

A Comparative Study of the Legal System Governing P & I Club Marine Insurance in Iran and England

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Abstract

Many of the issues of law system of marine insurance are based on the marine law and trade law and basically its increasing development is due to the growth and spread of marine transport and international trade. Most of merchants and international merchants are trying to move their products despite time-consuming only because of its low costs of carrying, with giant ships through the sea. The idea in itself causes the development of international transport by the sea and consequently the developments and movements in the sea, facing with the events of sea is inevitable and all kinds of accidents, collisions and crashes in ocean areas have engaged the thought of merchants and removed them from the path of trade. P & I Club Marine Insurance was the result of concerns of victims from the events of the sea. In this study, it is tried to legal system governing marine insurance P & I Club including structure of P & I clubs, hazards and collisions under coverage and how to compensate in this type of insurance to be examined. Analytical –descriptive method is used in this research.

Key words: P & I Club Marine Insurance, English law, Collision, Compensation

INTRODUCTION

In 1836 that two ships of de wax and C-Salvador had accident with each other and owners of both ships demanded compensation from each other, a new perspective was opened on insurers and they thought about creating a new cover. At that time, when the two ships collided, there was no responsibility for the ship owners and virtually none of them accepted the responsibility arising from its operation and the difference caused the involvement and legal problems, following the occurrence of the above problem, the owners of ships and floating requested from insurers of hull insurance to cover the risks of the accident with a third party and they agreed with the plan of this subject and in a form of collision covered the responsibility in the form of 75% in responsibility of insurer and 25% in responsibility of the ship-owner. Since even 25 percent responsibility for owners due to heavy damages of ships (fiscal third) was

remarkable, so they thought to insure 25 percent above near the insurers. The result was the emergence of P & I marine insurance. P & I insurance in the world are issued in clubs that are made up of the owners of the ship and managed in two ways. What is mainly considered in marine transport insurance is to cover the damages to the goods carrying. Accordingly, the present paper is to examine the various aspects of marine transport insurance of P & I Club, questions about the structure of this type of insurance, the risks covered and how to pay compensate. The research hypothesis is raised that in Iranian legal system, P & I Club marine insurance are not considered more. This means that Iranian legal system has a set of general rules in the field of insurance. But on the Law of the UK, it must be said that P & I Club marine insurance is the product of the country's maritime industry and there are rules codified in the field of risks under coverage, collisions and damage in the rules governing this category of marine insurance. This article attempts to examine the question and hypotheses mentioned. In this regard, first, the concept of marine insurance and then P & I Club marine insurance is defined, then the structure of P & I Club marine insurance and risks and collisions covered by this type of marine insurance is explained and analyzed and then damage of collisions are studied and finally the conclusion is expressed.

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CONCEPTS

Discussion around a subject requires a clear understanding of the concepts of the issue so that the relative awareness of research to be obtained and the reader to be found the readiness to enter the main discussions.

Marine Insurance

The marine insurance- the oldest protection type against losses- has a long history and is contemporary with marine trade. Ancient Finighis, Greeks and Romans used to protect themselves against the risks resulted of sea voyages by the various insurance systems sometimes in the form of loan or mutual guarantees (1, 2 and 6). The concept of marine insurance not has a fundamental difference with non-marine insurance. In the definition of this class of insurance have said contract of marine insurance is a contract by which, the insurer undertakes to compensate marine damage of insure ie losses caused by marine hazard in a way and to the extent to be agreed. ²Article 1 of the Iran's Insurance Act provides that: insurance is a contract whereby one party undertakes, in return for payment or funds from the other party, in the event of an accident, to compensate the damage to him or to pay a certain amount. Committed is called insurer, the obligation party called policyholder, the fund that policyholder gives to the insurer, the insurance premium and what is insured is called the issue of insurance. So marine insurance is a means to provide damage of shipping and other marine activities related in the framework of agreement of parties of the insurance contract.

In a definition that is presented of marine law of England, contract of marine insurance is a contract whereby the insurer undertakes compensation of insured properties as agreed, against the damage from sea to sea that in voyages is likely to occur (3 and 4)

Article 1 of marine insurance law of England in this regard stipulates: "the contract of marine insurance is a contract whereby the insurer undertakes to pay the marine damage (possible damage) of voyage to policyholder, the agreed amount." Marine transportation insurance contract is subject to particular international issues and law and on the other hand, risk transfer and risk from the insurer issued to reinsurers caused to policy to be drafted under a specific condition uniformly in international practice to in the case of an accident, rights and obligations of insured, insurer and reinsurer to be identified similarly and uniformly and to be prevented of changes and different interpretations and disagreements and why different institutions acted to formulate general terms of policies that the most famous of these institutions is "Institute of London insurers" that has been formulated the general conditions

of marine insurance (1 and 8) Unfortunately Iran's marine law has many shortcomings. Among the issues regarding sea and marine insurance provisions and marine proceedings that in the law of their approving referred to ordinance is still insufficient (2, 5 and 7)

