

MARINE P & I CLUBS, AND A THAI PERSPECTIVE

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Abstract

Protection and Indemnity (P&I) Clubs began in England in 1855 as shipowners decided to provide their own mutual insurance for liability risks which traditional insurance companies refused to offer. They prospered and spread, as essential components of booming maritime trade, and became international organizations.

P&I clubs mainly provide liability insurance to shipowners, giving financial protection against compensation payable to third parties such as crew, passengers, cargo owners, other shipowners, and port authorities. The clubs also give substantial advice and assistance around the world, through their representatives, known as correspondents. Each club is controlled by a Board whose directors are elected by and from the shipowner members. Day to day administration is by professional managers, skilled in the maritime law and insurance. Most clubs in the world also belong to the International Group, which provides pooling and reinsurance and other facilities. Clubs exert influence on national governments and international bodies.

Clubs are financed by premiums known as 'calls', including supplementary calls, unlike insurance companies which can charge only one premium at inception or renewal. Marine risks are increasing, due to bigger ships, greater international trade, and more liability impositions by governments and international Conventions. Clubs are under pressure to make rational risk assessments and make adequate calls. Clubs are regulated by government financial or insurance authorities, some in several countries because of their international presence.

The Thai perspective is examined, through a description of a Bangkok correspondent's role and experiences, plus two pollution incidents and a ship detention.

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The Rise of Protection & Indemnity Insurance Mutuals

A unique part of marine insurance is the existence of P&I Clubs. They are strange when compared to traditional insurance companies. They are little known to the general public or even most insurance employees because of their specialism and because little is written about them. Yet their function, tested over time, is an essential support of maritime trade.

P&I is insurance for third party liabilities which derive from the ownership of ships operating in international trade. The P&I clubs are not identical to insurance companies but are mutual insurers, not-for-profit, issuing no shares and paying no dividends. A club provides collective-self-insurance to its members, each shipowner member being a part-owner of the club, from which he is entitled to a claims service to deal with liability claims he might receive from third parties (such as cargo owners, crew, passengers, other ships, port authorities) and to which he must pay his share of the club's annual total claims payments and expenses. The mutuality factor makes P&I clubs different from conventional insurers, but like them, clubs are risk-pooling organizations without which international trade would be impossible.

P&I Clubs began in England in 1855, because of the refusal by traditional insurers to insure collision liability risks, so-called 'running-down' risks. The insurers used the argument that to provide such cover would create morale hazard in that the owners and crew would become less careful knowing that insurance would pay for loss or damage to other property or persons. It is not clear why that argument should be applied to liability risks and not to hull risks. The insurers did relent, to the extent that they would cover 75% of liabilities, leaving ship-owners to be responsible for the other 25%. But even 25% of a total loss liability claim would be too big a risk for a ship-owner, who could be bankrupted by such a large claim if found legally liable (Young, 1995).

So, P&I Clubs began in England, as insurers for the missing 25% of collision cover. The Shipowners Mutual Protection Society was formed in 1855 (a predecessor of the existing Britannia P&I Club), to cover the excluded 25% of collision liabilities (and the restriction of the sum insured) for damage to the other ship, and for death and injury to people. The mutual self-help idea caught on, there was a need, and similar societies (clubs) clubs were formed. Thus began the continuing split in the marine insurance market between the insurance of hull and cargo by Lloyds and insurance companies, and liability insurance mostly provided by P&I clubs.

As the value of some cargoes had significantly increased, and cargo insurers had begun successful subrogation proceedings against ship-owner carriers, in 1874 club cover was extended to include liability for loss of or damage to cargo carried on the members' ships. So, to the initial protection (**P**) against the missing 25% and other liabilities, was now added indemnity (**I**). But the distinction between the **P** and the **I** has virtually disappeared, even though the generic name **P&I** persists.

When the Suez Canal was opened in 1869, bringing Europe, India and Asia closer, shipping escalated in size and number of ships. The UK Mutual Steamship Assurance Association (later known as the UK P&I Club) was formed in 1869 to cover hull machinery risks, adding liability protection in 1871 and indemnity in 1886. It was based in London, although most of its shipowner committee members were from the Northeast of England (Young, 1995). Most P&I Clubs were formed in Britain by 1900.

