ANNUAL REVIEW
2014/15

IGP&I

KEY FACTS

1. Total entered tonnage in the Group Clubs continues to grow - 1.047 billion GT as at August 2014.
2. The world merchant fleet grew by 3.6% during 2014 to just under 89,500 vessels.
3. In 2014, global seaborne trade grew by approximately 3.4% year-on-year to 10.5 billion tonnes.
4. 91 reinsurers worldwide participate on the 2015/16 Group General Excess Loss and Collective Overspill reinsurance programme.
5. In excess of 32% of the entire Group Reinsurance programme is written through Lloyd's.
6. The LLMC 1996 Protocol liability limits will increase by 51% from 8th June 2015.
7. Fifteen claims have been notified to the Group pool for 2014/15 (2013/14 25 claims).
8. In July 2014, the COSTA CONCORDIA was successfully re-floated and towed to Northern Italy for demolition.

Chairman's Statement

Grantley Berkeley
Chairman

The strength of the Group system lies not only in the unparalleled limits and range of cover which it is able to deliver for shipowners and for third parties, but also in the collective expertise in legal, insurance and technical matters that it brings together through its established subcommittees and working groups.

Recognising the need to nurture and promote such expertise within the Group Clubs was the rationale behind the development of the P&I Qualification programme in 2007, with the creation of a subcommittee under the chairmanship of Charles Hume on whose initiative the project was launched. The programme covers seven dedicated learning modules, providing a comprehensive insight into the history, operation and practice of P&I insurance, with extensive learning material prepared with input from current and former senior Club managers, and a CII certified examination programme. The full examination programme was completed in November 2013, since when examinations have been held twice yearly with a high level of take-up by staff within the Clubs. The Group is immensely grateful to Charles Hume for his original initiative, and for his very considerable efforts in bringing the programme to fruition. The availability of this dedicated learning facility to Club staff will undoubtedly play a very important part in promoting and ensuring high levels of expertise within Clubs and the Group.

The freight market uncertainty continues

For shipowners, 2014 was a year of mixed blessings in the freight markets. The ClarkSea index dropped below US$10,000/day in the early part of the year, but regained ground to stand at almost US$14,800/day in December. Tanker rates showed some improvement on the previous year, but other sectors showed little or none, and in some cases (particularly the dry bulk sector) the December 2014 rates fell below those of the same period in the prior year. It is too early to gauge whether the 40% fall in oil prices during the second half of 2014 is a long-term correction, but in the short-term the impact on shipping is mixed. For most operators, the margin between revenue and OPEX remains very modest.

World fleet growth continues with Clarkson reporting tonnage growth of 3.6% during 2015, to a total of 89,464 ships with a combined 1,175 million GT. Over the last six years the world fleet has grown in tonnage terms by 52%. Encouragingly, 2014 saw a growth in global seaborne trade of 3.4% year-on-year to a total of 10.5 billion tonnes with growth reported for all vessel sectors. Despite these positive influences however, the realistic market expectation is that 2015 will be another uncertain and challenging year for the shipping industry.

2014 saw further growth in the total Group entered tonnage, which increased from 1.021 billion GT in August 2013 to 1.047 billion GT as at August 2014.

Claims continue to challenge

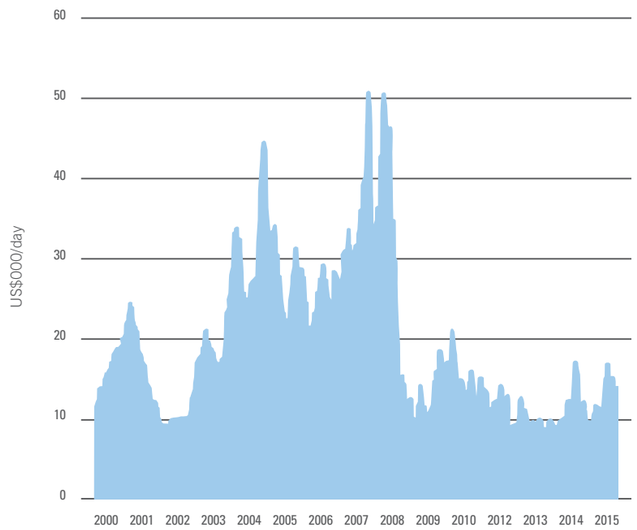
Compared to recent years, claims over the last 12 months have been relatively benign. However, the claims environment generally continues to be hostile to shipowners and the potential for large claims is ever-present. 2014 was a third consecutive year of reduced frequency and severity of claims impacting on the Group pool and reinsurance programme. This continuing favourable trend resulted in a positive benefit for shipowners in reinsurance cost savings and in the strengthening of the free reserves of the Group captive, Hydra Insurance Company Limited, which is playing an increasing role in the Group's reinsurance arrangements.

