

Introductory guide to P&I cover

Shipowners insure against loss of or damage to their ships with hull underwriters.

Shipowners insure against loss of or damage to their ships with hull underwriters. They look to their P&I club for insurance in respect of third party liabilities and expenses arising from owning ships or operating ships as principals.

The term “P&I” stands for Protection and Indemnity. It is not hull insurance, war risk insurance, loss of profit/freight insurance, detention insurance, strike insurance or uninsured legal expenses (Defence) cover.

The following risks typically covered by P&I Clubs are briefly described in this 'layman's guide' to the Rules of the Club

- Personal injury to or illness or loss of life of crew members
- Personal injury to or loss of life of stevedores
- Personal injury to or illness or loss of life of passengers and others
- Loss of personal effects
- Diversion expenses
- Life salvage
- Collision Liabilities
- Loss or damage to property other than cargo
- Pollution
- Towage contract liabilities
- Liabilities under contracts and indemnities
- Wreck liabilities
- Cargo liabilities
- Cargo's proportion of general average or salvage
- Certain expenses of salvors
- Fines
- "Omnibus" cover

Freight, demurrage and defence risks can be insured with the UK Defence Club. The UK Defence club provide insurance for the legal and other costs of

- This guide should not be treated as in any way definitive of the terms of cover provided. If you would like to see the full text of the current Rules & Bye-Laws.

These can be downloaded in pdf format from the Club website (www.ukpandi.com) or obtained in hard copy from your usual Club contact (see back cover for contact details).

pursuing and defending claims related to entered ships where the sum in dispute is not insured. A review of the UK Defence club cover can be found at the back of this brochure.

1. Personal injury to or illness or loss of life of crew members

The shipowner may be exposed to such claims in tort or under statute law, although it is more usual for the claims to be made under the crew member's collective agreement or particular contract of employment. The cost of medical treatment and of repatriation is covered, as are the funeral expenses of dead seamen and also the cost of sending abroad a substitute for a seaman who is sick or injured or for a seaman who dies. Where there is a particular employment contract and this provides for unusually generous compensation in the event of death, injury or illness, the shipowner will normally be expected to have cleared it in advance with the managers of the Club so that his additional exposure under the contract can be taken into account in the assessment of his premium.

2. Personal injury to or loss of life of stevedores

This is a frequent source of heavy claims in tort or under statute law against shipowners and thus by them against their Clubs. Claims have been specially heavy in US ports, although the number of these claims has been reduced somewhat since the introduction of the 1972 Amendments to the Longshoremen's and Harbour Workers' Compensation Act which narrowed the circumstances in which the shipowner, as opposed to the employer of the stevedores, is liable for stevedore deaths and injuries.

3. Personal injury to or illness or loss of life of passengers and others

The shipowner may be exposed to claims in respect of passengers carried on board his ship in respect of injury, illness or death. These claims may in certain jurisdictions be defeated or limited in amount by the terms of the passenger ticket but, whether this is so or not in the particular case, the shipowner is covered for this risk. He may also be liable in tort to persons other than crew, stevedores and passengers who come on board his ship for one purpose or another, including surveyors, Customs officials, pilots and so on. Cover in respect of liability to these persons is also included.

4. Loss of personal effects

Liability of the shipowner to crew, passengers and others in respect of loss of or damage to the personal effects of these persons is also covered.

5. Diversion expenses

The shipowner may suffer losses through having to divert his ship in order to obtain treatment for an injured or sick person on board or for the purpose of landing stowaways. Although there is no liability here in the usual sense, the Clubs give cover to the shipowner in respect of the basic running expenses of his ship during the diversion, including port charges incurred solely for this purpose. Similarly, the cost of providing food and other necessities for stowaways may be reimbursed to the shipowner by his

Club. Several Clubs extend the cover given in respect of stowaways to include the like expenses in respect of refugees who have been picked up by the ship.

6. Life salvage

A shipowner may become obliged to pay a life salvage award to a person who has saved or attempted to save the life of persons on board the salvaged vessel. Where property has also been saved, the usual practice is for the property salvage award to be "enhanced" by an unspecified amount in recognition of the life salvage service.