In the First World War, Britain lost half its pre-war commercial fleet, and clubs began to seek more foreign members (Young, 1995). Thus, from their British origin, in clubs associated with northern English towns and cities, P&I Clubs have spread their operations to most parts of the globe, wherever there are ship-owners who need the services which the clubs provide. There is an umbrella club, the International Group, for reinsurance and other services, to which most major clubs subscribe. This gives them the power of size to secure more generous cover and rates than if acting singly. Many clubs have moved their domicile offshore, for tax and currency exchange reasons, to Bermuda, Luxembourg and other discreet tax havens.

Almost all new members of a club are guided there by brokers. A membership application usually needs data about the intending member's specific cover required, the nature of the management of the vessel/s, the geographical area of trading and nationality of the crew (more information being available to a club from Lloyds online registry).

Vessels covered by the clubs include containerships, bulk carriers, tankers, cruise ships, harbor tugs, barges, and bunker vessels, in addition to offshore oil rigs. In addition to shipowners, club members can include bareboat charterers, those who charter a ship from its owner and exercise possession and control and are therefore owners 'pro hoc vice (in place of) the owner. Such charterers usually insure their liability risks with P&I clubs. A charterer and the actual owner of the ship can enter a P&I club separately or as co-insured. Time and voyage charterers are not in the same legal position and usually insure their liabilities under charterers liability insurance.

Cover, and Control

The Basic P&I cover is third-party legal liability insurance, arising out of the operation or management of the ship for:

injury, illness or death, of crew, passengers or other persons; cargo loss or damage; wreck removal; pollution; collision; damage to docks and other fixed or floating objects; towage; general average contributions; legal costs; confiscation; administrative penalties or fines.

(The last item is contentious: it could be considered as compounding a felony).

There is a compulsory deductible, quite low. A member can choose a higher amount, say US\$500,000, for a discount. It depends how much he wants to self-insure. Clubs issue cost-free 'letters of undertaking' which are similar to bank guarantees and are used to free ships which have been arrested or detained. These 'letters' can be speedily issued and are accepted in many countries.

A member can also choose additional cover, such as FD&D (Freight, Demurrage and Defence). This cover provides legal advice and expense when a member is faced with a dispute about ship operation even if the underlying risk is outside the scope of the actual P&I cover. Examples of dispute topics are speed and performance, and ship-yards. Some clubs offer only FD&D cover, and some shipowners are members of both types of club, preferring their FD&D cover to be handled by a specialist club. Issues arising from this cover are usually about haggling over freight or demurrage or dubious liability demands. As the two types of cover, FD&D and P&I are so different, there are different rules, deductibles, and rates.

The Board of Directors has overall control of a Club. The Board meets to decide policy on calls, the scope of cover, finance, underwriting and claims issues, reinsurance, current maritime issues, and management and control. They also resolve 'omnibus' claims arising out of a peril that is neither specified in the cover nor expressly excluded, but which can be paid at the discretion of the Board: such claims are infrequent. The day to day running of a club is under the control of management professionals employed by the club and to whom specific authority is delegated, with wide discretionary powers.

The International Group of P&I Clubs

Ships steadily increased in size. The first bulk oil tanker began operations in 1892. Risks increased, in frequency and severity. In 1899 a reinsurance pooling agreement was made between six clubs, the UK Club, Britannia Club, Standard Club, London Club, Newcastle Club, and Sunderland Club, and now has thirteen members, each being independent clubs. The relatively small American Steamship Owners Mutual P&I Association, the only P&I club based in USA (indeed in the Americas) is a member of the International Group. Three other clubs are based in Sweden, and the sole Japanese club (Japan Shipowners' Mutual Mutual P&I Association) joined in 1976. The world leader (depending on which criteria) is either the UK P&I Club based in UK and Bermuda, or Gard P&I Club (Assuranceforeningen Gard) based in Norway and Bermuda.

This 'International Group of P&I Clubs' arranges collective insurance and reinsurance, and because of its size can negotiate good rates and high limits. It shares information between members about many issues. It provides a forum for its shipowners and charterer members *and also represents their concerns to such bodies as the International Maritime Organisation*

and UNCTAD. The clubs represented by the International Group account for 90% of the world tonnage of ocean-going ships (UK P&I Club, 2010).