Solvency II - a new era of regulation

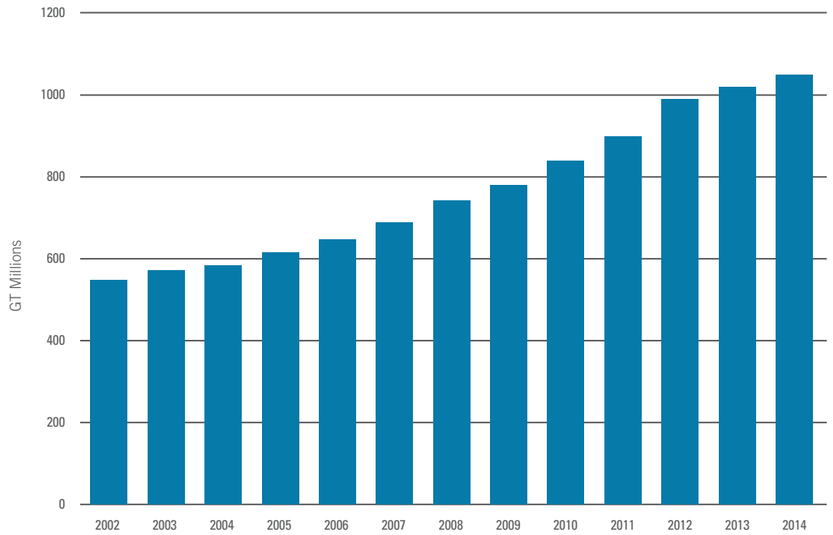
Delays in finalising the Solvency II framework details meant that the January 2014 implementation date was postponed, and the regulation is now scheduled to enter into force on 1 January 2016. Not all Group Clubs will be subject to the regulation, but for those which will be there has been extensive engagement over a number of years with Individual Member States and EU regulatory bodies. The unique structure of the Clubs and the mutual business model which they operate, posed a number of challenges for Clubs, through a long process of discussion with the regulators, and restructurings within some Clubs, Solvency II compliance from January 2016 should not prove problematic.

Shipping Cycle 2000-2015: ClarkSea Index

(The ClarkSea Index is a weighted average of the earnings of Tanker, Bulk, Gas & Container Vessels)



International Group Owners' tonnage



Diversification

There was continuing focus during 2014 in the press, and in broking circles, on the subject of diversification by Clubs into new correlated and uncorrelated business areas. Undoubtedly diversification carries some potential benefits through enhanced spreading of risk and providing alternative income sources, but the possible downsides should not be ignored. In particular the risk of cross-subsidisation exposes mutual memberships to the possibility of the financial failure of diversified activities.

More significantly, subsidising P&I rates from extraneous sources artificially distorts call income, with the effect of reducing a Club's assessed contribution to pool claims. This in turn risks undermining trust and confidence between Clubs, trust which is fundamental to the successful operation of the claims pooling and sharing mechanisms that underpin the Group system. Going forward the Group will need to closely monitor and assess the impact of diversification of activities with a view to ensuring the preservation and effective operation of the Group claims pooling and sharing system.

Fixed premium

The continuing development of Club managed fixed premium non-pooled facilities was another issue which attracted interest during 2014. The traditional market for fixed premium cover focused on smaller vessels which did not need the high limits, or broad range, of cover offered through the mutual system. Increasingly, however, fixed premium commercial providers are offering higher limits of cover to larger vessels, and are competing directly with the mutual providers. In response to shipowners' demand for such cover, most Clubs have established their own fixed premium non-pooled cover facilities. Whilst at present this business accounts for a very modest proportion of Clubs' total combined mutual and fixed premium income, the medium and longer-term ramifications of further development of fixed premium facilities at the expense of the traditional mutual product will need to be kept under review.

Preserving the system

13 Clubs simultaneously co-operating and competing with each other is bound, at times, to produce strains within the Group. This is as true today as it has always been, and Clubs have always found a way to moderate individual ambitions where they threatened the Group pooling system and all the benefits that come with it. Undoubtedly some of the issues outlined above will continue to generate strong opposing views. This is healthy. Our goal, however, must be to ensure that the current pooling system, which has served shipowners so well, is not sacrificed in the pursuit of broader commercial aspirations.

Executive Officer's Statement

Andrew Bardot
Executive Officer

2014 saw continuing widespread interest in the on-going operations to remove the wreck of the COSTA CONCORDIA. Hopefully however, with the wreck safely re-floated, and towed to Northern Italy for scrapping, the response phase of this tragic incident is now drawing to a close. Work continues on the remediation of the stranding site, and in dealing with outstanding third party claims. There will, however, be valuable experience to be gained, and important lessons to be learned, from this incident which will be the subject of a detailed review within the Large Casualty working group during 2015.

2014 was another very busy year of diverse engagement for the Group Secretariat on both current and new regulatory, legal and technical issues impacting on Club cover and the Group pooling and reinsurance arrangements.

Sanctions continue to confuse

Further developments in relation to sanctions legislation and regulation, in particular targeted against Russian and Ukrainian individuals and entities, resulted in increasing complexity for shipowners and their insurers. These commanded considerable time and engagement by the Group during 2014. Sanctions measures against Iran also continued to feature prominently, and it appears that some progress has been made towards a longer-term resolution of the concerns surrounding the development of Iran's nuclear programme. As previously reported, discussions between Iran and the 'P5 +1' during the autumn of 2013 resulted in the introduction in early 2014 of a temporary relaxation of a number of sanctions measures against Iran that impacted the shipping and related insurance sectors. This temporary relaxation was further extended during 2014. The ambiguity, however, in the wording of the relevant EU provisions in particular, means that Clubs continue to advise their members to proceed with considerable caution in relation to the insurance of vessels trading with Iran.

Major claims - a brighter picture

In relation to claims falling on the Group pool and General Excess Loss (GXL) programme, 2014 saw a continuation of the more benign large claims trend following the spike of the 2011/12 policy year. As described later in the review, this in part contributed to a positive restructuring of the GXL programme conferring a significant reinsurance cost benefit on shipowners. History has shown that claims falling on the pool and reinsurance layers are random in nature and 'spike years' such as 2006/2007 and 2011 will inevitably occur, but it is encouraging that 2014 recorded a third consecutive year of reduced frequency and severity of major claims.

