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A Different Perspective to Stowaways on Board

For the last few years, the stowaway problem has come to forefront among the other problemsencountered for Turkish vessels, especially for those voyaging to European countries. Increasing stowaway incidents and how such stowaways should be treated on board together with the procedures required to be followed, are described in detail in IMO RESOLUTION A.871(20) and various publications have been circulated by Turkish Shipowners Association and Maritime Chamber of Commerce similarly in our country.

As a result of increasing incidents, both the shipowners and the P&Iinsurers have gained great experience, since the risk falls under P&I insurance coverage.

If the ship crew complies with the instructions of the operating companies and implements the directives and regulations, the stowaway problem can be solved with minimum distress. However, oneissue that is concerned by the ship crew but not emphasized much is the communication between the ship crew and the stowaways.

Despite all security measures, stowaways can still manage to get on board somehow. When the voyage begins, especially on a long voyage, they came out from their hiding place and demand food and clothing from the ship crew. In some cases it is also known that during the shipment to the first port, they were occasionally employed as crew member. The risks that may occur due to this situation would be muchgreater than anticipated. Most of them are well aware of their legal rights and what they should do in order to be accepted as refugees in the country they plan to reach. It should never be forgotten that they are adamant to endanger their lives to seek asylum in the country they are aiming to go.

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During the voyage, the ship crew should keep the communication with the stowaways as short as possible at a formal level and avoid being very close to them. It is a known fact that stowaways try to be sincere with the ship crew in order to ensure provision of their demands, to speak to theconscience of the staff by exaggerating their bad situation in the countries when they come from and try to create a humane sentiment in this way.

In an exemplary case, the one of the ship crew members, who was influenced by the stories of the stowaways detected on board, did not made the ship operation aware of the issue, relying on the promises made by the stowaways. The master and crew approached the matter completely conscientiously and thought that they were doing a favor to the people in distress and left the stowaways safely to the sea at a distance close to the port of destination in line with the stowaways' request.

However, in this case, it should be remembered that the stowaways may surrender to the official authorities as soon as they go ashore, and declare that they are forced by ship crew to leave the vessel, and that they may even declare that they want to stay as refugees considering the difficulties they have experienced.

Similar examples have been experienced and the subject was considered by the authorities as human smuggling, so that the stowaways became victims and the master and ship crew, who thought they were doing a favor, had been convicted and arrested by the authorities.

However, if the shipowner had been informed about the stowaways at the beginning of the incident, the P&I insurer would step in and inform the relevant authorities and the P&I representative would help them at the port of destination and the issue would be solved without any problems.

The possibility of minor incidents to become big ones should always be taken into account, and it should be encouraged to report any unusual circumstances to the entity, irrespective of their importance, during both in-company training and notifications and visits to the ship.

Statutory Non-Liability of Carrier under Turkish Maritime Law

In principle, the carrier is not only responsible for the transportation of goods by sea but also for the storage and timely delivery of the same. The liability of the carrier has been limited and even abolished both under the Turkish Commercial Code and international regulations, provided that certain conditions are fulfilled, in order to determine the liability limits of the carrier in the transportation operations wherein more than one party involve. Therefore, one of the most important issues in international maritime trade is the determination of liability and non-liability issues of the carrier.

Until the end of the 1800's, the regulations and records that contained the non-liability records of the owners were dominant and the liability of the owner was only originating from the delivery and the accuracy of the information contained therein if a B/L was issued. For these reasons, it has become a necessity to introduce a number of mandatory rules to ensure the survival of each actor participating in commercial life. The Harters Act, which came into force in 1873 in the United States of America, was the first regulation that had set limits on the non-liability records of the owner in favor of the cargo interests and prohibited conclusion of contracts restricting liability for damages resulting from a "commercial deficiency". Following these developments, the Hague Rules in Europe and the subsequent conventions aimed at achieving the balance of forces between the carrier and the cargo interests. Turkish Commercial Code which was adapted from the German Commercial Code, is also based on the Hague Rules and regulates the absolute non-liability of the owner in line with this. Although it is thought at the first glance that it has been prepared based on the Hague Convention and contains some provisions in favor of the carrier (For example; TCC article 1180/2: providing that the damage in case of hesitation shall not be deemed as a consequence of technical management), it is seen that "Late delivery" related liability provisions, which are not covered by Hague Rules but regulated under the Hamburg Convention, have been legislated under the Turkish

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Commercial Code. The most important responsibilities of the carrier in accordance with the provisions of the Turkish Commercial Code are i) Responsibilities regarding the cargo (loss and damage emerging in contrary to the due diligence and responsibilities on late delivery in parallel to Hamburg Rules) and ii) liability for damages caused by the vessel's unseaworthiness or , cargo worthiness and voyage worthiness at the beginning. (Article 1178 et al. and article 1141 of TCC)

In the TCC systematic, provisions concerning the non-liability of the carrier are sometimes arranged as an exception to the liability and the exception to the non-liability of the carrier is included in the article. For example, in accordance with the provisions of Article 1141 of the TCC, the carrier of obligated to "show the attention and care that a cautious carrier is obliged to show". However, exceptionally, the same article also regulates the release of liability, and the carrier shall not be held liable for damages arising from cases where "the deficiency of the same was not possible to be discovered until the beginning of the journey".

Some non-liability cases within the law are regulated not with the exception provisions but in direct and individual articles. These include technical defects and fire, rescue at sea which are the cases of absolute non-liability of the carrier and danger and accidents in the seas and other waters which are suitable for the operation of the vessel, unrest and riots, movements of public enemies, orders or quarantine restrictions by the authorities, seizure orders given by the courts, strikes, lockouts or other labour obstacles, acts or negligence of the shipper, charterer and cargo owners as well as their representatives and officials, instinctive decrease in volume or weight or hidden defects in the goods or natural inherent type and quality of the good, inadequate packaging, inadequate marking, which are the cases of possible non-liability. In addition to that, deliberate misrepresentation of the quality or quantity of the goods by the shipper or charterer and getting off course for saving lives or property or for another just cause are also considered as cases of non-liability of the carrier pursuant to article 4 of Hague Rules.

In summary, if the circumstances mentioned above take place, the carrier may be relieved from liability provided that the burden of proof shall be at his account unless it is proven that, the incident resulted from owners/or it's employers' fault and that the carrier did not keep the vessel seaworthy, cargo worthy and voyage worthy pursuant to article 932 of the Turkish Commercial Code.

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Proper Manning of Vessels and Seaworthiness

Manning briefly refers to the provision of minimunumber of crew members required for ensuring safe operation of the vessel according to technical, administrative and legal requirements. The number of crew members required to be have on board varies depending on the type, equipped technology, voyage field of the vessel and competency of the crew. For the sake of both the vessel and cargo together with the seaman, trainings obtained and experience constitute great importance together with the seaman license during the recruitment. In marine terminology, seaworthiness refers to as follows;

"A seaworthy vessel is the one that has been treated in terms of condition, equipment, sufficient manning and health in a manner that it can withstand hazards of sea."

It is stated in data published by Accident and Investigation Board of the Republic of Turkey Ministry of Maritime and Communication, the number of vessels that sank in years 2015 and 2016 was 6. According to the statistics of the same board covering the last 7 years (between 2010 and 2016), the number of incidents reported is 938. When the causes of the accidents are investigated, it was seen that mostly due to the physiological-psychological status, training and competencies of seamen. When global statistics are checked, 90% of collision incidents and 75% of fire and explosion incidents are caused by crew members. Although no one desires even a small accident takes place or causing the same, accidents continue to take place sometimes because of operational weaknesses and crew failures in some cases.

It is understood from the incidents taking place that degrees on the licenses are considered rather than the experience in recruiting seamen especially for small-scale ship-owners and that drills that must be performed periodically on board, are performed in theory rather than practice and no necessary diligence is shown for the training even in this era, when it is easy to access technology and information. Many incidents, where seamen got panic and abandoned the vessel or put themselves into danger asserting the problems originating from operation even in case of a small hazard because of their inexperience

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although they could secure the vessel and crew with basic actions, have taken place. The ship operators and owners must ensure that seamen have sufficient and suitable training and have sufficient experience while onboard. It must not be forgotten that the master is responsible from all these people. An experienced able seaman can be preferred instead of more than one young inexperienced seaman. We recommend ship-owners not assign any seaman and even cadet not holding a certificate and sufficient training on board.

When assessing the accidents that took place, P&I insurers perform sensitive examinations on the competencies and qualifications of the crew member regarding the manning of the vessels. If necessary diligence is not shown by the ship-owners, they may face with the risk that the insurance coverage is suspended as this endangers the "seaworthiness" of the vessel. Regarding to this, article 15 of the special conditions of our company on "Classification and Condition" states that:

15.1. Unless otherwise is agreed by the insurer, following conditions shall constitute insurance terms and conditions applicable for each and every ship:

(5) The insured must comply with all statutory requirements of ship's flag state relating to the construction, adaptation, condition, fitment, equipment, manning and operation of the ship and must at all times maintain the validity of such policy as are required or issued by or on behalf of the ship's flag state, including those in respect of the ISM and ISPS codes.

15.2 Unless and to the extent the insurer otherwise decides, an assured is not entitled to any recovery in respect of any liabilities arising during a period when any of the conditions in rule 15.1 have not been complied with.

Ship-owners shall be liable for the accidents to be caused by the vessels, which become unseaworthy due to the failure of the ship-owners to provide the vessel with the crew members who have sufficient competency and experience.

Although it is known which risks will be encountered, which trainings will be taken against these risks and which procedures will be applied, the number of incidents not decreasing still, is a sign of the lack of adoption of a safe working culture and the inadequacy of implementation. Many ship-owners have adopted a safe working culture and have been pioneers in the marine industry. We wish that the number of ship-owners, showing necessary care and holding technical equipment, increases in time.

Carrier's Responsibility for On Deck Shipments

In the modern age, on deck shipments by cargo ships have become an indispensable practice in maritime transportation due to reasons such as commercial reasons, type of the cargo carried and local or international shipping practices customary for certain shipping operations.

It is accepted that the fact that the cargo is deprived of the preservative property of the ship's hold in the on deck shipping is a factor that increases the risk of damage or full loss of the transported cargo.

One of the parties affected most by this conjuncture is undoubtedly the shipowners who are those that are responsible for delivering the cargo to the recipient safe and sound.

The usual approach of ship-owners to carry cargo on deck, which is deprived of the preservative features of the ship hold is to clearly write on the carriage contract and bill of lading that "the cargo will be shipped on the deck" and "risk(s) related to the cargo on deck shall be borne by the shipper and the carrier shall not have any liability for the cargo carried". In addition to this, although the cargo on deck are excluded from Hague-Visby rules under article 1(c) of definitions parts of the Hague-Visby Cargo Convention, stating on the B/L and carriage document that Hague-Visby rules shall be applicable for cargo on deck, is a common practice encountered in these circumstances. Therefore an easier settlement can be reached based on the applicable provisions written on the B/L through reference for distribution of liability regarding the on deck carriage operations and it is easier to estimate how to interpret the contract wording by the courts in case of a possible disagreement. Another advantage brought my this practice is that, it prevents carriage operations not subject to international cargo conventions and thereby prevents rejection of any damage by some P&I insurance companies, stating in their book of rules that they do not offer cargo coverage as the rights of defense of the carrier are limited or abolished, based on the reason that such carriage operation in not covered as it is not subject to international cargo convention.

Since it is possible to attribute liability to the carrier by the receiver of the cargo, charterer and even the owners of the cargo carried under the deck during the voyage where on-deck carriage is performed in addition to the shipper, the carrier must be sure that its liability for the cargo on the deck has been properly limited or eliminated by ensuring that carriage contracts protecting his interests have been concluded.

Another condition that must be taken into consideration for the carrier to benefit from the agreed defenses stated on the bill of lading is that applications before and during transportation are do not allow emergence of a situation that is contrary to the transportation conditions.

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For example, if the ship-owner overlooks carriage of a cargo, which is not suitable for transportation on deck, on the deck considering that "it is at the Shipper's risk in any case", this can be considered as a violation of the liability of the carrier to stack the cargo "on board properly and carefully". (see Article III.2 of Hague-Visby rules).

In transport contracts, the responsibility of lashing on the cargo o- deck cargo is left to the charterer and recommended to be left, but the Carrier must require lashing operations to be carried out by a professional company, ship crew should closely supervise the lashing operations and report to the ship-owner that the lashing operation is not reliable if there is any nonconformity. Ondeck cargo with unreliable lashing must not be accepted and no departure should be started under the circumstances. Although the lashing operation is under the responsibility of the shipper or charterer, the Carrier is also responsible for the loss if the non-conformity in the operations is clearly apparent and the ship / carrier has not intervened. Upon completion of the Lashing operations, the Carrier must obtain a copy of the Lashing certificate.

Likewise, if any cargo, for which B/L stipulating carriage under the deck is arranged, is transported on the deck and such cargo is damages, this may case the carrier to face with a serious liability for compensation. Since this type of transport, which will constitute an intentional and deliberate act in contrary to the terms of the transport contract, will be excluded from the coverage of the Owner's P&I insurance; the options of the carrier to insure its liability in this case will either to convince the P&I insurer to include this special case, which is not possible in most cases or to purchase an additional insurance coverage providing coverage for the ship-owner's liability when a cargo, stated to be transported under the deck on the B/L, is actually transported on the deck. This coverage may be offered by some insurers under the Shipowners Liability (SOL) insurance heading, as well as under different names under the insurers' fringe covers product groups.

Although it is known which dangers will be faced, which trainings will be taken against these dangers and which procedures will be applied, the number of incidents not decreasing still, is a sign of the lack of adoption of a safe working culture and the inadequacy of implementation. Many ship-owners have adopted a safe working culture and have been pioneers in the marine industry. We wish that the number of ship-owners, showing necessary care and holding technical equipment, increases in time.

Likewise, taking on-deck cargo in a way that destabilizes the ship, ship class and certificates not allowing on-deck transport; may be perceived as a fundamental breach of the carriage contract on the grounds that the carrier has not fulfilled its responsibility to maintain seaworthiness of the vessel and may impair the carrier's right to waive responsibility for the cargo on the deck. The carrier is obligated to maintain seaworthiness of the vessel at and before the beginning of the voyage. (see Article III.1.(a) of Hague-Visby).

Another important consideration in over-deck cargo transports, just as with usual under-deck transports, is whether the conditions of carriage to which the bill of lading is subject to, allow the carrier to limit his liability under what circumstances and in what extent. Although it is beneficial that these issues are predictable; in practice, the supercargo does not consider these limitations in favor of the carrier for cargo damage claims to be made against the carrier; and when full loss is claimed and the issue is referred to judicial authorities, the judge shall take the decision on such liability exception and/or liability limitation of the carrier, considering the objections of the supercargo.

Such defense and limitation opportunities offered to the ship-owner / carrier by carriage conventions such as Hague, Hague Visby and Hamburg rules may become obsolete if the issues stated in different articles of the same rules are realized and the limitation cannot be utilized. For example article IV.5 of Hague-Visby, prevents exercising limitation of liability provisions of such carriage conventions for indemnification of the losses that may be incurred due to the error and omissions to be made by the carrier, being aware that they may lead to loss, which can be considered as irresponsibility .

In terms of insurance; some fix premium-based P&I insurers either do not provide a cargo coverage for cargo carried on deck indirectly or may limit their cover against the insured ship-owner with liability limitation limits per package or weight provided by the abovementioned cargo conventions (for example it is 667 per item in Hague-Visby convention). Ship-owners who are unaware of this situation may face with a huge financial loss when a guarantee letter amounting as much as the invoice value of the cargo as a result of the damage to cargo on the deck and the insurer declares that it will refuse the request and informs that coverage will only be provided as per the liability limits.

In selecting the insurer, we always recommend that the above-mentioned measures be taken into consideration when carrying on-deck cargo, as well as the coverage differences provided by the insurers and the nuances between these lines rather than the premium comparison

Passenger Transportation Implications of Turkey's Adoption of Protocol 2002 to the Athens Convention

The Law No. 6990 which ratifies adoption of Protocol 2002 to the Athens Convention 1974 relating to the Carriage of Passengers and their Luggage by Sea, has entered into force upon its promulgation in the Official Gazette on 03.04.2017. Likewise, the Turkish Commercial Code No. 6102 was enacted before the effective date of the Athens Convention and was based on this convention in the responsibility regimes.