As each club competed with each other, it might be thought odd that they come together under the IG. But their mutual interest is in collectively insuring the large risks. Each club signs a contract which defines the risks to be pooled and exactly how these are shared. All claims in excess of a specified amount (and subject to an upper limit) are shared. The IG buys reinsurance from the commercial market, through brokers acting for all the participating clubs, for a specified layer within this range (the limit is lower for oil pollution cover, and also for charterers). This IG reinsurance contract is the largest single contract in the global insurance market.

The International Group is restructuring its pooling arrangements to make it fairer as some P&I clubs found the old structure inadequate, because while clubs are expected to pay their pool claims quickly, those which paid much more than they claimed find that it takes a few years to redress the balance (Hughes, 2009).

How the Clubs are Financed

Each club manager prepares an estimate of the following year's claims and expenses, and reinsurance premium, for approval or amendment by the club's board of directors. The total is divided among the participating members according to their tonnage and risk. By tradition, the accounting year for P&I clubs begins on 20th February. This date originated in the Baltic trade as this was when ships which had been laid up for the winter began to be prepared for the new season (Young, 1995). Around this date, a notice is sent to each member asking for cash: this is known as an 'advance call' (a call for premium). The pattern of claims year by year is largely unpredictable. If the actual experience becomes worse than estimated, additional calls are made, known as 'supplementary calls', which can be substantial. These can be made several times until the coverage year is 'closed': liability claims are notorious for the long time it takes to reach settlement (the long-tail effect). A coverage year is not closed until the club has established financial reserves to meet outstanding claims and has decided the final supplementary call (usually a coverage year is closed after three or four years).

These supplementary calls are unlike an insurance company which cannot later ask for more premium (except in policies which have a declaration clause). If, conversely, the P&I club has an annual surplus of income over payments, this is used either to reduce the next 'call' or is returned to members. This is also unlike insurance companies (although they usually try to recoup an underwriting loss by increasing next year's premium rates, depending on the competitive situation in the market). If a member wants to leave the club, before the end of the year, he is charged a 'release call' which is an estimate of what additional calls (or returns) are likely. Thus, P&I clubs are assessment mutuals (unlike conventional mutual insurers in USA

which cannot ask for more premium later). In USA, conventional insurance companies are a source of P&I insurance for commercial river and coastal vessels, but their premium system is that of an ordinary insurer, and this is known as the fixed-cost P&I market.

Member clubs of the International Group have their accounting policies reviewed so that their financial strength can be monitored, which adds another validation to a club's soundness.

Benefits of Club Membership

A shipowner becomes a member of a P&I Club for protection against financial damage from third party claims. His Club acts as a guarantor and its reputation, financial strength, stability and longevity often carry greater weight than the shipowner's. It is essential for the Club to respond rapidly to a member's call for help, for a guarantee or a bond to lift an arrest, or for aid in the event of a serious shipping incident. A Club can minimise or even stop a claim by providing immediate information to a master, guiding him through the complexities of maritime rules and regulations. Thus the Club provides a mixture of claims handling and advice. Clubs also provide education and training for owners and correspondents, and disseminate information to associated professionals. Clubs make sure that their members are kept aware of changes (UK P&I Club, 2010). All these activities by the Club produce benefits to members.

Fundamentally, a shipowner will have to join a P&I club because otherwise with any major claim his ships could be arrested and his business would fail (Young, 1995). The club's guarantee can avoid the arrest of a ship or enable its release. The owner-member also knows that his claims will be speedily and professionally reimbursed. The local knowledge and personal contacts of P&I correspondents (club agents) ensures speedy action with various authorities, and immediate reassurance for the shipowner. A correspondent is sometimes able to stop a claim, and can control the damage by prompt action. The shipowner member knows that wherever in the world his ships trade, he has the backing of the financial strength and negotiating power of his club. Supply chain management is now an important practice for more and more firms, and delay problems affecting cargo can seriously interrupt the chain and can be costly (Lapanan, 2009). The correspondent can provide immediate help to free hindrances. Club members also often seek advice from a correspondent over commercial or contract issues, or operational issues at specific ports, and other problems which are not P&I related.

Underwriting and Claims

Clubs used to be run by legal minds, but experienced underwriters are now equally important. In deciding the underwriting terms and call rates, individual members' loss experience is used, with their exposure and coverage, to assess the risk. There was action to eradicate substan-

standard shipping through call rates, inspections by classification societies, and ship inspections by the P&I clubs, with warnings issued to shipowner members who were slow to upgrade their standards. Even so, claims have become more expensive, due to inflation, bigger ships and bigger cargoes, wage costs and more and more onerous legislation (Young, 1995).

