affect claims under Clauses 8 and/or 11.*

Whilst some over-valuation of trading ships is accepted by Underwriters for sound business reasons, they are not anxious to see Ship-owners making windfall profits by reason of the total loss of a vessel on her final voyage to the breakers' yard, when the value to her owner, indisputably, is only the scrap value. Accordingly, this clause 1.3 limits any claim (other than for collision liability under Clause 8 and general average under Clause 11) to the market value of the vessel as scrap, unless other arrangements have previously been made with Underwriters.

Clause 2 CONTINUATION

Should the Vessel at the expiration of this insurance be at sea or in distress or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

Ships are customarily insured for a specific period of time – usually one year – and negotiations for the renewal of the policy are likely to take place a month or more before the existing policy expires.

One could have the situation, however, where a serious accident occurred towards the end of the policy period and before negotiations for renewal of the policy had taken place. Insurance cover would still be required when the current policy lapses, but the premium required for a seriously damaged ship which may still be in danger at sea could well be prohibitive.

To alleviate this position, Underwriters hereby agree to hold the vessel covered to her port of destination, if required, at the same rate of premium as on the existing policy, but on a monthly basis.

Clause 3 BREACH OF WARRANTY

Held covered in case of any breach of warranty as to cargo, trade, locality, towage, salvage services or date of sailing, provided notice be given to the Underwriters immediately after receipt of advices and any amended terms of cover and any additional premium by them be agreed.

In the Navigation Clause dealt with earlier, it was warranted that the vessel should not be towed or undertake towage of salvage services, etc., for reasons which have already been explained. There are other clauses containing various warranties.

However, if the Ship-owner wishes to break any of these warranties, he is at perfect liberty to do so and retain the cover of the insurance, provided only that he gives notice to the Underwriters immediately on learning that a warranty has been or is about to be broken, and agrees any amended terms of insurance or any additional premium required by the Underwriters to cover the extra risk involved.

Clause 4 TERMINATION

This Clause 4 shall prevail notwithstanding any provision whether written typed or printed in this insurance inconsistent therewith.

Unless the Underwriters agree to the contrary in writing, this insurance shall terminate automatically at the time of

4.1*change of the Classification Society of the Vessel, or change, suspension, discontinuance, withdrawal or expiry of her Class therein, provided that if the Vessel is at sea such automatic termination shall be deferred until arrival at her next port. However where such change, suspension, discontinuance or withdrawal of her Class has resulted from loss or damage covered by Clause 6 of this insurance or which would be covered by an insurance of the Vessel subject to current Institute War and Strikes Clauses Hulls—Time such automatic termination shall only operate should the Vessel sail from her next port without the prior approval of the Classification Society,*
4.2*any change, voluntary or otherwise, in the ownership or flag, transfer to new management, or charter on a bareboat basis, or requisition for title or use of the Vessel, provided that, if the Vessel has cargo on board and has already sailed from her loading port or is at sea in ballast, such automatic termination shall if required be deferred, whilst the Vessel continues her planned voyage, until arrival at final port of discharge if with cargo or at port of destination if in ballast. However, in the event of requisition for title or use without the prior execution of a written agreement by the Assured, such automatic termination shall occur fifteen days after such*

requisition whether the Vessel is at sea or in port.

A pro rata daily net return of premium shall be made.

This clause is highly important from the Underwriters' point of view and, for this reason, the clause opens in heavy type and states that it shall prevail notwithstanding any provision whether written, typed, or printed in the insurance which may be inconsistent therewith.

When Underwriters originally wrote the insurance, some of the important factors which they would have taken into account in assessing the premium to be charged were:

- A) The Ownership (or Management) of the vessel;
- B) The Classification Society in which the vessel was entered;
- C) The Flag (or country in which she is registered).

