

Tanker accidents and the public perception

Judging by the recently prominent attention given to tanker operators by legislators of various nationalities, one could get the impression that tankers are unsafe and a bad insurance risk. That would be a wrong impression and one that needs the efforts of both the operators and the insurers to dispel

One of the more difficult tasks in informing public bodies about tanker operations is to make the case that tankers, as a class of vessels, operate relatively safely and indeed that the overall safety record has shown consistent improvement over the past decade. This argument seems to fall on fallow ground and tanker operators continue to be stigmatised as having an unsafe and uncaring approach to their maritime environment.

There are, I believe, two reasons for this false perception:

1. The attention span of persons not inside the industry appears to be governed by simple sound bites on all matters maritime. Therefore cries of Exxon Valdez, Erika and Prestige swamp any possibility of a sensible debate on the real issues involved in marine accidents.
2. The knowledge and understanding of maritime operations by today's intelligentsia is lamentable. The days are long gone when most people actually knew someone who served in a ship and had some passing knowledge of ships and the sea.

Therefore, the self-evident fact that the high seas are a dangerous place in which operators require a considerable degree of experience and skills to navigate safely appears to be totally lost outside of the industry itself. Further, the growing belief that all accidents have a root cause in negligence and can therefore be eliminated by legislation and sanctions alone is now increasingly being forced on maritime operators. The result is a confrontation between the realists and the idealists with the tanker operators at the very forefront of this debate.

The record

Does this perception matter? It does, if tanker owners wish to continue plying their trade as independent commercial operators and with a reasonable expectation that any future losses will remain insurable. Therein lies the operators' best hope: the willingness and ability of the insurers to inform this debate, and to propagate the message to all who will listen that this is indeed a safer industry with effective safeguards.

In general, the maritime tanker industry has been well served by its insurers. Insured tanker accidents to date, whether large in numbers or quantum, have been duly covered as agreed and the claims competently managed. Any tanker operator placing both his asset insurance and liability insurance with a recognised carrier - commercial or club - can be confident of having done the right thing. However, it is submitted that this may not continue unless both the ship operators and the insurers work together to counter the growing trend to strict liability, the criminalisation of errors made in good faith by professional managers, the punitive costs which are not related to actual damage, and the imputation of guilt on persons caught in events beyond their control.

The information to begin this process already exists. For example, the International Tanker Owners' Pollution Federation (ITOPF) has detailed data on pollution accidents that shows unequivocally the improving tanker pollution record. Their data indicates an annual average of 24.2 oil cargo spills throughout the 1970s; 8.9 spills per year during the 1980s; and 7.3 spills per year during the 1990s. Total quantities of oil spilled have likewise reduced: 3m tonnes total in the 1970s; 1.1m tonnes in the

1980s; 1.0m in the 1990s. If the several large pollution only accidents are not counted (see table below, which also shows non-ITOPF accidents), then the figures are 2.7m tonnes and 0.73m tonnes and 0.72m tonnes respectively. Only about 15% of marine pollution involves shipping, and much of that is bunkers rather than cargo. In the context of tens of thousands of cargo voyages, these figures do not indicate an irresponsible industry out of control. This message must be repeated ad infinitum.

The downside

Tanker operators however are not entirely blameless and there have been serious accidents with consequences well beyond the monetary losses. Unfortunately, a single high profile claim can eradicate the good will from many years of safe operations. While the overall claims profile is well under control for tankers, several large pollution and total loss claims have caused serious problems for liability insurers, the P&I Clubs. Unfortunately, they seem to occur with cyclical regularity: The inevitable conclusion from this list is that liability underwriters will take a major tanker "hit" about every second year. This will invariably include pollution resulting from grounding or pollution plus loss of life resulting from a total loss.

A second conclusion, if one looks at the details of the accidents, is that the more recent incidents (from 1993) are in fact comparatively minor at the end of the day, despite the pollution, if compared with the earlier incidents, most of which included a heavy loss of life under appalling conditions. No right-thinking person can possibly conclude that pollution is worse than seaman fatalities.

Impact on insurance

From an insurance perspective, tanker claims have both a positive and negative aspect. On the positive side, the total number of incidents falls well within the capabilities of the insurance companies to deal with. Most marine underwriters will agree that a well managed tanker operation is a good risk. In addition, tanker fleets are considered "low maintenance" in that they do not absorb an inordinate amount of insurance management time. Many tanker operators pay their annual insurance premium and are never heard from again.