New risks came along, such as health risks for operators and small personal claims. Risks insured became far more complex. As ships became bigger and faster, competition became tighter. There were increasing national and international regulations on issues of safety, security and the environment. Offshore energy operators (mostly of oil-rigs) are a growth market, especially in Southeast Asia. It is a highly specialized insurance niche, both technically and contractually. The Standard P&I club is a leader in this offshore market (Drummond, 2009). A long-standing claims principle of P & I clubs, differing from much conventional insurance practice, is 'pay to be paid' This means that the member must pay the claim himself and only then will he be reimbursed. A sensible member will seek the guidance and advice of his club in dealing with the claim, to ensure that he will be paid after paying.

The UK P&I Club first began its service of providing advice on the reduction of the frequency and severity of risk, by publishing the first of what became a substantial series of reports 'Carefully to Carry', the first one focusing on preventing cargo damage (Young, 1995). Clubs provide surveys of ship condition, reviews of a member's management risk, publications, and training.

A worrying aspect regarding loss control, is a lack of competent crew, often ascribed to the changed nature of seafaring which is now about reports, rules, and regulations (Swallow, 2009; Hall, 2009). Surveys and research have shown that there is a severe shortage of seafarers, particularly engineer officers. Young people are reluctant to join. Modern ships represent very high value assets and, because of their size and cargoes, have the potential of incurring unimaginable destruction, both on human lives and the environment. There are insufficient numbers of LNG-ship officers with the requisite skills to command such highly sophisticated ships. Some of the best senior officers have opted for early retirement (Mitropoulos, 2005).

Correspondents

Before turning specifically to consider the Thai perspective, it is essential to describe the tasks of a correspondent, the essential on-the-spot representative, who has to deal with an incident involving a member's ship. It is a highly specialized job. A correspondent must act for clients, often unknown to him, at very short notice. As he must be careful not to prejudice the client's legal interests, he usually has a legal background or experience of maritime legal aspects and of the commercial and technical side of shipping. Information must be gathered, authorities dealt with, and others informed. A correspondent must have ability, integrity and reliability in addi-

tion to so much knowledge and skills (Young, 1995).

A correspondent has many varied tasks, including on-scene investigations, legal representation of the master, co-ordination of clean-up operations, directing negotiations with coastguards, port and state officials, and dealing with salvors over salvage of wrecks. In different ports, rules, languages and customs can all differ: the correspondent must have excellent local knowledge and contacts. Electronic technology now enables quick communication between all parties, around the world. This enables a correspondent to find an expert on an unfamiliar issue, but can also put intolerable pressure on a correspondent who is expected to respond immediately and fully to any query.

This is one correspondent's description of his job:

"Somebody who knows about ships, their local inward and outward cargoes, and the shipping business in general, and is readily available at all times - Saturdays and Sundays and public holidays included - at all the ports he is assigned to cover. He must know those ports thoroughly, including their geographical and nautical problems, be familiar with their installations and facilities, know their particular working and operational problems and - perhaps above all, be in contact with all ship agents, whatever specialists are available in the area - such diverse people as divers, doctors, dentists and lawyers, and with all the authorities of every kind - port officials, customs, immigration, health and others. He may have to act, in the course of handling a problem, as a kind of tourist guide, moneychanger, financier, interpreter, translator - in fact make himself available in whatever capacity may be required". (Young, 1995, p112).

Correspondents also have a role as educators and trainers, keeping shipowners up to date with changes. Topics can include ship finance, maritime legislation. The seminars can involve the expert advice of brokers, bankers, lawyers and economists. They offer ship-vetting programmes, a kind of audit. There is also crisis management advice so that systems are in place for handling various types of crises if they happen, enabling the shipowner involved to brief the media in a calm professional manner.

Clubs and their correspondents have to manage internationally, often in a legal jungle as no two nations have exactly the same laws. Shipowners are easy targets for liability claims, and the club's experts have to deal with not only the law but the political influence of the receiver and the owner of the goods, the integrity of surveyors, courts and lawyers, tardiness of bureaucrats, and political pressures generally (Young, 1995).

