

The Future of P&I Clubs

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To some there is a cloak of mystery surrounding mutuality. In truth, mutuals are simple structures. They are groupings of people with a common interest who have banded together to serve that interest;

- anyone from fishermen who form co-operatives to market their produce;
- to road users who formed the NRMA to provide road services;
- to ship owners who have formed P&I clubs to provide third party liability insurance and advisory services.

My firm, Transport Mutual Services, is the general correspondent in Australia for the marine mutuals managed by the Miller Group. The UK P&I Club enjoys a large market share - approximately 22% of the world's tonnage. The UK Freight Demurrage and Defence Club (FD&D) covers owners and charterers for their legal costs in respect of uninsured risks, for example, ship sale, ship building and chartering disputes. We also act for the TT Club, which offers third party liability insurance and advisory services to landside operators who do not operate ships, in other words, the multimodal industry - freight forwarders, NVOC'S, hauliers, terminals, stevedores, depots, train operators, tank operators, deconsolidators/consolidators and so forth. The TT Club also insures approximately 70% of the world's container fleet. Additionally, we act for the International Transport Intermediaries Club, or ITIC, which covers the liabilities and professional negligence of

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an interesting section of industry - ship agents, ship managers, surveyors, correspondents and ship brokers.

This cross-section of shipping and transport gives us plenty to think about, and it is from this broad base of experience that I take the opportunity to make a few general observations on the direction and future of P&I Clubs.

A) P&I CLUBS AND THE COMMERCIAL INSURANCE MARKET

The commercial market for marine insurance in 1996 is wrestling with a paradox. Competition for risks is fierce, rates are cheap and there is not sufficient premium to pay all the claims. The commercial market has, in recent years, tended to incur underwriting losses but has been able to satisfy its shareholders through income derived from investing premium. This is true at the primary level of risk - where virtually all the meat of the insurance is to be found and most of the premium. However, at the other end of the scale, suppliers in the market for catastrophe insurance are growing scarcer and coverage is growing scanty and the price is higher.

After the adventures of the last few years there is frankly less insurance capital available to spend on the next natural disaster. So, where then do the clubs fit in? Insurance mutuals are usually formed when the commercial insurance market finds a risk difficult or unpalatable.

It follows that mutuals, or as they are commonly known, 'clubs', tend to exist at the end of the insurable spectrum where easy money is hard to find and regular underwriting profits are scarce. Clubs are normally successful in providing a higher level of expertise, specialisation and service than is common in the commercial insurance market.

By way of background, the P&I clubs, which were originally hull insurance mutuals, evolved in the last century in response to the development of the law of equity, which gave rise to the then radical and

onerous notion that one should be responsible for the consequences of one's own actions, or in other words, for one's negligence. Almost overnight, ship owners were required to compensate cargo owners for cargo lost or damaged - additionally, they were burdened with the responsibility for the welfare of their crew (and much later, of course, for the welfare of the environment). Ship owners formed their own co-operatives or mutuals to protect and indemnify themselves from these risks, after the commercial insurance market indicated an unwillingness to cover them.

There is no indication that the shareholders of commercial underwriters have changed their view, and I do not see that commercial underwriters will generally wish to compete with P&I Clubs at this, the difficult and highly specialised end of the market

Apart from the obvious financial considerations, I offer the following tangible reasons why I believe P&I insurance will remain in the domain of mutuality.

Specialist Expertise

Third party liability insurance of ship operators is all we do. If you require motor vehicle insurance, life insurance or insurance for your real property - you had better go and see a generalist. We cannot help. The clubs have been refining this specialism for over 100 years. If you investigate the careers of P&I men you will find they have either spent time at sea or have a pedigree in maritime law - very few have a formal insurance background. In the ranks of P&I men you will find experts in salvage, those who have specialised in the care of specific cargoes, and world renowned experts in catastrophe planning and oil pollution clean-up procedures.

The P&I Clubs sit on, or are asked to advise the important international committees and associations which determine the international carriage of goods standards, whether it be in relation to a liability regime such as Hague Visby or charter party standards. We are

boutique operators, and although our spectrum of specialism is narrow, it is also very intense.

International Network of Correspondents

It is also worth noting that P&I clubs have built up a comprehensive international network of correspondents so that a club man is there to assist a member whatever the job might be; whatever the expertise is needed and wherever the service is required. When clubs state that they have a correspondent in nearly every conceivable port in the world, they are not exaggerating. The UK Club, on the latest count, has a representative in 553 ports world-wide. If one is to provide a service to the international shipping community, the international flavour of the service is paramount. It needs to be able to account for the idiosyncrasies of the most far off jurisdictions and practises. Somehow, I do not think the P&I network of correspondents would be easily mimicked by the commercial insurance market.

Service Ethic

Another discernible difference between P&I and the market is, for want of a better word - attitude. The focus of P&I clubs is service to its members. Members enjoy a high level of expertise and specialisation in all areas of claims handling, advisory and risk management services. Mutuality is characterised by a high service ethic, and a sympathetic and helpful attitude to the requirements of its members.

This quality arises from the fundamental structure of a mutual, whereby the managers are employed by the owners or members to serve their needs. There is little room for conflict where an organisation's owners and clients are one and the same.

Contrast this to the world of the commercial underwriter, where the all important considerations are 'acceptable return of investment to shareholders and price/earning ratios'. It is these considerations which, in some quarters, have caused the word 'insurance' to be seen as a grubby

word - where the fine print merchants are at their best, and the court lists are littered with the cases of insureds litigating their grievances against insurers.

