

**7<sup>th</sup> Annual Marine Money Korea Ship Finance Forum**

# **Marine Insurance Aspects of Ship Financing**

**B.S.Park**

Chief Operating Officer

Korea P&I Club

[bspark@kpiclub.or.kr](mailto:bspark@kpiclub.or.kr)

[www.kpiclub.or.kr](http://www.kpiclub.or.kr)

# Insurance Aspects of Securing Shipping Loans

- 1. Registering mortgagees with the flag state subject to loan agreement
- \* **Maritime Liens statutory and Proprietary Lien**
- 2. To approve the marine insurances-by the shipowners (borrower) or ship managers or bareboat charterers  
Insurance policies assigned to the mortgagees
- 3.To take out contingency insurances for lenders.

## Bankers vs. Insurers for the Value of the Ship

- **Bankers:** always know precise value of their liabilities , but never be certain their realizable value of their assets will meet their liabilities.  
Remedy: Adequately covered by Insurance.
- **Insurers:** always know the value of their assets, but never know the exposure of their liabilities under the policies underwritten.  
Remedy: Spread capital base and reinsurance.

# Marine Insurances for Marine Adventure

## Vessel-Hull & Machinery

H&M

\*  $\frac{3}{4}$  RDC

## War & Strike

W&S

Insured Value-Insurance Terms & Conditions

## Cargo

Cargo Insurance

---CARGO INSURANCE

## Liabilities

P&I

Crew-Cargo-FIFO- $\frac{1}{4}$  RDC-Passenger  
and others-Oil Pollution-Wreck Removal

Protection & Indemnity (P&I)

- ✓ Terms & Conditions (Policy)
- ✓ Insured Value (at the commencement of the risk)
- ✓ Trading Limit
- ✓ War & Strikes Insurance
- ✓ CIF Value  
(Insured Value)
- ✓ Terms and Conditions
- ✓ Assured / Co-Assured
- ✓ Terms & Conditions (P&I Rules)
- ✓ Mutual or Fixed
- ✓ Unlimited or Limited Liabilities

# Marine Insurance

Minimum Three insurances( **Hull& Machinery, War & Strike ,P&I**)

- **Not a Guarantee But a Contract**
- with the underwriters /**Subject to insurance laws, terms and condition.**
- Implied and Expressed Warranties and Require disclosure of the material Information at Inception.
- Warranties
- Based upon the Utmost Good Faith
  
- **MIA 1906** : A Contract of Marine Insurance is **a contract** whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure.
  
- **Contingency Insurance for the Lenders:**  
Covering the risk of claims under Shipowners insurance policies being void or not payable.  
---Not Payable due to lack of coverage or insufficient cover
  
- Marine Insurance: Contract: **Mostly short periods' Time Policies**, but Ship Financings are Medium to Long term

# Key Words for Marine Insurances

**Marine Insurances : Corporate Insurance( vs. Personnal Insurance),  
Time Policy, Term & Conditions( Rules in P&I), Deductibles**

## Act as if uninsured Prudent Owners!

- ✓ Warranties : Implied Warranties- Seaworthiness - **Hague Visby Rules**
- ✓ Expressed Warranties: **Terms and Conditions,**
- ✓ **P&I Rules**
- ✓ Governing Law : Subject to **English Law** & Practices
- ✓ Assureds' Duty for Loss Mitigation - **Sue & Labour**

**\* Fair & Reasonable / Without Prejudice / Utmost Good Faith**

- ✓ Trading Limits//
  - H&M : World-wide within I.W.L.(Institute Warranties Limited)
  - W&S : War risks exclusion area(zone)

## Laws governing the Marine Insurances

- A right of Direct Action against Insurers:
- Third Parties(Rights Against Insurers) Act 1930: only against the liability insurers of a bank bankrupt or insolvent defendant.
- This law does **not apply to P&I club cover** by reason of the Pay-to-be Paid rule.( The Assured have to first pay or discharge their liabilities for recovery from P&I Club)
- Korea Commercial Code:

# Potential Risks on Ship Financiers' Insurance

- Non payment due to breach of warranty or terms /condition of insurance contract,
- Insufficient Loss/Damage/liability cover