P & I CLUB Marine Insurance

P & I CLUB Marine Insurance today is one of the most common and the most important type of specialized companies of ship insurance that variety of their supplied covers, in addition its own operational structure has changed them to one of the most important safety tool in the international shipping. The clubs, both in relation to the crew and also in relation to the operation of the ship act as a third party insurance and cover obligations of ship owners in a range such as marine pollution, quarantine, etc. to fine some violations of shipping. Robert H. Brown has defined P & I clubs in the dictionary of marine insurance as: P & I clubs are cooperatives that owners of ship have created to cover risks that are not insured in conventional markets of marine insurance. Each owner enters his ship to the club and receives a certificate of entry. Ship owner for entry must pay a fee considering the tonnage of the ship or his ships that usually prepay a percent of it and pay a percentage of it in the next installment, after considering the total income and cost of the club at the end of each fiscal year. The non-profit club is run by an administrator and a committee that club members have appointed and monitoring it. It should be noted that premium rates and conditions that is applied in the law of 1906 of marine insurance, in this type of cooperative insurances is not applied, but in the end, the premium shall be adjusted in agreement with the members.³ These associations that each is formed of a number of ship-owners are called the mutual insurance institutions because their annual funding is provided from the fund location that following the request of association is paid by the member and in the implementation of the association commitments to providing compensation of each of the owners is paid (4 and 9) In other words, the owners of ships that are members of the association are insurer and the policyholder to each other. In fact, in exchange of money that the owners pay to association according to the ship capacity or their ships and thus receive the certification of entering ship to association that is considered a kind of insurance policy, association is committed to pay funds to him that owner of each ship as damages resulting from the use and marine hazards including coverage has paid to persons (third). The annual quota for each member depends on the number and importance of the accidents that occur and may be as a result of multiple payments, association throughout the year demands deposits from its members to be able to provide appropriate compensation coverage in necessary cases. Therefore, unlike insurance companies that literally

are merchants and do profit activities, associations that have been formed for the purpose of mutual support of ship-owners from each other are not profit institution (5) Now, fourteen associations around the world are working very seriously and considering very favorable financial implications of membership in the communities, most of ships entering ports of different countries, including Iran's ports are registered in one of the associations and have insurance coverage (10)

THE STRUCTURE OF P & I CLUBS

All of these clubs are known today as a specialized insurance company and now, of course, are companies registered with limited liability and without capital stocks, because they are non-profit. At the time of liquidation and dissolution of the company, commitment to a certain amount is guaranteed from each member. The guarantee has a concept of mutual and reciprocal that every member according to task has paid damages based on the principle of cooperation of its share that ultimately will not be more than one amount. Because clubs are an insurance company, all legal requirements (insurance) will be applied about them. Marine Insurance Act 1906 in England has defined them as (1):

When two or more persons mutually agree to insure each other against marine losses in fact, have formed a cooperative or mutual insurance company. Club members elect Board of Directors among themselves. The Board of Directors appoints responsible members for providing policy of running the club for administration of affairs and policies that will make and managers form a team for shipment tasks in their contribution. These tasks include: issuance of the insurance policy, issue members certification, admiration of damages and recoveries, record and protect the rights of members of the club. Under the supervision of directors, some qualified workers, such as issuance of policy, financial expert, lawyers and experts of insurance claims are employed to be able to handle claims related to club to representing members.

As previously mentioned, clubs use a large number of commercial lawyers and representatives in the role of brokers in the worldwide that each has invaluable experience in doing P&I services in the field of their activity. Clubs are to communicate and convenience, from brokers of offices, receive information on how events and inform to clubs, as well as helping to injured ships. These offices are in fact the representative of club in the field of maintaining the interests of members.

Regulations in different clubs may be varied but in English clubs, it is common that they consider the beginning of

fiscal year or year of the issuance as twentieth of February to the twentieth of February of next year and starting of all policies 12 months is from this date. Of course, this does not mean that policies which are issued after this date will have problem. Extension of contracts is done by itself unless the declaration of terminating one month before the February 20 is sent

For receiving and determining the amount of the premium, as previously mentioned, the club assesses the potential risks of vessel or vessels registered plus their past loss ratio and determines early insurance premium on the tonnage of the ship. The primary receiving is called prepaid. If necessary, it will follow completed or extra payment. Position and the circumstances of each member annually is reviewed (February 20) and through the following order, the record of losses of member is obtained: Fee of income, losses paid of premium, administrative costs of investment profit and the reinsurer right recoverable.

RISKS COVERED IN P & I CLUB

Marine risks that are insured by directors of P&I are described a varied category of remaining risks (1, 11, 12 and 13) However, this definition has reduced somewhat from the importance of insurance covered by P&I clubs but such a description of P&I insurance indicates that insurance coverage has progressed for a category of different risks unplanned and empirically and gradually. Much new insurance coverage has progressed as a result of social changes, technology and legislation in a past century and many of them have emerged as a result of increasing demand. When ship-owner is covered under insurance of P&I Clubs, he will be insured against all his responsibilities from oil spills to unexpected collisions and death of humans, trafficking passengers, compensation for damage to baggage of passengers and freed the drunken crew of the ship from local prisons by indicating the insurance (2)

Ship hull insurance and other devices in the first place insured the policyholder (ship owner) than the damage entered to the ship, while the insurance P&I is indemnity to the owner of the ship in connection with the legal liabilities that he has undertaken in connection with the performance of his ship. Old Forum of ship hull was developed to support clubs and the responsibility of guarantee compensation as second part of their performance was added to their duties later.

The first part of their responsibility regarding the "protection refers to the responsibilities and accidents that caused by the ownership of property. While the second part of their responsibility in relation to

“indemnity” refers to the responsibilities arising from the employment of (employment) ships. This does not mean that insurance cover in connection with trade and responsibilities related to shipping and management is covered by the first part of support insurance. However, as in the votes of Court of Appeal of England is acknowledged on this issue, never a precise and explicit definition of these two categories of insurance is provided, and “there is no clear boundary between the two.”^(3 and 14) Since the border between the two categories of insurance, in practical not has any result, and considering the fact that most of modern P & I clubs, today have incorporated the two categories of insurance under insurance of P & I, in future other discussions not to be considered the traditional distinction between the two categories of insurance. It is not necessary that the members of club insure themselves to all the risks that are covered by insurance of club rules but each member can negotiate about the risks that willing to insure themselves to them and on whether he wants to discount to such risks to be negotiated. In the common booklet of rules of P & I clubs, it is provided that insurance of indemnity by the clubs converts by insurance the responsibility of members in the following events ⁽⁴⁾

Risks Related to the Cargo

If the ship’s cargo is lost or defected during traveling, the product owner to compensate damage faces with two solutions: First, since he has insured his goods and paid the money of insurance, he can directly refer to the insurer and compensate his commodity. In this case, in fact, he has selected the best and easiest method of compensation by submission of claim to the insurer. Because in this case, he will not be involved problems to defend his case against the carrier and also damage to him is also compensated.

