



West of England 

Current P&I Challenges

13 March 2012

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Content

- **P&I Club system - International Group and its Sub-Committees**
- **Drivers for change**
- **China**
- **United States**
- **LLMC**

Structure of the Club system

- 13 Clubs
- Insuring over 90% of the world's blue water fleet
- Over 95% of ocean going tankers
- Compete amongst each other but work together in the International Group:

“Individually competitive, the International Group of P&I Clubs brings together the collective influence of the mutual clubs as a force for security and stability in international maritime trade.” [www.igpandi.org]

The International Group of P&I Clubs



Structure of the Club system

- **International Group is an effective vehicle for:**
 - **Pooling of claims**
 - **Purchase of world's largest marine reinsurance contract**
 - **Providing unparalleled limits of cover:**
 - **Pollution - US\$1 billion per event**
 - **Non-Pollution - US\$6.9 billion (approx) per event**
 - **Sharing of knowledge & experience**

Knowledge sharing – IG sub-committees

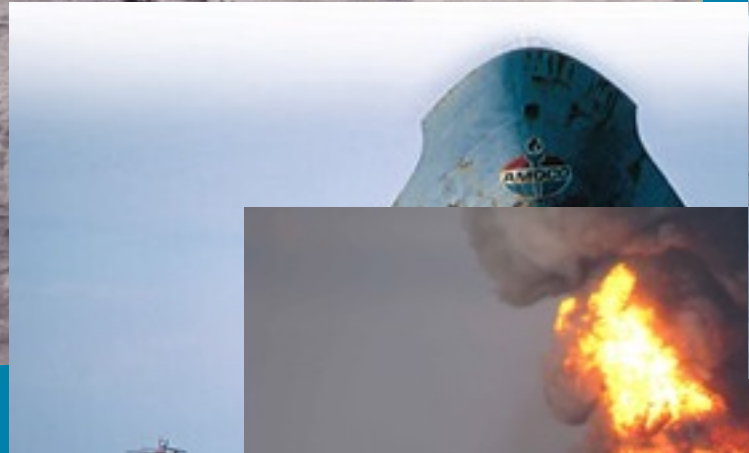
- Pooling of knowledge and experience for benefit of world's shipowning community
- Various sub-committees – e.g. personal injury, ships standards, bills of lading, salvage, pilotage, etc
- One voice on common issues
- Focal point for industry
- Pollution Sub-Committee

Vessel Response Plan (VRP) Working Group

- **Sub-set of the Pollution Sub-Committee**
- **Analyse pollution-related contracts on behalf of IG to ensure compliance with Club cover**
- **Reference point for industry**
- **Publish guidelines**
- **QI, OSRO, SMT, etc in US, Canada, Panama, Argentina & China**

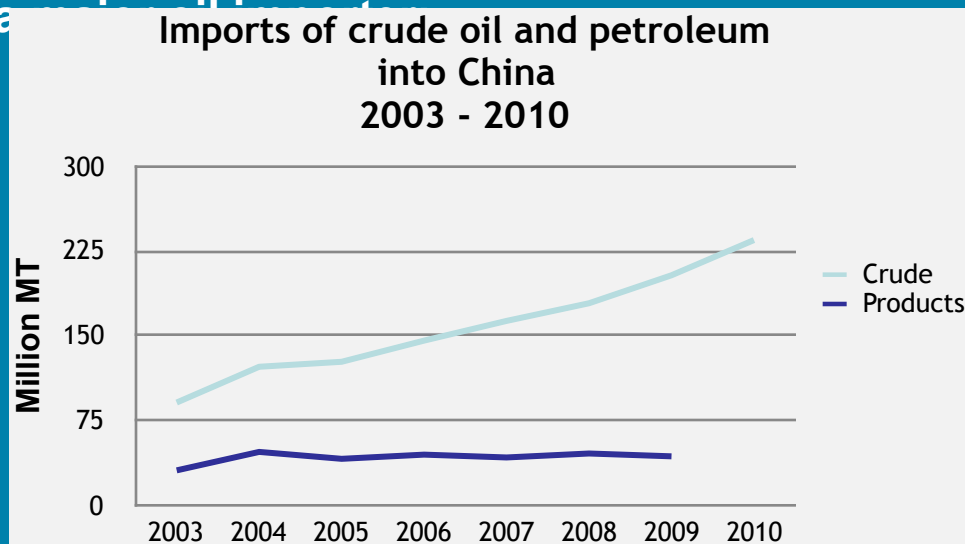
Drivers for change in pollution legislation