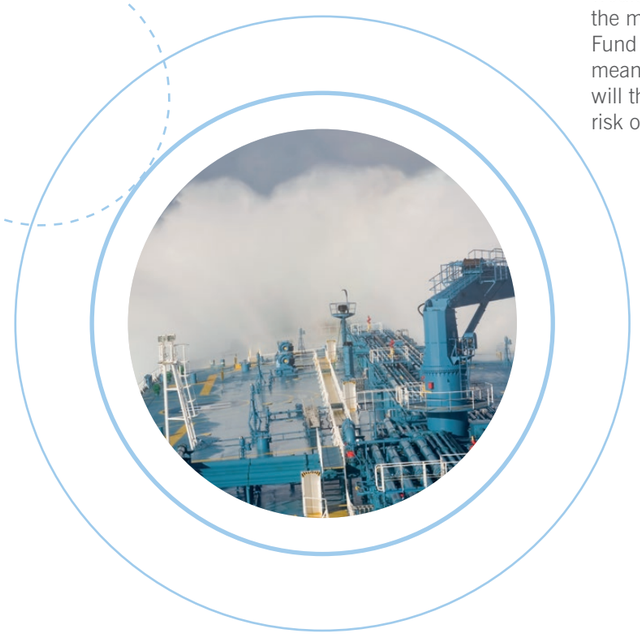
Piracy threat shifts

In 2014, a total of 259 piracy incidents were reported globally, down 7% year-on-year (source Clarkson). For a second successive year, no vessels were captured in the areas around the Horn of Africa/Gulf of Aden/Arabian Sea, where tight naval security involving multiple countries as a part of the NATO counter-piracy mission "Operation Ocean Shield" continues. There was a significant rise in 2014 in attacks and successful hijackings in South East Asia and West Africa, with an overall increase in piracy captures during 2014 of 31% year-on-year. There have been particular concerns in the Niger Delta and Nigerian territorial waters regarding the use of private maritime security advisers, which has been the subject of inter-industry discussion with a view to determining what action might be taken to try to resolve these concerns.

Although the geographical focus has shifted, the piracy threat remains ever-present. In the current enhanced-risk areas in South East Asia, India, Horn of Africa/Gulf of Aden/Arabian Sea, East and West Africa, there is no room for complacency on the part of shipowners, or their insurers. In particular, continued shipowner compliance with the joint industry developed Best Management Practices remains essential.

Growing cyber-awareness

The focus on cyber risks impacting on insurers intensified during 2014, and this is likely to remain an area of significant interest in the insurance and reinsurance markets during 2015 and beyond. A review was undertaken for the Group Reinsurance subcommittee, with assistance from the Group's brokers Miller, on the likelihood of a successful cyber-attack against a ship. Whether that is through the interference with shipboard systems either by an automated random or targeted attack, the likelihood is considered low. In relation to Club cover, there are no specific exclusions of cover for usual P&I liabilities arising as a result of a cyber-attack although, depending on the nature of such an attack, the resulting liabilities might be excluded by the application of the war/terrorism cover exclusion. Similarly, the Group pooling arrangements and GXL reinsurance do not contain cyber risk exclusions. The Group will, however, continue to monitor developments in relation to both the operational and insurance ramifications of cyber-risk exposure.



Farewell to the 1971 IOPC Fund

The events surrounding the decision by the IOPC 1971 Fund, taken at its October 2014 meeting, to wind up the 1971 Fund by the end of 2014 received widespread coverage in the shipping press. The decision was opposed by the Group and Shipowner Associations on the grounds that it was premature whilst there were still potential claims outstanding against the Fund. It was also controversial within the Assembly, with a significant number of States aligned with the Group view and opposing the winding up. Following extensive discussion however, the decision to continue with the winding up was carried by a majority vote of 29 to 14, and the 1971 Fund ceased to exist at the end of 2014. This leaves the Group potentially exposed in respect of claims in Venezuela involving the NISSOS AMORGOS incident in 1997, which is still the subject of pending legal proceedings in Venezuela against the shipowner and the Gard Club.

The decision to wind up the 1971 Fund, notwithstanding the opposition of the Group, goes to the heart of the co-operation which has been built up between the Group and the IOPC Funds over many years. It is because of this co-operation that Clubs have historically been prepared to advance compensation payments to victims over and above their CLC exposure, on the understanding that overpayments would be reimbursed by the Fund, subject to not exceeding the maximum Fund limit. The decision to wind up the 1971 Fund undermines this understanding. If future incidents mean that there is a risk of CLC limits being exceeded, Clubs will think twice about exposing themselves to any unsecured risk of overpayment.

Liquefaction concerns resurface

The Group continued to focus during 2014 on concerns surrounding potential liquefaction of certain bulk cargoes carried by sea. A number of IMO Member States have failed to implement and apply the mandatory requirements, established by the International Maritime Solid Bulk Cargoes (IMSBC) Code, and some of them are mining and exporting by sea significant quantities of bulk cargoes that have a propensity for liquefaction. The Group continues to work closely with Intercargo to address these concerns at the regulatory level, with the IMO and with individual States where such cargoes are mined and exported.

In relation to the ongoing problems concerning the carriage of Direct Reduced Iron (DRI), the Group is leading an industry grouping of international associations to review the research work that is currently being undertaken that will form the basis of a new DRI (D) Schedule to the IMSBC Code. It is hoped that, at the conclusion of this work, a draft DRI (D) Schedule will be proposed to the IMO that has industry-wide support.

European focus on ship recycling

In 2009, the IMO adopted the Hong Kong Convention on the safe and environmentally sensitive recycling of ships. To date just three States have acceded to the Convention.

Since the Hong Kong Convention was adopted in 2009, the European Union has agreed a Ship Recycling Regulation (Regulation 1257/2013/EC1 – SRR) which encourages EU Member States to accede to the Convention, and also introduces an EU-wide ship recycling regime. The Regulation entered into force on 30 December 2013.

Article 29 of the Regulation obliges the European Commission to submit to the European Parliament, and to the Council, a report on the feasibility of a financial instrument to incentivise shipowners to recycle ships in accordance with the minimum standards set out in the Hong Kong Convention, with the objective of facilitating safe and environmentally sensitive recycling. Options under consideration include an 'end of life' insurance product.

