

The Nautical Institute
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Piracy
- Insurance and Loss Prevention -

P & I cover in respect of piracy

Liability

Cover

Exclusion

Differences

Weapons

Security

Ransom

Charterparties

Future

Definition of Piracy

1. Pooling Agreement and Club Rules.
2. UN Convention on the Law of the Sea:
 - illegal acts of violence or threat of violence...
 - committed for private ends
 - on high seas outside the jurisdiction of any State
3. For insurance purposes, not limited to acts outside the jurisdiction of a State.

Are Owners liable for accidents caused by piracy?

- **Strict liability claims:**
 - Under International Conventions, the “intentional act” defence of a third party may provide some protection where/if applicable
- **Fault-based liability claims:**
 - Example: Under RR: piracy can be a defence: peril or danger;
- **Contractual liability crew claims:**
 - Owner can not leave crew to suffer consequences of piracy

Do Clubs cover piracy?

- Piracy is not excluded from P&I cover
- P&I Clubs cover liabilities, as set out in a 'risks covered' rule. Piracy is not a named risk.
- P&I liabilities that could potentially arise from piracy.
- Additional liabilities that could potentially arise from piracy.



If 'piracy' not an exclusion, is there a relevant exclusion?

- Yes – war risks
 - P&I cover excludes liabilities arising from loss caused by defined war risks
- War risks as meant in Rules:
 - war
 - Act of terrorism
 - “Piracy excepted” from exclusion relating to seizure of ship
 - “Mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war...” all types of explosives, not guns.

How does piracy differ from terrorism?

- Different motivations and objectives
 - Terrorism: political or religious motivation and intention to cause death/injury/damage. No current indication that attacks off Somalia are other than for private gain.
 - Piracy: seizure of property/persons by violence or threat of violence to secure private/personal financial gain.
- Why does it matter?
 - acts of piracy are not an excluded risk under P&I
 - whereas terrorism is an excluded risk (and would fall under war risk cover).
 - exclusion reflects desire of reinsurers to separately price the risk

Use of “weapons of war” in piracy incident trigger war risks exclusion

- No precision in the Pooling Agreement or in Club rules on the wording used “or other similar weapons of war”
- But “other similar weapons of war” should be of a similar nature to those identified, ie. mines, torpedoes, bombs, rockets, shells and explosives

What do hull underwriters cover and what do war risks underwriters cover?

- Typically, hull and machinery underwriters and war risk underwriters will between them provide property cover and war risk P&I cover
- If a Piracy incident triggers the club war exclusion the consequent liabilities are likely to be covered by war risk underwriters.
- Also some primary P & I War Risk underwriters also cover piracy as a specific named peril.

Club's Special war risks cover

- By Directors' resolution
- Up to US\$500m
- Cover responds to claims in excess of the ship's value, deemed not exceeding US\$100m (primary P&I war risks cover)
- Bio-chem exclusion, but pooled up to 30m in respect of crew claims and legal costs

P&I view on use of shipboard security guards

- No cover restriction or prohibition
- appropriately trained and competent personnel can assist with enhancing security
- Security personnel may be treated as any person on board for purpose of normal club cover
- Shipowners' care and diligence in selection of security company and personnel may have a bearing on liability issues
- Need to check that additional personnel do not breach requirements of SOLAS safety equipment certificate
- Clubs have joined industry in discouraging use of armed guards

Arming Guards

- Discouraged because:
 - inherent risks in use of arms in a civilian context
 - risk of escalated attacks with heavier weapons, leading to increased risk of crew injury or death.
 - risk of force being judged inappropriate and of shipowner being held vicariously responsible
 - risk of shipowner breaking laws of flag state, or of port states, in placing arms on board

P&I cover where armed guards used

- No general prejudice to cover, but necessary to look at causation on case-by-case basis.
- Potential prejudice to cover if used in breach of Flag or Port state prohibition.
- Potential prejudice to cover if additional personnel puts them in breach of Statutory requirements

Contractual/insurance issues in the use of security companies

- Contract terms. No automatic cover for contractual liability to guard company. Clubs will expect, as a minimum, reciprocal indemnities for gross negligence or wilful misconduct, or a knock-for-knock agreement.
- In the event that the “weapons of war” exclusion is triggered, there would be no P&I cover and shipowners would need to clarify the position of their war risks underwriters in relation to the terms of the security company contract.
- Shipowners are encouraged to consult fully with their clubs/war risks insurers before entering into such arrangements so that they are aware of any potential gaps in or restrictions on cover.