The most important innovation introduced in Turkish commercial law is the compulsory insurance in maritime transportation. Pursuant to Article 1259 of the Turkish Commercial Code, if passenger transportation is performed by a vessel licensed to carry more than 12 passengers, all carriers, who undertake or perform all or part of the transport operation, are obliged to provide an insurance covering their liabilities arising from the death of or injury to the passengers. Accordingly, the maximum amount of compulsory insurance shall not be less than 250.000 Special Drawing Rights (SDR) per person per accident.

The law explicitly states that a vessel that does not fulfill this obligation shall not be allowed to depart. Thus, as stated in the justification of the said law, harmonization with international law was ensured and it was also ensured that the provisions of the Turkish Commercial Code were put forward within the framework of international law in line with the national interests. Therefore, the transferring of the relevant protocol to our domestic law should be noted as an extremely important development in terms of providing the necessary protection for the circumstances where indemnification arises in favor of passengers in maritime transportation.

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With the Protocol, Article 6 of the, Athens Convention 1974 relating to the Carriage of Passengers and their Luggage by Sea, was revised and the provision stipulating that the responsibility of the carrier for the death and injury of a passenger could in no case exceed 400,000 Special Drawing Rights (SDR) per incident, has been established Of course, the provision of the first clause of Article 1256 of the TCC, stipulating that if the carrier is in negligence, it shall be liable for the damages exceeding these amounts, has been reserved and in that case the carrier is obligated to bear the burden of proof that it is not in negligence. It should be underlined that the contractual liability of the carrier for damage or loss of the luggage shall be deemed to have existed only if the luggage has been delivered to the master or officer in charge of this duty, and if there is a misconduct by the carrier or its assistants and there is an absolute causality between the misconduct and the damage incurred.

In addition, Article 8 of the Protocol stipulates a limit of liability for damages caused by loss of and damage to the luggage and vehicles, and these limits have been likewise maintained under the provisions of article 1263 of TCC, stipulating that regarding the indemnification liability of the carrier arising from these circumstances, the carrier shall not be liable for claims exceeding 2.250 Special Drawing Right per passenger under any circumstance, that the liability of the carrier arising from the loss and damage to the vehicles and any luggage carried inside or on such vehicles, shall not exceed 12.700 Special Drawing Rights per vehicle per transportation operation and that the carrier's liability for any luggage loss or damage other than these, shall not exceed 3.375 Special Drawing Rights per vehicle per transportation operation. It should be stated that in cases where the objects subject to the claim for damages due to damage and loss are of precious goods, works of art, precious documents and money, the occurrence of claim is conditional on the notification of the type and value of the goods to the master or the person assigned to for that task during delivery.

If the carrier caused such damage intentionally or recklessly, or caused emergence of such loss while acting by the awareness of such possibility, then the limitations provided for in the Athens Convention and the Turkish Commercial Code shall not be applied. In any case, appropriate covers are necessary for the safe voyages in our seas in order to avoid possible risks.

Cyber Risks

Cyber Attacks, which we have seen and heard more in movies/ news, have gradually become a part of our lives and started to occupy the top places in the risk planning for companies. The triggering factor in maritime took place after Maersk, which was exposed to a cyber attack in June 2017, announced US$300 million loss and the number of maritimespecific seminars and workshops on the topic have increased.

Almost all major organizations (BIMCO, Intertanko, Interkargo, Iumi, etc.) published similar recommendations for their members based on IMO cyber risk management recommendations. In terms of insurance, it is also seen that some insurers recommend cyber security specialist companies and offer new products to the members regarding cyber risks that do not fall under traditional insurance coverage.

So, what is the actual severity of the risk for us? The answer to this question can be evaluated as both high and very low. To date, there has been no direct attack on any company or ships as seen in the movies. In other words; there has been no attack in the form of neutralizing the ship's systems or seizing control of the ship. Attacks that have been developed for a specific purpose, such as the Stuxnet virus, that target the infrastructure of countries are already beyond our scope, and it is unlikely that companies will be able to resist such sophisticated attacks on their own. However, the basic cyber risks faced by individuals and companies today are more in the form of data theft or requesting money by blocking data by using viruses such as Petya, NotPetya, WannaCry, Equifax, and so on. For example, the WannaCry virus encrypts the hard disk of the computer to block access and requests a certain amount of money to decrypt and reuse it. Petya and then NotPetya viruses similarly follow the method of preventing data flow in the computer and charging fees to remove the obstacles.

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The interesting thing here is that, the NotPetya virus spreads with an accounting software originating from Ukraine. NotPetya is the cause of Maersk's $ 300 million loss, including operational losses. Equifax is also a large corporation that stores credit data in the United States. With cyber attack, registered user data in Equifax was made public.

As an individual user or as a small and mediumsized company, you need to evaluate how you can prevent a virus originating from the accounting software you use, how well a generic 100 TRY antivirus software available in the market can protect you from such attacks. Today, Cyber Risk Insurances are available but they cannot be provided widespread in Turkey as they contain a risk analysis different from those of the ordinary risks.

As it can be understood from the above, these attacks are aimed at all computer users in general and there has been no cyber attack targeting the maritime sector specifically. Although it is not paid attention as much as the attention given to the main coverages, every Hull & Machinery policy contains a Cyber Risk clause (Institute Cyber Attack Exclusion Clause Cl.380), The full text of this clause can be found easily on the Internet, but if we summarize, Cyber Risks are excluded from coverage.

In P&I insurances, the situation is slightly different. Although P&I insurances contain detailed information on paperless trading, no study on Cyber Risks has been performed yet. In other words, if a liability arises in the event of a cyber attack on the ship, the P&I coverage will apply as for any other liability damage. The only exception applies when such attack is fall under War & Strike Risks.

If we bring it up a little more; vessels had very limited connections with the land while they were cruising on the high seas until recently, but nowadays they maintain electronic connections with land facilities through many equipments, such as AIS, ECDIS, GPS etc. making them more vulnerable to cyber risks than it was in the past. Even if a cyber attack has not taken place so far, if the electronic devices of the ship would be shut down as the result of a cyber attack and any circumstance such as collusion, environmental pollution, damage to third parties or their property which are covered by P&I takes place, the P&I insurers will take part and reimburse the damage incurred. However, the damage to the ship itself as a result of the attack is out of coverage.

Although it seems simple, the experts' first suggestion against cyber attacks is to think twice before opening the attachments in the incoming emails and to confirm the bank details received, by telephone before you make the money transfer.

The Most Common B/L Related Problems and Recommendations for Carriers

The bill of lading is a valuable document signed to confirm that the cargo has been received before loading or at the port of loading for transportation. This document shows the relationship between the shipper and the carrier. The most common problems with the bill of lading are summarized in the following article;

I - In cases where it is requested to sign a clean bill of lading in return of the loading of damaged or defective cargo brought to the loading port;

If the cargo brought to the port of loading is requested to be loaded to the vessel in damaged or defective condition and the shipper insists to the master that the remark "clean on board" is written on the bill of lading, although the cargo is defective, the master must refuse to load the cargo in the specified condition, or approve the loading, provided that the exact condition of the cargo is written on the bill of lading.

The master is obliged to put the remarks indicating the exact condition of the cargo loaded in his capacity as the agent of the carrier. In carriage operations subject to a letter of credit, banks do not want a "remark" to be lodged on the bill of lading and since they request issuance of a "clean" bill of lading pursuant to the L/C requirements, they may request stating clean loading on the bill of loading although defective cargo is loaded by presenting a LOI to the master or the carrier. Most of the time, when the vessel arrives at the port of discharge, we witness the arrest of the same based on the claim that the damaged cargo is delivered as the cargo receiver is not aware of the letter of indemnity issue between the carrier and the shipper. When the ship is arrested, both the charterer and the shipper often disappear and the carrier is left alone with such problems. In such cases, declaring that the cargo known to be not clean actually is considered to be clean by accepting a LOI is considered as a kind of fraud.

P&I insurers shall not cover any damages to be incurred by the carrier in any liability arising from the shipments where such LOIs are accepted by the carrier. The carrier will have to deal with the legal proceedings to be initiated by the cargo receivers on his own or he will have to convince the shipper / charterer to protect himself.

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II - In cases where it is requested to deliver the cargo at the discharge port without presenting the original bill of lading;

In some cases, delays may occur in the presentation of the original bill of lading in the event of the sale of the cargo more than once by changing hands and problems generally occur due to this delay. In some cases, the bill of lading may be lost for various reasons. The receiver of the cargo may claim that the bill of lading has been lost, stolen or there has been a delay in arriving at the destination port. In these cases, the risk of delivering the cargo to a wrong counterparty or fraud may be encountered.

Although it is not recommended to deliver the transported cargo to the buyer without presenting the original bill of lading, such delivery is a procedure applied in international trade. In case of delays in the chain of delivery of the documents and selling the cargo when it is in transit, the original bills of lading usually does not arrive at the destination port when the vessel arrives at the port of discharge.

When such circumstances occur, the shipper agrees to deliver the cargo, assuming that a Letter of Indemnity (LOI) shall be received from the charterer or receiver. In many cases, no problem is encountered in delivering the cargo in this way. However, although the parties are familiar with this practice, in some cases continuity may cause indifference. Therefore, it is necessary to remember the risks of the said delivery method and to act with prudence in order to minimize these risks.

The first danger that may arise from the delivery of the cargo carried without the original bill of lading is the delivery of the cargo to the wrong receiver. When the bill of lading is presented to the master at the discharge port, it serves as a key for the delivery of the cargo. In the absence of this key, the Letter of Indemnity (LOI) shall not absolve the carrier from the liability that may arise from the delivery of the cargo to the wrong receiver.

The lawful holder of the bill of lading may sue the owner of the vessel for the delivery of the cargo to the wrong receiver and at this stage, the ship owner will have to resolve the matter at his own discretion without support of P&I insurer.

When these circumstances are encountered, the best way is not to start discharge until the original bill of lading is presented. If there is no provision in the "Charter Party" the owner of the vessel cannot be obliged to deliver the cargo without the original documents. However, in these cases, due to the commercial reasons, the ship owner may agree to deliver the cargo with a Letter of Indemnity without presentation of the original bill of lading. If there is such a provision in the Charter Party, it may not be claimed that no delivery shall be made without the presentation of the original B/L although the party requesting to take delivery of the cargo is not the beneficiary receiver and the ship-owner does not feel safe.

What could be the reasons behind late delivery of the original bill of lading to the discharge port? One of the reasons may be the delays in the bank and another is the bank's holding of the original bill of lading until the seller receives payment under the letter of credit sales.

As a result, our recommendation is that the master should be careful in identifying the party appeared to receive the cargo, carefully record all the information of the person arriving to take the delivery and ensure that the details of this person are the information on the Letter of Indemnity or not to perform the delivery without making sure that such person is the same person notified by the charterer. As a matter of fact, the prudent ship owners try o obtain this information before the ship arrives at the port and to ensure their checking in advance.

The second danger that may be encountered in delivering the cargo without submitting the original bill of lading is related to the insurance coverage. It should be well known that the problems that the owner may face due to the delivery of the transported cargo without the original bill of lading will not be covered by the P&I insurer.

The third danger may be the problems arising from the failure of the owner, who gives consent for to the delivery of the cargo with a Letter of Indemnity without submitting the original bill of lading, to pay attention to the contents of the Letter of Indemnity offered by the charterer. For example, while a standard Letter of Indemnity states "Allows discharging of cargo", in some cases, this Letter of Indemnity may have been amended and states "Allows the delivery of cargo". The discharge and delivery of the cargo actually correspond to two different processes. An action may be brought in the future against the owner, who performed the delivery of the cargo despite of the indication allowing the discharge of the cargo only, based on the claim that the cargo has been delivered to wrong receiver and the vessel may be arrested at any port by the actual receiver of the cargo.

The delivery of the cargo without the original bill of lading is a method applied in practice. However, P&I insurance coverage will not be applied for the risks that may arise from this delivery method and the carrier will be deprived of the support of the insurer in such cases.

The Concept of Warranty in Maritime Insurances

Insurance, which is a common instrument used in risk management, is based on the written contract principle.

The purpose for an assured to purchase insurance is to recover damages that can be incurred because of the risks noted to be covered from the Insurance Company. Therefore the proper execution of the indemnity principle, which is one of the most important principles of insurance, is possible only if the mutual liabilities determined in the insurance policy are performed fully and completely in entire insurance period starting from the date of issuance of the contract. The assured is deemed to have undertaken liabilities at its side when the policy starts.

The general perception of the assured about the warranty concept is "performance of the indemnity obligation by the insurer against the premiums paid on time". Although this approach summarized the essence of insurance, it is insufficient alone. Since many assureds fail to show necessary care for the warranties and examination of the policies or do not work with broker institutions not holding necessary qualifications, they may face with situations where the duty of indemnity under their policies are not fully performed or are not performed at all.

Since the insurance policy offers material warranty provided when the damage takes place, most assureds recognize the errors or omissions in their liabilities during the damage process and in case of this scenario, which is it the worst in terms of timing, the Insurer invalidates the policy from the moment when the liability is violated and may cause the Assured to be deprived of compensation by returning the premium accrued for respective period.

These obligations, which are defined as "warranty" in British insurance terminology, entitle the Insurer to withdraw from its liability from the date when such obligations are not fulfilled by the insured regardless of they are "related to the risk or not" (Marine Insurance Act 1906, 33(3)).

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If the insured violates an obligation, it may be difficult to find a supporting argument however when the obligation is in contrary to the law and/or is inapplicable under the insurance contract, this may prevent the insurer to exercise its right to waive from liability (Marine Insurance Act 1906, 34(1)).

These warranties are generally mentioned under "Warranty" heading and/or with "warranted that" phrase and phrases like "provided that", "on condition", "subject to the condition", "on the stipulation that", "with the provision that" may bring liability to the insured.

These obligations are not limited to those written on the policy wording. The "Basis of Contract" Clause contained in some policies subject to British Law, considers even a simple omission or error made by the assured on the application form as a "warranty" violation.

For example, leaving a question, the answers to which is not known, as empty instead of writing "not known" entitles the insurer to claim that there is an error on the form and therefore the right the withdraw. Although this in an example that compels the principle of good faith, it explains the importance of the warranty topic.

If we handle the subject from maritime risks perspective, British Laws, which are dominants in maritime trade and insurances, divides warranties as "Express Warranty" and "Implied Warranty" (Marine Insurance Act 1906,33.(22)).

"Express Warranty" concept covers the obligations mentioned expressly on the policy. Their scopes are generally shaped upon technical assessment of the insurer rather than generally recognized
customs and laws. Following examples can be given as these kinds of warranties;

- Performing condition survey within a certain period for a vessel which will be covered under Hull and Machinery Insurance
- Excluding the liability to be attributed to the ship-owner due to wet cargo from the P&I insurance in a bulk carrier, hold hatches of which failed to pass from ultrasonic test.
- Stating the obligation that it is necessary to take certain security measures against pirate attacks for a vessel, regarding to which Kidnap and Ransom Insurance have been issued.

Other than the "Express Warranties", there are "Implied Warranties" which are not printed on the policy as the parties are familiar with but must be complied with by the insured such as the performing legal trade, taking the measures known or should be known for the potency of the insured's benefit and no variance regarding the insurance subject than the one introduced to the insurer.

Although these warranties are not stated expressly on the contract, they are implicit obligations that are expressly agreed by and binding for the insured.

Seaworthiness of the vessel (Marine Insurance Act 1906,39), legality of the trade subject to insurance (Marine Insurance Act 1906,41) and voyage coverage stated for the vessel or not using the vessel for any purpose other than the voyage coverage (Marine Insurance Act 1906,46(1)) can be shown as the most common examples encountered historically regarding the implicit warranties.

In order to the allow the insurance policies, which have financial importance more than ever considering the economic conditions of today, to rescue the ship-owners from huge financial losses encountered due to possible accidents, the ship-owners must show necessary care for the warranty concept and be in touch and continuous cooperation with the insurance brokers and insurer in order to better understand their obligations.

Pollution and Liability Regimes

Many incidents with huge impact occurred in the seas that were subject to indemnities throughout the history which have caused environmental damage and exorbitant costs for measures taken for preventing the spread, clean-up, indirect economic losses incurred in tourism, fishing industry, death and injuries, damage to sea creatures and ecology.