In relation to the preparation of the feasibility report, the Commission has initiated a review by external consultants, supported by DNV-GL and Erasmus University.

Whilst there does not currently appear to be any significant support for mandating a ship recycling insurance product, the Group (together with other shipowners and insurer industry associations) has provided input into the review and participated in a stakeholder meeting with EU Member States. A clear message has been delivered that an insurance-targeted solution is not the way ahead, and would be unworkable in practice.

Final proposals on a financial instrument will be made by the European Commission by December 2016, and in the meantime the Group will continue to monitor closely developments in this area.

Strengthening the team

The Secretariat team, which currently numbers seven in total, brings together a broad range of training, skills and practical experience including legal, government shipping policy, oil pollution, seafaring and IT amongst others. The team was further strengthened during 2014 by the arrival in November of Catherine Grey. Catherine, who holds a BA and MA from Cambridge University in Natural Sciences, was previously Head of Information Systems at ITOPF and more recently Head of the External Relations and Conference Department at the IOPC Funds. Catherine is already adding considerably to the expertise and reach of the Secretariat team.

By industry standards the team is small, particularly when viewed in the context of the large number and wide range of issues covered on a day-to-day basis. However, the unique structure of the Group means that the team is greatly supported by the collective expertise, input and participation of Club managers who sit on the Group's many subcommittees and working groups. The extensive legal and technical expertise contributed by Club managers is unparalleled in the industry and a unique feature of the Group system. With the support of the Group, the Secretariat team is well placed to address the current and new challenges arising during 2015.

Pooling and Reinsurance

Hugo Wynn-Williams
Chairman Reinsurance subcommittee

The 2014/15 policy year proved to be another benign year for claims reported to the pool and to the Group's reinsurers. As at 20 February 2015, a total of 15 claims had been notified, with a total estimated exposure to the pool of around US$180 million, and no claims had reached the GXL attachment point of US$80 million. This is the third consecutive year of favourable loss experience on the reinsurance programme for the 2012/13 and 2013/14 policy years.

However, further development during 2014 on the 2011/12 policy year has continued to impact on the Group's reinsurers, in particular on those participating on the third layer of the programme. The development in incurred losses since the 2014 renewal, which were very substantially accounted for by the COSTA CONCORDIA and RENA claims, amounted to approximately US$400 million.

Pool structure 2015/16

For the 2015/16 policy year, no changes have been introduced into the lower and upper pool layer structure. The individual Club retention will remain at US$9 million for a third year, and the attachment point on the GXL contract will remain unchanged at US$80 million. There will once again be a three layer pool structure, with a lower pool layer from US$9 million to US$45 million, an upper pool layer from US$45 million to US$60 million (within which there is a claiming Club retention of 10%) and a top pool layer from US$60 million to US$80 million (within which there is a claiming Club retention of 5%). Hydra's reinsurance of the Group pool will remain unchanged at US$50 million excess of US$30 million.

Group GXL and Collective Overspill renewal 2015/16

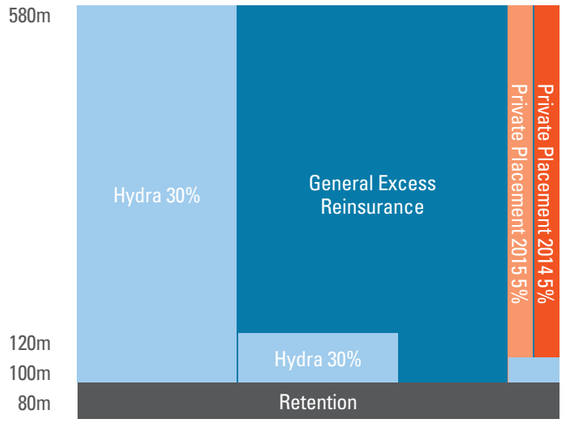
A number of factors including; increased market capacity, the continuing positive financial development of the Group captive, facilitating additional Hydra risk retention and the use of a further multi-year fixed placement, enabled the Group to achieve favourable reinsurance renewal terms for 2015/16. The result was that Clubs could pass on rate reductions for tankers and dry cargo vessels and no increase for passenger vessels.

For 2015/16 Hydra increased its co-reinsurance share in the first layer of the Group GXL programme (US$500 million xs US$80 million) to include an additional 30% share of the layer US$80 million-US$120 million and a 10% share of the layer US$80 million-US$100 million, thereby increasing its overall participation on the layer from 30% to 32.8%.

In addition to the 5% 36 month private placement of US$1 billion xs US$100 million which incepted on the 2014/15 renewal, a further 5% 36 month private placement of US$1 billion xs US$100 million incepted on 20 February 2015.

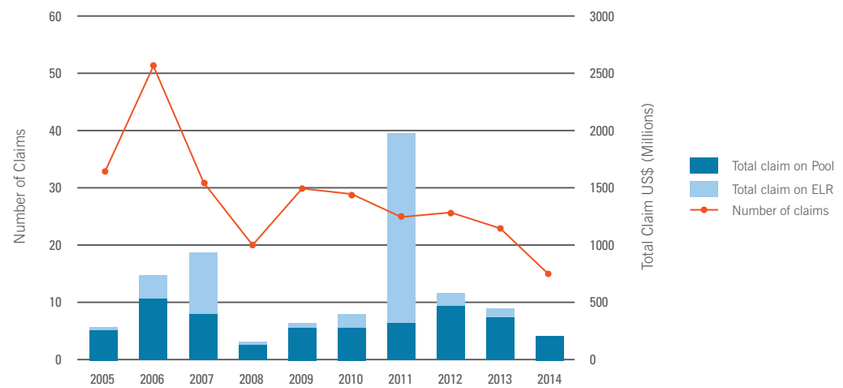
The diagram below illustrates the revised participation structure of the first layer of the Group GXL programme for 2015/16.