- Environmental awareness
- Increasing imports into developing nations
- Underdeveloped response infrastructure?
- Increasingly litigious society
- Political interference
- BUT all these pale into insignificance compared with:



China

- No significant ship-borne spills recently
- But a significant increase in oil imports



- 1 March 2010 – Regulations of the People’s Republic of China on the Prevention and Control of Marine Pollution from Ships

China - the Regulations

- **Discharge/reception of pollutants**
- **Dumping of waste**
- **Reporting of pollution incidents**
- **Investigation into and compensation for pollution events**
- **Loading, lightering and discharge of hazardous cargoes**
- **Compulsory insurance**
- **Response planning and clean-up arrangements**

China: clean up – new setting for an existing idea

- Ship ‘operator’ required to contract with clean-up contractor before entering PRC port
- “Shipowners Pollution Response Organisation” or SPRO
- Certain types of vessels – oil in bulk, “liquid hazardous cargo” in bulk + all others >10,000 gt
- Various levels of SPRO 1-4, consortium + networks
- Implementation deferred many times but finally in force 1 Jan 12
- Note: no QI, SMT, etc requirement

China – SPROs and the IG

- **VRP WG in active dialogue with SPROs, agents and China MSA**
- **Developed SPRO contract with wording acceptable to MSA and IG**
- **Reviewing individual and consortia/network SPRO contracts to ensure:**
 - **Contractual wording within IG guidelines & therefore insurable**
 - **SPRO has adequate insurance backing**
 - **Response tariff is reasonable (ITOPF)**
- **Big job – 120+ SPROs and counting**

China – compensation matters

- **China is State party to:**
 - '92 CLC
 - Bunkers Convention
 - But not '92 Fund Convention

- **New Regulations have limited effect:**
 - A requirement to establish financial security
 - Limited re-ranking of claimants' priorities

- **Creation of China's own domestic fund**

- **Sits on top of CLC but small compared to others (IOPC, OSLTF)**

USA



USA – the Deepwater Horizon effect (1)

- Immediate clamour for change to reflect the public mood
- Offshore industry firmly in Congress' sights
- But shipping industry may suffer collateral damage
- IG lobbying and testified before House Committee
- OPA '90 has served its purpose
- Ships represent a bounded liability
- Unlimited liability is uninsurable

USA – the Deepwater Horizon effect (2)

- **Dispersant use has had unintended consequences**
- **OSROs drawn into litigation over illness claims**
- **Expensive battle to extricate themselves**
- **Efforts to change the law**
 - **Responder immunity under OPA '90**
 - **Derivative immunity**
- **USCG considering the position as well – part Federalised?
Direct contracts?**

USA – the Deepwater Horizon effect (2)

- In the interim, contractual protection sought
- Addendums to major OSRO contracts
- Include provision for shipowner to contract with dispersant supplier
- Indemnities are not balanced, outside IG guidelines
- IG has engaged with OSROs to discuss modifications
- Additional cover (and therefore expense) may be necessary

USA – towards greater NRDA cooperation

- **Natural resource damage assessment: a particular feature of OPA '90**
- **Trustees want to get to restoration quickly**
- **Owners and Clubs want to pay full part in the process - TWGs**
- **A process based on sound science and consistent data**
- **Cooperative NRDA is best for all**
- **IG MOU with NOAA and now DOI**
- **Signed in Washington, DC November 2011**

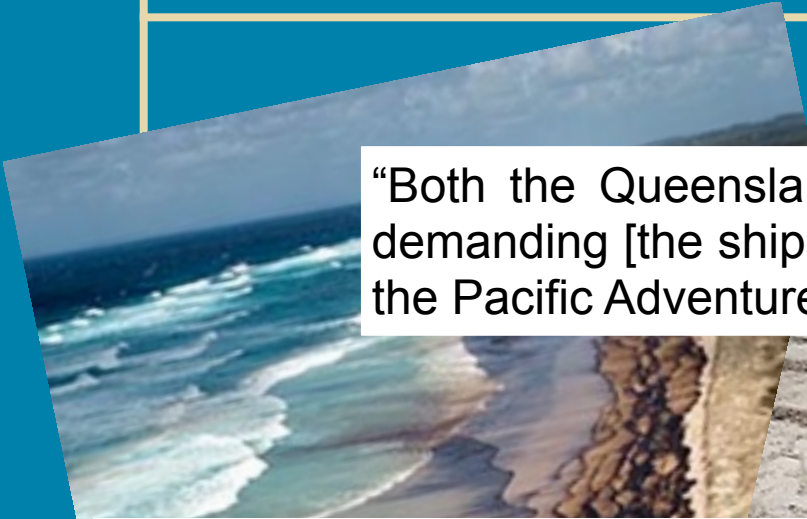
LLMC – raising the limits?




