Standard Bulletin

The Standard

Financial review and club update

14 September 2009

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In this issue:

Financial Update – 20 August 2009

- Tonnage up to 86m gt
- Premium income up to $236m
- Free reserves up to $225m
- S&P rated A with stable outlook

I am pleased to report that the club remains in good shape. The tonnage has continued to increase, with owned and chartered tonnage now up to 86m gt, a record level for the club. Owned tonnage is up from both existing and new members during this year. Also, we had assumed that there would be a lower level of chartering activity with the downturn in the shipping market and the world economy, but indications so far are that the level has not reduced as much as we had anticipated.

The year's P&I premium income is $236m, well up on last year, reflecting premium increases negotiated at renewal, new members and additional tonnage. However, as the year progresses, we expect to see more requests for laid-up returns and scrapping which will have an impact on the premium income. We are also conscious of the need to monitor premium collections carefully and take appropriate action where necessary.

At the last year-end, we reported a reduction in free reserves from their previous record high level of $226m to $176m as a result of the difficulties in the financial markets. Investment conditions are still uncertain, but the equity markets have staged a remarkable rally in recent months and the overall return on the portfolio since the end of February has been approximately 13%. Although we reduced our equity holdings during the course of 2008, we did not pull out of the sector entirely, and we have now seen the benefit of remaining invested across the various asset classes, with reserves back up to $225m. But we are very conscious of the fragility that still exists and have now again reduced our equity holdings. Fears for inflation at some point in the future continue to be an important factor in the assessment of bond investments.

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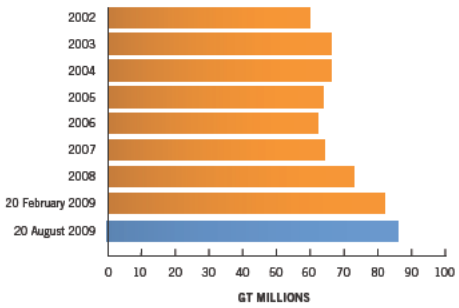
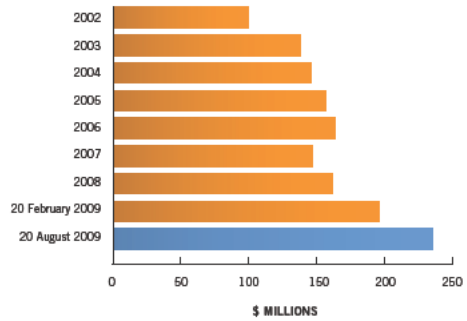
All 20 August figures unaudited.

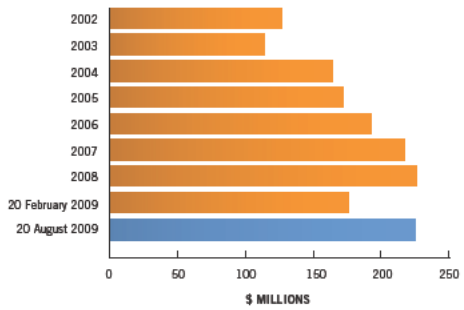
GROSS TONNAGE



PREMIUM INCOME



FREE RESERVES



New Standard Offshore P&I rules

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At renewal this year we introduced modernised and simplified P&I and defence rules; these rules are much clearer, shorter and more user-friendly than the old versions and allow members and brokers to understand more easily the cover that the club provides and how the club operates. Following this successful launch, we are now introducing a new set of Offshore P&I rules specifically designed for members operating in the offshore oil and gas exploration and production industry. The new Standard Offshore rules will provide members with a clear, concise and up-to-date statement of the Offshore coverage terms in a single document.

The Standard Club is a leader in the provision of liability insurance to the offshore oil and gas industry, and is one of the few International Group P&I Clubs specialising in the sector. The club has long experience of and commitment to the provision of flexible P&I coverage for those involved in the offshore oil exploration, construction and production industries. This coverage can be tailored to members' requirements and has the potential to offer limits up to US$1 billion within a single package that can be configured to fit with any hull policy.

Previously this cover has been provided on the basis of the Standard Offshore Conditions ("SOC"), which were specifically drafted to incorporate the club cover for units operating in the offshore sector in an appropriate wording. The SOC provide cover for a number of offshore-type risks which are excluded from normal P&I cover, and which are backed by the club's non-pool reinsurance programme. They are primarily used by members who operate floating production, storage and offloading units (FPSOs) and drilling rigs, a number of whom have had their cover provided on the basis of the SOC for some years.

We have now undertaken a review of the SOC. As currently drafted, the SOC provide cover in accordance with the P&I rules, except that the rules dealing with the scope of cover, risks covered, excluded risks and excluded losses are deleted and replaced with the SOC. The SOC do not, therefore, provide stand-alone cover and have to be read in conjunction with the P&I rules for their full terms and effect.