# Ship Financiers' Risks on the Marine Insurance

- **Physical Loss and Damage claims by H&M(inc. W&S)**
  - Breach of warranties condition,
  - Non-disclosure or mis-representation of material information to insurers
  - Automatic termination Clause-e.g Class
  - Seaworthiness, overloading, non-ice class, unqualified officers and crew
  - Willful misconduct including scuttling
  - Time barred claims

Continued>>>

➤ **Liability claims by P&I**

- Breach of SOLAS, Automatic termination of cover in the event of member's bankruptcy
- Loss/suspension of class, willful misconduct, Deficiencies by the condition survey, Non Payment of calls
- Claims can be rejected by reason of **Pay to be paid rule**
- Liabilities exceed the limit insured, i.e. **Oil pollution, USD 1bill.**
- Delivery of cargo without production of original B/L

# Viabile Alternatives

## >>>>>Contingency Insurances

### ◆ **Mortgagees Interest Insurance**

Ship-financiers(Bankers) take out a contingency insurance against claims under borrower's policies being void or voidable.

### ◆ **Mortgagees Additional Perils Insurance**

Covering against the risks of liabilities exceeding any limitation in P&I Cover, to be confined to oil pollution or extended to the all types of risks covered by P&I clubs or insurances.

# Mortgagees Interest Insurance Claims Analysis

*(ref: the Bank Serve Guide 2010)*

- Breach of warranty/Fraud 16 cases
- Unseaworthy or Breach of warranties 13 cases
- Scuttling, Deliberate damage 10 cases
- Breach of deviation and condition 6 cases
- Non disclosure, misrepresentation 3 cases
- No established cause of loss 3
- Time barred 1
- Drug Smuggling 1

## ✓ Marine Insurance - Checked-up Points

### ✓ H&M , Increased Value Policies

- Assured Clause: Are the named assureds are acceptable?/Each named assured signed and dated the Notice of Assignment?
- If not, problems for the collection of claims?
- Agreed Values
- Classed
- Period : More than 12 months/ Total Loss claims-balance of the annual premium should be paid in the event of Total Loss
- Leader's Clause
- Law & Jurisdiction Clause
- Running Down Clause( Collision Clause):  $\frac{3}{4}$  RDC with H&M?,  $\frac{1}{4}$  RDC with P&I, or  $\frac{4}{4}$  RDC with P&I

## continued

- Deductibles-inclusion of fleet aggregate deductibles??
- Machinery Deductibles: the Institute Machinery Damage Additional Deductible Adaption Clause//
- Warranties
- Assignment of Insurance Policies & Loss Payable Clause Endorsement: the Loss Payable Cl; a partial waiver of the effect of an assignment
- I.V. (Increased Value Policies): 25% of H&M policy
- Port risks, Builder's risks

Continued...

✓ Protection & Indemnity Liability Cover

- Overall limit of shipowners' liabilities cover as per **LLMC**
- Oil Pollution Cover : max USD1 billion.
- Max. Passenger Cover: Passenger-USD2billion, Crew USD 1billion
- (P&I Club cover for claims in respect of liability to passengers and seamen is limited to \$3,000 million, with a sub-limit on passenger claims of \$2,000 million)
- Wreck Removal Cover-Unlimited
- LOU(Letter of Undertaking) from Club Managers:
- Assignees/mortgagees to receive a LOU from club managers to satisfy the Cesser of Insurance Rule.
- The standard P&I Club Letter of Undertaking

## Choice of Owners' P&I Clubs

- P&I Association or organization, approved by the Owners or the Security Trustee
- P&I Club as the Mortgagee shall from time to time approve previously in writing
- IGA
- Other Organization designated by the Security Trustee



## Closing comments:

- ✓ A Marine Insurance is not a Guarantee but A Contract.
- ✓ A Marine Insurance will be renewed mostly each year with terms /conditions to be revised.
- ✓ Bankers' Contingency Insurance Plan (MII) should be arranged and be checked up prior to arrangement viewing the SHIP Financing /Owners Insurance Contracts.
- ✓ Governing Law/Jurisdiction for marine insurances has some critical restriction to cover the liabilities.