The whole award is then payable by the property underwriters. But should the owner have to meet a claim for life salvage alone, this will be recovered from his Club.



7. Collision Liabilities

i. One-fourth collision liability

The English form of hull policy requires the ship's hull underwriter to pay three-fourths only of the liability of the insured ship in respect of loss or damage to another ship or her cargo as a result of the collision (subject always to the maximum mentioned under (iii) below). The remaining one-fourth of such liability is insured by the shipowners Club. This one-fourth usually makes the Club the largest single insurance interest, and in practice the managers of the Club will usually be asked by the hull underwriters to handle the issue of collision liability with the other ship and her cargo on behalf of all the underwriting interests. It is also usual for the Club concerned to give, on behalf of the insured shipowner, any necessary guarantees to the other ship and her cargo, the Club taking appropriate counter-security from the insured shipowner and also from the hull underwriters (or brokers) to the extent of their respective interests.

ii. Other risks excluded from the Running Down Clause

There are a number of important exclusions from the liability of the hull underwriters in the Running Down Clause. For instance, wreck removal liabilities are excluded, as is consequent damage to shore side structures or to the cargo in the insured ship herself, and pollution from and loss of life or personal injury on board any ship is involved. All those liabilities are insured by the shipowner's Club.

The Club cover includes, and the hull underwriter's cover excludes, not only the wreck removal of the insured ship herself, but also the removal of the wreck of any other ship involved. The same is true of liabilities incurred by the shipowner not in tort but because of the existence of a contractual obligation, as the words in the Running Down Clause "pay by way of damages" have been interpreted as being restricted to payments in respect of tortious liability. Thus in *Furness Withy v. Duder* payments made by a shipowner for collision damage to a tug were held to be unrecoverable from hull underwriters where the collision was caused solely by the negligence of the tug and liability arose under the special terms of the towage contract; the

shipowner may in such circumstances recover his payment from his Club (although in the case of towage other than ordinary harbour towage, by special arrangement only).

It may be asked why the Club cover should include the insured shipowner's liability to cargo carried in his own ship, in view of the fact that the Club's cargo cover is conditional upon the application of the Hague or Hague-Visby Rules and these Rules exclude claims by cargo in respect of the negligent navigation of the carrying ship. In most jurisdictions it is indeed most unlikely that the owner of cargo in the insured vessel could succeed in a claim against the owner of that ship in a collision situation. The cargo owner may make a claim against the non-carrying vessel in accordance with her degree of blame, if any, but cannot recover either from the carrying ship or from the non-carrying ship in respect of that part of the blame attributable to the carrying ship. However in the US there is a well established principle, the "innocent cargo rule" to the effect that cargo may recover from the non-carrying ship the whole of its loss, provided only that there is some degree of blame, however slight, upon the non-carrying ship.

The non-carrying ship is then entitled to recover over against the carrying ship in respect of the carrying ship's degree of blame for the collision. In this indirect manner the owner of the carrying ship may become obliged to pay part of the claim of the cargo carried on board his own ship. As the shipowner would be unable, because of the terms of the last sentence of the Running Down Clause, to recover in respect of this payment from his hull underwriters, the Club cover is extended to fill that gap.

8. Loss or damage to property other than cargo

The Clubs provide cover for damage caused by contact between the entered ship and property belonging to other persons, including docks, wharves, locks and so on. The shipowner will not need to insure with his Club for this risk where his hull policy accepts it, as is the case, for example, with the German and Scandinavian types of hull policy, although he may still wish to have Club cover for the excess above any

limit imposed by the hull policy. The Club cover also extends to damage caused by the entered ship to other ships and their cargoes without any actual contact, as, for example, by causing damage to a moored vessel by passing her closely at excessive speed.

9. Pollution

It is well known that there has in recent years been a huge increase in the exposure of ship-owners to liability claims in respect of pollution caused by cargoes from their vessels, in particular cargoes of oil. Most such liabilities are imposed by international convention such as CLC, domestic statute such as OPA 90 or common law, but some have been voluntarily assumed by shipowners in accordance with schemes such as STOPIA.

