



The ostrich principle is alive and kicking

Clubs are failing to recognise that the whole financial system has altered for good

MANY of the protection and indemnity clubs are facing significant financial problems, with more than \$1bn wiped from their reserves.

Now, they are again making significant supplementary calls, despite assurances in the recent past that this strategy would never be repeated.

The problems do not end there. Many clubs are imposing highly restrictive release calls, which raises questions in relation to European Union competition law. They have also unleashed mayhem around the new Bunker Convention in similar ways to the headaches they created following the US Oil Pollution Act and the provision of Certificates of Financial Responsibility.

What has happened to that most vaunted and proclaimed benefit of a club, the omnibus rule, let alone other areas where cover is granted such as expenses incidental to the operation of ships, sue and labour and legal costs, or cargo liabilities, or indeed crew?

The stubborn, somewhat arrogant approach of the clubs is costing money in both adjusters' fees, and in legal fees. They are failing to grasp the opportunity to improve their product, and to recognise that the whole financial world is being shaken. The old world order is no longer credible, and, in fact, has died.

There are a number of questions that the clubs need to address. How will they adopt the Financial Services Authority initiative, Treating Your Customer Fairly? How will they clearly illustrate management information and key performance indicators? How will they demonstrate they treat all equally?

The P&I world should grasp the opportunity for making some changes, which would be of real benefit to their members, and meet their requirements in the evolved operating environment. The directors of the clubs should impose these changes now for the benefit of all.

One move, for instance, would be to revoke the 'pay to be paid rule' and issue a policy of insurance. This simple step would negate, among other aspects, the need for bank guarantees, as many third parties would accept the financial security of the club itself and be prepared to rely on a useable document.

After all, clubs are rated, and a quality club may be better rated than the bank issuing the guarantee. The present system may only be adding cost for the members.

Any port or jurisdiction that did not accept this would be surcharged — which would quickly bring them around.

This would also reduce the costs in time and money of providing COFRs and bunker 'blue cards', which, after consultation with the International Maritime Organization, would not be required (a tremendous saving to the clubs' members).

The clubs should accept that as liability underwriters they should fundamentally contribute to the concept of general average, the cost of which should be split three ways, not just two ways. For clearly, if the world had been the litigious place it is today when the concept of GA evolved, the clubs most certainly would be contributors.

Likewise, the cost of salvage should be divided between three parties and not

two. No Special Compensation P&I Clause (Scopic), required, no additional arguments, leading to further costs. No hull underwriters happy for the vessel to become a wreck removal, no P&I provider wanting the vessel to be kept out at sea.

In the world of salvage, the process of arbitration needs to be reviewed. Mediation should be introduced and encouraged.

At arbitration and mediation, alongside our learned friends from the legal world, more commercial-minded individuals from the shipping world with more practical experience may well be of benefit. The concept of salvage awards, which are predominantly based on the market value of salvaged vessels, need to be reviewed.

Underwriters should be allowed to actively participate in the mediation and arbitration process — after all, they pay the bills.

This would put a stop to recent cases of Lloyd's Open Forms being signed after the vessel is safe and where no salvage services were rendered, and where salvors were possibly in cahoots with owners and members of the legal profession. Both hull and P&I underwriters need to feel confident with LOF, as currently a great many of them do not.

Quite possibly many underwriters do not realise that any interference by them that results in loss of life and/or pollution

could potentially result in criminal proceedings against them, which might find underwriters ending up joining the poor old captain behind bars. If they did realise that they could face criminal proceedings, there is every chance they would not wish to interfere in the approval of LOF — and would be more than happy to leave it entirely to the master.

The difficulties and possible scale of salvage awards for container vessels in particular needs to be addressed. An agreed amount per container could be included in the value of the vessel's insurance policy, in respect of salvage, which additionally will reduce costs in time and money.

Both hull and P&I underwriters need to start to recognise owners who properly train and employ their own officers and offer significant rewards through lower premiums.

P&I providers could in these difficult times offer options of substantially higher deductibles for quality owners in return for lower premiums, while at the same time greatly increasing deductibles for others and penalty increases in premiums. These simple measures would bring long-term benefit to the shipping world.

If P&I providers also introduced additional premiums for known troublesome ports, the 'monkey business' in those ports would soon be addressed, or the ports would lose trade.

Many other aspects of marine insurance need to be closely and quickly reviewed and appropriate amendments introduced, without delay — now is a good time to make the changes.

Underwriters, both hull and P&I, need to get together with shipowners and, more importantly, work together, if the many challenges of the market are to be met successfully by the industry.

Jonathan Jones is a director of JIJ Maritime, Greece.

“Both hull and P&I underwriters need to start to recognise owners who properly train and employ their own officers and offer significant rewards through lower premiums”