Second, since some product owners do not want to distort their good experience with their insurance (Usually in their small and insignificant damages), they litigate based on existing carrying against the carrier.

Many legal regimes and systems when there is such a potential liability for the carrier allow to the insurer to seek compensation from the carrier.

According to Articles 386 and 387 of the Commercial Code of Iran, carrier exclusively is responsible for lost, missing, delay in the submission or product defect and marine damage to cargo (Avarie) unless he proves that the damage to product related to the property or wrongdoing of sender, receiver of product (consignee) or the result of teachings which one of them is given to him and finally, damages are related to events that no careful carrier could prevent it.¹

It is observed that the principle is on civil liability of the carrier, in land transport, air and marine and even though someone else is the agent of carrying product. Legislator by anticipating such responsibility caused to the carrier to be more careful in performing their duties in the carriage of goods, it seems according to these articles and certain aspects of them to Article 10 of the Civil Code, the carrier cannot predict the condition of non-responsibility in the contract of carriage of goods consignee. Such a change is consistent with legal logic and flow of international goods transport.

P& I insurance coverage of ship-owners is in fact, insurance for such liability of ship owner against the owner of product or insurer replaced. Of course, knowing that P& I clubs are not Insurers of product is very important.

Although the risks that are covered by the insurance are those which are litigated due to occurrence of an incident against the carrier or owner of ship due to damages such as damage, loss, loss of product. But often claims related to product are related to non-compliance with the obligation incumbent to “maritime capability” (Article 3 of the Hague Convention and Hague- Vizby) that not only follows the responsibility of owner of the ship for the loss or impairment of the product but sometimes they have additional areas to minimize the damages and incident management as well ^(15 and 16).

Risks Related to Change the Destination

When the demand to change the destination from the product owner is sent to the ship’s owner, he has a few options ahead. The first option is to modify contract of carriage. In normal mode, three bills of lading for each cargo is issued, however, if total of three main Bill of Lading is not done due to change destination, anyone who has even one of these main bills can claim ownership of the goods and request its delivery from the ship owner. In this case, the owner is obliged to deliver the goods and may be responsible against the original owner. Another option is to insist on providing commitment from the holder of the bill of lading. A commitment that is guaranteed by the owner removes any liability arising from such redirection from responsibility of ship owner.

Risks Related to the product Health Scarce Products

In the event that the product owner or captain of a ship requests and ship owner acts to issue the bill of the lading with healthy product with the knowledge to lack of health product in exchange for warranties (LOI), the committed will be forged that his action has the risk of opening legal case on the fraud against ship’s owner or captain, in this case, club does not bear any responsibility and the considered member must protect himself using (LOI) in

front of potential complaints associated with such action. It is worth noting that these (LOI), legally not have the documental worth (1)

Club of members usually not covered by insurance in front of rare or very valuable goods unless shipment contracts to be approved by the club management and also maintenance space of the goods is not proper on board and the captain of the ship transports and maintains the goods in accordance with the special instructions. Some clubs believe that these goods should be maintained and transported in a special space that is called "strong room".

Club cannot guarantee function or schedules of members' ship. Therefore, any complaints regarding the failure or inability to ship or ship late in the transport or loading of the goods is outside the area of responsibility of club and such damages will not be covered by the club.

Product owner may demand that the goods to be delivered without presentation of a bill of lading and against presenting letter of indemnity (LOI). In this case, if a third party in charge of one of the main bill of lading demand for cargo, ship owner will be responsible for any damage against product owner. In this case, the club is not responsible for member and he must protect himself using warranty against such risk.

The issuance of bill of lading before or after the deadline normally is provided by the owners of the goods that likely the time of his requesting carrying is not in accordance with the agreements with the buyer and credential of documents opened. So he requests inserting date inconsistent with the actual date of delivery time, the date is quite contrary to the law and deemed contrary and club does not accept any responsibility for it.

Risks Related to Human

P&I clubs provide third party insurance cover for their members for financial responsibility arising from compensation for losses or costs resulting from death, personal injuries or damages or disease. Area covered by insurance is in this area included the following cases.

Medical treatment

This item included insurance cover for liability for seafarers (1) to injury, illness, and death and returning the hometown.

A member may be responsible according to the terms of the contract with the crew about wages of injured crew or compensation of each crew injured.

The majority of claims that P&I clubs are usually involved are related to pay wage of patients and the cost of medical

treatment of little and non-important diseases that ship owner pursuant to its contract with a crew is responsible for paying them (2).

Other persons may be on board of the ship that as a sailor are not covered by this definition. Independent employers usually embark employees like barbers, and actors on the deck of boats. As a general rule, any contractual liability related to these persons is in the responsibility of employers and any liability arising from the imprudence is on the owner of the ship. Where a person is employed on a ship of member of club under a contract that may affect liability of insurer, the contract according to the regulations is sent to P&I club for approval. If the contract or agreement approved by the club and if necessary, additional premium is paid, then any liability arising from such a contract will be covered by insurance club (2).

Funeral costs

The word funeral means something more than a funeral in the place where the death occurred or where the body of one is out of the ship. In some countries with tropical climates, immediate burial is necessary. Ship owner in the case of accepting deceased family will follow such regulations. Although in most cases, the body of the deceased may be transported to his land for burial. Body to home and homeland for burial or cremation is deceased (4 and 17).

This insurance coverage also includes the return of deceased relatives. Funeral costs are costs that are deemed essential.