IG GXL Layer 1 structure 2015/16



The result of the renewal negotiations and programme restructuring was a reduction in reinsurance cost of 8.11% for clean and dirty tankers, 6.05% for dry cargo vessels, and no increase for passenger vessels or chartered entries – a welcome result for shipowners following a series of annual rate increases following the 2011/12 policy year claims' spike.

Pool Claims by Policy Year



An improving pool claims picture

In relation to pool and reinsurance claims experience across the board, this showed a continuing favourable trend of reducing claims during 2014/15, with decreases in both frequency and severity of claims notified, further facilitating a return towards claims /reinsurance premium equilibrium across all vessel types.

Spreading the cost

In approaching the reinsurance cost allocation exercise for the 2015/16 policy year, and in accordance with the Group's general allocation objective of moving towards a claims versus premium balance for each vessel type over the medium to longer-term, the Group's Reinsurance Strategy working group and Reinsurance subcommittee again reviewed the updated historical loss versus premium records of the current four vessel type categories.

In the tanker category, both the clean and dirty tanker records show a continuing favourable trend of steadily reducing claims and premium since 2004/5.

In the dry cargo category, claims and premium have continued to return towards equilibrium. In comparing container and non-container dry tonnage, the objective of seeking to achieve equilibrium over the medium to longer-term dictates that a new vessel type category should not be created in the short-term without a compelling reason to do so based on a sustained claims pattern. The absence of any significant container claims arising during the 2014/15 policy year has meant that there is insufficient historical claims data to support a separate treatment of container vessels from dry cargo vessels in general, for the purposes of reinsurance cost rating for the 2015/16 policy year.

In the passenger category, there were significant increases in reinsurance costs allocated in the 2013/14 and 2014/15 policy years, principally reflecting the very substantial continuing adverse development on claims arising from the COSTA CONCORDIA incident. These claims should now be fully, or very close to fully, developed and (in the absence of any further major passenger vessel incidents) the sector should continue to move towards claims/premium equilibrium over the medium-term.

The year ahead

The level of the individual Club retention, the GXL attachment point and the Hydra reinsurance attachment point within the pool will all be the subject of further consideration and review within the Group Reinsurance subcommittee during the course of 2015, with a view to making recommendations to the Group on possible changes for the 2016/17 policy year.

P&I Qualification Programme

The genesis of the P&I Qualification programme (P&IQ) was the belief that, as a matter of good governance, the Group Clubs should be attuned to the growing expectation of professional qualification within the insurance sector. Clubs should be able to demonstrate to their own memberships, as well as to insurance regulators, that technical insurance expertise is fundamental to the successful management of the Clubs in future. While this has always been so, the transparent business culture nowadays means that it is important that the next generation of Club senior managers should have the opportunity to demonstrate such a relevant qualification.

Developing the concept

The concept to develop a dedicated P&I qualification programme was approved by the Group Managers in the autumn of 2007. The first stage in the development process was to agree a syllabus and develop learning material on which students could be examined. This resulted in the development of seven separate core modules, which covered the whole range of P&I principles and topics, from the concept of mutuality to the intricacies of Club Letters of Guarantee. The Group is very grateful to the original Chief Editor, David Martin-Clark, and to Charlotte Warr, who were instrumental in developing the learning material and aligning the accreditation process with the Chartered Insurance Institute's (CII) expectations.

The importance of accreditation

At an early stage of the planning, it was agreed that the Group should seek accreditation of the P&IQ by the CII, the principal professional organisation for the insurance industry. It was considered that this would lend weight to the P&IQ in its own right, and would also facilitate the achievement of the CII's Advanced Diploma qualification for those who wished to have a general insurance industry qualification, as well as one specific to P&I. The P&IQ modules were therefore designed to provide additional optional modules in the exam process for the Advanced Diploma qualification. The CII did not agree to accredit individual modules until they had been through an exam process. A pilot group of Club staff volunteered to be examined on the learning material without knowing whether or not they would end up as accredited modules. In the event, all the modules were accredited, and the staff in the pilot group passed all seven and were subsequently awarded their P&IQ by the Group Chairman in November 2013.

Since 2014 all seven CII accredited modules have been available to Club staff, and the number of staff embarking on the programme has grown and, at the last examination session in November 2014, candidates sat more than 100 exams over the seven modules.

Moving with the times

As experience of the P&IQ has grown, there has been feedback from both examiners and candidates, and materials have been updated to keep them relevant in a constantly changing P&I world. In the early part of 2015, there was significant editing of the texts, removing areas of overlap and repetition between modules, moving some text into different modules where it sits more logically and evening out the length of the different modules. This has resulted in the first two modules remaining much the same, but a change in the content and ordering of the remainder. The seven core modules are:

1. The marine insurance business
2. P&I insurance: history, operation and practice
3. Underwriting and claims management
4. People risks
5. Cargo risks
6. Collision, FFO and pollution risks
7. Towage, salvage, wreck removal and GA risks

It is anticipated that the learning material supporting the new modules 3 -7 will be available to Club staff in June 2015, for examination in October. With this in place, it is hoped that the P&IQ will move into a new phase and be achieved by a growing number of Club staff.

The way ahead

One of the key strengths of the Group system is the pooling of the collective expertise of Club managers in matters relating to, amongst others, marine insurance. The P&IQ will play an important role in raising levels of understanding and knowledge in this field to the benefit of shipowners, Clubs and the Group.