For all these reasons, rules regulated by international organizations emerged and states have aimed to ensure protection under these circumstances by adopting such rules into their internal law. International Maritime Organization (IMO) constituted some rules particularly for preventing maritime pollution and limiting liabilities and developed financial guarantee and fund formulations such as compulsory insurance in order to recover such damages. Thanks to the conventions formed with this aim, it has been ensured that, the liability for recovering the damage is shared between the maritime and oil industry through various protections which have been provided for the victims.

As mentioned above, environmental law was developed following some disasters, which can be called as milestones from this perspective. For instance, the CLC 69 liability regime was developed immediately after the "TORREY CANYON" incident, which took place in 1967 and affected the coasts of England and France, which was followed by FC 71, leading to the constitution of the 71 Fund and subsequently, MARPOL 73 was developed. Unfortunately, our country also got its share from these disasters. After the disaster which took place in the tanker called "Independenta" in 1979, the fire could not be extinguished for a month and 95,000. m/tons of oil spilled into the sea. Afterwards, 25,000 m/tons of oil spilled into Bosporus because of the Nassia (1994) incident and the fire sustained for a week. Following these incidents, our country became a party to both CLC 92 Convention and FUND 1992 protocol in 2001. (CLC 92- Official Gazette: 26.04.2018/ FUND 1992- Official Gazette 18.07.2001).

When we look at the area of application of the CLC regime in detail, it is seen that the pollution damage incurred due to the pollution taking place in one of countries, that is a party to the convention, including the land waters or at a neighbour territory and measures for preventing or minimising such damage is under coverage. The most important point here for the implementation of the convention is that the "pollution damage" referred in the convention must arise from the "vessel" again as defined in the convention. Such pollution damages include the property

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damage, damage related indirect loss, net economic loss and environmental damage. Article 3 of the convention stipulates circumstances under which the ship-owner is released from the liability. For instance, the cases where the pollution takes places because of a war, hostility and act of God and circumstances arising from the negligence and misconduct of the authority are out of coverage. If we glance through the limits stipulated in the convention, we can say that a liability limit between 4.51 million SDR and 89.77 million SDR is applicable depending on the deadweight of the vessel.

According to article 7/1 of CLC 92, the ship-owner of a vessel, which is registered at states that are parties to the Convention and carry more than 2000 m/tons of oil, is obligated to have a financial guarantee such as an insurance or bank guarantee or a certificate to be issued by an international indemnity fund, in order to cover the limits stipulated under the convention. The states, which are parties to the Convention, issue certificates that certify fulfilment of this obligation for the vessels registered under them and inspect whether the vessels entering to their waters have the same certificate. Thus, the ship-owners of the vessels bearing the flags of the countries that are not parties to CLC 92, become also obligated to have such financial guarantee in order have a commercial relation with the states that are parties to the Convention. The Blue Card received from P&I insurers is submitted to the Flag State and a CLC certificate is received in return.

When we have a look at the Fund Convention, we see that the FC aims for the indemnification of pollution damages that exceed the coverage of CLC 92 (art.2). The states, which are parties to CLC92 but not to FC 92, are excluded from the protection provided by FC 92. FC 92 anticipates payment of compensation for damages not indemnified due to one of the following circumstances (Article 4/1). If the ship-owner has relied on the reasons for discharging from liability stipulated under CLC 92 or is not financially capable of fulfilling its liabilities under CLC 92 and the insurance does not cover the liabilities or the coverage is not sufficient or the pollution damage exceeds the limits of liability of the ship-owner under CLC 92, then FC 92 applies and damages are covered under this convention. The FC 92 limit has recently been increased from 135 million SDR to 203 million SDR.

I believe you have heard of the recent "AGIA ZONI" incident, where the vessel had sunk at anchorage at Piraeus Port/Greece on September 10th, 2017. When the vessel sank, she was carrying 2.914 m/tons of IFO and 370 m/tons of MGO. It is estimated that 700 m3 of fuel oil polluted Salamina Islands, Piraeus and Athens coasts. Greece is a party to both 1992 CLC and 1992 Fund Convention. According to the data available at official website of the International Oil Pollution Compensation Funds (IOPC Funds), the deadweight of the tanker Agia Zoni II is 1.597 GT and shall be subject to the limitation stipulated for < 5.000 GT according to 1992 CLC, thus the liability will be limited with 4.51 million SDR in this case.

In case where there is an environment clean up and compensation of pollution requirement arising from carriage of dangerous and hazardous goods, which is not covered under CLC and IOPC Fund, the HNS Convention will be applied, which has been signed by only 8 states, including Turkey. The damages exceeding LLMC limits, shall be compensated from a fund built. Oil varieties which are not covered by CLC and IOPC funds are also covered by this convention. Pursuant to HNS Convention, total limit of the ship-owner and the Fund is maximum 250 million SDR.

If it is explained briefly, another remedy used regarding the pollution caused by tankers is the Memorandum (MOU) signed between IG representing P&I insurers and IOPC Funds (92 Fund and Supplementary Fund) in 206. As the result of this MOU, an order based on two Agreements, which are STOPIA 2006 (Small Tanker Oil Pollution Indemnification Agreement) and TOPIA 2006 (Tanker Oil Pollution Indemnification Agreement), has been adopted.

As the disorganization of the regulation in pollution cases leads to a complexity of application of limits, we wish one international uniform liability regime is adopted in the future for better order.

War & Strike Insurances and JWLA List

You see various clauses regarding War & Strike risks in your insurance policies that are covered by British rules. If you would like to get familiar with them and to know their source and if you receive messages from your brokers occasionally indicating that the JWLA list has changed, we strongly recommend you to read following article.

War and Strike coverage is provided under War&Strike Clauses Hulls Time Cl. 281 requirements, which, as the name implies, provides coverage against War and Strike risks. The risk under coverage can be an active war risk as well as any abandoned mine, terrorist attack or forced seizure of the vessel. Unfortunately, these risks are likely for ships sailing around the world. High risk countries, ports and regions are also included in a list as an integral part of this coverage.

Let's start giving details on this issue from LMA first. LMA (Lloyds Market Association) is an umbrella association established to protect the interests of Lloyds, the UK insurance center, and to provide professional and technical advice, with several committees covering all branches of insurance. The main reason for the establishment is to represent Lloyds, which consists of many syndicates / companies, to protect their rights on various platforms and to provide technical advice on issues such as statistical information, trainings and insurance clauses.

JWC (Joint War Committee) is one of the subcommittees of this association. The purpose of this committee is to provide technical support to LMA, more specifically on the War & Strike risks to the War & Strike insurers in London. The members of the JWC are also these insurers and the committee assembles 4 times in a year to make some assessments.

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The association analyze the countries, ports and seas in terms of insurance and provide necessary, up-to-date warnings to its members through its agents (Lloyds Agents) and its consultants in various parts of the world. In addition to its announcements and warnings, it publishes the JWLA (Joint War Listed Areas) list, which is known as the "Listed Areas", an integral reference point of the War Policies. This list shows the extremely risky areas in the world's seas and is a reference not only for London insurers but also for the insurers in many other countries.

JWLA is being updated in parallel with the developments in the world and some regions / countries can be removed while new ones are added. Although the Committee evaluates the situation during the meetings held, the updating of the list is not subject to a specific schedule. For example, JWLA/23 list, which is the latest update, was made on June 14, 2018, and the previous update (JWLA / 22) was dated December 2015. In JWLA / 23, the risk level for the port of Jakarta was considered to have decreased and therefore removed from the list.

Nearly all War & Strike insurers refer to the JWLA lists in their policies. Insurers require shipowners to inform themselves in advance, during the planning of voyages to the listed regions. In return, insurers not only warn the shipowners about the risks in the region to be called, but also decide whether to withdraw cover or request additional premiums according to the risk they see.

The duty of the JWC committee is not only to identify high-risk areas, but also to prepare rules/clauses for the insurers when they deem necessary. For example, the JW2005/003 Piracy Extension clause is one of these which aims to eliminate the gray areas between the Hull & Machinery insurance and War & Strike insurance coverages that you will see in your policies.

Our ship-owners usually remember their insurances during annual renewals, damage or premium payments, because of their daily workload. There may be situations where they skip to inform the insurer during their voyages outside the war zones reflected in the press such as Libya, Syria and Yemen. This issue should be shown sensitivity, the current JWL list should be followed carefully and insurers must be informed before the voyage for the continuation of the coverage

Human Factor in Collision Incidents

Despite of the developments in navigation and communication equipment today with the advancement in technology, the collision incidents can only be prevented at a certain degree. Such incidents may not only cause physical damage to the boat, but also lead to serious environmental pollution or, more serious, deaths of numerous innocent people. A simple fatigue while holding the shift may result the death of people which is worse than a material damage.

Navigation deficiencies can occur in many areas and when we look at the collision incidents encountered we can categorize them as follows;

1 – Poor / improper lookout
2 – Wrong Action to Avoid Collision

Regarding the collision incidents at sea, it is generally seen that the officer in charge fails to evaluate the risk of collision in advance or that the actions to avoid the collision are wrong even if he sees the risk of collision. In fact, poor lookout also delays the timely adoption of appropriate measures.

Improper Lookout

Lookout is the most important factor in preventing collision risk and predicting the collision beforehand.

COLREG (International Convention for the Prevention of Collision at Sea) Rule 5 - (Lookout)

"Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and or the risk of collision."
Lookout is the most important factor in preventing collision risk and predicting the collision beforehand.

Timing - Early Detection

When proper lookout is performed, the presence of vessels in the vicinity may be informed in advance. Collision incidents generally occur when one of the vessels is unable to detect the other vessel or has detected it very shortly before the moment of the collision.

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COLREG (International Convention for the Prevention of Collision at Sea) Rule 7 - (Risk of collision)

"Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observations of detected objects."

Considering the radar and AIS technology that can be used any time by the officer in charge onboard vessels equipped with modern devices today, it is unacceptable not to fulfill this rule. In other words, it must be realized very early that another ship will present a risk of collision.

The officer in charge should pay attention to the work he is performing, using his technological equipment and personal experience on the bridge. If he is unable to watch by himself due to weather or other circumstances, he should ask for help from other officers and delegate his duty if necessary.

In general practice, only one officer in charge is present on the bridge, but this should be applied to day shifts. The master should carefully consider each and every situation when deciding that a single person shall be on watch per shift. The master can create a continuous working order by taking into consideration the conditions of shift, weather, sea, day / night situation, regions with high density of traffic, clarity of sight, the presence of elements that may create danger for navigating the route, functional condition of the bridge equipment, passing through narrow waters etc. It is required not to assign any task other than lookout to the officer in charge and if such assignment is made, to inform the crew member that will assist the officer in charge and the crew member in the main shift. Because, in case of an emergency, the reserve personnel must adjust the conditions so that they are always ready for the bridge duty.

Timing - Determining the Risk of Collision

Time is vital. If the presence of another vessel is detected early, it will allow an early assessment of the risk of collision. By early detection of the situation we mean, the angle at which the opposite vessel will cross, and the determination of the positions and movements of other vessels if it is a region with heavy traffic. In this way, it can be determined which vessel is chasing and which vessel clears the way. In the convention on preventing collision, the actions that vessels should take depending on whether they are approaching or giving way are clearly linked to a rule. Every vessel should be able to determine its own situation in this way and communicate with the other vessel directly.

Action for Preventing Collision

Even when there is a risk of collision while trying to reach the port of loading or discharge, it is often not desirable to slow down. When the officers in charge of both vessels wait for the opposite ship to slow down, there will not be enough time for each other to do an avoiding action.

COLREG (International Convention for the Prevention of Collision at Sea) Rule 8 - (Risk of collision)

" (e) If necessary to avoid collision or allow more time to assess the situation, a vessel may slacken her speed or take all way off by stopping or reversing her means of propulsion."

Although very strict rules apply to the training and qualification of seafarers, seafarers may panic and forget what to do in such sudden events. Seafarers should become familiar with the tasks they will undertake in case of emergency through continuous drills, and all seafarers must become familiar with the use of life-saving equipment. It should not be neglected to ensure the adaptation of new personnel to the vessel and emergency equipment. In case of damage, the adaptation and adequacy of the personnel is questioned by the insurers.

"Shipowner's Liability" Insurance

Today, Protection & Indemnity (P&I) insurances have become an indispensable insurance instrument for shipowners to secure their liabilities towards third parties. Among the liabilities covered under P&I insurance, cover for liability towards cargo carried is of great importance, especially for ships intended for cargo shipment.

Marginal commodity prices, which have risen by an average of over 100% in the last decade, and the ongoing upward trend in volume of cargo that ships can carry per voyage, also increase the destructiveness of the damage to be incurred by the shipowners as result of damages and losses to the cargo carried, and it has become even more vital for the shipowner to have their liabilities that may arise from the damage and loss of cargo, covered under an insurance.

However, as with any insurance product, P&I insurance is not designed to provide all risk insurance cover for the shipowner's liabilities. As with all liabilities covered by P&I insurances, cargo liability cover is also subject to certain rules and exceptions determined by the insurers.

When a shipowner is in breach of rules and exclusions agreed with the P&I insurer concerning shipment operations carried out and / or that a shipowner renounces rights of defense granted directly or indirectly to the shipowner by acting in contradiction to shipment contracts to which the shipowner is a party, such acts are considered explicit breaches of P&I cover . Henceforth, such a scenario playing out means that the shipowner, who wants to recoup it's liability against towards cargo interests from it's P&I insurer, has been deprived from taking this path from the beginning.

It is of utmost importance from this perspective that shipowner is in agreement with their P&I insurer in advance that the usual P&I coverage will include such additional risk before such a scenario emerges and a risk of outstanding nature is triggered or, where this may not be possible, to cover such risks exempted the P&I insurance, under a separate insurance policy by purchasing "Ship-owner Liability" (SOL)

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coverage. Failing in this endeavor prior commencement of risks considered as exclusions, may be cause for a very serious gap in the liability to cargo cover.

Beyond misconception of assuming P&I cover wider than it's actual scope by omitting to review the coverage in detail for particular scenarios, another approach where the shipowner may jeopardize his position even further, is by obtaining a Letter of Indemnity from the charterer. It should be borne in mind, this not only jeopardizes the P&I cover, which may be already aggravated due to the inherent nature of operation itself, and acceptance of the charterer's guarantee is considered as an exception by P&I insurers. Additionally, the shipowner also surrenders itself to the guarantee provided under a letter of Indemnity, the reliability of which cannot be assumed in determining the financial security the letter of indemnity provides in most cases. Furthermore, since any guarantee provided by the charterer does not imply that the cargo interest expressly accepts this guarantee or will release the shipowner from the risks covered by the charterer's guarantee, it is of utmost importance for the shipowner to always aim to have cargo liability coverage in such cases.

Transshipments, which are gradually becoming more complex, and increasing frequency of lightering operations due to the fact that the physical facilities in the ports are not always in parallel with the increasing drafts of the ships are the operations accepted as exclusions by P&I insurers under normal conditions. Likewise, keeping the cargo carried at lightering for a long period prior termination of the shipowner's liability is not considered as an ordinary risk in terms of P&I insurance and assumed as an exclusion to the insurance. Today, the requirements for SOL insurance are mostly needed for similar reasons.

The deviation of the ship from a reasonable navigation route, except in the cases of a life-saving condition, is also considered an exception by P&I insurers, and the shipowner must take out SOL insurance to avoid deprivation of insurance cover if this exception is not specifically covered by the P&I insurer under the P&I insurance.

Shipment of cargo on the deck by contravening B/L and/or other transportation contracts that stipulate cargo shall be carried under deck, or shipment of the cargo on a vessel which deviates than the agreed vessel with the shipowner for the benefit of the charterer/cargo interest due to operational difficulties, are other physical reasons that may cause the ship-owner to require a SOL insurance policy.

When the ship-owner concludes a freight contract that burdens stricter carriage conditions on the carrier compared to the carriage conditions stipulated under the rules of the P&I insurers, the shipowner must obtain SOL coverage in order not to be deprived of cargo liability coverage. Even if the general approach of P&I insurers on this issue may differ according to their own rules, it is often the case that the shipowner does not assume more responsibility than the "Hague-Visby "or" US Carriage of Gods by Sea Act" rules - if the law does not force the ship-owner to agree on different terms.