Crew wages

The ship-owner may be required under the terms of the contract pay the wages for sick or injured crew of the ship that do not work in the ship or if his death to pay descendants. Wages or minimum wage that can be demanded from the club are those that ship owner is obliged to pay it from when the crew stopped work until the end of the contract is stipulated in it. When the ship owner must request compensation from the club, he must extract an abstract from office of ship to show the club of what time and what place the crew has not been able to work on the ship. He must also provide an account of his monthly salary to prove the amount and nature of his wages.

Passengers and Visitors

Liability to pay damages or compensation for death, injury or illness of any passenger as well as compensation for damage to luggage and vehicles with a passenger, costs of reaching such passenger to destination or return him to the port of loading and the cost of caring for him on the beach is covered by insurance (18)

A ship is visited by many people. When they are present on deck, they are introducing risks such as injuries and even death. In these circumstances, the ship-owner may be prosecuted by them or their relatives to be compensated. If plaintiff to be able to prove that the death or damage in whole or partly is occurred due to imprudence of ship-owner or any person that legally ship owner is responsible for his negligence, he can compensate his losses (1 and 19).

Pilot and responsibilities related to death and bodily injuries caused by collision

Whenever the pilot wants to board on the ship or landed from the ship, the owner of the ship will be responsible for providing certain tools to access to ship and port because basically riding or landing of the ship can be not only dangerous for them but also navigation boat and its crew will be in risk. So the ship owner must take all necessary precaution acts.

In a collision event, ship owner as the third party may be responsible for the death or damage to the crew of the ship or its passengers or other persons that are on board of each ship. Under the Convention of Brussels collision enacted 1910, two collided ships jointly and individually are responsible for any injury or death caused by collision of course, provided that both ships to be known guilty in the incident. In this case, the plaintiff can claim against one of the two ship-owners. Claims that are raised by individuals in other ship against the insurer is covered by insurance (Article 19/10) But since there is no contractual relationship between the policyholder and the persons present on the ship, these claims are raised as claims of third parties. If both ships of collision are considered guilty, responsibilities due to collision to their failures will be shared between them.

However, when all necessary measures to reduce accidents are taken but unfortunately, mishaps occurred. Measures should be done that in the following issues; there are examples of them (1)

1. The situation to be return to safe and normal mode.
2. Medical measures required or first aids to be done.
3. If the ship is still at sea and organ damage is serious, injured should be taken to the hospital and to be advised medically from the International Centre of medical advice (CIRm).
4. The ship owners and club to be informed.
5. Their statements to be recorded in the presence of witnesses.
6. The findings should be investigated and discussed in ship security committee meeting (if the ship has such a committee) or similar working group meeting.
7. Details of the incident should be recorded in a suitable form and to be reported to considered persons in land.

8. Preparing and sending reports related to the incident to the flag State or the competent authorities
9. Recording details in the ship's office
10. Photos to be taken of the accident and the shapes and designs of the occurred problem, dated and signed by the witnesses.
11. If the reason of incident is technical violation or problem in ship equipment, damaged or broken parts or disabled of vessel should be carefully protected, to the parts to be able to be analyzed to be determined the cause of this fault.

Stowaway

Stowaway is a person who at any port or place near the port without the consent of the ship's owner or captain or any other person responsible for the ship hides himself in the ship and after he left the ship to be on deck. Problem of stowaway in the past few decades has changed from a common nuisance to a big international problem in terms of time, manpower and costs. Time and manpower spent on training the political and practical results of the stowaway to delay the ships are all the problems related to this issue (1 and 20). To prevent stowaway definitely it is better to prevent passengers from entering the deck of ship in the first stage or before the ship leaves the port to be inspected. Compliance with security cases to prevent stowaway on ships and in port is essential (21 and 22). Usually after reaching vessel to the port of destination, the immigration authorities incarcerate stowaway in a cabin on deck and ask the ship-owner to employ the person as charge of security to be ensured stowaway do not escape. Even it is possible that immigration officials insist to stowaway to be transferred into a hotel under the care in land in which cases a security official should be employed (1).

All these will have many costs for ship owner. Immigration authorities in some countries may

request additional representations or warranties to cover the cost of the seizure and return of the stowaway as a condition of license of riding stowaway to ship.

Immigration officials permit to exit and return of the stowaway only if the stowaway has documents of travelling or temporarily documents of travel is issued by the embassy or consulate of that country. Given that the issuing of these documents is often time-consuming, the captain should report to ship-owner or P&I club that a stowaway on board the ship is found. Then the club can notify his local brokers that before reaching the ship to port to be taken necessary arrangements (23). Stowaway nature should be determined before the broker goes to the embassy or consulate authorities for travel documents. It is not always easy and may require further investigation

using an interpreter or an expert. Many P&I clubs have created a questionnaire to help to solve this problem. But this requires the help of people like brokers that in the use of the questionnaires to have skill if stowaway not answers to them correctly. In addition, passport-size photographs of stowaway and fingerprints will be required (2). When all the data obtained, the broker will raise the issue to the embassy or consulate of stowaway, embassy officials may sometimes before issuing temporary travel documents for stowaway had an interview with him to be convinced that he is from their nationals. Often before the nationality and correct nature of the passenger to be approved, it should be will be contacted with different embassies.

Fine

Some countries impose significant fine for violation of immigration laws for example if the ship before reaching to port not announces the presence of stowaway in ship to migrant officials, or it carries a passengers without proper documents or a visa, it will be fine. But if the owner informs the immigration authorities fully or in a timely manner, he will generally not to be fined. The consequences of not announcing stowaway in ship can be very serious and imposed heavy fines to ship owner, providing escape conditions for stowaway whether from a ship or while on the beach are under the custody of immigration officials are among the most important fine of ship owners (3).

