

Insurance matters for seafarers

Given the importance of oil and its products to the industrialised world, tanker transportation represents a vital component in process of global trade. Yet the tanker industry also faces increasing pressure to operate with greater safety and environmental responsibility. Stephen Hawke executive director, Aon Limited Marine describes the issues

From an insurance perspective the issues concerning tankers, in common with other vessel types, are the risk of the physical asset itself, the vessel and the resultant liabilities that emanate from the vessel operations.

Dealing with these aspects separately, it is possible to identify certain heads of insurance that are deemed to be essential for a tanker operator. There are other areas of insurance coverage but this article will deal with the more fundamental aspects.

Hull and machinery insurance

The actual terms and clauses in general usage for the insurance of tankers are not that far removed from those used for other vessels carrying cargoes in bulk.

However, given the relatively high values involved, insurers are likely to require significant deductible levels. One of the factors for this is the cost of repairs for tankers and the availability of suitable specialist repair facilities worldwide. This situation is even more relevant when dealing with the more specialist vessels within the tanker sphere such as gas carriers where values are proportionately greater.

In terms of types of losses sustained by tankers, Lloyd's Maritime Information Service indicates that between 1978 and 2001 the greatest number of incidents involved hull and machinery damage followed by collisions and then groundings which appears to be consistent with tanker trade.

War risks

The events of 11 September 2001 brought about a dramatic change in war risk insurance with the particular focus and definition of terrorism. Whilst annual war risk premium is not in itself a significant cost factor, the additional premiums relating to calls to breach areas, such as those areas excluded under general war risk trading warranties, can give rise to high levels of premium since tankers tend to make increased calls to such areas by virtue of trading patterns. Unfortunately, in light of recent conflicts in the Middle East and tensions in other regions, hull war risk additional premiums have risen considerably. The Limburg incident off the coast of Yemen in October 2002 highlighted the potential risk of terrorism faced by tankers in the open seas and brought up the spectre of tankers being used as 'floating weapons'. Although the clauses utilised for war and terrorism risks for tankers are not that far removed from wordings used for other types of vessel, it is essential that coverage is tailored to 'dovetail' with the vessel's protection & indemnity entry in order to maximise available coverage.

Loss of earnings insurance

The decision for a shipowner as to whether to insure loss of earnings is a commercial one - say to protect earnings from a lucrative charter in the event that a marine casualty prevents the vessel from trading - much more than a question of necessity. Furthermore, the market for such insurance is considerably more restricted than that which prevails for pure marine hull and machinery insurance. Prices are therefore by nature higher. Thus for most classes of tonnage, when the cost of loss of hire insurance is high, such as at present, the premium for the coverage can often

outweigh the benefit. In many cases therefore owners may well elect not to buy the cover and run the risk themselves.

With tankers, the situation is somewhat different, since the charters are often long term and extremely lucrative. Therefore a casualty that might result in the vessel being offhire for a substantial period, could result in a significant loss of earnings. Furthermore, particularly with VLCC vessels, the availability of suitable repair facilities often means that repair periods are longer than for other vessels by virtue of the waiting period for such facilities. In many cases therefore for tankers the exposure from loss of earnings may be substantial and unless the cost of insurance is particularly prohibitive, the tanker owner is much more likely to purchase such insurance regardless of the cost.

Protection & Indemnity

Perhaps the most critical aspect of insurance coverage relevant to tankers is protection & indemnity (P&I). Increasing complexity of international conventions and legislation now requires tanker operators to purchase adequate P&I coverage. The International Group of Protection & Indemnity Associations or 'Clubs' as they are commonly referred to, provides this coverage in an internationally recognised and accepted format. Entry into a P&I Club is by way of mutual membership. The P&I Clubs are the traditional mutuals which pool their losses in excess of US\$5m up to US\$30m and above that, share in a catastrophe reinsurance programme. It is estimated that the P&I Clubs collectively insure 90% of the world's tanker tonnage totalling around 290m deadweight tons.

Perhaps the most important feature of the coverage as provided by P&I Clubs, apart from the scope of coverage, is the high level offered, particularly in respect of oil pollution liabilities which is currently US\$1bn. The salient coverage features of P&I are:

- Third party liability cover
- Claims handling assistance
- Worldwide correspondents network to assist with problems
- Guarantees to release arrested ships
- Loss prevention advice
- Statistical data
- General advice
- Industry representation

From a liability point of view the most emotive issue associated with tankers is oil pollution. Recent incidents involving Erika off the coast of France in 1999 and Prestige off the coast of Spain in 2002 have once again brought in to focus the inherent dangers of carriage of oil products on the high seas. But, taken into context, oil pollution is not the most frequent type of major claim involving tankers. An analysis of major claims undertaken by one of the leading P&I Clubs, the United Kingdom P&I Association, shows that oil pollution, although highest in value, is behind cargo claims and personal injury in terms of frequency and is closely followed by collisions. The Club does report that the overall trend of tanker claims has been one of steady improvement since 1991.

It is therefore of paramount importance that P&I coverage for a tanker adequately addresses those areas of risk associated with crew, third parties, cargo, collision and loss or damage to third party property. This is particularly relevant when any of the operations are undertaken by third parties, for example crew managers.

Freight, demurrage and defence

One ancillary and unique head of coverage offered by P&I Clubs is freight, demurrage and defence (FD&D). This can be particularly pertinent to tanker operators where, for instance, vessels are involved in chartering operations. This

offers coverage in respect of the legal costs and expenses in relation to disputes that may occur with third parties. Under this class of cover, Clubs offer assistance to their insured members in seeking to recover sums that are due to them when contesting sums that are wrongly claimed from them in respect of vessels that they have entered.

The P&I Clubs often employ a number of experienced lawyers on the staff who can provide legal advice and assistance in resolving disputes as quickly and efficiently as possible.

The FD&D Class covers legal advice and the costs and expenses relating to:

- The enforcement of proper claims for freight, dead-freight, demurrage, general and particular average and insurance moneys due in respect of the entered ship.
- The defence of actions, proceedings or arbitrations brought against the insured member in respect of the entered ship. The recovery of damages for breach of charter or contract relating to the entered ship and for detention of the ship. Legal representation at coroners' inquests, official investigations and other enquiries.
- Supply of inferior or wrongly described bunkers, stores or negligent repairs.
- Claims by or against masters, officers, crew or passengers. Claims arising in connection with building, purchase, sale or mortgage.
- Information and legal advice on matters of general concern to ship owners.

With the exception, arguably, of the cruise industry the tanker trade is the highest profile segment of shipping. Unlike the cruise industry the tanker trade is an integral part of global trade. The social focus on the industry will remain heightened, with the consequent hardening of safety regulations and liability regimes, at the same time as insurers react to perceived increased risk. The natural consequence should be that increased differentiation between the 'good' and 'bad' operator, accentuated by regulatory and legal demands, is reflected in the availability and cost differentials of the insurance that underpins the system.