From 20 February 2010 we propose to replace the SOC with new Standard Offshore P&I rules, which will be a separate set of rules for the offshore sector. These rules will, in one document, contain all the relevant cover and insurance provisions for members operating units such as FPSOs and drilling rigs. We have been involved in underwriting offshore business since the first days of oil exploration in the North Sea, and the production of these new offshore rules further reflects our expertise in and long-term commitment to underwriting business in this sector.

Members and their brokers can view the new rules on the club's website standard-club.com, and have been asked to let the managers have any comments. It is intended to put the new rules to a Special General Meeting of the members on 9 October 2009 in Singapore, prior to implementation for the 2010/11 policy year.

Details of the new rules

The effect of the new Standard Offshore P&I rules will be to ensure that members can view all the details of their cover in one unified document. The intention is to make the provision of cover clearer, not to alter the extent of cover given.

The rules will be called the Standard Offshore P&I rules, to distinguish them from the P&I rules which are applicable to P&I cover for conventional cargo and passenger carrying shipowners, and will apply to units entered in Standard Bermuda, Standard Europe and Standard Asia. We have made a number of amendments to clarify the cover given. The new Standard Offshore P&I rules provide cover on a non-mutual basis, and therefore all provisions which are relevant solely to mutual cover, such as references to contributions and overspill calls, have been replaced by wording appropriate to Offshore cover. We have also deleted the limits sections, since for offshore units the limits of cover given vary from member to member and are set out in the member's certificate of entry.
The cover given to charterers operating offshore units is the same as the cover given to owners, so all references to charterers' entries or charterers' cover have been deleted.

We have also made some specific rule amendments. Most of these are mere clarifications of the cover, and you are invited to view the full wording on the website and let us have your comments.

There may be, as there often are, further, market-driven, proposed changes to the rules later in the policy year. We will, of course, notify members in the event that any such changes are proposed.

Legal update – whether an offhire vessel is back on hire during a "common route"

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A coincidental "common route" for both a repair voyage and charterers' chosen route is not sufficient to put an offhire vessel back on hire under a deviation provision.

TS Lines Ltd v Delphis NV (The 'TS Singapore') **[2009] EWHC B4 (Comm)**

Background

The TS Singapore was operating under two time charterparties on the 1993 NYPE form. She had been damaged in the port of Yokohama when she had dragged her anchor and hit a breakwater. Her classification society imposed conditions that required the ship to proceed to Hong Kong in order to discharge her entire cargo, including cargo bound for Shanghai, before proceeding to Guangzhou for repairs.

It was accepted that the vessel was off hire for a number of days at Yokohama and also off hire at Hong Kong and thereafter whilst being repaired. The dispute turned on the time spent proceeding on the same route as she would have taken to get to Shanghai, which was the intended discharge port.

Charterparty terms

The importance of assessing whether the vessel was on hire until deviating from the common route she would have had to take anyway to get to Shanghai became crucial, as an additional clause in the charterparty provided that if the vessel was at any point off hire for more than 20 consecutive days, the charterers were entitled to redeliver her when she was next cargo-free. There was a standard deviation/off hire provision in the contract supplementing the standard off hire provision in the NYPE form, stating that the vessel would be off hire due to an accident or breakdown causing a deviation from the course of the voyage or putting back until the vessel was again efficient, in the same or equivalent position (whichever is the shorter distance) for the original intended port.

The vessel was off hire at Yokohama and again at Hong Kong: if she was also off hire consecutively on the voyage between Yokohama and Hong Kong, the 20 consecutive days was exceeded, allowing charterers to redeliver when cargo-free.

Arbitrators' decision

The arbitrators in their award agreed with the owners that for the time on the common route, the vessel was performing the service required of her and therefore came back on hire for a period after Yokohama until deviating from that "common route".

High Court decision

On appeal, Mr Justice Burton in the English Commercial Court disagreed and overturned the award on that aspect. He held that for the purpose of the voyage in question, the vessel was under the instructions of the classification society to repair rather than under the instructions of the charterers and referred to the fact that if the charterers had changed their orders, the vessel would still have had to proceed on the same route as she did regardless of that change in orders. He was not impressed by the geographical coincidence of the routes and stated that simply because part of the route was common did not mean that she was performing the service required of her and was therefore back on hire.

The judge approached this off hire clause, as with other such clauses, as a mechanical clause operating to start and stop time, and the fact that the interpretation of the clause would lead to a different result as to overall time lost or on hire, depending on whether the repair yard was located closer to or further away from the original destination was, in his view, beside the point.

The judge did acknowledge that the position might have been different had the vessel already set out to Shanghai in accordance with charterers' instructions, before orders to proceed to Hong Kong for the repair voyage were given, as in those circumstances, it might be said that until that decision was made, the vessel was carrying out charterers' instructions rather than other instructions, albeit temporarily of the same effect.