Freight, Demurrage and Defense

Insurance of Freight, Demurrage and Defense (FDpD) is a category of insurance that sometimes are also known as defensive insurance, FDpD insurance is to cover the costs imposed by the members in terms of getting legal consultations as well as legal costs in pursuing or defense of different types of claims. The main difference between insurance FDpD and insurance PpI is that insurance FDpD insured only members against the costs. This insurance does not insure their members for their substantive responsibilities, but also for the costs imposed as a result of the prosecution and defense of liabilities offer insurance coverage, the normal costs that are covered by FDpD are costs of lawyers, officials, referees and assessment experts and other spacialists.¹ FDpD insurance has a discretionary nature, it is offered by most P&I clubs. The club will review whether an uninsured cautious person with regard to all the circumstances including the nature of the dispute and the possibility of compensation will raise a dispute or against the dispute will defend himself or not? Discretionary nature of insurance FDpD to all types of FDpD insurance and all P&I clubs as well as to independent defensive clubs is common. When a difference occurs in result of an accident in abroad or the difference is the subject of foreign law or arbitration clause that the important functions of a lawyer is that to guide and coordinate the activity of foreign lawyers,

brokers and auditors and other experts in order to achieve the best interests of the policyholder.

In this regard, the club brokers' network can be used on a large scale. Better guidance of lawyers or the defendants can be one of the most important activities in determining the outcome of any particular dispute. Some risks that there is legal expenses insurance for it could be considered. However, 80% of claims related to FDpD are related disputes about renting ship (2). Ship owners can gain income by renting their ships, whether in the form of termed lease or rent for a specified journey as a result of the reluctance of transportation, Demurrage and renting ship indicate the amount of money that the ship owners achieve by leasing their ships. While there are many types of disputes related to ship renting. Ship owners often litigate due to non-payment of ship renting, Demurrage and freight of ship tenants or product senders. The complexity of modern contracts of renting ship and the number of exempt conditions from responsibility that by the parties is added to the standard forms leads to various types of disputes related to ship renting. Even if there is no difference or simply the contract party fails in paying these amounts under the lease contract of ship that the insurer can contact the Department FDpD to help him in the interpretation of certain clauses in the lease contract of ship (2). Taking back the ship rented, lien, port and confident dock, demands that related to ship performance and characteristics of ship are such claims that need to be asked them help of the Department FDpD.

COLLISION DAMAGE IN P & I CLUB INSURANCE

Physical collision of two ships, collision, can lead to the creation of large losses in ship building, burning it and sinking of one or both of the ships. Of course, there is much risk about injury or death of crew or passengers, oil spill and damage to goods and properties in both ships equal to the collision. The responsibilities of the owners of the vessels arising from collision usually are insured by hull and machinery insurers and by the clubs P& I.

Ship Collision Insurance

Insurance of marine hull insurance is known as term insurance includes hull insurance, equipment and machines for the ship. Until 1892, Britain and many other countries, ship and cargo insurance, hull insurance on the Lloyd's form (G.S) that took place in 1779 was set. But this time the ship generally based on a uniform form known as Lloyd's marine insurance policy (RAM) or similar form of marine insurance by London underwriters Institute (ULI) is prepared to do so.

Insurance ships in terms of marine insurance is known as hull insurance including hull insurance, equipment and machines of the ship.¹ Until 1892, in Britain and many other countries, hull insurance was done based on form of insurance of ship and Lloyd's goods called (G.S) that was set in 1779. But this time the ships generally are done based on a uniform form of Lloyd's marine insurance policy (RAM) or its similar form ie marine insurance of companies that is prepared by Underwriters London Institute (ULI). The institute now operates under the name of International Association of London. These policies include only general information about insurance contracts like insurance policy number, name of policyholder and ship, time or the journey that insurance contract is concluded for it, the value of the ship (on the policies with agreed value), or the sum insured (on the policies with non-agreed value) and insurance premium, but insurance contract provisions that indicates the scope of insurance coverage and the insurer's rights and obligations and policyholder practically are inserted in one or several uniform forms of the Institute of London Underwriters that under the title of constraints of the institute of policies attached (2 and 24).

In the event of a collision of two ships and other ship, the Club P&I compensates the damage of the ship partly and if the damage is not compensable under the Running Down clause with collision liability clause contained in a hull insurance of insured ship. Because hull and machinery insurance insure 3.4% damage to other vessel or property on board according to the provisions mentioned.

This type of insurance policy is perhaps the best example to connect P&I insurance and the ship's hull insurance. However, the hull insurance not specifies the limits of P& I insurance. But the rules of the club consider the assumption as issue that the member of club contracts his insurance to the entire hull insurance and to fill the errors that may potentially arise in ship collision under insurance coverage of P&I of contract according to the contract of ship

hull insurance in the UK, a club member of P&I can cover three-quarters of the damage in the collision of ship under the hull insurance coverage, while ship owners that according to America or Norwegian law, insure their ship may be for example, to be covered by hull insurance to all damages and so it is essential that members to be in relation to the precise scope of the hull insurance coverage and so it is essential that the members to be negotiated in relation to precise scope of insurance coverage about this type of risks or prevented that might be raised a gap in their insurance coverage or incur costs for unnecessary re-insurance.¹

The maximum scope that can be covered by the insurance of the club is determined by the club rules which until recently this scope to a quarter have been the ship's owner responsibility however, recently some of the clubs P & I have provided facilities for total insurance of liabilities arising from collision (2).

Rules of clubs generally include provisions that are called "sister ship clause": according to this condition, if ship of a member collided with another ship that generally or partially is dedicated to that member, he is entitled.