Maritime Enthusiasm

Maritime business is an immensely international business with a very human face. It has a refreshing and uncommon grass roots quality and as a race of men, successful P&I men have what other professionals call 'a good bedside manner'. International shipping is an immensely capitalised and professional business but there remains a certain intangible quality that relates back to the romantic and honorable days when brave men first went to sea. My enthusiasm for my work comes from my great love of all things maritime and I am sure that most P&I men, and indeed maritime lawyers, have similar motives. It may be naive, but I think this quality will always set us aside from the generalist commercial underwriters.

In my opinion, all of the qualities that I have mentioned, whether tangible or intangible, are either beyond the capabilities of or are unpalatable to, a generalist commercial underwriter.

B) P&I CLUBS AND EVTERMODALISM

The price of transport has collapsed when compared with earlier times. It is said that the price of getting a chest of tea from Sri Lanka to Britain is today 1/64 of the freight price of 1961. A container ship today carries out the work of 40 to 60 general cargo ships of the early 1960's. Transport of goods is cheap, efficient and abundant. Historians will probably have to place Mr Malcolm McLaren on the short list of men who modernised our century. Whenever you look at the world, you cannot fail to notice where containerisation has changed transport for good.

It is not often realised how far, say packing procedures, have deviated from good practice away from traditional maritime centres. In the

outskirts of every booming new town there are metal unmarked boxy buildings which are the new packing houses of the container world.

You can see it in the silent pools of the maritime centres of yesterday. Where 50 years ago there was a busy port in the middle of maritime cities, today, the draft requirements of container ships mean that the ports are usually in the middle of nowhere, and the old port is a scenic area of marinas, apartments and parks.

The face of transport is changing. The systematic standardisation of the unit load industry is diluting the cultural, political, and physical barriers between countries. We are moving steadily towards the global society, where the sea carrier becomes but a bit player in the transport chain. It is a little known fact that, overall, only 30 cents in every freight dollar goes to the ship. The remainder goes to the so-called 'landside operators'.

Although the P&I Clubs offer a limited extension of cover for cargo liabilities that arise through transport bills of lading, it is only where their member is acting as a ship operator, and does not extend to third party liability generally. With this in mind it intrigues me that P&I clubs have generally restricted their insurance to the 'fcea leg" stage of their members responsibility, and it may be that intermodal risks are a new frontier for P&I Clubs in the future.

C) P&I CLUBS AND ASIA PACIFIC

There has been a shift in the maritime industry from the Atlantic to the Pacific ocean. A cursory glance through the Containerisation International Yearbook will confirm for anyone who has been dozing these past five years that there is a phenomenal shift in the centre of gravity of shipping. This should not be too surprising. As industries have one by one relocated into Asia from the United States and Europe so they have helped to build the region into the workshop of the world. So too has followed the shipping emphasis. Cities like Liverpool and Glasgow which once housed the oak panelled offices of the great

merchant fleets of the world, are now the hosts of ghost-town-like waterfronts.

More containers are discharged into mid-stream lighters moored alongside ships in Hong Kong than are put over every ship rail in every berth in the United Kingdom. The latest figures I have seen estimate that around 40% of ocean shipping is now based in the Pacific. It seems unlikely that the needs and expectations of the shipping industry will be anticipated and met by specialist P&I clubs located solely in Europe.

I was fortunate enough to attend the inaugural Asia Pacific P&I conference in Hong Kong earlier this year. The conference was characterised by an undercurrent of concern of Asian ship owners that P&I clubs were too European, both in attitude and in geographical terms. Veiled threats of setting up a new Asian P&I club were voiced, but, in the end I think the message was clear - Asian ship owners require proportional representation on P&I club boards, and moreover, require clubs to decentralise their existing structure, and establish offices in Asia which have autonomy for underwriting, claims, and advisory services, and which are able to evidence a sympathy for, and a response to, the particular needs of Asian ship owners.

Although most clubs have offices in Asia, they are generally skeletal in nature and I believe club managers will need to dedicate further substantial resources to this region. I am aware of only one club - The TT Club - which has obtained an underwriting licence in Asia and which assesses and underwrites risk on a regional basis.

D) P&I CLUBS AND THEIR SERVICE PROVIDERS

In particular in shipping matters, the disputes will often be very technical in nature. In fact, I would almost dare to say - in the presence of some eminent maritime lawyers, that often the disputes are technical rather than legal; and if and when the technical evidence is decided, the law will often follow. Additionally, modern shipping practices, in particular containerisation, have reduced the frequency of cargo damage.

Similarly, advanced navigation, communication and crew training techniques have reduced the frequency of incidents at sea. Where an incident has occurred, the focus is now on a cost effective and alternative dispute resolution processes, rather than on litigation.

I understand that a number of lawyers were surprised by the eagerness some clubs recently displayed in engaging the services of a commercial correspondent in Australia. There are international trends in P&I that we in Australia are not immune to. The Miller clubs, like, I dare say, most of our mutual cousins, are paying more and more attention to the costs of outside advisors. Like all demanding customers, the clubs appear to be demanding higher standards of service at lower unit costs. This is hard to deny. In all aspects of business and commerce the hunt is on for the sometimes elusive quality of value for money. This applies no less to legal services.

I respectfully suggest, that you, the maritime lawyers of Australia and New Zealand, ask yourself the question; 'What does the user of my services want?' Perhaps this would be a useful topic for the 1997 conference.