All these liabilities are insured by the Clubs, although with a limit in respect of oil pollution claims which presently stand at US\$1bn each entered ship each accident or occurrence. This oil pollution limit does not apply only to claims that are made directly against the entered ship by those who suffer the oil pollution, but also embraces those which come indirectly, as, for example, those which form part of the collision claim of another vessel.

10. Towage contract liabilities

Clubs provide cover in respect of liabilities which may be incurred during ordinary harbour towage and may by special arrangement offer cover on appropriate terms for situations beyond harbour towage. They also give cover for liabilities under the terms of the usual contracts for towage by the entered ship or another ship or object.

11. Liabilities under contracts and indemnities

Shipowners are often required to give contractual indemnities in order to secure services required by their ship, for example in order to obtain the services of a floating crane. Cover in respect of any resulting liability can be obtained from the Clubs in most such situations.

12. Wreck liabilities

The Clubs give cover for the liability which a shipowner may incur in respect of the raising, removal, destruction, lighting or marking of the wreck of his ship. From the cost of the operation will be deducted the value of the wreck or any part thereof that is recovered as a result of the removal operation.



13. Cargo liabilities

A very important part of the cover provided by the Club is that which relates to the liability of the shipowner under his contract of carriage to pay for any loss of or damage to cargo. Unless prior arrangements are made with the Club managers, this cover will be given on the basis that the shipowner's contract with the owner of the cargo is on terms at least as favourable to the shipowner as the provisions of the Hague or Hague-Visby Rules, that is to say the Brussels Convention of 1924 and its Protocol of 1968 and the Hamburg Rules of 1978.

The cover extends beyond the sea leg of the carriage and thus will protect the shipowner throughout a combined transport contract from an inland point to another inland point, provided only that the sea leg is performed by an entered ship. This part of the cover is extended beyond liabilities as such, in that the shipowner may recover from his Club any additional cost incurred by him in discharging or disposing of damaged cargo. Clubs' Rules impose restrictions on the cover in respect of deviation from the contract voyage (for example an unreasonable departure from the agreed itinerary or the shipment on deck of cargo with underdeck bills) and in respect of other departures from the proper carrying practice, such as the delivery of cargo without production to the master of the relevant bills of lading, or the issue of a "clean" bill of lading for cargo which is patently damaged.

14. Cargo's proportion of general average or salvage

As an extension of their cover for loss of or damage to cargo, the Clubs again go beyond the insurance of liabilities as such by agreeing to pay to the shipowner any contributions to general average, special charges or salvage which the shipowner would have been able to recover from cargo interests had he not disentitled himself from so recovering by committing some breach of his contract of carriage.

15. Certain expenses of salvors

The Lloyd's Standard Form of Salvage Agreement provides that in certain circumstances the owner

of an oil tanker may be required to reimburse a contractor who attempts to salvage that tanker for his "reasonably incurred expenses". These expenses, in contrast with ordinary salvage awards made under the Lloyd's Form or under general maritime law, are not recoverable under hull insurance policies, and the Clubs have agreed to insure shipowners for them in an agreement known as SCOPIC, having in mind the interests of the Clubs in the avoidance of oil pollution incidents.

16. Fines

A variety of fines may have to be paid by a shipowner, either directly or because of an obligation to reimburse his seagoing employees in respect of fines levied on them. Most of these come within the cover of the Clubs.

17. Legal costs

The Clubs also pay for legal costs and similar expenses which a shipowner may incur in dealing with a liability insured by his Club. In practice, the defence to the claim against the shipowner is usually conducted by his Club's managers or correspondents, who engage any lawyers, surveyors and other experts who may be required and have them paid directly by the Club.

18. "Omnibus" cover

In recognition of the fact that the list of liabilities to which shipowners are subject is constantly increasing in unforeseen ways, the Rules of the Clubs give their Directors discretion to pass for payment certain claims that are not expressly covered by any of the heads of cover set out in their Rules, provided only that they are within the general scope of the Club cover and are not expressly excluded elsewhere within the Rules. This is a most unusual provision and is a reminder that the Clubs exist, not as profit making insurance companies, but as organisations for the benefit of the shipowners who are their Members. The Omnibus Rule gives the opportunity to the Directors to move rapidly in response to the needs of the Members, particularly where a new risk suddenly arises or when an exceptional case appears to fall outside the express provisions of the Rules.