The negative side is that occasionally, but inevitably, there is a major blow. However, this also is well containable within the insurance market. The costs noted in the table above are high but the global insurance and reinsurance markets have been able to absorb these. Underwriters either limit their cover as in oil pollution (currently US\$1bn) or reinsure their exposure into other markets. If this were the only problem, the ships noted above would by now be forgotten.

However, insurers are in addition seriously concerned about the downstream effects of major pollution claims which catch the attention of legislators. The European Commission even names its legislation after the ship which spawned it, so we have Erika 1 and Erika 2. This makes the insurers very nervous and liability underwriters in particular are concerned about developments in the following areas, which directly emanate from recent pollution incidents:

1. The provision of Ports of Refuge.
2. The treatment of ship Masters as felons and penal sanctions against ship managers.
3. The banning of single-hulled tankers in advance of IMO agreed timetables and without identified capital resources or ship building capacity to replace these.
4. The flaunting of agreed international laws by individual states.
5. Published ship "black lists", increased Port State Control (PSC) and Condition Assessment Schemes (CAS).
6. New European third tier compensation fund (COPE) up to €1 billion total.
7. Increase in CLC and Fund Conventions limits including voluntary 3rd tier.
8. Loss of right to limit liability through ship owner's "fault or privity".

9. Inclusion of charterers, managers, cargo owners, disponent owners and possibly mortgagees in the liability chain of responsibility.
10. Extension of territorial seas, enforcement with EEZs and establishment of tanker traffic lanes.

From Drewry, Ship Operating Costs Annual Review & Forecast 2003/04.

In partnership with the insurers

All the above directly affect the ability of insurers to continue giving tanker operators the breadth and level of protection they need. But there are no realistic alternatives presently available to owners and charterers other than the currently accepted Market Wordings or the standard P&I cover in accordance with the Rules of the IGA Clubs. Any diminution of the cover afforded by these Wordings or Rules will have an immediate impact on the world wide operation of tankers.

Insurers have a duty - both in their own self-interest and in the service to their assureds - to actively work for a greater understanding of their contributions to international commerce and safety. They must continue to expound the principle that insurable international conventions are preferable to motley jurisdictions. The P&I Clubs have already taken action on this.

Regardless of the public perception, tanker accidents at sea have been reduced substantially, in particular in relation to deaths and injuries. Yet, oil pollution from ships remains a severe problem which threatens all the positive improvements in safety and standards over the past decade. The tanker industry must therefore continue to publicise its improving accident record and to work with the insurers to proclaim the facts.

A history of major tanker spills since 1972

Year	Ship	Location	Cargo spilled (tonnes)	Loss of life	Estimated* costs (US\$m)
1972	Sea Star	Gulf of Oman	120,000	12	Not Available
1978	Amoco Cadiz	Brittany, France	223,000	Nil	\$282m
1979	Betelgeuse	South Ireland	30,000	50	\$200m
1979	Atlantic Empress	Tobago, WI	270,000	29	\$100m
1983	Castillo de Bellver	South Africa	252,000	3	\$72m
1988	Odyssey	North Atlantic	132,000	27	Est. \$25m
1989	Exxon Valdez	Alaska	36,500	Nil	\$9.5bn**
1989	Khark V	Morocco coast	80,000	Nil	Not Available
1991	ABT Summer	South Atlantic	260,000	5	Not Available
1992	Agean Sea	Spanish coast	<80,000	Nil	\$280m
1993	Breear	Shetland Is.	86,825	Nil	\$83m
1996	Sea Empress	West Wales	72,000	Nil	\$62m
1997	Nakhodka	Japanese coast	6,200	Nil	\$219m
1999	Erika	French coast	19,800	Nil	\$175m +
2002	Prestige	Spanish coast	77,000	Nil	\$178m +
2003	Tasman Spirit	Pakistan coast	30,000	Nil	Up to \$1bn***

* Estimates from various sources and indicative only.

** Of which \$400m was insured for P&I. Most of the balance is self-insured.

*** Initial early claim only.

Source: *Ensign Marine Consulting Ltd. with assistance from Intertanko and ITOPF*