Regardless of the statutes regulating carriage of goods, it is also possible that the ship-owner may sign bill of lading on the value of the goods, a scenario which can be covered by SOL insurances. In such cases, P&I insurers may demand additional premium, and / or impose serious restrictions for such a shipment, even if insurers agree to extend the P&I cover without additional premiums. In such cases, SOL provides a more flexible and reliable solution to avoid any uninsured or under-insured cargo liability of the ship-owner.

Despite lack of frequent requirement scenarios in comparison to P&I insurances, SOL insurances are particularly beneficial specialist tools allowing continuity of the ship-owner's cargo liability guarantee in exceptional cases and special cases which are not covered by P&I insurances. However, as in P&I insurance, SOL insurance has its rules and exceptions set by the insurers. Therefore, every P&I insurance exception will not be accurate in the sense that it can be insured under SOL insurance. Especially in terms of the validity of the coverage to be purchased by the ship-owner, matters such as conducting trade in accordance with the laws that can be considered indispensable for an insurance with the exception of technical exceptions, or making an accurate and complete information statement to the insurer are of great importance for SOL insurances. In any case, we recommend that the ship-owner inspect the insurance rules and other conditions in detail in cases where SOL insurance is procured and it is sure about the scope of the coverage procured.

Right of Direct Action of the Aggrieved Party and the "Pay to be Paid" Rule

The Turkish Commercial Code no. 6102, which entered into force upon its promulgation in the Official Gazette on 14.02.2011, has established a right of direct action for the aggrieved party in liability insurances, in addition to other new thing it has legislated. Pursuant to the provisions of article 1478/1 of TCC, the insurer shall be jointly liable together with the insured against a third party who is not a party to the contract, in addition to the act undertaken by him due to his obligation arising from the existing insurance contract.

In order to understand the legislative intention of the law-maker, it is necessary to look at the grounds of the article. It is stipulated in the preamble of the article that "Although the main purpose of the liability insurance is to compensate the decrease in the property of the insured depending on the indemnity to be paid to a third party because of the damage given, the indirect consequence of the same is to recover the damage of the aggrieved party as soon as possible and to protect third parties against the insured's inability to pay." In addition, direct application of the aggrieved person to the insurer will have a comforting effect on the insured causing the damage and make it easier for the insured to reach the purpose he/she would like to achieve with the liability insurance. However, the arrangement brought does not in any way put the liability insurance into a contract in favor of a third party. Because it is still the assured whose interest is insured".

§Currently number of international regulations such as the CLC of 1969, 1971 Fund Convention, the 2001 Bunkers Convention, the HNS Convention, the 1974 Athens Convention and the 2007 Nairobi Convention as well as systems in which various risks anticipated such as maritime pollution, wreck, death-injury, are anticipated to be covered by a guarantor/insurer, have created the right for the aggrieved party to apply directly. It is also observed that the article in the Turkish Commercial Code constitutes an exception to the condition that the existing loss prescribed in the insurance policies is paid by the insured in principle (Pay to be Paid Principle).

If we take a look at the situation in the UK in relation to the aggrieved party's right to a direct claim to the insurer from the comparative law perspective, in principle, in English Law, third parties do not have the right to directly claim against the P&I Club.

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Pursuant to "Third Parties Act Rights" (TPAR) dated 1930, the precondition for the claimant to be able to sue the insurer was that the liability of the insured to be determined by a court or through arbitration. By the 2010 revision made in this law, this condition has been removed. Therefore, the third person can directly sue the insurer without having to address hostility to the insured under the current situation in England. However, the same law stipulated a new condition and stipulated that the insured must have gone bankrupt or had to be given a liquidation decision so that the victim could directly sue the insured and the succession was directly transferred to the insured.

Towards the end of the 80's, the English courts had to consider the existence of the right of direct action to the insurer i.e. the issue of the application of the in “Pay to be paid rule”, in two separate cases. Firstly, in the "Fanti" case, the Judge Staughton found that this rule was in contrary to 1930 Act and was therefore unenforceable. However, in the subsequent "Padre Island" case, Judge Saville took a completely opposite approach, noting that no third party could be in a better position than the assured even for legal succession and therefore the rule was applicable. The cases were appealed first at the Court of Appeal, then at the House of Lords. As a result, it was concluded that the right of direct action could not be exercised in the presence of this clause and it was pointed out that the application of the rule eliminated two drawbacks; i) The assured / members benefit from an unjust enrichment when receiving payment from the insurer / club ii) The risk that no third party will be paid. However, in order to protect the third party victim, there is a tendency that the rule is not applicable to cases of death and injury.

Subsequent applications will show how the court practices and maritime insurances, will be shaped in the light of this development and how the balance for preventing unjust enrichment of third party or insured while serving for the purpose of protecting the victim on the one hand, will be maintained. On top of everything, we believe that this situation constitutes a basis for better cooperation between insurer and assured, which underlines that the interests of the assured and the insurer come together, as the phrase goes “we are in the same boat”, except the cases where this situation is without prejudice to the policy coverage. Thanks to this regulation, "the information/disclosure" obligations, which are among the legal obligations of the parties will be performed better and when becoming a joinder to the case, either compulsory in terms of Code of Civil Procedure or arbitrary for performing defense in favor of the owner under any incident, it will be in favor of the assured in terms more effective and powerful defense by obtaining support, experience from the insurer in addition to the legal support provided by the same.

Running Down Liability Coverage in Insurances

While P&I insurance basically covers the liability of the insured against the third parties, H&M (Hull & Machinery) insurance covers the damage to the insured vessel. When we check their background, H&M coverage providers are more risk-loving investors, while P&I coverage providers are the shipowners themselves. P&I was formed based on the fact that shipowners wanted to come together to guarantee their liability risks. This distinction is important for a better understanding of the following assessment.

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In our article, the most commonly used British ITC Hulls conditions are taken into consideration and although the information given is valid for other conditions such as Nordic Plan, DTV-German clauses, some practices may be different. Since the insurance contract is a trade agreement, it should be remembered that the terms of the trade agreements may be modified upon consensus of the parties.

P&I and H&M insurances are both distinct and complementary to each other. The most basic example of their complementarity nature is the collision liability and liability to fixed and floating objects, which are known as RDC/FFO in short form.

Although RDC / FFO (Running Down Clause / Fixed and Floating Objects) are used together under the Collision Liability in practice, they are different in terms of content and insurance they are subject to. In this article, they will be evaluated as separate coverages as it should be.

RDC- Running Down Liability Coverage:
The running down clause is the liability against the third parties arising as a result of the collision of an insured ship with another one. Opponent ship's owner, the owner of the cargo onboard of the

opponent ship, those on board of the counter ship or the parties incurring damaged due to environmental pollution caused by this collision are considered within the scope of 3rd party.

While the Collision Liability was initially covered by the H&M Insurers, since the insurers did not want to carry more than 3/4 of the collision risk, the remaining 1/4 of the risk was borne by P&I, in other words the shipowners undertook their remaining risks under coverage. With the institutionalization and specialization of P&I insurers over the past period, the entire collision has been seen as a liability risk and in practice 4/4 of this risk has started to be undertaken by P&I insurers.

Today, H&M insurers can also provide full coverage for RDC. However, the facts that the coverage provided by H&M is limited to the insurance cost of the insured ship, the collaterals such as the required guarantee letter, bank guarantee are provided faster by the P&I insurers, the deaths and injuries that will occur on board of the opponent ship are excluded from the RDC coverage given under H&M, and the ability of P&I insureres to act more rapidly because of its structure, come to the forefront specifically for this coverage.

The division of coverage between H&M and P&I also causes a number of problems in practice. Difficulties arise in obtaining the collaterals to be requested by the counter party, and more importantly, since the ship's value is taken as the basis in the coverage provided under H&M insurance, there is a problem in determining the ship's value. There is also a weak coordination between the H&M and P&I insurers in cases such as dealing with the damage caused by the collision, distribution of costs, wreck removal, death and injury to be caused on the opponent ship.

FFO- Liability for Fixed and Floating Objects:
Since RDC and FFO are generally considered together as we mentioned above, it may lead to misunderstanding by many insureds. Unlike RDC, FFO assures the liability damages arising from the collisions of the insured ship with fixed and floating objects outside the vessel. The most common is the damage given by the insured ship to the docks and/or port cranes. Again unlike RDC, FFO is completely out of coverage in H&M insurance without any distinction such as 3/4 - 1/4. (In Nordic Plan and DTV-German clauses, FFO can be evaluated under H&M insurance.)

Since the purpose of creation of the P&I insurance is to cover liability risks that are not covered by H&M, in other words, to become a complementary to the H&M insurance, the FFO damages excluded in H&M insurance are also covered by P&I.

In some cases, the problem of whether to consider a floating object as a ship or not is encountered. RDC will be activated if it is considered as a ship and FFO will be activated if it is considered as a floating object. This issue is not only related to insurance coverage and distribution of H & M / P & I coverage, but also closely related to the laws and rules to be applied. For example, in case of a floating object, the issue is resolved within the framework of local laws / courts, while collisions with a ship are subject to international rules such as Colreg (International Regulations for Preventing Collisions at Sea). In other words, while the RDC coverage is regulated by international rules, there is no regulation for FFO, and it is subject to local law / rules.

The sharing/transitions between H&M and P&I in the RDC coverage and the consideration of the FFO coverage under P&I reveals the importance of insurance and insurer selection once again.

Türk P&I is one of the scarce insurers that provide both H&M and P&I insurance coverage and provides a great advantage to our shipowners in eliminating the lack of coordination arising from the said insurance coverages.

2019

Is it Possible to Prevent Crankshaft Damage, the Nightmare of Ship-Owners?

Although there are significant improvements in technology and quality control processes on ships, serious failures are still encountered. When the loss records of hull and machinery insurers are examined machinery claims are the most common claim type representing approximately 40%- 50% of costs.

Türk P and I Sigorta A.Ş. started to offer hull and machinery insurance coverage as of May 2016. The number of vessels insured under this coverage in 2016 - 2018 period is 767. Our portfolio is expanding day by day. On the other hand, we have experienced 128 claims in 1.5 years period totaling $ 5.9 million. 9 of 128 claims totaling $ 3.3 million are related with the crank shaft damages contributing to 55% of the cost of all H&M claims. As we understand from here, crankshaft damages are costly.

When we look at the age of the ships, it is possible to say that the ships with crankshaft damage are between 10 and 21 years old.

But why does it occur?

Of course there are many causes of damage to crankshafts. As a result of our technical investigations on the damages we experienced, we can list the most common causes of major crank shaft damages as follows;

- Inadequate monitoring and maintenance of the condition of lubricating oil
- As we all know, alarms indicate a problem in the system, and in most cases operators ignore or not notice the first (temperature, oil) alarms. Restarting the engine without taking a remedial action after the alarms have been silenced, increases the severity of damage.

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• Failure to submitting samples of lubricating oil to the laboratory at certain intervals
• Not keeping the lubricating oil clean in the system
• Vibration
• Cracked welds between bearings and connections
• Excessive pressure inside the cylinders

How is it prevented?

The most important fact is to have a well implemented and proper management system. Human factors are the main cause of accidents. Facilitating proper training and education of the crew, providing them with the essential knowledge and experience required for their ordinary daily work and maintenance according to company procedures should be included in the management system. In addition, we recommend that the connection between the ship and the company is performed via computer based PMS (Planned Maintenance System). We recommend that the PMS to be used by the company is approved and periodically audited by the competent authorities or institutions.

We have listed some of the tips below that would help ship owners and operators to gain insight and take the necessary preventive measures;

• Equip ships with proper fuel and lubrication system
• Take samples during bunkering and avoid the use of new fuel until the analysis results have been considered and it has been established that the fuel is suitable.
• As you know, lubrication oil is the lifeblood of the engine. In addition to testing the lubrication oil on the ship, take samples from the lubrication oil and submit samples to the laboratory at certain intervals.
• Carry out regular system checks at both fuel and lubrication oil systems.
• Carry out periodic inspections to ensure that oil which will settle on the bottom of crankcase is free of metal particles
• Identify the cause of oil pressure changings accurately. Determine whether the pressure change is due to temperature, filter or excessive clearance.
• Check the line of the crankshaft at regular intervals by taking advantage of changing the dimensions of the webs without removing any parts / assembly of the crankshaft while all pistons and bearings are connected.
• Maintain the lubricating oil filters in clean and proper condition by frequent daily routines
• Ensure that maintenance-handling booklets can be accessed easily by the crew members at all times.
• Ensure that proper tools for maintenance are always available and calibrated.
• Use computer based PMS (Planned Maintenance System) linked with the onshore organization
• Ensure that an engineer from the manufacturer is in attendance during major overhauls and repairs
• Always take every alarm that sounds in the engine room serious and investigate in detail. Equip the vessel with a fully functional alarm system for the safe operation of the vessel.

Wishing you fair winds and calm seas…

A Treatise on "Sum Insured" Concept in Hull and Machinery Insurances

The term "Sum Insured", being among utmost important elements of insurance, has undergone various transitions throughout centuries. The term, which initially came into being with strong semblance to a gambling mechanism, has evolved a great deal until it matured into it's current meaning in today's insurance industry.

In case of property insurances, the basic principle of which is to indemnify the damage and loss to any property of the insured following any loss taking place due to a risk covered, and to cover reasonable expenses incurred in order to prevent or mitigate possible damage, it is important that the insured sum , as noted in the policy, accords with the sum insured concept defined according to the terms of insurance contract. The fact that the sum insured has been determined in accordance with the principles agreed in this framework is one of the most important factors to be considered in order to determine the risk premium of the insured correctly and to ensure that the insured can benefit fully and completely from the policy in case of any damage.

This principle is of great importance in terms of Hull and Machine insurances, which is a type of property insurance that has evolved over the centuries in order to provide coverage for watercraft.

England, holding the market leadership of the maritime trade insurance through Lloyds in early 20TH century when the world trade volume continued to gain momentum, had emphasized the importance of the "sum insured" concept for the assets subject to marine risks under Marine Insurance Act dated 1906, and provided one of very first modern examples to the questions of which items shall be covered based on which principle under the sum insured not only for the cargo subject to carriage, but also for the vessel carrying such cargo. In particular, paragraph 1 of Article 16 of such British law, which is still form the basis of many insurance contracts today, specifies the issue of which values shall be considered as a basis for the sum insured under which conditions regarding the Hull and Machine insurances for floating assets.

Although such sub-article 16.1 is not fully applicable today due to the facts that said law has a history of more than hundred years, and both the varieties of floating assets used for maritime trade and the perception of Hull and Machine insurances in the market have evolved in time, basic principles such as the stipulations that the asset insured under hull and machines insurances is the hull, machine and other assemblies considered as integral parts of the vessel and the sum insured related to these assets insured must be the total fair value at the beginning of the risk, are still applicable today based on this article of the act.

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Regarding the Hull and Machinery insurances, the role of this article is very important in terms of determining exactly what asset is covered under the insurance policy and clarifying basis for determining the sum insured for this asset.

By the time these issues have been highlighted bylaws in the UK insurance market, the use of P.P.I. - Policy Proof of Interest policies in maritime insurances with no significant insured assets behind it had gradually decreased, and especially the types of agreements that cannot be reconciled with the principle of transferring certain defined risks, such as, "Chinaman" and "Tonner". to the insurers and therefore considered like a bet-like arrangement rather than an an insurance agreement, had encountered slow but a certain downfall.

Policy types such as "Increased Value & Disbursements" "Hull Interest" and "Freight Interest", which are recognized as per the rules of different insurance markets and different insurance rules for coming into effect based on the fair value of the Hull and Machine as a whole and in which the policy itself rather than the property is a consideration for the insured's interest, had started to be used in insurance markets once the insured could prove after long term efforts that, they had incurred additional material damages beyond the sum insured under Hull and Machine insurance following the total loss of the integrity of the hull and machine and thus, it had become possible for the concept of P.P.I to restore its reputation under the Hull and Machine insurances within certain limits and frameworks.

As with all property insurances, it is the responsibility of the insured having its property insured, to declare the sum insured to the insurer not more or less but exactly in accordance with the insurance rules.

Declaring the sum insured on the insurance policy more than the sum it should be, is a defect defined as "overinsurance" and does not allow the insured asset to be subject to a damage process as if it is insured above the sum insured. Since the insurance contract is not accepted as an instrument of enrichment in principle, in case of overinsurance, the claim process is carried out as if the insured asset has been insured at proper value as per terms of the insurance contract, and the premium amount corresponding to the premium difference between the sum insured that should be and sum insured under overinsurance, is returned to the insured in most cases.