LLMC – raising the limits?

- **Convention on Limitation of Liability for Maritime Claims 1976**
- **1996 Protocol – higher limits**
- **Bedrock of international maritime legislation**
- **Facilitator of international trade**
- **Governs liability under Bunkers Convention in many States**

LLMC – raising the limits?



“Both the Queensland and Federal governments are demanding [the shipowner] pay the full costs related to the Pacific Adventurer oil spill...”



“Queensland premier, Anna Bligh, a great, great, great, great, granddaughter of Capt Bligh of Mutiny on the Bounty renown is now on the other side of a rebellion and refused to accept the shipowner's right to limit.”



LLMC – raising the limits?

- **'PACIFIC ADVENTURER' spill 2009**
- **Australia signatory to LLMC with '96 Protocol**
- **Claims exceeded limitation available to the shipowners**
- **Public and political pressure on owner to go beyond the limit**
- **A deal was done**
- **But now proposal before IMO to raise LLMC limits**
- **If LLMC procedure applied in full the effect would be dramatic:**

LLMC – raising the limits?

Loss of Life/Personal Injury	Oct-96		Oct-10	
	SDR	US\$	SDR	US\$
Vessel GT				
2, 000	2,000,000.00	\$3,120,000.00	4,521,807.91	\$6,854,378.26
5, 000	4,400,000.00	\$6,864,000.00	9,947,967.91	\$15,518,829.94
10, 000	8,400,000.00	\$13,104,000.00	18,991,567.91	\$29,626,845.94
50, 000	36,400,000.00	\$56,784,000.00	82,296,767.91	\$128,382,957.94
100, 000	60,400,000.00	\$94,224,000.00	136,559,167.91	\$213,032,301.94
175, 000	90,400,000.00	\$141,024,000.00	204,385,717.60	\$318,841,719.46
Any Other Claims				
	Oct-96		Oct-10	
	SDR	US\$	SDR	US\$
Vessel GT				
2, 000	1,000,000.00	\$1,560,000.00	2,260,903.96	\$3,527,010.17
5, 000	2,200,000.00	\$3,432,000.00	4,973,983.96	\$7,759,414.97
10, 000	4,200,000.00	\$6,552,000.00	9,495,783.96	\$14,813,422.97
50, 000	18,200,000.00	\$28,392,000.00	41,148,383.96	\$64,191,478.97
100, 000	30,200,000.00	\$47,112,000.00	68,279,583.96	\$106,516,150.97
175, 000	45,200,000.00	\$70,512,000.00	102,192,858.80	\$159,420,859.73

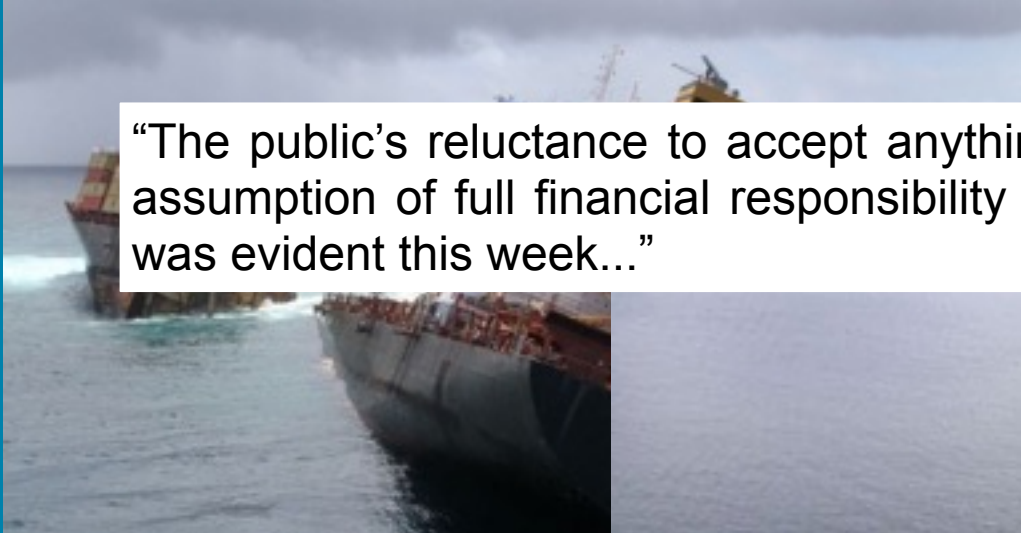
LLMC – raising the limits?

