Limitation of liability – marine pollution perspective

Sharmini Murugason, Regional Offshore Claims Director

+65 6506 2867
sharmini.murugason@ctplc.com

- Standard Asia took part in the Singapore Forum in April 2013
- new limits under the 1996 Protocol to LLMC 1976 come into force in June 2015
- Hazardous and Noxious Substance Convention 2010 has been adopted but is not yet in force

Singapore Forum
Singapore Maritime Week hosted a variety of maritime conferences, including the International Chemical & Oil Pollution Conference & Exhibition (ICOPCE) 2013 from 9 to 11 April 2013 at the Pan Pacific Hotel, Singapore. Standard Asia participated in a training workshop with the Singapore Maritime Port Authority (MPA), the IOPC Funds and ITOPF on the various international compensation conventions and the way in which pollution claims are dealt with.

Limitation

As many readers will be aware, there exists a series of *international conventions* dealing with limitation of liability within the context of marine pollution. All the conventions mentioned below allow a shipowner to limit liability according to the tonnage of the ship.

The most notable are the Civil Liability Convention (CLC) 1992 and the Fund Convention 1992, which provide a liability and compensation system. The Fund Convention is administered by the IOPC Fund. With their two-tier system of compensation for oil pollution from trading tankers, these two conventions limit liability for loss/damage caused by spills from these ships. The key features are strict liability, limitation of liability, compulsory insurance and direct action against the insurer. These key elements are replicated in the Bunkers and HNS Conventions mentioned below.

The Convention on Limitation of Liability for Maritime Claims 1976 (LLMC) as amended by the 1996 Protocol allows shipowners to limit their liability for certain categories of claims, including arguably claims arising from a pollution incident involving a seagoing ship. The LLMC can be distinguished from the other conventions mentioned in this article as its regime recognises the right to limit in the event of a clear liability while all the other conventions are pure liability (strict liability with few defences) and compensation regimes.

The Bunkers Convention 2001 provides a liability and compensation system for damage caused by bunker spills from seagoing ships. It allows a shipowner to limit based on its tonnage as set out in the 1996 Protocol of the LLMC 1976, in the absence of any national law.

The Hazardous and Noxious Substance Convention 2010 has been adopted but is not yet in force due to insufficient ratifications. It is a liability and compensation regime for damage caused by the carriage of hazardous and noxious substances, which would predominantly include chemicals as well as LNG/LPG cargoes. It also contemplates a two-tier system of liability, the second tier being most likely to be administered by the IOPC Fund.

There is now some debate as to whether current limits of liability are sufficient. The relatively recent *Pacific Adventurer* casualty is an example of claim costs exceeding limitation. This ship was damaged by a cyclone off Queensland, Australia in 2009, and 270 tons of bunker oil escaped into the sea. The cost of the clean-up operation was reportedly around US$27.5m, but under the current 1996 Protocol, the shipowner's liability was limited to about US$15.5m. This led to political and commercial pressure being exerted by both the state and federal governments of Australia on the shipowner to pay the difference, rather than leaving the excess to be borne by the taxpayer.

1996 Protocol increase

This casualty also led to the Australian government submitting a proposal to the IMO Legal Committee for the 1996 Protocol limits to be increased. The Legal Committee agreed to this in April 2012, via the tacit acceptance procedure, whereby an increase of 51% will be applied to the limits. These new limits are expected to come into force in June 2015.

However, the problem remains that, in time, these increases will again be insufficient to cover the full costs of large clean-up operations and, when this happens, shipowners liable for large pollution claims will again face pressure to waive their legal rights to limit their liability and pay the shortfall, which would not as of right be covered by their insurance. Whether by the International Group of P&I Clubs (IG), the governments of the states themselves, or whomever else, consideration must be given to a system to cover the excess costs on those hopefully rare occasions.

Interestingly, the present limits and the new higher limits of the 1996 Protocol are still lower than those of the CLC.

Definition of ship

The applicability of these conventions to offshore craft such as FPSOs and FSUs is explored in detail in our ***Standard Bulletin*** of October 2012. While the working group of the IMO is debating whether to extend the definition of ship from trading tankers to FSUs only, it is unclear for the remaining conventions whether offshore craft such as FPSOs and FSUs would be defined as ships, and the key to this would lie within the national law enacting the respective conventions.

Club assistance

The IG clubs are the main providers of financial guarantees for claims pursuant to the CLC and Bunkers Convention through the issue of CLC and Bunker Blue Cards. The Standard Club will continue to take a reasoned view of shipowners' liability and work with the IG to ensure that adequate protection is afforded to members.