When the ship "A" collides with ship "B", the ship owner "B" is entitled to demand damage to his ship from hull insurance. At the end of the dispute, the insured is occurred when the ship "A" and ship "B" is owned by one person, in which case insurer of ship's hull after compensation of damage "B" as his successor understands that he cannot litigate against the ship-owner "A" because a person cannot litigate against himself. Because the damage of insurer to be compensated in this situation, the provisions will be included in the insurance policy which provides if the other ship collided with the policy holder, wholly or partly to be in his ownership, policyholder under the insurance policy has the same rights that if the ship was owned by owners that have no interest in the policyholder. So the insurer as an alternative of policyholder can demand its compensation from the impaired ship in the incident. Responsibility of policy holder in ships collision and the amount of damages that is payable by the insurer should be referred to an arbitrator or the policyholder and the insurer agree together (3). Sister ship clause is predicted in P&I insurance policies. According to this clause, the payment of ship's compensation of owner associated with costs that by its fault occurs to another ship and is responsible for payment of it is guaranteed (4 and 8).

Conditions of Collision Insurance in Terms of the Amount of Damage to the Ship

Complete destruction of ship

According to the general verdict mentioned in paragraph 1 of Article 55 of marine insurance law of England that is governing all marine insurance, the insurer is only liable to compensate for damages that is caused directly and immediately from the risks covered by insurance, provided that according to the principle governing in insurance law which is also applied in the context of marine insurance law, but by contrary stipulating in the insurance policy, the policyholders or other factors not caused the accident. (Part A, paragraph 2, Article 55) On this basis, generally in the constraints attached to the hull policies, list of various risks, under the coverage of insurance including hazards of the sea, rivers, lakes or other waters for sailing, fire, explosion, dealing with equipment and port installations,

lightning, accidents of time of loading and unloading, error of commander, officers, crew and guide as well as risks out of the insurance coverage, including risk of war, strike, nuclear weapons is included. It should be noted that the first category of risks covered by insurance ie risks of sea includes different events such as the sinking of the ship, reversal, storm, groundings, collision of ship with the sea floor and any external object other than water is also collision¹. So in the case of collision and provided that policyholder in accordance with rule of proving in premiums, prove that the loss is in the result of collision of ships, hull insurer must compensate damages caused by overall loss of ship covered. Such losses and provisions concerning its compensation in two general assumptions are conceivable: 1. Real loss 2. Total loss assumed. Notwithstanding the foregoing, in other issues of maritime law, the major effect of this separation is evident in the discussion of the marine insurance. According to paragraph 1 of Article 57 of the Marine Insurance Act of England which destroyed the insured case or so damaged that is not the property not insured or where policyholder irreversibly (certain) to be deprived of it, there is a real general damages, as the ship exploded is destroyed or drowned in the deep waters of the sea also according to Article 58 of the law: where the ship encountering risk is missing and after a reasonable period of time not to be received any news from it, it is the assumption on the real total damage. Accordingly, if the ship due to maritime accidents such as collision to be affected the real overall loss, the insurer must pay the amount mentioned in the insurance policy about the policy with value agreed and about the insurance policy with non-agreed value, pay the insurable value of the ship to policyholder unless in the insurance policy, something else is stipulated (Article 68 of the Act)

Now let's see in what cases, we face with total loss assumed of the ship. According to paragraph 2 of Article 60 of the marine insurance law of England: When the policyholder is deprived of seizing ship of his goods due to insured risk and given the circumstances, there is no likelihood of ship recycling or the product or cost of its refund is more than the value of ship or product after recycling and when the ship due to the risk of coverage of insurance damaged so that repair costs is high from its value after repair, we faced with a hypothetical general damages. In these cases, policyholder can consider damage to ship from the instances of minor damage somehow to be told or leave his ship and assign it to policyholder and thus, consider his damages from real general type. (Article 61) the effect of recent action of policyholder is unconditional transfer of all rights and interests in injured or missing ship to Insurer. So in the case of lawsuit against the owner of the ship, insurer must be responsive.¹For example: If the injured vessel is placed in the waters of the port, the port authority can

require the insurer to displace the wreck. A policyholder who wants to be considered his overall damage assumed from the type of real overall damage must give the notice of release and leaving ownership to insurer, otherwise, his losses will be considered merely from the type of minor damages. This announcement that indicates the intention of the policyholder on real assignment of ownership of the ship and its benefits to the insurer can be written or oral or in both ways but it is important that after receiving, confident information to be given to the insurer on the state of the ship. Insurer is allowed to accept leaving the ship owner and its transfer explicitly or implicitly and in this case, will not be allowed to accept his decision. The insurer could condone from the need to policyholder's warning (paragraphs 1 to 8 of article 62) and thus, pioneer in agreeing to the transfer of ownership of ship after the consent of the insurer with leaving the ownership of the ship, the damage is considered from real total type, the policyholder can refer him as it was said about the limits of responsibility of the insurer about the real total damage.

Minor damage of the ship

In most cases of maritime accidents, ship will be only suffered minor injuries as a result of the collision, a hole is created in the body of it or part of the machinery has been damaged. According to Article 64 of the Marine Insurance Act of England, special damage means minor damage of the subject of insurance that is created due to the risk of insurance coverage and the damage is not common. So the gist of minor damage is any damage to the ship resulting from accident (collisions) and if such losses voluntarily and in order to protect the public interests of all stakeholders occur in the health of the ship, the coverage will be subject of common marine damages. About such losses, the limits of insurer requirement in compensating damages are as follows:

A) By complying with explicit condition of policy, if the ship is repaired, the conventional cost of repair it that in any case, is not more than the sum of insurance or the insurer's obligation to any event to be paid to policyholder. (Paragraph 1 of Article 69) In this context, the explanations are necessary:

The insurer's commitment in the period of the contract included damages caused by hazards covered by insurance. So if in the period of validity of hull insurance, ship collides several times, the insurer is obligated to pay the cost of ship repair that about any accident will not exceed the sum of insurance. For example if the amount of commitment of the insurer in insurance with agreed value is 50000000 Rials and ship collides three times during one year insurance contract and 4000000, 10000000 and 35000000 Rials is the cost of repairing it, the insurer is obligated in any case, to

pay the cost of repairs even though the total amount of the sum is more than the insurance amount. (Paragraph 1 of Article 77) But while minor damage to the ship is not repaired and resolved, the vessel has total loss, policyholder can only refer to ship's hull insurer in terms of overall waste, however, policyholder is not entitled to receive an amount greater than the total damages.