P&I cover and ransom

- Not a liability – an expense
- Not covered as of right
- Not expressly excluded (save for one Club)
- Shipowner could ask Board for discretionary cover
- General desire to be able to price the risk has resulted in moves to shift piracy back from hull to war risks policies.

Ransom under Sue and labour Rule?

- Rule 2, sec 25: A Extraordinary costs and expenses ... reasonably incurred on or after the occurrence of any casualty, event or matter liable to give rise to a claim upon the Association and incurred solely for the purpose of avoiding or minimizing any liability or expenditure against which the Owner is wholly or, by reason of a deductible, partly insured by the Association, but only to the extent that those costs and expenses have been incurred with the agreement of the Managers or to the extent that the Directors in their discretion decide that the Owner should recover from the Association....

Ransom and General Average

- **Are ransom costs recoverable in GA?**
 - *“There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure. General average sacrifices and expenditures shall be borne by the different contributing interests as the basis hereinafter provided” York Antwerp Rules 1994; Rule A*
 - *As an extraordinary cost incurred to ensure that the common venture can continue then a ransom payment and other costs should be recoverable in GA*

Club's cover for ransom claimed as GA

- No primary contribution from Clubs
- May have cover for ship's proportion of GA not recoverable from H/M insurers
- If cargo declines to pay because ship unseaworthy – cargo's proportion may be covered by Club

Charterparty issues

- **Are shipowners obliged under their charterparty to transit the Gulf of Aden or can they refuse the charterer's orders to do so?**
 - depend upon the terms of the Charter party.
 - BIMCO piracy clauses; Intertanko clause: preserve owner's rights to either refuse orders to proceed to piracy risk areas or to seek alternative orders in appropriate cases.
 - In each case it will be necessary to examine the relevant contract/s to determine the extent of the Shipowners rights and obligations and to negotiate an agreed allocation of risk between shipowners and charterers.
 - To let Club to review and comment

Charterparty issues

- BIMCO clause from Charterer's point of view
- Indemnify owner for additional insurance and liabilities – burdensome on charterers who (i) would need to indemnify owner for additional insurance costs and (ii) may also need to buy additional insurance for his own extra liabilities
- need to negotiate

Piracy and loss prevention

- All Clubs provide extensive advice on measures to protect against piracy through their websites
- All support the industry **Best Management Practices**, to the drafting of which the IG contributed together with other industry organisations

New edition of "Best management practices"

- A new edition of "Best management practices to deter piracy in the Gulf of Aden and off the coast of Somalia" is now published on the website. This edition has been substantially reworked and updated replacing the previous copy. We recommend that Members review this copy and distribute it amongst their masters and crew.
- It can be viewed from:
<http://www.ukpandi.com/ukpandi/infopool.nsf/HTML/BMPPiracy>

Actions to deter – industry self defence

- Industry Best Management Practices
- Registration with MSCHOA and UKMTO
- Industry co-operation on ‘ship hardening’

IMO – the search for national legislation on piracy

- In December 2008, the IMO sent out Circular Letter No. 2933 to the Governments of all Member States seeking information on existing national legislation to prevent and punish the crimes of piracy and armed robbery at sea. Numerous Member States have yet to respond. It is difficult to fight piracy in an organized and cooperative manner if those on the front lines have not been informed as to what the rules are.

Future trends

- Sept – Dec 09 high volume of attacks expected
- Use of increased force and violence expected
- Naval forces remaining in '09 and '10
- Increased prosecutions
- Actions to slowly improve coast guard in region
- But continued political failure in Somalia – and pressure from Al Shabab terrorists

Summary 1

- Club cover
 - Usual P&I liabilities remain covered.
- Ransom
 - Ransom is not a liability and is not insured by the Club.
 - G/A if it is unrecoverable from cargo due to a breach of the contract of carriage.
- War risks exclusion
 - In the event that War Risk underwriters include piracy as a named peril, then P&I liabilities may be covered by them.
 - Cover may be excluded for claims in respect of damage/injury caused by certain “weapons of war”

Summary 2

- Armed security on board
 - Use of arms by crew or on-board security personnel is discouraged
 - If arms are carried, all relevant laws must be obeyed.
 - Contracts with guards are covered only if the contract has prior approval.
- Advice & information
 - The Maritime Security Centre (Horn of Africa) website (www.mschoa.org) is best source of regularly updated guidance for protecting against piracy attacks.
 - Club website (www.ukpandi.com) maintains a central reference page of key industry information and advice on the subject.
- Essential steps to protect against piracy off east Africa
 - Best Management Practice

Thank you!



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