Large Casualty Review

Michael Kelleher
Chairman Large Casualty working group

In July 2014, two and a half years after stranding and capsizing off the port of Giglio, the COSTA CONCORDIA finally left the port afloat and under tow for demolition in Northern Italy. This brought to a close what was undoubtedly the most complex marine salvage operation ever undertaken, and one which generated the largest ever claim faced by the Group and its reinsurers. Work continues on remediation at the stranding site and the handling of outstanding third party claims.

It is not uncommon for major maritime casualty incidents to result in removal of wreck operations. Since the very significant casualties in 2011/12 involving the COSTA CONCORDIA in Italy and the RENA in New Zealand, there have been a number of further casualties involving removal of wreck which have impacted on the Group pool and, in one case, the Group's reinsurers. These operations have involved a variety of vessel types and sizes, and a range of locations around the world. In stark contrast to the operations involving the COSTA CONCORDIA and RENA, which were both on their own facts exceptional incidents, the more recent wreck removals have been successfully carried out at a reasonable and contained cost – even if they involved large and complex operations. This is consistent with the historical experience of the Group in dealing with removal of wreck operations over the past decade, which reveals that (with the exception of the COSTA CONCORDIA and RENA), average costs involved have generally not exceeded the pool retention.

Improving collaboration

Exceptional cases such as the COSTA CONCORDIA and RENA serve to underline the importance of continuing to work collaboratively to improve co-operation and efficiency in dealing with major removal of wreck operations. It was with this in mind that the Group developed its outreach programme, based around a Memorandum of Understanding (MoU) between the Group Clubs and States' maritime administrations. The programme focuses not only on improving co-operation and streamlining response activities following a major casualty incident, but also addresses mutual training and engagement outside of specific casualty response. This is aimed at building more effective working relationships, and raising levels of understanding of the parties' respective roles and modus operandi in relation to casualty response.

Outreach

Under the auspices of the Large Casualty working group, a first wave of States was approached during 2014 to ascertain interest in the concept of the MoU. These approaches have been positively received, and MoUs have been concluded with South Africa and Australia, and discussions with New Zealand are at an advanced stage. Arrangements are already in hand for participation in joint training exercises during 2015 and 2016. Interest in the outreach programme and MoU concept has been expressed by a number of other States, and we will approach others during 2015. The scale of the task should not be underestimated, but the preliminary results and indications are positive. Our reinsurers retain a strong interest in the outreach programme and their commitment to it mirrors ours.

The review continues

The Large Casualty working group has an ongoing remit to review major casualties involving removal of wreck, and lessons which can be learned from the response to such incidents. The objective is to provide guidance and recommendations to Group Clubs on possible ways in which the response to such casualties might be improved, and the resultant costs more effectively monitored and controlled.

Places of Refuge

Historical experience reveals a worrying number of incidents where vessels in distress have not been promptly afforded a safe place of refuge, thereby seriously imperilling life, property and environment, in some cases with disastrous but avoidable consequences.

The issue of ships in distress seeking assistance, and in need of a place of refuge, remains one of fundamental importance for shipowners and for their insurers. For many years, the Group has participated constructively in discussions on this issue at the International Maritime Organisation, within the European Union and with individual State maritime administrations.

The vital role of the coastal States

When a shipowner approaches a coastal State or States with a request to afford a place of refuge for a vessel in distress, this will generally be with the objectives of saving or protecting life, protecting the marine environment and preserving property. Indeed, these objectives are consistent with a shipowner's obligations in relation to safety of life at sea under SOLAS and, where applicable, in relation to protection of the environment under MARPOL 73/78.

In such situations shipowners will seek a coastal State's approval to enter a port or safe haven in the territory of the State concerned. If approval is granted, the safety of crew members is assured, damage to the ship can be assessed and stabilised, and fuel and cargo can be transferred to another ship or discharged on land in a controlled and safe manner. Such actions mitigate the risks not only to the parties involved in the maritime adventure, but also to third-party interests in the coastal State or States in question who, as experience has shown, can be very significantly impacted by the consequences of not affording a safe haven to a vessel in distress. But the decision on whether to grant a place of refuge rests not with the shipowner, but with the relevant coastal State which has the sole authority to make the necessary decision.

Prompt and decisive intervention

Prompt and decisive intervention is a key factor in preventing a manageable casualty from becoming a maritime disaster. Recognising this objective, a number of States have very sensibly implemented streamlined casualty evaluation and decision-making processes for handling major casualties, the UK SOSREP and Australian MERCOM systems being two examples which have proven to be very effective in ensuring prompt response to casualty situations.

But the recent history of ships seeking refuge in ports and coastal shelters reveals that, regrettably, there are considerable delays in the decision-making processes and in some instances vessels are refused access to a port or place of refuge. A number of well-publicised incidents over recent years, including the PRESTIGE in the Bay of Biscay (2002), the STOLT VALOR in the Persian Gulf (2011), the FLAMINIA in the English Channel (2012) and most recently the MARITIME MAISIE in the Sea of Japan (2014), demonstrate the problems which arise where coastal States, for whatever reason, fail to respond positively and promptly to a shipowner's request for a place of refuge.

The IMO regime

Whilst there is no specific legal requirement, or international rules, that impose a duty on coastal States to grant or designate a place of refuge, there are IMO Guidelines on Places of Refuge for Ships in Need of Assistance which were adopted in 2003. These address not only the actions required from masters and/or salvors in appraising and responding to the need for a place of refuge, but also the actions expected of coastal States in such situations, both in advance planning and response as and when incidents arise. There have been suggestions that the IMO should develop a stand-alone Places of Refuge Convention but, following consideration within the IMO Legal Committee, it was not considered that there was any need for such an instrument. States were, however, encouraged to adhere to, and apply, the guidelines and to ratify the IMO conventions, which through their no-fault compensation provisions provide financial security and comfort for States when considering whether or not to grant a place of refuge to a vessel in distress.