Since in line with repairing the ship, usually new parts that naturally to old and used parts of ship have more value are used in ship, policyholder benefited from this situation and a part of his damages resulting from normal wear and tear and depreciation of ship (not marine accident) will also be compensated. In this case, the insurer can reduce a part of the value of parts from the sum of insurance payable to policyholder according to the above law, and if contrary to it not to be provided in insurance policy.

(B) if only a part of the damage to the ship to be repaired, policyholder is entitled to receive the conventional cost of repairs done and receiving conventional price due to the damages non-repaired provided that the sum of the amounts not to be more than the cost of total repairing of the damage that is calculated with the above conditions (paragraph 2 of Article 69). A point that its mentioning is essential is the difference between minor or special damage and the special cost. According to paragraph 2 of Article 64 of the Marine Insurance Act of England, costs that covered by or from policyholder for safety or protection of the subject of insurance, other than joint damages and rescue costs is called special damages. Special costs are not part of special damages as mentioned special damage means injuries and defects caused by the collision is occurred to the ship while special cost is the amounts that paid for the health and protection of the ship according to law. So the conventional costs of towing injured ship from the collision place to the port of repair place or dry pond and crew wages that during the ship's repair should be present in it can be considered from the class of these costs.

Damage to Fixed and Floating Objects

Other common damages that occur by ship are damages to dock, crane and other port facilities. However, it does not need damaged objects to be fixed or floating on the water surface. A damaged ship can also be regarded as fixed and floating objects. Another example is when the crane of ship collides with the roof of the warehouse or beach facility on the beach. Claims related to fixed and floating objects are placed in two major categories. Physical damages and indirect losses that are created as a result of the damages, the law of a place that the event occurs there always and without exception is governing liability arising from damages to properties.

Physical damages to properties

If properties damaged caused by an non-exchange action from the ship, then, by failing to care the person's properties and comply with duty of care, damage to be extended, the owner is responsible, in practice it is difficult for the owner of the ship that for contact of ship and fixed or floating object avoids liability. If the ship is moving and the object is fixing, there is failure assumption from ship effectively. In some areas of competence for damages of ports, regardless of ship failures, there is a certain responsibility. In most cases, liability arising from non-exchange is independent of the contract, though it may there are cases that ship owner to be concluded a contract. For example, the contract is for the use of a dock or terminal which includes a condition of immunity. Ship is considered responsible for damage to property in any way that is created. The plaintiff for any accident resulting from fixed and floating objects certainly demands guarantee, unless the accident is small. The insurance can also be insured by the insurer from the club or by the hull insurers.

Indirect losses

Any indirect loss that is created as a result of an accident is covered by the insurance. It is more difficult to assess the losses and often it is related to compensate properties owner for losing the possibility of using that property, even it may be port owners rent a space at the other port. Other ships who want to use the port faced with indirect losses such as delay of ship in loading or unloading.

Removal of wreck

Ship owner for whole or tacit damages under a standard hull insurance policy body is covered by insurance. For collision in standard hull insurance, the responsibility of removing or destroying wreck is exempted from the provisions of the insurance policy. If the ship to be repaired by spending beyond the value of the ship, it can be said that ships is considered wasted totally. The owner must notice the release of the ship to the insurance company. Hull insurers must accept the notice of releasing ship then they are responsible for the consequences and subsequent results such as removing the wreck. If the insurer refuses to accept such a notice, the result is that while the ship owner can claim damages on ship, the liability of displacement, destroy, marking wreck is with the owner and not transferred to the insurer. Here owner can claim these costs from his club; this rule can be applied to the cargo even if the ship not to be destructed (1)

Damage caused by the pollution of the sea

World ocean pollution is a subject that increasingly has been followed international concerns although most of the pollutions come from sources on land but it cannot be ignored the share of pollutions created by the marine

and maritime activities. In terms of quantity, the most important pollutions are from activities of the oil shipping which usually occur due to accidents involving tankers. Quantities of oil enter the sea through the normal operation of ships such as cleaning the ship's cargo. However, despite concerns is more concerned with oil pollutions but many of the chemicals that are shipped by sea are more dangerous for sea and coast environment. Claims that are raised due to incident leading to pollution mostly are as demand of damages that the most common of them is defect of the income from the area considered. For example, it can be referred to the impossibility of fishing with the operation of recreational means on the beach of incident which often estimate of actual damage of plaintiff in these cases is very difficult. The damage is covered by insurance P&I, of course it should be noted that insurance P&I have certain limitations on the liability of compensation in the event of oil pollution. On the responsibility for the clean-up, the total responsibility is applied in most jurisdictions, it means that the owner regardless of the failure and factors mitigating is liable, except in exceptional cases such as war, failure of the coastal state in doing navigation aids (2 and 23)

CONCLUSION

The results indicate that in the Iranian law, an establishment called Marine Insurance of P & I Club is the establishments of an unknown insurance and there is no statute about this insurance. In other words, in Iranian law, there is no specific definition of marine insurance and general definition of insurance is sufficient. It is stated in this definition that insurance is a contract that according to it, one party undertakes that for paying fund or funds on the other hand, in the event of an accident to be compensated damages to him. But in English law, there are special rules on the activities of P & I clubs. Establishing P & I clubs primarily is done based on an informal note or memorandum with providing statute. Apart from administrative regulations, documents submitted should contain the following points: clear definitions of the terms, members, regulations, accept members, leaving members, commitments will be held, although in the case of emergency, the assembly can be formed for several times. About the sum insured should be noted that it does not include a fixed sum but the fundamental basis is the tonnage of the ship that the right to vote is determined in how calculating premium based on it. The term of membership is usually at least a year, although for non-owners such as hire vessels (charter) naturally is less than a year. In general, it must be said that the members themselves directly manage and control clubs. In general, members (and ship owners) refer directly to the club; some are introduced through the broker to join the