Although it is the responsibility of the insurer to prove "overinsurance", the fact that such disagreements appear in a possible damage is a negative factor for both the shipowner's completion of the compensation process as soon as possible and the performance of the insurer in the damage and therefore it is always in the best interests of the shipowner to refrain from stating a value that is higher than the value required in the Hull and Machinery Insurance policy.

In terms of both the optimization of the total insurance premium cost and the correct insurance practices, if the insurance is required for a value exceeding the integrity of the hull and machinery, the right option to follow is to provide coverage for this additional value not under "hull and machinery" insurance, but under "increased value and costs" or an equivalent insurance.

A particular point that needs to be underlined for such insurances operating on hull and machine insurances is that the fact that these insurances operate completely above the value required for the insurances of the hull and machinery, is clearly defined in the insurance rules in writing form, so such additional value insurances are not equivalent to hull and machinery insurances under any circumstance.

In other words, if the fair value of the integrity of a hull and machinery, and hence the value that should the basis for the hull and machine insurance is already known, the increased value insurances may only be applied as an excess insurance over this sum insured under the hull and machine insurance. Substituting the value that must be subject to hull and machinery insurance partially with increasing value insurance only in order to reduce the insurance costs, will be a practice in contrary to both insurances and may even affect a possible claim process adversely.

Since underinsurance, which defined as the fact that the sum insured in less than the sum insured defined according to insurance principles, unlike the overinsurance, will allow reduction of both individual and joint average damage payments recoverable under a hull and machinery insurance in case of any damage in the ratio between the sum insured under the underinsurance and insurance value of the ship,

underinsurance practice may result with devastating consequences for the insureds especially in case of high value claim processes.

In the evaluation of the principles on which the sum insured is determined in the policy, it is also important to note whether the sum insured is posted as agreed or not agreed on the policy. Hull and machinery insurance policies issued in accordance with British laws and rules approach this issue mostly within the framework of Marine Insurance Act 1906. Article 27 of the said law provides for the sum insured to be stated as "agreed" in the insurance policies, in which case the sum insured for the hull and machine integrity subject to the insurance becomes fixed by prior agreement between the insured and the insurer, so that many possibilities regarding the insurer's objection to the sum insured in case of damage are eliminated. Such policies are defined "valued policy" in the said law.

According to Article 28 of the same law, if the insurance policy is in force by using the terms "sum insured" or " "insured limit", without reaching an agreement of the amount subject to the insurance, the sum insured is defined as "not agreed" and in these types of policies, which defined as "unvalued policies", it is considered by virtue of the law that the upper limit applicable as a basis in case of payment of the claim only rather than the value of the interest subject to the insurance.

When this topic is handled in terms of Turkish law, Article 1461 of the TCC uses the expression "The liability of the insurer is limited to the sum insured". However, Article 1462 of the Law stipulates that "In case the sum insured is less than the insurance value, if the insured interest is partly damaged, the insurer shall pay the insurance indemnity in the proportion that the sum insured bears to the insurance value, unless otherwise agreed". Therefore, only an agreement between the insurer and insured on the sum insured can lead to the emergence of "unless otherwise agreed" provision of article 1962 and allows the policy to be considered as a "valued policy"

One thing that must be underlined here particularly is that, issuing a "valued policy" by keeping the insured sum higher than the insured value that should be and thereby getting compensation higher than the insured value in case of a possible damage is not considered as a valid method. In reconciliation practices for the sum insured, insurance companies require an appraisal survey, other than exceptions, in order to avoid such negativities and this possibility already becomes practically impossible. Moreover, the provisions of the Turkish Code of Obligations regarding the "error, are likely to prejudice the insurance policy in such a possibility as it will provide the insurer with strong defense opportunities that it is not bound to the insurance contract under the pretext that the price has been reconciled as a result of the error.

It is also important that the neutral survey firms that determine the value of the vessels are also an institution appointed by the insurer and the insured and agreed by both parties. Based on the fact that ships vary in their value according to their types and working area, even in the geographical region in which they operate, the fact that the assigned neutral institution makes a determination by taking into account the location of the ship and the geographical region where it operates sometimes causes sharp differences on the results.

When all these particulars are considered, we believe that it is appropriate to recommend that the sum insured regarding the ship in hull and machine insurances be the same as the current market fair value of the ship which is accepted as sum insured, and that the sum insured should be noted as the "agreed value".

Burden of Proof in Cargo Damages Under the Hague and Hague-Visby Rules- Current Developments

Recently, the English Supreme Court has overturned the decision of the Court of Appeal during the trial held on December 5TH, 2018, in which the issue of who shall bear the burden of proof in case of damage to the cargo under Hague and Hague-Visby Rules was discussed and a ruling case, where a decision in contrary to the established interpretation of these set of rules was awarded, has been formed. (Volcafe v. CSAV [2018] UKSC 61). This decision is also important for Turkish ship-owners, as aside from the close relationship between maritime transport and insurance issues with English law, English law can easily be applied to disputes arising from bill of lading with a "jurisdiction clause" that can be added to bill of lading and charter parties.

Under the case referred, an exceptional examination was carried out, in which the diligence liability of the carrier stipulated under the Rule No. IIV.2 and the relationship between the circumstances allowing exception of liability for the carrier as stipulated under the Rule No. IV.2, were analyzed. Supreme Court accepted the appeal application of the plaintiffs and asserted that the carrier, acting in the capacity of a "bailee", must prove that the damage or loss in question had not caused by any violation of its diligence obligation stipulated under the Rule No. IV.2. In other words, in order to benefit from the faultlessness clause under the Rule No. IV.2, the carrier must demonstrate that the damage had not been caused by its own negligence or violation. This decision constitutes a contradiction to many other case-law practices (for decisions awarded in contrary see: The Glendarroch [1894] P 226, Albacora SRL v Westcott & Laurence Line Ltd 1966 SC(HL) 19 and Great China Metal Industries Co Ltd v Malaysian International Shipping Corpn Bhd (The Bunga Seroja) [1999] 1 Lloyd's Rep 5.).

If we take a look at the merits and the details of the case, the Volcafe incident had arisen from an incident where the cargo, which was composed of coffee bean carried in the container, was damaged due to moisture. It was indicated that, if barriers were established by placing paper or cardboard between the containers, the damage would actually not occur or be less. Although the carrier, claiming that, such moisture-related damage was a defect inherent to the cargo,

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intended to rely on the “Inherent defect, quality vice of good" faultlessness exception set out under Rule IV.2 (m), the owner the cargo held the carrier responsible by asserting that the above-mentioned paper / cardboard placement measure was not taken.

Initially, the local court concluded based on the evidences submitted that, the damage had taken place due to the failure of the carrier to fulfill its obligations stipulated under Rule No III.2 and the carrier could not be relieved from such liability as it had failed to provide any evidence refute that conclusion. Court of Appeal, on the other hand, overturned the judge's decision and, based on "Glend The Glendarroch, Flaux J" award, which constituted established case-law, decreed that when the carrier claimed that the damage had been caused inherently by the cargo as the “prima facie”, the burden of proof had shifted to the cargo side and that they had to prove violation of the carrier.

The Supreme Court decided that it was fair that the burden of proof shall be borne by the carrier. It is anticipated at the starting point that, none of the provisions of the Hague Rules, stipulates elimination of shifting of the burden of proof to the carrier, which acts as the bailee. In this case, it was concluded that the carrier, just like the person who accepts delivery of any bailment, would be liable for the damage to the cargo under its custody unless it proves the opposite. For the avoidance of any doubt, proving the opposite means is to prove by the carrier that, such damage has not been caused by any action that was in contrary to its standard diligence obligation or the carrier is in a position that allows it to claim any exemption.

The significant impact of Lord Sumption's decision was that the question of burden of proof, which is often discussed in the case of cargo damage in transports to which the Hague and Hague Visby Rules apply, was clarified by Supreme Court through the English "Common law of bailment" provisions and the burden to disprove its negligence was attributed to the carrier. In other words, while the burden of proof related to the carrier's failure and how the carrier shall not rely on the exemptions that will allow it to flee from the causing liabilities was at the cargo side, it has been shifted to the opposite party with this decision.

Although all these developments and the legal trend may appear to be against the carrier, this burden of proof underlines the measures that need to be taken in practice before loading. The immediate detection of any defects observed in the condition of the cargo shall be protective for the future.

Specialist Operations Coverage

As ships navigating from one port to another are predominantly subject to marine risks, the classic P&I coverage is sufficient for these vessels and meets the needs. However, vessels engaged in activities other than routine navigation at sea are subject to additional risks. These risks are considered under the "Specialist Operations Cover" and excluded from the classic P&I cover.

Vessels such as tugboats, pontoons, floating cranes, which perform operations like quay, bridge construction, underwater cable laying, dealing with pollution need this cover but they do not exactly know the scope of the cover, why they have to purchase this cover and the differences from classical P&I cover.

What is important for the insurers is not the type of the ship but the activity it performs. To provide an example; a ship carrying material to a construction site is considered under P&I cover, but when it is used for this construction, it is covered under the Specialist Operations Cover.

P&I insurers have classified the risks arising from Specialist Operations under 3 headings and excluded them from the classical P&I cover. However, in certain cases, it may not be crystal clear whether a claim incurred is covered by the P&I or Special Operations Cover. In order not to cause any grievance until the issue is resolved, P&I insurers evaluate the human issues such as disease, injury, death and social issues such as wreck removal, ship related pollution, and environmental issues, where time is of essence under the classical P&I cover, regardless of the activity.

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But there is also a thin line here. For example, if a vessel engaging in underwater cable installation, sinks a fishing boat or diving boat in the vicinity during this operation, injury to personnel and third parties on the sinking boat is beyond the standard P&I cover. The issues, which are mentioned above and are under P&I cover regardless of the activity performed, are related to the incidents that take place in the insured vessel (in our example, the vessel laying underground cables) .

1) Claims made by third parties because of the Special Operation
2) Claims due to the quality of the work performed
3) Claims arising as a result of the damage to the work performed.

The insurers, when requested, can provide cover for the vessel engaging in a special activity. However the cover provided will be limited to item 1 above. Items 2 and 3 in most cases are excluded from cover.

If we examine these items in detail:

Claims made by third parties because of the Special Operation: It is the main clause that determines the standards and conditions of the Special Operations coverage. It emerged after the Chicago incident.

In 1992, a pile driving barge operating at Chicago river, had caused perforation of an old subway tunnel passing under the river. River water discharged into the tunnel and had caused disruption of transportation in almost entire Chicago city center via subway network, collapsing of electrical systems, and flooding the ground floors of buildings. The resulting damage exceeded $ 2 billion.

Because of this high risk, the insurers question where and what work the boat performs before giving coverage and make their evaluations accordingly.

Claims of damage due to the quality of the work performed: Performance guarantees and the demands regarding the quality of the work or incomplete and defective work performed are out of coverage. The claims arising from the use of poor quality materials and failure to complete the work on time are not under coverage. Failure to complete the work due to the engine failure of a vessel operating in the project also considered under this article.

Claims of damage arising as a result of the damage to the work performed: Claims of damage arising as a result of the damage to the work performed are out of coverage. Here it is not sought whether the damage is due to the work performed. It is sufficient that it took place while the work was being performed. The damage caused by a boat working in a bridge construction by hitting the bridge related to its work is out of coverage. Even if the cause is a navigation error, it is still not covered.

As it is tried to be explained briefly above, Special Operations coverage is designed to cover additional operations where the vessel will be out of its routine navigation. The ship-owner who will carry out such activity must contact its insurer and provide necessary information.

Do 16 million Istanbul residents feel more relieved with the new Implementation Directive of the "Turkish Straits Traffic Order Regulation"?

We all know the strategic importance of Istanbul and Çanakkale Straits both for Turkey and the countries with a coast at the Black Sea The Turkish Straits, which are the main trade routes for the Black Sea countries, are one of the most difficult waterways with their physical characteristics. In addition to its physical structure, meteorological conditions, sharp turns, reverse and strong currents of Istanbul Strait are the fearful dreams of many masters passing through the straits.

In addition to commercial vessels passing through the straits, there are also numerous fishing boats and private vessels that do not comply with intensive local marine traffic and traffic separation scheme both at the Çanakkale and Istanbul Straits.

According to the data issued by the General Directorate of Maritime Trade, a total of 85,102 ships passed through the straits, where 41,103 of them passed through the Istanbul Strait while 43.999 passed through the Çanakkale Strait. 23,565 of the 41,103 vessels passing through the Istanbul Strait and 19,958 of the 43,999 ships passing through the Çanakkale Strait received pilot services.

In 1936, there were 17 ships passing through the Istanbul Strait per day and according to 2018 data, this number was recorded as an average of 114 ships per day.

Aside from the increase in maritime traffic, the size of the ships has increased as a result of the development of technology and the characteristic of the cargoes has changed. The volume of dangerous goods transported by sea increases every year. Considering the types of ships passing through both straits, approximately 20% of the vessels are chemical carriers. The ratio of vessels with a length greater than 200 meters in the total number of ships passing through the straits is around 10% - 15% in both straits.

Let's remember the explosion that occurred in 1979 when the tanker "Independenta", which painted the Istanbul skies and the Bosphorus in black, collided with another ship. The fire that emerged as the result of the explosion, could be extinguished in 27 days, 43 of the crew members lost their lives, 96% of the sea creatures were killed and property damage occurred on the buildings located at coastline due to the explosion. The extent of the damage caused by the chemicals liberated into the air was not mentioned at that time. Who can guarantee that no such incident will ever occur again?

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The Republic of Turkey has started to implement a series of measures for increasing navigational, life, property and environmental safety and ensuring regular control at Turkish Straits. " Practice Direction of the Rules Regulating the Turkish Straits Maritime Traffic Scheme" which is one of these measures, has been revised and the new practice direction has entered into force on 01 September 2018.

We would like to share both some of the items that have been modified and those added with new practice direction in this article.

Modified Articles

- The transit status of vessels passing the Turkish Straits without any commercial stop will not change if their stay will exceed 168 hours due to weather conditions or due to traffic passage planning made by the TBGTH centers. This period was 48 hours before the amendment. In fact, it is appropriate not to keep the ships occupying the anchorage area and to show care to allow the vessels, whose passage is really close, to wait in those areas. Not encouraging the vessels to wait for a long time at the anchorage, will also prevent possible risks that may be encountered while waiting.
- The passage of LNG vessels through the straits shall only be carried out during the day time and under pilotage assistance. These vessels shall perform their passage escorted by tugboats (s) each of at least 60 tns bollard pull and for a total 150 tons bollard pull and the traffic to be suspended from the opposite direction.
- Regarding the LPG vessels, those with overall length of 150 m. and more shall perform their Strait passages during the day time, under pilotage assistance and escorted by a tugboat. The overall length limit at former practice direction was 200 m.
- The former Practice Direction required that 500 GT and larger vessels carrying dangerous goods shall have valid a P&I cover during their transit which has been amended in the new wording as "300 GT and larger" vessels.

İlave edilen maddeler

- With the conditions that all safety precautions set by the Commission for the passage of containers and passenger vessels having an LOA of 300 m and over are properly taken , there will be no need for an additional Commission to be set and the initial additional safety precautions will be valid for 1 calendar year as from the date of their first passage. Vessels (except containers and passenger vessels) having LOA of 300 m and all vessels including Container and passenger vessels having an LOA of 400 meters and more shall apply to relevant port authority or to the İstanbul Harbour Masters's office (if both straits will be passed) at least 10 days before their Strait passages. The passage of these vessels will be subject to the authorization of the administration.
- The ship agents shall now be responsible for the existence of P&I coverage and the determination of the validity of the policy.
- An additional clause has been added regarding grounding / contact with coastline/shore etc. and other accidents to occur at Istanbul and Çanakkale Straits and anchorage areas specified in the regulation. Former practice direction was granting a time to the master for the repair of such breakdown. In the new practice direction, it is seen that the relevant port authority will provide ex officio salvage services and that the General Directorate of Coastal Safety will carry out all determinations and investigations for salvage, including underwater surveys.
- Vessels are not allowed to resume navigation before removal of judicial and administrative measures, completion of administrative investigation and payment of environmental damages, salvage expenses or without providing securities for these matters.
- Vessels navigating in Istanbul Strait were able to meet with the ship's agent before reaching the anchorage area. The following additional clause has been added to prevent this. In that:

Meeting Places with the Agency;

Vessels navigating within the Istanbul Straits may not make agent contacts except in anchorage areas. In cases of necessity, after obtaining permission from the TBGTH Center, agent contacts can be made while proceeding, as near as possible to the outer limit of the traffic separation lane which, on the starboard of the vessel and without endangering the navigational safety; (a) In the South, at the west of the longitude passing through the Atakoy Marina, not exceeding 1 hour. (b) In the North, on the north of the line connecting Hamsi Limani and Fil Burnu, not exceeding 15 minutes.