The EU review

EU Directive 2009/17 (the "Vessel Monitoring Directive" or VTM Directive) requires Member States to designate a competent authority or authorities to take independent decisions concerning the accommodation of ships in need of assistance. This includes drawing up response plans on the basis of IMO Resolution A.949 and making decisions in relation to the accommodation of ships if they consider that this is necessary for the purposes of protection of human life or the environment. It does not however mandate accommodation, which is left to the decision of the competent authorities. A repeated concern expressed by States relates to the availability of compensation for damages and expenses which may arise as a result of a vessel being granted a port or place of refuge. The Group has repeatedly pointed out that the solution to this concern lies in States ratifying and implementing the IMO maritime conventions. This provides a comprehensive compensation system which will respond to all the main liabilities arising out of a vessel being provided with a port or place of refuge, and which is backed by the financial security provided by the Group Clubs.

In 2013, the European Commission launched a review on the issue of places of refuge, with a view to developing its own guidelines for member States on handling these situations. This review has involved some consultation and engagement with shipping, salvage and insurance industry, and the Group has been, and remains, involved in this process. It has provided input on the drafting of the guidelines and participated in joint meetings with Member State and industry representatives. This project remains work in progress, but may result in European guidelines being finalised in the latter part of 2015. Hopefully these guidelines will provide encouragement to States to respond more promptly and positively to shipowners' requests for a port or place of refuge.

Joint industry initiative

Shipowners, Clubs, salvors and marine property underwriters have a mutual interest in improving States' pre-planning for, and response to, port or place of refuge situations. They should continue to work together, through initiatives such as the current EU review, to promote a more focused and proactive response by States in considering requests to grant a port or place of refuge to a vessel in distress. The Group is committed to pursuing, and will continue to support, such joint initiatives along with other relevant industry associations.

Nairobi Wreck Removal Convention

The International Convention on the Removal of Wrecks (the "Nairobi Convention") will enter into force on 14 April 2015, eight years after it was adopted at a Diplomatic Conference held in 2007 in Nairobi under the aegis of the International Maritime Organisation (IMO).

Status of accessions

At the time of going to press, 17 States have acceded to the Convention, and more are engaged in the accession process and are expected to follow. From the dates of entry into force of the Convention, ships of 300 GT or more which are registered in a State Party, or use a port or offshore facility in the territory of a State Party, will be required to have insurance, or other financial security, in place to meet the liabilities arising under the Convention.

Convention liabilities

The Convention provides that the registered owner of a vessel is liable for the costs of locating, marking and removing a wreck which constitutes a hazard or that poses a danger to navigation, or may reasonably be expected to have major harmful consequences for the marine environment or expose a risk of damage to the coastline or related interests. The Convention lists a number of criteria which an affected State must consider in determining whether a wreck constitutes a hazard which requires removal. According to the Convention, the measures taken by State Parties must be proportionate to the hazard posed. Liability of the shipowner under the Convention is strict, and subject only to the same three limited defences applicable to other IMO Conventions, namely; acts of war, natural phenomena, intentional acts and omissions of third parties including negligence of the authorities responsible for lights and other aids to navigation.

Scope of application

The Convention applies to a States' Exclusive Economic Zone (EEZ). However a State may exercise an option to extend the application of the Convention to its own territory, including its territorial sea. As most wrecks occur in territorial waters, the Convention will have limited impact in States which do not exercise the option to extend the scope of application to their territorial seas. It is therefore surprising to note that several States have not availed themselves of the opportunity to apply the Convention in their most vulnerable sea areas.

Compulsory insurance requirements

In common with other IMO Conventions, the Nairobi Convention requires a ship registered in a State Party, or trading to a port or offshore facility in a State Party, to maintain insurance or other financial security in accordance with the requirements of the Convention. A certificate issued by a State Party attesting that insurance is in place must be carried on board. In 2014, following consultation within the Group, all Club boards agreed to issue evidence of the insurance required by shipowners in the form of a certificate ('blue card') accepting the liabilities set out in the Convention. An insurer who issues a blue card is in effect agreeing to act as guarantor. The model adopted by the drafters of the Wreck Removal Convention followed the mandatory insurance provisions in the CLC, Bunker Oil Convention and Athens Convention, for which Clubs already issue blue cards.

Shipowners limitation rights

The Convention does not affect the shipowners right to limit liability under any applicable national, or international, regime. The regime which commonly applies is the Limitation Convention 1976, either in its original form, or as amended by the 1996 Protocol. The LLMC limits will increase by 51% from 8 June 2015, following a decision taken by the IMO Legal Committee to amend them in April 2012. Under the LLMC, States are expressly entitled to exclude wreck removal from the category of claims subject to limitation. Accordingly, in jurisdictions where such a reservation has been made, shipowners liability for wreck removal is not subject to limitation.

Will the Convention make a difference?

It is difficult to say with any certainty what effect the Convention will have on future removal of wreck operations, but what the Convention does provide is an international framework of rights, duties and obligations on States, shipowners and insurers. The Convention provides international uniformity where currently there is none, and this should lead to greater clarity and legal certainty. The Convention should also provide a degree of comfort to States when they respond to requests from ships seeking a safe haven or place of refuge, as Convention Parties will draw comfort from the fact that by virtue of the Convention there are appropriate liability, insurance and cost recovery systems in place.

Maritime Labour Convention

Jonathan Hare
Chairman Compulsory Insurance subcommittee

The 2013/14 Annual Review reported on the Maritime Labour Convention, 2006 (MLC). Under Article XIII of the MLC, the Convention is to be kept under continuous review by a Special Tripartite Committee comprised of representatives of shipowners, seafarers and governments.