Comment

The decision supports a mechanical interpretation of an off hire clause turning the time clock off and then on, and also confirms that if a vessel is following instructions either of the owners or in this case the classification society, the fact that those instructions coincide temporarily with charterers' instructions does not, under the terms of the contract, bring the vessel back on hire as the vessel is still not effectively performing the service required of her.

The fact that the charterers' gained some time overall on the common route did not affect that interpretation nor how many consecutive days the vessel was off hire.

When approaching such off hire provisions, the guidance to be drawn is to take a literal interpretation of the clause as to when time starts and stops, by reference not simply to common geographical routing, but the commercial service required of her and whether performing is pursuant to those instructions and service. Whilst in this case the vessel was only temporarily on the common route, it can be envisaged that far longer periods on a common route would still not count towards hire based on this decision and wording of the charterparty if the vessel was not performing the charterers' service but proceeding under the owners' or class' direction.

Legal update – implied safe berth warranties: important Court of Appeal ruling

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Mediterranean Salvage and Towage Ltd v Seamar Trading & Commerce Inc 2009 ('The Reborn') **[2009] EWCA Civ 531**

Where a berth (voyage) charterparty names a specific load port with no express safety warranty, will a "safe berth" warranty be implied under English law? Surprisingly perhaps, prior to this recent Court of Appeal decision, there had been no previous direct authority on this issue. The decision is therefore of considerable interest and relevance to members engaged in negotiating similar voyage charterparties.

Background

The vessel "Reborn" was chartered by the claimant owners to the defendant charterers on an amended Gencon voyage charterparty for the carriage of a cargo of cement from Chekka, Lebanon to Algiers. Box 10 of the charterparty stated:

"Loading port or place (Cl.1) 1 BERTH CHEKKA – 27 FT SW PERMISSIBLE DRAFT"

The charter did not contain an express warranty that either the port of Chekka or the loading berth there would be "safe". In addition, Clause 1 of the 1994 Gencon form had been amended to remove references to safety as follows:

"The said vessel shall…proceed to the loading port(s) or place(s) stated in Box 10 or so near thereto as she may ~~safely~~ get and lie always afloat …and being so loaded the Vessel shall proceed to the discharging port(s) or place(s) stated in Box 11 … or so near thereto as she may ~~safely~~ get and lie always afloat, and there deliver the cargo."

Further strengthening the charterers' position, the charterparty also contained the following additional Clause 20:

"Owners guarantee and warrant … that they have satisfied themselves to their full satisfaction with and about the ports specifications and restrictions prior to entering into this Charter Party."

Whilst loading at Chekka, the ship's hull was penetrated by a hidden underwater projection at the loading berth, damaging both ship and cargo. The owners commenced arbitration proceedings against the charterers, claiming damages and alleging that the charterers were in breach of an implied duty to nominate a safe berth.

Arguments

The charterers argued that by agreeing the port, the owners had accepted the safety of that port and its constituent parts, including the berths. The owners accepted that where the port is named, they assumed the risks associated with the port, but not the berths within. They argued that because the charterers had a choice of a number of berths at Chekka to which they could send the vessel, this choice carried with it an implied warranty that the berth nominated by the charterers within the named load port of Chekka would be safe.

Proceedings below

The arbitrators and the High Court agreed with the charterers and dismissed the owners' claim. Both the arbitrator and the court accepted the commonsense point that a port encompasses many parts, including all the berths within it. It made no commercial sense to suggest that the owners bore the risk of the safety of a port but the charterers bore the risk of a constituent part of that port. However, given the general importance of the issue to owners and charterers, and the lack of previous legal authority, the case was referred to the Court of Appeal.

Court of Appeal decision

The unanimous decision of the Court of Appeal was that the owners' appeal should be dismissed. In reaching its decision, the court recognised that, on the facts of this case, it appeared that the danger at the berth would not have been obvious to either the owners or the charterers. The question was therefore which party had to bear the risk or, put another way, how the risks should be apportioned. It was held that the courts would only imply terms into charterparties to resolve such questions where it was necessary in all the circumstances.

The court conducted a thorough review of the leading texts and authorities relating to unsafe port and berth provisions, both in respect of time and voyage charterparties. Particular emphasis was placed upon the need, when considering these general principles, to have regard to the terms of the particular contract in issue.

The Court of Appeal had no difficulty in finding that, given the terms of the charterparty in this case, there could be no safe berth warranty implied as contended for by owners. It was held that when Clauses 1 and 20 were read together, the owners undertook that the vessel would proceed to the nominated berth at Chekka or so near thereto as she may get and lie afloat and load the cargo. This was clearly unlike those cases where the charterers had the right to make a nomination from a range of unnamed ports. In the circumstances, there was no necessity for any term to be implied into the contract concerning the safety of the berth as suggested by the owners.