- In cases where two ships try to overtake each other, the one performing the evasive action may hit to the bridge legs and create a greater

danger. Article 20 has beenadded considering these risks. In that: Bridge Legs; (1) At the bridge legs, including local traffic;

(a) The vessels shall not overtake each other.
(b) Bridge legs shall not be approached more than 100 meters.

- Administrative Sanction clause has been added. In that, administrative sanctions shall be applied for those acting in contrary with this Practice Direction

- In addition, the following sections have been added to the SP1 report form.
  - CLC BUNKER 2001 CERTIFICATE NO / VALIDITY DATE
  - CLC 92 CERTIFICATE NO / VALIDITY DATE
  - SHIPWRECK RECOVERY CERTIFICATE NO / VALIDITY DATE *

Since we are not subject to the "Nairobi Convention", filling the last section will be optional.

- An additional Annex 3 form has been added as a checklist for the technical condition of the vessels passing through the straits.

Comments and Suggestions

From an insurance perspective, amendment and additions appear to be in favor in terms of improving the navigational safety. However, we would like to share a few suggestions that will make strait traffic more secure in terms of loss prevention and risk assessment. Perhaps following suggestions may be included in the next revision, who knows;

- Stopping the North / South traffic passages at peak hours.

- Showing excessive sensitivity to maintain the distance between two ships in the C zone where ships carrying dangerous cargoes are anchored and in the D zone where vessels declaring that they will be on anchorage for more than 48 hours and that are derelict, abandoned or dormant or seized ships are anchored and checking the vessels performing transit passage and local traffic more carefully in these areas.

- Particularly in the Istanbul Strait, we observe that local traffic has its own operation in terms of transit passage, traffic separation scheme and follow-up distance rules. By this reason, monitoring and regulating the local traffic by a separate operator; ensuring coordination between the local traffic and VTS when the VTS sight is limited, in case of a strong undertow current and when the area is affected adversely by the wind.

- In the passage in North-South direction, sight inside the Istanbul Strait can cause distress to the vessels navigating in traffic separation line at points where eye contact cannot be established due to the physical structure (ex: around Kandilli Cape). Therefore, regulating the local traffic, in particular for these points

- The traffic density between Beşiktaş-Kızkulesi-Eminönü-Karaköy during the morning and evening hours cannot tolerate any carelessness or failure to comply with the rules. Performing trainings for monitoring local traffic and increasing the safety awareness in the region indicated during these hours.

We hope that the new arrangements will lead to safer navigation in the straits.

Contaminated Bunker Issues Within Scope of Marine Insurances

Marine insurances, which are indispensable for marine industry as much as bunker does, are frequently applied by ship-owners and compensations are claimed due to problems arising from the bunkers.

Bunker-related problems can lead to individual incidents, and depending on how high the level in the supply chain where this problem originates, there may be problems that may reach to epidemics on a regional or even global scale.

The most recent examples of large-scale bunker-related incidents are the problems that bunker fuel from Houston had caused worldwide last year. Even in Singapore, which is an important base of global trade in the Far East, the negative effects of Houston off-spec bunker were felt. Based on this supply chain alone, it is estimated that approximately 200 ships had suffered financial losses and/or commercial losses in Singapore and around the world.

The source of the problem cannot always be determined with certainty as the chain from the production of bunker fuel to supplying to the final consumer, which is the vessel, passes through a number of chemical processing and storage processes. However, if the bunker acquires chemical and physical properties, which are not compatible with the vessel, as the result of changes, which take place at any stage of the supply chain and can be identified as "contamination", this may lead to problems with different natures and severities.

Some problems caused by a basic need for the ship, such as bunker, in the functioning of the ship, can cause problems that can be solved relatively easier, such as the necessity of replacement of fuel filters or the temporary deactivation of fuel injection systems. In more serious cases, it is possible that the ship will collapse and consequently the shipowner's ship will suffe serious physical damage and even very serious claims of liability may be made for the damages that may be given to the third parties by the uncontrolled ship.

Compliance with the ISO 8217 standard, which is a reference source for bunker fuel trade worldwide, is an important milestone to ensure that the ship does not encounter bunker-related problems. However, the tests performed in accordance with ISO 8217 are not always sufficient to ensure that the bunker is not contaminated. Especially non-carbon

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based contaminants cannot be detected during ISO 8217 compliance tests. The tests which take longer to complete and cannot be conducted in most places due to lack of infrastructure may be far from being practical.

Even if the defect in the bunker can be detected before the it is delivered to the ship, the steps taken by the ship-owner at this point are of great importance for the ship's seaworthiness and the continuity of trade. Although elimination of some defects in the bunker by using additives is considered as the practical implementation in some incidents, it is often not possible to remove the contamination in the bunker and risks and physical damages to the ship may be increased.

Furthermore, when these interventions to be made on the bunker without obtaining approval from the bunker supplier, this may lead to the accusation by the "supplier that the bunker supplied had been deteriorated by the ship-owner" and prejudices primarily the right of recourse of the ship-owner that can be used against the bunker supplier.

In cases where the charterer is responsible for the bunker supply, the right of the ship-owner to assign the responsibility to the charterer may be possible on a contractual basis and in accordance with the legal regulations binding the contract. In this case, defueling the vessel, supplying new bunker and compensating the commercial and financial losses that the shipowner will suffer in this process by the charterer are among the most frequently communicated requests. At this point, the most important step that the shipowner needs to take in order to form its own defense is to take multiple samples from the pipe where the bunker is supplied to the ship before the fuel enters the tanks and to keep these samples in a secure manner that they constitute evidence in the future within the framework of the agreement between the charterer.

In cases where the charterer does not assume responsibility in the supply of bunker, some notations in the content of the shipowner's contract with the bunker supplier are critical in solving the problem. In such incidents where the shipowner is left alone with the bunker supplier, the most important issues arewhether the contract includes any financial compensation limit that falls below the shipowner's loss, and whether damages arising from the loss of rent and freight of the ship can be claimed from the bunker supplier. In addition, the notification period, which is an important basis for the exercise of almost any legal right, is a factor to be observed both when submitting the protest of the shipowner to the bunker supplier regarding the incident and starting to seek his remedies within the legal order.

Again, if the ship-owner puts provision that will limit the right of recourse of the insurers against the bunker supplier, in the contracts to be signed with the bunker suppliers, this will prejudice the rights of the ship-owner under the insurance.

It is important that the shipowner discusses the matter with their insurers if he is aware of any uncertainty in the contracts to be signed with the bunker suppliers.

Policy Owner's Breach in Duty of Disclosure and Its Consequences

When we look at the legal nature of the insurance contract, the basic obligations attributed to the parties are considered as "premium payment obligation" and "obligation to provide insurance protection". Although the execution of these obligations actually keeps the contract alive, the functioning of a number of issues, that is to say, entitlement, is conditional upon the fulfillment of a set of duties. The insurance contract provides the parties with a number of duties, which are based on the bona fide rule stipulated under article 2 of the Turkish Civil Code.

Fulfillment of these duties is of high importance for both parties as it will require the parties to revise all elements of the contractual terms. Likewise, if the insurer is convinced that the risk is aggravated in any way or that substantial changes in the interest subject to insurance take place, all agreement terms must be negotiated from the beginning. Although the necessary notifications are not made, the insurer will consider that the protection will continue but will not be able to give any meaning to the insurer's reservations and objections when the damage occurs and the compensation is due. For all these reasons, the subject of our article is the duty of disclosure of the policy owner.

Pursuant to Article 1412 of the TCC, "Where the Code attaches any legal consequence to the policyholder's behavior or knowledge, the same consequence shall attach also to the behavior or knowledge of the insured, of the representative or in cases of personal insurances of the beneficiary, provided that they were aware of the insurance contract." In this case, the obligation of declaration of the representative, whom is worked intensively in marine insurances, recognized by law becomes important in addition to those of the insured and the beneficiary. In order for any information to be "material" provisions of article 1435 of TCC stipulates that "Circumstances that are not so disclosed at all or disclosed insufficiently or wrongly to the insurer shall be deemed of importance if they could lead to the non-conclusion of the contract or to its conclusion with different terms."

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In addition, the same provision stipulates that "Circumstances asked by the insurer orally or in writing shall be deemed as important until proof to the contrary." This part is essentially subjective and in need of proof, but it is of high importance in insurance practice.

The information form used for specifically for marine insurances also functions as enforcement of this provision and is one of the major documents to be immediately recourse in case of any dispute between the insured and the insurer. In practice, different application forms are used for each type of coverage considering potential risks and specific situations. For example, the information required for the compulsory financial liability insurance application form related the sea crafts and the yacht insurance application form are different from each other. Although the questions asked vary, they mainly consist of previous damages to the ship in previous insurance periods, operation ship, physical characteristics, and encumbrances on the vessel and crew issues. The insurer fulfills its duty of disclosure arising from the law through these forms. The information transmitted is taken into consideration by the insurance departments and the risk size and content and accordingly the premiums are determined.

Article 1436 of TCC stipulates that the policyholder shall not be liable for any circumstances remaining outside the scope of the questions contained in that list, but the situations where the policyholder has hidden an important issue in bad faith are excluded.

Remedies to be applied when the policy holder violates its duty or provides unreal information, are regulates under article 1439 of TCC, in which case the insurer may exercise its right to withdraw from the contract or request additional premium within 15 days as stipulated under article 1440. After the risk has occurred, this situation, that is, if the breach of duty of disclosure has affected the occurrence of the risk, may lead to a decrease in the insured's compensation and even in some cases (where the defect is deliberate) may even lead refraining from paying compensation. For all these reasons, it is very important that the insurer and the policy holder / representatives cooperate at high level and declare any unusual circumstances. Indeed, from the evidence law perspective, the burden of proof on the fact that the circumstances that may have an impact on the conclusion and terms of the contract "are known by the insurer" has also been left on the insured pursuant to article 1438 of TCC and observance to this obligation and provision of material information in written form will be for the benefit of the insured in the future. Accurate, effective and complete communication will eliminate unforeseen situations in advance also in the insurance field as in all other areas of life.

Necessity of Condition Surveys From the Insurer's Perspective and the Differences With the Surveys of Other Authorities

In today's maritime industry, seafarers are now obliged to be exposed to the control and supervision of different maritime authorities and to meet these requirements in addition to both their daily navigation routines and operational duties carried out at the port. We can count the flag state and class society's surveys and "Safe Management System (SMS)" and "International Ship and Port Facility Security Code (ISPS)" surveys, which are also carried out on an internal basis among these and we can easily say that one of the surveys mentioned by them in their complaints featuring "We have to deal with a survey at every port" phrase is the insurance survey.

It can be said that one of the most basic misconceptions about the necessity of these surveys in general, which we can say to be performed for allowing the insurance company to know the ship better and to have an idea about the possible coverage and its scope, is the perception, especially by the undertaking that the vessel has already had a class and/or Seaworthiness certificate. We believe that it is necessary to explain the insurers' perspectives regarding this argument asserted against the survey expectations we demand from our insureds and the main differences from other authorities' surveys.

Unlike PSC/Flag State controls, which are roughly more detailed in terms of documentation control, or class / ISM / ISPS surveys that give more attention to operational details, P&I surveys predominantly focus on cargo safety, marine and environmental pollution and, of course, crew/passenger safety issue, which is also the main theme of other surveys. Although it contains basically similar topics, it should be noted that these topics are evaluated by the appointed surveyors from different perspectives. As a basic example, a P&I surveyor checks if a ship's generator runs properly (just like the surveys of other authorities), but it also assesses the risk of an oil leakages from the same generator eventually leading to slippage of a seaman and turning into an incident that could result with an injury to the seaman.

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P&I surveys, if they are not pre-entry surveys, do not include binding provisions that will interfere with the trade of the ship (as opposed to other institutions) unless there is a major reason to hinder the provision of coverage, but they require rectification of deficiencies quicker and faster, unlike others. Although this solution sometimes creates operationally and materially challenging conditions for the management, the insured should not ignore that the result of any extra work done at the end of the day is an added value for the general safety of the ship, cargo, environment and crew members.

In this context, the surveyor assigned to the ship has the chance to see the general structure of the management, the communication between both the ship and the management and the personnel among themselves, the reactions of the crew members to emergency situations and the level of their competence in their duties.

Although the insurers holding these findings (again unlike other survey types) do not want to perform survey for all ships in a fleet belonging to a company, they may require to choose and check some units from the fleet depending on various criteria (age, flag, tonnage, past and / or current damage status). Visiting different vessels belonging to the same insured or business will help seafarers working on other ships in the fleet to see and understand the insurers' perspectives. It should not be forgotten that every vessel under the control of a class authority and a flag state is checked at regular intervals (annual surveys, intermediate surveys performed once in every 2.5 years and renewal surveys performed once in every 5 years), but it is not possible to implement a survey on any vessel insured in order to determine if such vessels meets insurance requirements.

Particularly some tests that are carried out more detailed than the surveys of other authorities from operational perspective (suction tests of cargo hold bilge wells, ultrasonic tests of hatch covers depending on ship types, hydrostatic pressure testing of ballast tanks) can actually be considered as an opportunity for duly carrying out maintenance and handling works, which can be neglected by the ship crew in daily routine.

At the end of the day, when any negative situation that may result in cargo damage, environmental pollution or crew/passenger injuries and interfere with the ship owner's commercial activities, the insurance company shall be the first party that will protect and defend the interests of the ship-owners and managers.

In this context, as Türk P&I Sigorta, we believe that getting familiar with the P&I Condition Survey forms (regardless of there is any survey request) available at our website for free access of all our insureds, will serve as a guideline for performing the necessary work in the most appropriate way possible and increasing the ship's standards even to some extent. In the following periods, we will try to provide information on what basis these surveys (pre-entry surveys, surveys after coverage, follow-up surveys and renewal surveys) are carried out, statistical analysis of the results and methods of solution for the most commonly encountered problems.

Hoping to note that a chain is as strong as its weakest link.

FD&D
(Freight, Demurrage and Defence)

FD&D coverage is generally provided by P&I insurers and can also be defined as a legal protection insurance. Expectations of the insureds cannot be fully met as the content and the coverage provided are not fully known to the insureds and the coverage has subjective aspects. On the other hand, the explanation of the issue by the insurance companies causes difficulties and in some cases loss of reputation.

I hope that the following information will help, even if a little, in understanding of such coverage.

FD&D is basically a type of insurance that provides legal advice in case of disputes that are not covered by P&I or any other insurances. Some of the legal costs are also covered.

It is essential that the dispute is related to maritime. Although the coverage retains its name that was given when it emerged for the first time, it now provides support for an area far beyond Freight and Demurrage. Disputes with the charterer, sale-purchase operations, problems with new building projects, freight, demurrage, fuel disputes, even disputes with the insurance company and many other maritime-related disputes are under FD&D coverage.

Here, there are three important details to consider:

1) While the P&I insurance covers claims for damage, penalties and legal costs arising from a covered event, FD&D is not a compensation insurance and does not cover losses caused by the dispute, unlike the P&I coverage. It only provides legal advice for the settlement of the matter and covers the judicial costs if the matter is referred to the court.

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2) There is also a thin line regarding the coverage of legal costs and it should not be considered that the costs will be covered for any dispute referred to litigation. Here comes the subjective side of the coverage. The insurance company providing the FD&D coverage agrees to pay legal fees only if believes that the insured is fully right and considered that its insured will have an outcome when the case is won.

In other words, the insurer may refuse to bear these costs if it concludes that its insured is not entirely right in the dispute or that the legal costs are higher than the dispute amount. Here, what matters is not the insured considering it as the rightful party but the insurer, who considers the same.

3) FD&D insurance must be valid before the disputed transaction performed. For example, when a new ship is purchased; the P&I coverage starts with the delivery of the ship (in some cases a predelivery cover may be provided for the crew to take delivery of the ship), while the FD&D insurance must be in effect when the MOA or construction contract is signed in order to secure the disputes arising from this purchasing contract.