The Committee held its first meeting in April, 2014. The outcome of the meeting was in agreement on a number of amendments, resulting in more stringent liability and financial security requirements under Regulation 2.5 in respect of liability for the costs and expenses of crew repatriation following abandonment. The Committee also agreed to amend the liability and financial security rules for compensation for the death and disability of seafarers under Regulation 4.2.

Entry into force

The amendments were approved by the International Labour Organisation Governing Body, at the ILO Conference, on 13 June 2014. The Conference agreed that implementation will be deferred for at least two years (i.e. no earlier than June 2016), and it is likely that the amendments will enter into force by early 2017. States parties must, after consultation with organisations representing shipowners and seafarers, ensure that a financial security system is in place through appropriate national regulation.

Financial security

The effect of these latest MLC amendments will be that shipowners will be required to demonstrate that financial security is in place to cover the liabilities introduced by the amendments. Club boards have been canvassed on whether they wish their Clubs to provide that financial security for amounts within individual Club retention. All boards have concluded that, in principle, they would wish to see a Club solution for amounts within the individual Club retention. Various options are currently being considered by the Group Compulsory Insurance subcommittee and MLC working group. This is work in progress, and Club managers, and boards will give further consideration to certification options during the course of 2015.

The financial security requirements include security for repatriation costs, and the costs of essential needs such as food, accommodation and medical care. However, the most controversial requirement, and the one which poses the greatest challenge for shipowners and Clubs, is in respect of unpaid crew wages (up to a maximum of four months) for which the security provider will be responsible. Providing security for unpaid wages following abandonment is far from being a traditional marine insurance liability or risk, and the amounts involved (particularly if a large cruise fleet became insolvent, for example) could be substantial. The transfer of what has historically been a financiers' risk to the marine insurer, particularly where a mutual Club is involved, raises difficult issues of principle quite apart from practical concerns such as cover limits and pooling.

Financial security must also be provided for shipowners' liability for contractual payments for death or long-term disability due to an occupational injury, illness or hazard set out in the employment agreement or collective agreement (Regulation 4.2). Contractual compensation must be paid in full and without delay. There are also provisions relating to interim payments, where the extent of an illness or disability is not clear. These liabilities largely fall within the scope of existing P&I cover and represent less of a challenge than the repatriation and unpaid wages requirements.

Direct action exposure

The amendments to the Convention confer on seafarers a right of direct action against the security provider, similar to the direct action rights which arise under blue cards issued by Clubs under the IMO Conventions. The financial security provider will remain liable under the security unless his liability has been terminated by a minimum 30 days' notice to the relevant Flag State.

The work continues

The financial certification requirements are an integral and mandatory part of the Maritime Labour Convention. Given that shipowners have no choice but to comply with the requirements, a pragmatic solution was needed as to how the requisite security could be most effectively provided. The Club security solution seems to be universally supported, and the Group will continue to work on the detail of the security requirements so as to ensure that, when the requirements enter into force, shipowners will have the requisite certification.

On the Regulatory Radar

1. Nairobi International Convention on the Removal of Wrecks 2007

As reported earlier, the Convention will enter into force and will apply in the EEZ of signatory States, and to their territorial seas if the opt-in is exercised, with effect from 14 April 2015.

2. LLMC limits increase

The 51% increase in the liability limits under the LLMC 1996 Protocol, which was approved by the IMO Legal Committee in 2012 will take effect from 8 June 2015. The amended limits will increase the property claims limit for a vessel of 100,000 GT from approximately US$43 million to approximately US $63.5 million, and for a vessel of 150,000 GT from approximately US$57.5 million to approximately US$85 million.

3. York Antwerp Rules

The review currently being undertaken by the CMI International Working Group of the 2004 York Antwerp Rules will continue through 2015, with a view to having a new set of rules presented to the CMI Conference in New York in 2016 for approval. The Group, together with shipowner associations and marine property underwriters and representatives of the adjusting industry, are participating on the International Working Group.

4. MLC

As reported earlier, it is not envisaged that the provisions of the MLC incorporating the requirement for financial security in relation to unpaid crew wages will enter into force before 2016.

5. EU guidelines on Places of Refuge

As reported earlier, the guidelines which will be intended for application by EU Member States are currently work in progress but are on track to be finalised within 2015.

6. Rotterdam Rules

There has been no further significant progress in relation to ratification of the Rotterdam Rules.

Currently there are 25 Signatory States, but only three State ratifications. Entry into force will take place 12 months after 20 State ratifications. The position of the US, which is a Signatory State and which has given strong indications of an intention to ratify, is viewed as pivotal, and if the US does ratify it is likely that this would lead to a cascade of further ratifications creating a real prospect of the Rules entering into force. The Rules will increase the current Hague and Hague-Visby Rules shipowners' liability limits, and will erode the traditional shipowners' liability defences.

7. EU Environmental Liability Directive

The European Commission is currently reviewing the Environmental Liability Directive (ELD). However, its initial report, which is expected in mid-2015, is not expected to contain any proposals for legislative changes at this stage. The Group has been monitoring, and will continue to monitor, developments in the review process and continues to lead the industry liaison with the European Commission to ensure that the maritime exemptions in Annex IV are maintained.

8. Hong Kong Competition Ordinance

The Hong Kong Competition Ordinance 2012 is scheduled to enter into force during 2015. The provisions of the Ordinance broadly reflect EU competition law and principles with which Clubs are already well familiar, and will apply to Clubs carrying on business in Hong Kong. Guidance on the application of the Ordinance to Clubs activities in Hong Kong has been provided to local Club offices, and the Group will continue to monitor the entry into force of the Ordinance and its implications for the business activities of Clubs operating in Hong Kong.

International Group of P&I Associations

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