Interestingly, correspondents have no actual contract with any P&I club, and are not agents in

law for the clubs they represent. All they have is a brief letter of appointment allowing them to help a club's members on a case by case basis for a fee. It has always been like that, and seems to operate smoothly.

Thailand Correspondents of P&I Clubs

There are four main correspondents in Bangkok, representing a variety of clubs. The top two are Thai P&I Services and Spica-Thailand. This article focuses on Thai P&I Services International Ltd (TP&IS) which was incorporated in February 2000, converted from a division of Thoresen Thai Agencies plc (the holding group of Thoresen Group in Thailand). Thoresen Shipping Services was established in Hong Kong in 1904 to provide services to Norwegian and other European businesses trading in the region. It established a branch office in Thailand in 1937 mainly as shipping agents and correspondents for P&I clubs and Hull & Marine underwriters (TP&IS, 2010).

TP&IS represents sixteen P&I insurers, including clubs based in China, Germany, Netherlands, Norway, UK, and USA (many are financially based offshore). It represents some, but not all, clubs in the International Group: the very large UK P&I Club, for example, is represented by another correspondent in Bangkok. The major workload of TP&IS is concerned with members of the Britannia club, the West of England club, and Gard club. Another P&I club which TP&IS represents is the Shipowners Mutual P&I Club whose members consist mainly of tanker owners operating in the Gulf of Thailand (Shipowners Club, 2008).

In addition to representing various clubs, TP&IS also represents some Hull and Marine insurers who offer fixed-premium P&I cover (not being mutuals, they cannot be called clubs). Smaller shipowners, and charterers do not want to be in a pool with the big fleets and huge ships and therefore prefer these smaller fixed-premium P&I insurers. Also represented by TP&IS are some Brokers (whose clients insist that they exercise oversight of incidents dealt with by correspondents), and those P&I clubs which deal only with FD&D (Freight, Demurrage, and Defence insurance).

The mission of TP&IS is to provide the industry and its clientele with:

- the best possible technical and legal assistance that is available, wherein variable situations (i.e. claims and disputes) are reviewed and recommendations formulated with full respect for pertinent local codes, laws and marine insurance practices;
- reputable surveying teams to provide quick but precise first hand assessments and investigations in order to properly address every individual case;
- full assurances of legal assistance to Club members for litigation, arbitration, conciliation or even just legal advice;

- competitive fees with a commitment to be flexible, plus fair charges for different job assignments (TP&IS, 2010).

Incidents involving claims for cargo are the leading issues which TP&IS has to deal with: liability for loss or damage to cargo carried by the ship. TP&IS has to undertake most of the tasks of correspondents described earlier. The company management has long professional and practical experience of maritime affairs, and especially of who does what and how in Thailand, and which laws and Conventions apply in this jurisdiction. Bangkok has a long-existing busy port in the city itself, at Klong Toey on the main Chao Praya river. It also has a world-class container port further down the Gulf of Thailand, Laem Chabang, and some smaller ports such as Sattahip. Imports and exports are of enormous importance to the Thai economy, which means that there are a lot of ships involved, of every description, from many nations, representing membership of many P&I clubs, and consequently much work for the local correspondents. Next, are three examples of incidents which have involved correspondents in Bangkok.

Oil Pollution in Thai Waters

There have always been instances of escape of fuel oil from steamships, but the invention of tankers and their subsequent huge size, capacity, and speed, inevitably led to pollution of sea and shore. In response to the Exxon Valdez oil spill in 1989 off Alaska, The Japanese Ministry of Transport initiated in 1993 the Project on Oil Spill Prevention in the ASEAN Seas Area. It was funded by the Nippon Foundation. Japan imports vast amounts of oil from the Middle East, and its tankers therefore have to navigate the Malacca Straits and the seas further north-east, passing the coasts of many ASEAN countries. This project was of immense help to ASEAN countries in making pre-crisis preparations for an oil disaster.

Thailand itself imports millions of gallons of oil every year, and also has three major oil refineries. Many of Thailand's coasts and beaches are exposed to oil spills from tankers. Most oil spills happens in the unloading operation. Nevertheless spills off the coast can cause substantial pollution damage, and Thailand has had to develop a system and resources for immediately dealing with coastal oil spills (Sophonsiri, 2004). Pollution through oil spills results in liability claims, and thus P&I clubs are involved. There can also be pollution spillages of other liquids carried by tankers, such as chemicals. Two oil spillage examples from 2002 are now described to illustrate the containment and clean-up operations, which have to be paid for by the shipowner, who then claims reimbursement from his P&I club. In both cases, TP&IS was the correspondent who had to manage the incidents, for the Britannia P&I club.