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Staff news

New York

LeRoy Lambert, a leading maritime lawyer, became President of Charles Taylor's New York P&I operations on 1 September. LeRoy joins the club from Blank Rome, having been in private practice for 25 years.
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Singapore

Nick Sansom joined Charles Taylor Mutual Management, managers of Standard Asia, on 1 September. Nick brings with him experience of many areas of marine insurance, having worked as a barrister, for mutual insurers and as an insurance broker.
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Comment

The case provides an important reminder that, wherever possible, the courts will try to interpret and uphold the contract as agreed by the parties and will not intervene to imply terms unless absolutely necessary.

On the facts of this case, the amendments to Clause 1 of Gencon, together with the addition of Clause 20, meant that the court felt able to determine that the risks associated with the nominated berth at Chekka should be borne by the owners. However, the Court of Appeal noted that it had not been necessary to decide whether the outcome would have been different in a case involving a vast port with numerous berths, such as Rotterdam.

To avoid similar problems, members should ensure that the distribution of commercial risk associated with the nomination of ports or berths is specified clearly and to their satisfaction. In addition, care should be taken to avoid another common difficulty in unsafe port or berth cases, namely that of inconsistent or contradictory provisions.

As this case illustrates, if it is intended that charterers should be responsible for the safety of a berth nominated by them within a port named in a voyage charterparty, it is essential that the charterparty should state this clearly. Given the courts' reluctance to intervene to imply terms in such circumstances, and given also that this area of law is well known for producing difficult and complex disputes, a little extra care taken when negotiating safe berth and port provisions can pay dividends.

Club seminars

A Guide to P&I, London, 16 to 18 June 2009

The club held its third training week in London between 16 and 18 June 2009. 43 members and brokers turned up at Watermen's Hall for three days of intense learning and socialising. At the same time, the opportunity was taken to train five of the managers' staff.

The content of the sessions was designed as an introduction to the world of P&I insurance for those who were relatively new to the industry. The programme was planned to provide an overview of all the various facets of P&I: from an overview of the structure of the International Group to a more detailed examination of the club's new rules and the role of the safety and loss department. Other sessions were devoted to particular types of claim: personal injury, collision and pollution. The third day was given over entirely to a major casualty workshop masterminded by Andrew Taylor and Richard Gunn from lawyers Reed Smith. After a media response discussion led by Tony Redding (from TMC Consultants), everyone was split into one of three groups representing owners, charterers and cargo. They then remained in these groups as the scenario unfolded and they were asked to respond to the ever-changing facts.

We are planning to hold an "advanced" training event next summer that will enable us to explore specific areas in greater depth. If you would be interested in attending, please contact kieron.moore@ctcplc.com or louisa.gallagher@ctcplc.com

Future seminars in 2009

Member and broker seminar Hamburg – Thursday 17 September

This seminar will cover issues such as safety and loss prevention and information about the Rotterdam Rules.

Offshore Forum London - Wednesday 21 October
Offshore Forum Singapore - Tuesday 24 November

These events offer a great opportunity for shipowners involved in the offshore oil and gas industry to meet and discuss current industry issues with oil companies and contractors in an informal environment. The forums are intended to stimulate informed debate amongst participants and are open to both members and non-members of the Standard Club and their marine contractor and oil company clients.

Member seminar New York – Thursday 12 November

Following the successful personal injury forum in October 2007, the club is again holding a forum for members on topical issues. There will be a mixture of lectures and roundtable discussion, and topics will include a personal injury update, a review of the current piracy situation, national resource damage assessments and oily water separator infringements.

For more information on any of these events, please contact suzie.mate@ctcplc.com or louisa.gallagher@ctcplc.com

ATTENDEES AT THE CLUB'S GUIDE TO P&I SEMINAR

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Claims have continued to perform satisfactorily in the first six months of this policy year, with closed years being relatively stable overall and open years performing according to our expectations. We do not expect much claims inflation in the current economic climate, although we are yet to see any real tail-off in claims notifications. We have ourselves had three claims in the last 12 months which have entered the Pool layer, but even so our Pool record still appears to remain favourable. Defence class claims are significantly up, both this year and last, on historical levels with a number of members involved in expensive disputes with charterers and ship-yards as a direct result of the economic situation.

Our safety and loss team are continuing to do good work, both on the survey and member risk review front, and also with some good products and publications in the pipeline which will contribute to improved safety at sea and, we hope, to a reduction in avoidable claims.

We are acutely aware that although the club is performing well, many of our members are having a very tough time indeed. The different sectors of the shipping market are affected to differing degrees, some with really challenging trading conditions, but all with reduced freight rates and asset values. We shall continue to do all that we can to support our members in these difficult conditions and to ensure that the club remains in good shape to provide the stability and service that members need.

The Standard Club

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