Coverage and deductibles under the FD&D insurances vary and it should be paid attention to this issue. Some insurers apply a fixed deductible, while others provide support for a certain percentage of the costs over a certain amount in addition to the fixed deductible.

When it is decided to obtain FD&D coverage, the policy premium, as well as the competency of the insurer in subject matter, its financial structure and the lawyers in its team should be taken into consideration. Due to the international nature of the maritime industry, insurance companies that have knowledge about local law and have international connections should be preferred in disputes that may emerge in various parts of the world.

Importance of Planned Maintenance On Ships

The permanence and success of maintenance performed on board will vary depending on the ship operator's regular control / maintenance discipline and available spares. Therefore, keeping the maintenance performance always at a satisfactory level can be challenging for ship operators in cases of limited fund and workforce...

From this perspective, it is important to give priority to the procedures, measures and corrective maintenance action aimed at improving the reliability of materials and technical systems, which are critical to the operation of the ship. Technical failures can not only have serious consequences for the safety of the crew, the environment and the ship, but also the loss of time due to such errors and/or detaining of the vessel as the result of the controls performed by the Flag / Port State authorities will constitute loss to the ship's commercial trade. In addition, it should be kept in mind that the ship, the commercial operation of which is interrupted in order to remedy any deficiencies / problems arising during Flag / Port State controls, will suffer much more time loss than usual.

Although the actual repair cost of a technical damage is not always high, our experiences show that when total repair, off-hire, deductibles under the hull & machinery policy and all other costs are put together, the costs of damage tend to rise considerably and pose great difficulties for ship operators. In simple terms, this leads to an increase in operating costs.

The root cause of such damages is the failure to perform regular planned maintenance on the ships and we, as Türk P&I, refresh our insurers' minds time to time both through our circulars and during the condition surveys we perform on our vessels about the fact that the damage or loss arising from inadequate maintenance may be detrimental for their insurance coverages. Apart from the insurance coverage, the loss of time and work that may arise following such damages will affect the commercial reputation of the owners.

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For these reasons, we publish these circulars in order to remind our operators that a planned and effective maintenance regime will be a good investment for their ships, even during economically difficult times.

The common problem in most damages reported to us so far is the failure to comply with or improper abidance to the machine manufacturers' specific recommendations on maintenance intervals. We see that maintenance is kept at minimum level and/or is limited to class and flag state obligations in economically challenging periods. Maintenance operations are generally postponed dry dock periods and the operations during docking are kept to the minimum level due to budget constraints. However, deferred and/or temporary maintenance can be carried out at the shipyard in a much safer and more cost-effective manner with proper planning without causing high risk damages during the voyage. In addition, replacing the second-hand spare parts, which are used compulsorily in order not to hinder the commercial activities of the ship during the voyage, with their originals during the shipyard period will allow avoidance of the high risks that may occur in the future.

Lack of experience related the ship's machinery and equipment, especially the lack of diligence of the senior officers of the ship and the limited availability of the ship's contact with the ship agency due to the fact that it is usually in transit are factors contributing to the occurrence of damages. In addition, when senior officers are changed frequently, especially in cases where they will not re-join the same ship / company, we see that the spare parts ordered and the works performed are not followed regularly by the replacement officers and the spare parts brought to the ship on subsequent voyages are accepted without control and/or objection. Of course, the length of stay of senior officers on board may be short but in such cases, the contact between the ship agency and the ship must be very strong in order to maintain a high standard of maintenance on board.

If we give an example from our experiences, as the result of performance of visual and manual check without opening the connecting rod bearing (crank pin) of cylinder number x of the main engine during the repairs performed by the crew members, reaching to the conclusion that it was sound and their misleading of the operator, it was concluded that they could not detect the bearing, which had probably seized at the first moment of the accident and therefore they had had run the main engine again and continued running it on the bearing, which had already seized, for about 1 hour, that the damage, which could be fixed by replacing the piston, segment, liner and rod bearing under normal conditions, had considerably increased and aggravated due to the damage given to the crank shaft by the damaged bearing.

In another damage, it was found that the web weight had dislodged and hit the bedplate base with speed, breaking the casting base, as a result of the breakage of the 2 studs connecting the main machine crankshaft web weight to the crankshaft. Since these studs are fixed parts used to engage web weights on the travelling crankshaft, wear on the studs is not possible. Only the metal fatigue due to the deterioration in the molecular structure of the studs can be in question. As a result, it was inevitable that the web weight would break and damage the cylinder block and the crankshaft, as the crankshaft web weight studs were not checked because of the lack of regular maintenance.

Again in another damage, it was found that wearing parts were continued to be used over time and parts were replaced with less wearing parts. Several liners and piston rods appear to have been used although they are outside the manufacturer's maximum acceptable limits and acceptance criteria.

Finally, in a file in which it was stated that the machine had been running for months without cleaning the lubricating oil system due to the separators that were inoperative / blunted and/or

non-rotating at required speed, the lubricating oil pump has worn out, causing insufficient lubrication of the machine and crushing the bearings and damaging the crankshaft.

All files mentioned above are examples of situations that led to high damage repair costs, which could be related to poor maintenance planning, improper maintenance and/or lack of appropriate spare parts available on board. In addition, in all of these case files, the damage costs were above USD 500,000 and the ships had to stop their commercial operations for at least two months.

As a suggestion, the ship-owners and operators must prepare current risk assessment procedures and review them regularly in order to optimize the maintenance operations on board and to minimize the damage risk leading to operating periods out of the limits and thereby reducing the loss of income. Priority should be given to measures and corrective actions aimed at improving the reliability of such machinery, equipment or systems, including control, inspection and record keeping.

In summary - instead of saying that everything is fine - on paper, even if there are limited resources and budgetary constraints, the plan, together with its order and discipline, should be an indispensable part of the ship in order to prevent damages and failures that may lead to damages.

Brexit and Resulting Pitfalls in Insurance Sector

As the United Kingdom lurches toward the endgame in a bitter Brexit process, new realities awaiting the insurance market are getting ever closer to playing out. Whilst the political upheaval associated with Brexit is beyond the scope of this article, the multi-billion insurance industry with financial interests closely entwined with British insurance market and Lloyds syndicates have been long taking precautions to minimize the impact of the whole ordeal.

Due to sheer size of legal and financial areas to be impacted by Brexit and and immense complexities to take into consideration, it would be practically impossible to dissect all aspects of Brexit's impact on marine insurance industry in minute detail. Regardless certain practical considerations on this matter are worth considering and underlining some practical key points may be beneficial.

Brexit's short and long term effects on marine insurance industry will be felt in all primary areas constituting the busines such as claims handling, regulatory authorities involved and their practices, the principles of underwriting and insurance wordings which shall be widely adopted, but for sake of brevity and let's focus on regulatory and underwriting aspects as two vertical slices of the whole matter.

European Union's perhaps the single most important claim to fame is the single market between EU members and this applies to insurance market as well. Pre-Brexit arrangements already in place allow that insurance and reinsurance services can be freely provided between EU member states. This freedom is conferred by EU Insurance Directives and the Reinsurance Directive which has been repealed to make room for Solvency II some time ago. EU's Insurance Mediation Directive also has a role to play in realizing this freedom. In a nutshell, these regulatory texts enshrine rights that any insurer or player in EU insurance market with headquarters is automatically authorised to provide insurance services in any EU member state. This applies to whole EU in general, and altered regulations are binding for countries who are EEA entrants but not EU members.

The looming bifurcation of the once-united market following Brexit has been forcing the insurers to prepare contingencies. Pillars of these contingencies involve cross extension of operational capabilities of insurance companies between EU and UK, i.e.;

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- UK insurance companies establishing branch offices, subsidiaries, and/or other entities with legal powers and operational capabilities to do business in EU countries, and likewise,

- EU insurance companies establishing branch offices, subsidiaries, and/or other entities with legal powers and operational capabilities to do business in UK. In accordance with precautionary steps taken by insurers on both sides of the channel, the gears have already been turning for establishment of such offices, and attempts to overcome regulatory hurdles are going on.

Another question to be tackled is the servicing backlog of insurance contracts between UK and EU entities having taken affect prior Brexit but remaining in force after Brexit. Legal preperations have been underway at many EU members' regulatory chambers to bring transitional arrangements into effect to allow existing insurance contracts of UK insurers to remain valid, in effect and enforceable for variable periods. Unfortunately many EU members are still due to introduce counter measures to minimize negative implications of Brexit, agreed or otherwise. Regardless which scenario ultimately plays out, continuity of service paramount and failure in ensuring this would send jitters throughout the whole sector.

These steps are important because UK insurers will be deemed non-EU (i.e. third party) entities by EU counties, and thus must seek authorisation regardless if they entry new contracts, or service existing contracts. Even insurance policies which will have been terminated or otherwise became cancelled / expired by the time of Brexit may confer rights and/or liabilities to both insurers or assureds, thus rendering vital that regulatory frameworks are in place to enable a smooth transition.

Following Brexit there will be no overarching law to compel UK to comply with Solvency II. On the other hand, two offshots of the now defunct FSA, the FCA and PRA acceded to Solvency II some time ago. It is also worth keeping in consideration that such authorities with legal powers have not been idle in course of preparation stages of such directives and as a matter of fact were actively involved in their creation. Despite Brexit, there is good reason to assume UK will wish to maintain economically positive and commercially viable relations in insurance markets, and thus any UK regulations in this respect post Brexit will maintain well crafted wordings to similar effects as Solvency II.

Another aspect that must kept in perspective are the EU regulations pertaining to data safety and protection of privacy. Two cornerstone texts which must be particulary mentioned in this respect are EU Network and Information Security Directive (NISD) and EU General Data Protection Regulation (GDPR). GDPR has been brought into effect throughout EU in May 25th, 2018 to far reaching changes in various industries including insurance. Whilst NISD is a few years away from implementation in EU countries, once it's done, it will co-exist with GDPR in tandem. Primary purpose of both regulations are to bolster EU citizines' and entities' rights to privacy, but they also mandate that in some cases cyber attacks and data breaches are reported to competent legal authorities. UK's secession from EU will mean that UK will be free to reevalute if and how these texts impact their businesses and society in general, and possibly amend these texts to curb their power. Loosening wordings and trimming scopes of such texts would obviouly heighten cyber risks, possibly resulting in cyber attacks in larger numbers, with more destructive results, or both. Such developments could also possibly bring about a discussion to cyber risks in marine insurances, which currently are usually excluded, or severely limited within scope and/or limits covered.

Constituting part of financial sector, insurance business is averse to unknown risks as they are hard to objectively assess and protect against. Further aggravating such risks are the multitude of parties required to involve to ensure insurance sector will be able escape from Brexit's path of harm. Whilst the insurance companies and insurance markets are scrambling to minimize potential jitters from Brexit, the regulatory parties' and lawmakers' willingness and and full understanding of required solutions remains mixed.

ADR on the Rise- The Pros and Cons

In consideration that disputes are inevitable in commercial life, overcoming the conflicts and devastation with minor distress is substantial. In this respect, knocking the door of litigation in order to solve the discordance before the court, seems to be relatively inconvenient in comparison with alternative dispute resolution mechanisms, which are commonly abridged as "ADR", provided by various law regulations. Alternative dispute resolution methods have been commonly used in various communities over the world throughout history. For instance, mediation has been advised in Islamic Law (Shariah), as well as in ancient Roman history which call mediators in different names such as "internuncios, me-dium, intercessor, philantropus, interpolator, conciliator, interlocutor, interpres", and "mediator". (Roman law in 530-533CE).

In resolution of international maritime law disputes, Court of England and Wales are commonly opted and/or any dispute is agreed to be settled through London Arbitration. Many disputes linked with sea trade, which may be arising from either disagreement on charter party terms, bill of ladings, contracts of affreightment, ship sale or other incidents such as collision etc.may canalize parties to solve the matter through London Arbitration by incorporating such mutual preference into related agreements.

As a matter of fact, English law strongly motivates controversial parties to apply to alternative systems rather than long going court proceedings. Although there are various mechanisms to resort, the most common ADR methods can be summarized as negotiation, mediation and arbitration. As per the Arbitration Act 1996 ("the Act"), this process aims to obtain a fair resolution by an impartial tribunal without unnecessary delay or expense. In a case where the parties chose to reach a consensus through arbitration mechanism, they may either chose an adhoc settlement to decide specific procedures, or surrender a standard set of rules of present arbitration organizations such as International

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Chamber of Commerce International Court of Arbitration (ICC) or London Maritime Arbitration Association (LMAA). Although arbitration is a swift and binding way for disagreed parties, the most significant negative side of this method is its costliness which makes the concerned parties think twice before heading towards the arbitration gate. Given the fact that parties who would like to enforce an arbitration award will need some additional proceedings before the court, it is relatively complicated and unfamiliar in comparison to a court verdict.

Given the fact that statistic data of Ministry of Justice demonstrates apparently that when parties go litigation at Istanbul commercial courts specialized in Maritime, granting a definite (unappealable) decision takes approximately 4 years, it would be significantly practical to seek an alternative to settle arisen problems. In fact, in 14.06.2007 "Insurance Arbitration Institution" was established through article 30 of Turkish Insurance Act which had entered in force at that time. Although this institution has been terrifically successful and swift in solving insurance linked disputes, due to very specific field of technical knowledge in Maritime area, these institution remained short in resolving such disputes. On the other hand, this institution requires at least one to be an "insurer" and this limits the width of parties to apply.

There are also two other arbitration organizations called Istanbul Arbitration Center(ISTAC) and Istanbul Ticaret Odası Tahkim ve Arabuluculuk Merkezi ("İTOTAM"), however these are not specifically working on Maritime as well. As İTOTAM requires at least one of the party in dispute to be member of ITO (Istanbul Commerce Centre), this is also a limited dispute resolution way out.

As per data given by ISTAC, marine linked disputes solved through this arbitration organization consists %7 amongst all. This institution brought fast track arbitration rules which is quite suitable and time saving to keep up with the spirit of marine field, nevertheless this alternative is still not used as frequent as it must be. Actually, in present court system, marine disputes are solved through expertise of court experts and judges mostly follow their comments and conclusions on the matter. That being the case, we are completely of the opinion that there must be a specific Maritime arbitration center in Turkey which includes known experts in the business.

When we throw a quick glance at mediation, this ADR method seems to be swifter, handier and more practical, however as the mediator does not go deep into the merits of the case, this resolution method can be "much more flexible" than needed. In other words, the over-flexible and without prejudice sprit of mediation can leave some doors open as there is no definite decision to enforce. In Turkey, The Code of Arbitration in Civil Law Disputes ("Hukuk Uyusmazlıklarında Arabuluculuk Kanunu") was accepted in June, 2012 and through revision made in Turkish Commercial Code (TCC) in December, mandatory meditation has been accepted as condition of the commercial cases. In other words, the court shall not accept to hear a commercial case unless parties initially apply meditation. This compulsion was already existing in Turkish Labor Law as through "Code of Labor Court" dated 12.10.2017, mandatory mediation entered into force. In consideration of heavy work load of the courts as well as the time and money consumed for long running law battles at the courts, this developments are quite affirmative for each parties involved.

In a nutshell, alternative dispute resolution methods which features a swift and impartial substitution to the long-drawn out judicial proceedings are on the rise in both internal and international commercial life. As the saying goes; "Agreement made on the worse terms is always better than disagreement".

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Hatch Covers Related Cargowetness

One of the most frequently encountered damage items in general cargo and bulk carriers in maritime insurance is undoubtedly the issue of cargo wetness. Cargo quality/quantity related claims take the first place among the cargo claims (corresponding to 1/3 of the total P&I damages) followed by cargo wetness, however at the end of the day, the highest amount claims are occurred through cargo wetnesses by huge difference. Of course, the major cause of these defects is the deformation of the hatch covers.

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Upon graduation from Maritime Academy in 1990, Capt. Pamuk joined Zihni Shipping and worked more than 18 years as Master Mariner on board in various size of bulk carriers/tankers for 12 years, and as ISM Manager/Ship Operations Manager/General Manager at shore management for 6 years, respectively. In 2008, he joined as a Marine Surveyor to Kalimbassieris Maritime which is being acted as marine consultants and P&I correspondents of IG Clubs. In addition to overseeing P&I claims and correspondency for Clubs along with his regular loss prevention/damage related surveys, he also attended on various casualties in Turkey, assisted to salvage/towage issues, investigated pollutions and human injuries/loss of life. Then he acted as Head of P&I Department in same company from 2009 until his fall in with Türk P&I Sigorta family as Technical Manager, in the beginning of 2014.