On 15 January 2002, the Panama registered *Eastern Fortitude*, an unloaded chemical tanker, hit a rock off the Thai port and town of Sattahip, on the east coast of the Gulf of Thailand, not

far from many beaches. 234 tons of diesel oil (from its engine-fuel bunker) spilled into the sea and dispersed into a surface slick, which was then spread around by tide, waves and wind (Department of Marine, 2002). Within the Thai Ministry of Transport, the Department of Marine is the co-ordinating centre for the prevention and combating of oil pollution, and immediately took action. In accordance with the national oil spill contingency plan, the Royal Thai Navy, the Pollution Control Department and the Oil Industry Environment Safety Group (IESG) co-operated to control the spill and clean it up, offshore and at shoreline (Cha et al, 2010).

The offshore clean-up involved tracking the slick using patrol boats, plus boats from the Department of Marine, Navy, and IESG to begin the clean-up. Initially dispersant chemicals were used to break up the slick into small droplets which could then be more easily dealt with. This technique was used in the less sensitive areas where the sea was at least 15 metres deep. The resulting foamy mousse was contained by booms and then sucked into containers, and about 32 tons were removed from the sea this way, representing 13.6% of the total spill. A private company was hired to dispose of the recovered oil (Sophonsiri, 2004).

The other 86.4 % of the total spill was in shallower water, and involved the shore line. Contained by booms, the floating oil absorbed water, and also became foam-like, although some escaped, became lumps of solidified tar balls, and was washed ashore by the tides. The tar balls were found scattered in three locations which were beaches of importance to tourism, and which covered 0.1, 4, and 7 kilometres. In co-operation with the Navy and local government, the balls were collected in bags and sent to a contracted company for proper disposal (Cha et al, 2010).

Claims for compensation for the clean-up were made to the shipowner, and dealt with by the Britannia P&I club, after local negotiations by the TP&IS correspondent. In March 2002, the claim for 25 million Baht was paid to the government and to private firms who had assisted. A P&I Letter of Undertaking for 75 million Baht was also deposited with the government for the remaining clean-up cost (of which 4 million was to replace aquatic life, much of which had been killed by oil coating the skin).

The second example is from the same year, 17 December 2002. Fortunately the Thai government had acquired a second anti-pollution vessel only six days before. Another Panamanian registered tanker *Sky Ace*, collided with a Singapore registered ship *Kota Wijaya* in the same part of Thailand but a few miles further North, off the coastal town and oil refinery of Sriracha, just North of the major port at Laem Chabang. Again, it was oil from the ship's engine-fuel bunker which leaked into the sea. Fortunately, the tanker's cargo of crude oil was intact and did not leak. The initial report stated that the spill was only 20 litres (Department of Marine, 2003). The contingency plan of cooperation between the government, the Navy, IESG and local government administration, went into operation immediately (Sophonsiri, 2004). Again, the TP&IS correspondent was involved in negotiations.

The negotiations between the correspondent and the other parties were not easy as there were (and are) no guidelines, Thailand not having ratified the relevant international Conventions. However, at a Thai cabinet meeting in December 2009 a draft law was approved governing civil liability for oil pollution caused by shipping. The law is modeled on the International Convention CLC 1969 which Thailand will then ratify. The law imposes strict liability, but puts an upper limit on shipowners' liability to ensure certainty and predictability in law for all parties. Insurance will be compulsory, and claims may be made directly to insurers (Phankeasorn and Bovanant, 2010). This is welcome news to P&I clubs and their Bangkok correspondents, for future incidents will have precise legal definitions and limits.

Detention of a Ship in Thailand

Another P&I case, in 2008, involved the detention of a ship for oil spillage in dry dock. The ship had hit a rock in the South China Sea in July 2008, and seawater entered the bottom ballast tanks. The ship was sailed into a Thai dockyard near Bangkok, which allegedly ignored the advice of the shipowner and hoisted the ship, with the result that 10 tons of oil flooded out. The Captain was arrested, for six months. The ship was detained, in that sailing clearance was refused (Cha et al, 2010).