club. It is customary that the broker is paid by member and not club. Membership has effect since providing proposal form and club at the time of the contract must be notified of the following cases: 1. hull coverage and machinery 2. Covers that must be taken from club. 3- full profile of ship 4. Type of goods carried. 5. Traffic area 6. Management, nationality and flag of ship 7. Statistics of damages. After accepting the proposal form, club manager will be issued the membership certificate. This certification is not insurance policy and public conditions are not listed in it. If the club wants it can insert the risks covered and conditions and date of contract separately in summary of special contracts (slip) and presented to the member. The owner in the case of joining the ship to the club has accepted a commitment¹ in front of a score². The cases of insurance coverage in clubs usually are set in the policy. The insurance limits related to clubs are inserted in a special book called Club Rule Book. Rules of club allow its managers to include all claims of third parties (even if not to be predicted in the general rules). In most cases, the P&I insurance is limited in terms of the amount insured, except in cases of marine pollution to oil.

The cases of insurance coverage of P & I CLUB are: 1. damages due to death, bodily injury and illness: Ship owner is committed for any damage to any person on the ship or near the ship which subsequently lost their lives or damaged or diseased. These obligations include funeral expenses, medical and medicines that resulted of negligence in the administration of the ship affairs, incorrect implementation of the maritime or any other negligent in the ship or when the ship repair in the place of repair 2. Damages caused by death, bodily injury and illness of crew: expenses resulting from losses of funeral, medical and medication of individuals such as commander, sailor or any other crew on the ship, in addition to external costs such as their temporary transfer from the ship is in responsibility of owner 3. Crew transport costs: the owner of ship can pay for costs required for the movement of the crew or transfer of commander and sailors who have died or moved to the beach 4. Port costs and siphoning: the owner can be covered from club for these costs that resulted from siphoning, stop at the harbor and harbor, returning the stowaway or costs of transferring patients and damaged caused by ship 5- costs of the rescue of persons: the cost of rescuing people because it is not payable in the ship hull and cargo insurance 5. The responsibility of incident 6. Obligations and liability about fixed and floating objects: any damage to port facilities, dock, harbor and breakwater can be received through the club 7. damage to the ship or properties, other than an accident: damages due to neglect in shipping or negligence of crews to ship or other properties, except collision of two ships are from costs that are covered (such as driving ship with high speed

in the river that after passing waves caused damaged to the ship or property of third parties, without to be created a collision.

REFERENCES

1. Brown, R. H., Hull insurance of ship, translation of Khosrow Farshchian, first printing, Asia Insurance Company, 1996
2. Daryabari, Sayed Mohammad Zaman, Analysis of Maritime Law, 2009
3. Dastbaz, insurance of freight of product, ship, plane, Faculty of Economic Sciences, Tehran, 2004
4. Erfani, Mahmoud, International Law, vol. 5, publications of Jungle, 2010
5. Shipping and marine transport, publishing of IRISL, 1982
6. Mani Sharifi, Mohammadreza Shahriari, Golzar Ofogh "A Study on the Effects of EFQM Excellence Model with Regard to Customer Results in Mazandaran Province Gas Company (MPGC)" Journal of Current Research in Science 13 (1), 96-101
7. A. Groom, Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Ltd Bennett, Paul, utual risk: P&I insurance clubs and maritime safety and environmental performance, Marine Policy, Volume 25, Issue 1, January 2001.
8. Mohammadreza Shahriari," Ranking Network-Structured Decision-Making Units and Its Application in Bank Branches", International Journal of Industrial Mathematics (IJIM) 5 (4), 6
9. Brown,Robert H;Marime Insurance-Hull Practice London: Witherby Co LTD,1993.
10. Charles Taylor & Co Ltd, International House, London.2008.
11. Clarke, M.: "Law of Insurance Contracts", LLP, 3rd Ed. London, Supplement 1999.
12. Court line Ltd.V. canadinan Transport company Ltd. (1939) 64 I.L.Rep.57. atp.61.persotfL.j.
13. Hazelwood, SJ, P&I Clubs: Law and Practice, 3rd edn, 2000, London: LLP.
14. Hodges, S, Law of marine insurance, Cavendish Publishing,London,1996.
15. Iwamy,Hardy E.R.,Marime Insurance,London: Butterworths,1969.
16. Muhammet Alper Keceli, Establishing a new protection and indemnity (P&I(insurance institution in Turkey, World Maritime University,2012.
17. Noussia, K, The principle of indemnity in marine insurance contracts, a Comparative Approach, Springer, London. 2007.
18. Paul Dean, Richard Strub, DIRECT RIGHTS OF ACTION AGAINST P&I CLUBS: A GROWING TREND, London,2005.
19. Robert C Seward, The Role of Protection and Indemnity (P&I) Clubs, Tindall Riley (Britannia) Ltd,2002.
20. Robertson,Bill,An Introduction to P I,Norton: Bookcart LTD.,1988.
21. Rodiere, Rene et du Pontavice, Emmanuel, Droit marition maritime,12, Edition, Dalloz, Paris.,1997.
22. Seaboard shipping corporation.Jocharance Tugbout corporation,ETAI,and oceanus mutual underwriting Association LTD,[1972]A.M.C.215 atp.2151 atp.2153.perj.Joseph smith ct.Jo.
23. Nazanin Pilevari, Mohmmadreza Shahriari, Morteza Kamalian, "The impact of investment on human capital and innovation in oil-based economies" journal of Current Research in Science 18 (6), 62-72
24. Mani Sharifi, Mohammadreza Shahriari, S.Amir Shahab, "Analysis of the Relationship between Service Quality and Loyalty in Secco Iran Company", Journal of Current Research in Science 3 (3), 82

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