Overall conditions of cover

The risks described above are insured under the Clubs' Rules only where the relevant liability arises out of the Member's interest in a ship entered by him in the Club and when it arises in connection with the operation of that ship by or on behalf of the Member.

It is also provided by Club Rules that it is a condition of the cover that the Member must have paid the liability claim against him before he can recover from the Club. However, the failure of a bankrupt Member to pay the third party claimant may not provide a good defence to his Club when the Club is sued directly by the third party under the Third Party (Rights Against Insurers) Act 1930.

Exclusion of war risks

The Clubs' cover does not include liabilities arising from the war risks listed in the Lloyd's Free of Capture and Seizure Clause. Consequently it is usual for shipowners to attach to their war risks hull insurance policies a special clause giving cover for P&I risks to the extent that these may arise from such a risk and thus be excluded from the Club insurance.

Selection by shipowners of particular heads of cover and of deductibles

It should be particularly noted that a Member of a Club is not obliged to enter for all the risks set out above but may choose to take cover from his Club in respect only of certain risks which he perceives as most pressing from his point of view. Similarly, although some Clubs put in their Rules standard deductibles for the various risks, it is always open to a Member to negotiate specially large deductibles against a corresponding reduction in premium.

Cover for charterers

Although the above description of the Club cover speaks solely of shipowners, the cover is available also to charterers of ships, to the extent that they may incur any of the liabilities listed. Cover for charterers is usually subject to a provision that the charterer is deemed by the Club to have been entitled, as against the third party claimant, to any limitation rights that would have been available to a shipowner. Details can be found in Charterers' Liability Cover.

Additional Covers

The UK Club provides or arranges a number of additional covers for Members requiring specific additional insurance. Details can be found in Extended Cargo Cover.

defence cover

Defence cover is insurance for the legal and other costs of pursuing and defending claims related to entered ships where the sum in dispute is not insured. It is however more than just insurance. The Club's legally qualified staff are also available to assist and advise on claims without the need to instruct lawyers and to be used as a sounding board before particular steps are taken, as well as to advise on particular contracts or clauses.

Consider – if your usual insurers say it's not covered, is it covered under defence?

Examples of disputes covered

- **Wide range of disputes under time and voyage charterparties, concerning for example payment of hire or freight, payment of demurrage (including container demurrage), exercising liens over cargo, sailing orders, safety of ports, ship's performance and characteristics**
- **Disputes under contracts of affreightment and bills of lading**
- **Bunker quality disputes with bunker suppliers and between owners and charterers**
- **Claims for damage to the ship (where losses are below hull and machinery deductible) and loss of use between owners and charterers, shippers / cargo owners, terminal operators, third parties**
- **Disputes with agents, brokers, ship managers, stevedores, terminals or others supplying services to ships**
- **Coverage or other disputes with marine insurers**
- **Employment claims or other disputes with crew members**
- **Disputes with governmental or port state authorities, representation at official investigations.**

What is available?

- **Costs not exceeding \$10,000 available automatically**
- **Costs in excess of \$10,000 available following a review of the case**
- **Costs include fees charged by lawyers, experts, surveyors and correspondents arising in any jurisdiction**
- **There is no mandatory deductible under defence cover.**

How do I claim?

- **Notify the Club at the earliest opportunity – as soon as possible once the dispute arises**
- **Keep the Club involved – discuss strategic steps e.g. appointment of lawyers, start of proceedings, settlement discussions.**

It's not just about legal fees!

- **The Club can advise on and assist in disputes without the involvement of lawyers. Our legally qualified claims executives can help settle disputes at an early stage**
- **The Club can advise on particular contracts or clauses.**

DO I NEED TO INSTRUCT A LAWYER OR CAN THE CLUB ASSIST?

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