The shipowner was a member of the South of England P&I Association (not represented by TP&IS), and usually a letter of undertaking, guaranteeing money for pollution damage and clean-up, is sufficient for the immediate release of a ship and its Captain. But in some jurisdictions the Letter is not sufficient, even though no formal arrest of the ship had been made, and complications may also arise with local banks and dockyards, or with the wording of the Letter. Foreign shipowners are sometimes at the mercy of local organisations, and it is known that influential people can affect decisions when money is involved. This complication is worrying as shipowners rely on P&I guarantees to help them put their ships back into service quickly rather than lying idle losing freight. Sometimes the problem is caused by local claimants demanding exaggerated compensation, and in cash. P&I clubs are aware of the countries where this happens, and have undertaken a process of local maritime information for the judiciary. The captain was released, and the ship was later given sailing clearance, after payment.

Thailand has a relevant law: The Arrest of Vessels Act, 1991. Although Thailand is not a signatory or party to the 1952 International Convention Relating to the Arrest of Seagoing Ships, some principles of the Thai Act are similar to those in this Convention. In Thailand, the arresting creditor or the applicant is entitled to apply for the arrest of a vessel as security for a claim in respect of a vessel only. The arresting creditor is entitled to apply for the arrest prior to instituting court action. However, the Arrest of Vessels Act is designed to protect only creditors domiciled in Thailand. There is a parallel law for maritime lien, the Ships Mortgage and

Maritime Lien Act, 1994. The Act does not focus on the right of retention or 'lien' under English law, but provides preferential ranking of creditors who have the right of claim involving a ship. Neither Law was formally invoked in the case above, and no application was made to a court for the release of the ship, although legal advice was sought from a Bangkok law firm, and practical advice was sought from maritime experts in Singapore.

The P&I club involved in this case is unusual in that it is new, founded in 2004 as an alternative to the International Group of clubs. It is directed and managed by very professional experienced people, has reinsurance from Lloyds, and a Standard & Poors rating of A+. The management is based in Lichtenstein, through its branch office in Zurich, but claims handling is contracted to the club's UK correspondent in Brighton, England. The club is the fixed-premium type (SEPIA, 2010).

Conclusion

Seeing the continuing success of P&I clubs in providing liability insurance, one of the trickiest insurances to handle because of its potentially catastrophic losses and long-tail claims, one wonders why conventional insurers do not offer this cover. Also, why do P&I clubs not venture into hull insurance (which was their original focus)? Actually, these questions have been answered. Conventional insurers in USA offer cover provided by P&I clubs, and this is known as the fixed-cost P&I market (i.e. no supplementary calls), but the focus is on smaller tonnage ships. Not being mutuals, they have to make a profit for their shareholders. One of the oldest clubs, the British Marine Mutual which focuses on P&I and Hull insurance for small ships, decided in 1999 to demutualise. Also in 1999, Aon devised a liability cover for tanker operators, in competition with P&I clubs, but the results were patchy (Sansom, 2000). Conversely, a joint venture was started in 1999 by the Thomas Miller Group (managers of the UK P&I club), with Swiss Re and Lloyds', to offer hull insurance. Gard P&I club was also interested in following this hull development.

In the original English clubs, all the members and directors were English, as were the crews, virtually all northerners, from the heart of industrialization with its many ports. The clubs have survived dramatic technical, legal, political, economic and international changes and cyclical insurance markets. Most have developed into big international organizations, with multinational members, and Boards which meet at various locations around the world. The principle of mutuality persists. These are unusual collectives, with a giant oil-company member alongside a member having only one ship (Young, 1995). With the burgeoning economies of India and China joining those of Korea, Taiwan and Japan, it is probable that more Asian P&I clubs will be formed.

Of course there have been changes within the older clubs, or they would not have adapted to

the modern complex global world. They use sophisticated computer and communication systems, experts from the law, surveying, and government, commercial experts in maritime affairs, plus seafarers and other specialists. Interestingly, the clubs are not dominated by accountants as are so many businesses whose narrow focus is on the bottom line, although the clubs' accounts are properly audited in accordance with insurance regulations and commercial law. Their continuing success, due to expert control and management (and the inbuilt spur of mutuality) is impressive.

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