With regard to:

A) OWNERSHIP – Two vessels of identical build, size and age etc. can present two widely different risks to an Underwriter. One vessel may be operated by first class owner, be maintained by him in tip-top working order, and with the best available officers and crew to run it. Another owner, in his endeavours to make every possible penny of profit, may be inclined to run his ship on shoestring, skimping on repairs and routine maintenance, and this reputation may also mean that only second class personnel will be likely to accept employment with him. A ship belonging to the second owner clearly presents a greater risk to Underwriters, and the premium charged will accordingly be higher.

B) CLASSIFICATION – All Classification Societies endeavour to maintain high standards for the vessels classed by them, but it is a commercial fact of life that there is competition between the various Societies and that if one Society insists that certain work be done on a ship to maintain her class, the owner may transfer the vessel to a more "lenient" Society. It follows that the risk on that vessel has probably increased if the work required by the original Society has not been done, or done to a lesser standard.

C) FLAG – It used to be the custom for vessels to be registered under the national flag of the country of which the Ship-owner was a citizen, but since the World War II it has been common to see ships flying with a flag of a country – often with no previous maritime tradition – largely for convenience and tax reasons. In addition, some of the maritime nations have fewer and less stringent regulations concerning safety of life at sea etc., and Underwriters accordingly take careful note of the flag under which the vessel sails, or any change in that flag.

To protect themselves, Underwriters reserve the right to terminate the insurance whenever:

- a) The Classification Society is changed, or
- b) the existing Class of the vessel is:
 - (i) changed,

- (ii) suspended,
 - (iii) discontinued
 - (iv) withdrawn, or
 - (v) expires.
- c) The Ship-owner:
- (i) sells his vessel,
 - (ii) transfers it to new management,
 - (iii) charters her on a bareboat basis (i.e. where the charterer provides the crew and takes over all responsibility for running the vessel), or
 - (iv) has his vessel requisitioned (e.g. by the Government);
- d) The flag of the vessel is changed.

Unless Underwriters agree to the contrary in writing, the termination of the contract takes place automatically at the time of any of the above "changes", except that if the vessel is then at sea, termination is usually deferred until arrival at a port – see the actual wording of the clause 4.2 for precise details.

Where the insurance is terminated, a pro rata daily net return of premium is made.

Clause 5 ASSIGNMENT

No assignment of or interest in this insurance or in any moneys which may be or become payable thereunder is to be binding on or recognised by the Underwriters unless a dated notice of such assignment or interest signed by the Assured, and by the assignor in the case of subsequent assignment, is endorsed on the Policy and the Policy with such endorsement is produced before payment of any claim or return of premium thereunder.

Sections 50-51 of the Marine Insurance Act 1906 provide that:

"50. - (1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by indorsement thereon or in other customary manner.

51. Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative.

Provided that nothing in this section affects the assignment of a policy after loss."

The basic purpose of Clause 5 is fairly simple. Before any claim on a policy can be paid, the policy itself has to be produced, and the claim will normally be paid only to the named

Assured. By this clause, Underwriters avoid the possible situation where they have paid a claim to the named Assured, and are subsequently called upon to pay yet again by an assignee whose title is on some separate document of which the Underwriters had no previous knowledge.

IN BRIEF

- At the 150th annual general meeting of the British Association of Average Adjusters (better known as AAA) held in London on 9th May 2019, two average adjusters practising in Hong Kong, namely Peter Fei and William Lai, were elected Fellow of the Association, both having satisfied the examiners of the AAA. It is worth mentioning that William is the first local Hong Kong born AAA Fellow after Benson Chiu who qualified as AAA Fellow in 1992 and held a grand retirement party on the 15th March 2019.
- The Supreme Court gave judgment on the “Renos” on 12th June 2019, and unanimously allowed the appeal in part, holding that “the cost of repairing the damage” to the vessel under section 60(2)(ii) includes expenditure already incurred before the service of notice of abandonment, but excludes charges payable to the salvors under SCOPIC (Special Compensation Protection & Indemnity Clause) of LOF (Lloyd’s Open Form).

Accordingly, attention is drawn to page 28 of Issue 122 of “Seaview” and readers are requested to delete item 12 from the list of costs of recovery &/or repair of the Vessel which may be included in computing a CTL.

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