- **IG has actively engaged with IMO Legal Committee**
- **Data requested on past events shows that:**
 - Between 2000 and today, the total cost of pollution damage claims from a spill, or the threat of a spill, exceeded the limits of liability contained in the 1996 LLMC Protocol in only 10 incidents, whether or not the Protocol was in force in the State whose waters the incident occurred, and
 - Since the entry into force of the 1996 LLMC Protocol on 13 May 2004, the total cost of claims that were subject to limitation exceeded the limits, save for incidents involving pollution damage arising from bunker oil spills, in only 7 cases.

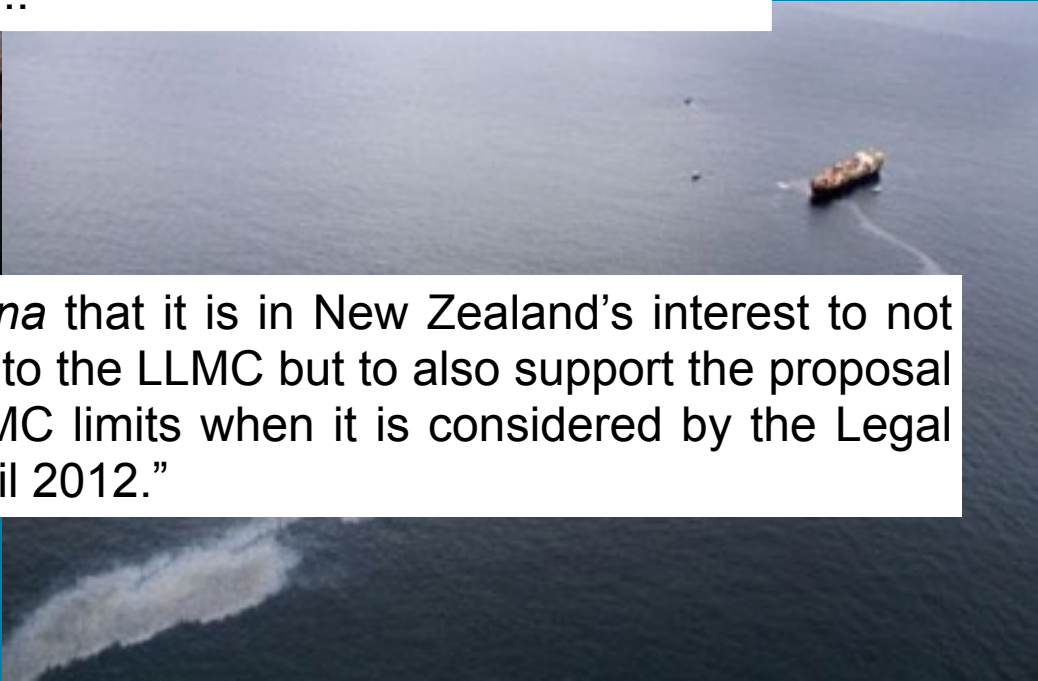
LLMC – raising the limits?

- Individual major events are (thankfully) rare and should not distort the operation of a system that works perfectly well for vast majority of cases
- Any increases should be justifiable and insurable at reasonable cost rather than being penal and therefore dissuasive
- “A limit which is too high could effectively void the concept of limitation of liability”
- A balance must be found to protect claimants but encourage shipowners to keep trading to those States

“RENA” – a case of déjà vu Down Under?



“The public’s reluctance to accept anything less than the assumption of full financial responsibility for the clean-up was evident this week...”



“It is clear in light of the *Rena* that it is in New Zealand’s interest to not only ratify the 1996 Protocol to the LLMC but to also support the proposal to increase the 1976/96 LLMC limits when it is considered by the Legal Committee of the IMO in April 2012.”

Thank you

www.westpandi.com