In fact, the main discord between the Owners/Managers and even the crew is the difference of perception in the segregation between the seaworthiness attributed to the vessel by the Classification Society or any local authority and the cargoworthiness of the vessel. Considering a ship certified by the Authority and having a Load Line Certificate is actually "suitable for trade “is one of the biggest errors encountered.

Because the cargoworthiness is the subject that nearly all different authorities in maritime are unfamiliar in terms of the regulations and practices and thus the insurance companies are obliged to be the party who needs to perform the most detailed practices with this regard.

The most important reference here is of course whether the hatch covers tightness is sufficient or not. The tests that we basically request and prefer in connection thereto are the ultrasonic tightness tests. Because the data of all other known methods show different results, for example the chalk test is rather performed to see the correct alignment of the hatch covers after the repair or shipyard period. Hose test is mainly used to see the contact of rubber packing with retaining channels or hatch coaming tables, but ultimately ultrasonic testing is a test to see advanced level of ***sufficient compression and pressure*** rather than sealing, so we can say that it is the most reliable one for sure. It

should be kept in mind that international conventions, organizations and class authorities demand that the hatch covers of a vessel be not "watertight" but "weathertight".

However, these tests cannot be applied to all insured vessel as this is not possible in terms of time and logistics unfortunately and it is also true that the result of the one-time test (during P&I Condition Survey) is not likely to be the same when applied at other times when the ship continues to trade. For this reason, we would like to share some issues with you as advice / information about hatch covers related cargo wetness.

As an exception tarpaulin type hatch covers are available, even if Cargo holds are closed with hatch covers as known, and various measures can be taken with regard to tarpaulins which are the main protection material for cargo here. For example, the most common of these is the use of at least two layers of tarpaulins on the cover, placing the newer and robust one absolutely below, preferably holding of a set of unused tarpaulins on board and an additional wire lashing on the top tarpaulin layer.

The most important wetness points in known covers are statistically the rubber packings. Routine problems encountered are these rubber packings being bigger or smaller size for the retaining channels, they become dysfunctional due to over compression, misalignment with hatch coaming table due to structural deformations on the panel, detached parts or gaps between rubber packing, termination with end pieces, which are not suitable for the original corner ends and cut shorter than 1 meter.

In cases where permanent repair solutions to these problems are not performed instantly, the addition of small rubber packing known as “backing strips” is the most common way. It should be noted that these are only short-term and temporary solutions, however, it is recommended that additional packing not exceeding 5-10 mm should be placed between the existing packing and the retaining channels if an application is to be made.

It is not necessary to wait serious deformations only in order to renew rubber packings. Particularly, it is preferred that it is maximum 25% of the structural thickness of the packing, but any rubber packing which has been exposed to excessive compression and has collapsed by 50 percent must be renewed. It should not be forgotten that a hatch cover, settled as the result of over-compression, may not be moved. It should be noted that cargo wetness risks may present on cargo hold manhole entrances on the main deck, just like the hold cover rubber packings and compression loss of maximum 5 mm in these rubber packings is enough for replacement.

It is a well-known fact that some ship-owners perform foam application on the hatch covers. This application can be considered as an additional precautionary measurement when the sealing is applied on hatch covers, but it should never be considered a permanent solution. It should not be forgotten that in high seas and strong winds, these foams may become ineffective, may break, and may also block drain channels, especially in aft corner hatch coaming tables.

Another problem of wetness caused by the hatch cover mechanism is the structural problems arising from the hatch coaming tables on which the covers settle. Especially steel corrosion starting from the corner points may become pittings and progressive cracks and it is frequently encountered that crew members focusing only on hatch cover maintenance, overlook these areas.

One of the equipment for hatch cover leakage is the drain valves. The absence of balls in these channels or keeping the fire hose-style extensions short may increase the risk of wetness from this area. In addition, the absence of fire caps may also cause oxygen contact to continue in case of fire

inside the hold, increase the existing load / fire risk and also may affect cargo fumigations performed after loading operations.

Some of the movable hatch cover equipment other than fixed equipment are securing mechanisms such as quick acting cleats and securing pins. It is important to use the originals in the same size as much as possible, which ensures that the cover is aligned and it is particularly important that the number of side acting cleats and rubber washers is the same. It is important that the cross joint wedges; form a banana shape, are firmly flush with slots in which they are located or completely free, and that they do not cause not cause structural damages to the adjacent hatch cover panels' top plates.

It should be remembered that hatch covers are mechanisms that age faster than the vessel because they are frequently used operationally. For this reason, we believe that all ship-owners should implement a hatch cover maintenance program, whether or not they are under the control of any class organization or in an ISM system.

Measures to be Taken by Ships to Prevent Sea Pollution

Although 80% of the global marine pollution is caused by coastal facilities, the ratio of ship-source pollution is 20%. Ship-source marine pollution constitutes a problem not only for Turkiye, but also for international area. There are international conventions signed in this direction and Turkiye is a party to most of them.

We can group these conventions under two main headings.

a. IMO conventions, Marpol 73/78, OPRC 90, CLC92, FUND 92 as International Conventions

b. Convention on the Protection of the Black Sea Against Pollution (Bucharest Convention), Convention on Transboundary Transport of Hazardous Wastes and Control of Disposal (Basel Convention), Protection of the Mediterranean Against Pollution (Barcelona Convention) as Regional Conventions

In order to control illegal discharges from ships: The Ministry of Transport, Maritime Affairs and Communication has delegated its authority to the Coast Guard Command and Istanbul, Kocaeli, Antalya and Mersin Metropolitan Municipalities under the Circular dated 06/06/2011 with the number 2011/9. This Circular covers the organizations and institutions authorized for the Ministry for detecting ship-sourced marine pollution, jurisdiction, authority of these institutions and organizations, inspecting whether the provisions of the Environmental Law Nr. 2872 are complied in the marine jurisdictions subject to Turkish jurisdiction, administrative sanctions to be imposed against the violations detected, methods of continuous control and surveillance on air, land and sea and methods of notifying the Ministry of the operations performed within the frameworks of the delegation of power.

According to the legislation; all passenger ships traveling out of the port, oil tankers of 150 GRT and above, ships of 400 GRT and above and each ship carrying 15 or more crew members are obliged to report waste notification.

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Waste notifications which must be made through the Ship Waste Tracking System (SWTS) are made to the waste receipt officer concerned or to the Harbour Master by the ship's owner, operator or authorized agent at least 24 hours prior to the arrival of the ships at the port and as soon as the ships leave the port of departure for the short voyages that will last less than 24 hours.

The amount of the wastes accumulated on board and possible marine pollution that may be caused from them increases in direct proportion with the age of the ship, the type of ship and her engine, fuel consumption, the number of people on board, the cargo she carries and the steaming / harbour stay time.

When we examine the ship-sourced marine pollution in terms of insurance; most of the penalties subject to claim notification are caused by

- Discharging bilge, ballast, hold or tank washing waters into the sea,
- Disposal of garbage and solid wastes into the sea,
- Discharge of the detergent water used for washing the deck or overflowing ballast water into sea together with oil/fuel and residues remaining on the overflow trays.
- Scraping and painting of the ship's board to the extent that they pollute the sea,
- Spillage of cargo residues into the sea,
- Fuel overflowing into the sea as a result of overflow, leakage or connection/hose puncture due to accidental or human error during fuel transfer or loading-unloading of fuel as cargo,
- Oil / fuel mixed into the engine cooling water system and flow into the sea with cooling water,
- Oil leaking from the stern tube and steering rod,
- Breaking of hydraulic hose and connections on the deck and discharge of flowing oil to the sea through open scuppers,
- Discharge of bilge water over 15 ppm to the sea in sensitive sea areas,
- Delivering sewage water directly to the sea without being treated in the incinerator,
- Fuel leakage to the sea as the result of damaging of the fuel tanks due to collision / contact,

It is of vital importance both to reduce operational failures arising from these reasons and to complete certifications. In the simplest terms, mismatch between the record on the Oil and/or Garbage Record Book and actual oil and garbage quantity on board (Misrepresentation) and/or disposal of cargo improperly, would be subject to pollution fines.

So, what are the measures that can be taken to avoid serious obligations and high fines that may even lead to arrest?

- Smooth operation of oil separator (OWS), alarm and automatic stop system, not bypassing them,
- Keeping the Oil Record Book correctly,
- Keeping the Garbage Record Book correctly, separating and collecting garbage in accordance with the Garbage Regulations, obtaining an receipt certainly for wastes delivered at land,
- Correct disposal and correct documentation of cargo wastes,
- Oil Pollution Emergency Prevention Plan (SOPEP) must be up-to-date,
- All oil pollution-related certificates on board, (Oil Pollution Prevention, Sewage Pollution Prevention, Dangerous Goods, Air Pollution, Engine Air Pollution Prevention, Anti-fouling, OWS, 15 ppm alarm, Oil discharge monitoring and control system, Oil / water interface detector, Sewage treatment or comminuting system, Incinerator, Exhaust gas treatment system Sox and Nox,

- Ballast water treatment system etc.) must be complete and valid,
- Oil / fuel filtering equipment, 15 ppm alarm system and standard shore connection must be working and in good condition,
- Oil / fuel / water detectors, tank / hold washing systems, ODME and load / ballast discharge systems, load heating systems, ventilation must be working and in good condition especially for tankers,
- Sewage water treatment system, holding tanks, their system and equipment, discharge connections must be working and in good condition,
- If the incinerator is available, it must be working and in good condition and its records are kept properly,
- Correct separation and storage of garbage, all appropriate signs and labels to be full and complete,
- Filling the Ballast Water Management Plan and Ballast Registry Book actually and completely,
- Keeping all scuppers on the deck closed,
- All vent pipe valves and fuel overflow trays must be working and in good condition,
- Existing material in the Oil Spill Kit should be in proper quantity and in good condition,
- Pollution drills that comply with the Flag State rules must be performed.

As it is known, our ships are subject to different inspections in domestic and foreign ports' calls. Considering that the method and frequency of these inspections vary depending on the port called, it is obvious that passing from these inspections successfully as a merchant by minimizing the risks and ensuring the smooth continuation of the trade is a gain not only for the ship owner / operator, but also at the national level. It will be a national pride for us to increase the standards of Turkish ships and fleets and to successfully pass from the inspections they are subject to in domestic and foreign ports.

Note:
You can access the notification on administrative fines to be imposed under the environmental law numbered 2872 published in the Official Gazette by the Ministry of Environment and Urbanization; from the link below.

https://www.resmigazete.gov.tr/eskiler/2019/12/20191231-17.htm

Charterers' Liability Insurance

Charterers' Liability insurance covers the contractual and legal liabilities of the Charterers of vessels under a charter-party.

Cover is typically being provided are; damage to the chartered vessel, cargo and property of third parties, death and personal injury, pollution, wreck removal, fines, mitigation and legal costs, general average, detention and delay, war and terrorism. Additional risks may also be covered on request of the charterer.

In contrast to P&I Insurance, Charterers' Liability Insurance is not mandatory, however just like H&M insurance for shipowners, it is highly recommended for Charterers to purchase such a cover.

Particularly small charterers are reluctant to purchase the cover to save costs, having the wrong impression that they are protected with the existence of cargo, P&I and H&M insurances.

P&I insurance is for the owner of the ship and covers the liabilities of the ship owner. H&M insurance provides cover for the vessel and Cargo insurance protects the cargo related claims. While all seems under the cover with these insurances, this is not the case for Charterers.

Recourse action by the insurer of above mentioned covers, is like sword of Damocles to Charterers. Any insurance deductible paid by the shipowner or rejected claims may also end up being paid by the Charterer. Any dispute or breach of insurance contract by shipowners are additional risks Charterers face.

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The Charterer of a ship can be liable for damages to the vessel caused during the contracted voyage or period. Damage to the vessel by stevedores or cargo carried, unsafe berth, defective fuel is just a few of the items that ultimately Charterers may be held liable.

Charterers may also be held liable for loss of or damage to Cargo for shortages, non-delivery, stevedore damages, stowage related claims as well.

Pollution is another risk Charterers face. Although this may seem considered under Owners P&I cover. In some jurisdictions (particularly in US), time charterer of the vessel may be regarded as operator of the vessel and held liable. Pollution during bunkering may also be treated similarly.

If there is a sub-charterer and there is back to back charter agreement in place, the Charterers may still face claims, as the sub-charterer can become insolvent or that any dispute may lead to court where huge sums may be at stake in terms of legal expenses.

Considering the vast variety of risks faced by Charterers and different jurisdictions involved due to characteristics of shipping, it is strongly recommended for Charterers to purchase Charterers' Liability Cover.

After all, the sword that was positioned over Damocles' head, suspended only by a single strand of horsehair !

Impact of Covid-19 on Marine Contracts

Due to the global outbreak of Covid-19, many business people are curious and anxious about the legal consequences and commercial impact of such situation on their valid and ongoing contracts. The main question that may be faced would be determination and applications of "force majeure" and "frustration" clauses. Under this circumstances, clarity of the interpretation will beyond doubt be of the essence. This article is drafted to present you a brief insight for the marine-related contracts, so as to let you protect your legal rights through exception clauses in various forms of charter parties. While doing so, we have took the advices of Bimco as basis, in consideration of the fact that many marine-related governed by English Law and must be interpreted due to this applicable law.

In terms of force majeure clauses under English Law, it is know that the "Force Majeure" can be accepted on condition that it is expressly defined in the related contract. Thus, the owners must be strongly encouraged to recheck their contract of carriage and to immediately incorporate "BIMCO Infectious or Contagious Diseases Clause for Voyage Charter Parties 2015" and the "Infectious or Contagious Diseases Clause for Time Charter Parties 2015". If not, the contractual liabilities shall not be terminated automatically although there are unforeseen incidents to prevent performing the contract itself. In other words, the "force majeure" can only be invoked by the affected party if this is expressly allowed to do so and the application is only limited to the extent explicitly defined in the contact.

As we look into the Turkish Law, we observe that it gives rise to abrogate fulfillment of performance under contract, only if it is proved that the performance was impossible. It must be noted that there is no definition of "Force Majeure" in any code and this term is defined based on other legal resources such as precedent law made by Court of Appeal,

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as well as the doctrine itself. Turkish Code of Obligation does not permit the release of obligation automatically without termination, unless otherwise agreed frankly in the contract, yet allows to revise the conditions accordingly to fit the new circumstances before the court. Thus, we once more underline that revising the contract terms is the key to prevent legal difficulties which may be encountered in this period.

Once for all, should we discuss this matter under P&I cover, under many P&I terms it is allowed to cover expenses incurred as a direct consequence of an outbreak of infectious disease on the vessel, including quarantine and disinfection expenses, however there shall be no recovery if at the time the ship was chartered to, or was under orders from the assured or her insurer to, proceed to a port it was known, or should in the insurer's view reasonably have been anticipated, that she would be quarantined. It is well-known that the due diligenceof the owner who acts responsibly and in good faith will always be covered against related risks. However, in case where the course is set for risky/quarantined ports, the precautions are not taken by the owner and also notifications on time are not made, neither any competent law nor a P&I cover would be sufficient for protection.

We hope to see you sailing safely forever!

Impact of COVID 19 on Marine Insurances

The shockwaves generated by Covid 19 continue to be felt throughout the world on many areas of business, and marine insurance not an exception. First disruptions on marine insurance sector created by the global pandemic have already manifested in cruise ships, many of which have endured shipwide infections of ship crew and the passengers.

Covid 19 is primarily expected to perturb contractual and legal liabilities between third parties, and the effects of the disease are projected to trigger liability claims than direct indemnification of property damages. Even though most likely type of insurance to be impacted for property damage are cargo insurances due to operational delays and perishable nature of certain types of goods, these are also wound to ultimately resort to potential recoveries from P&I policies of the ships.

Whilst crew, passenger and cargo liabilities are most likely areas to have substantial impact on marine liability insurances, certain costs due to sacrifices made by cargo and hull interests to ensure safety of maritime adventure may also give way to General Average claims. This would have potential impact hull & machinery insurances even in absence of physical loss.

Where goods shipped may encounter additional forwarding costs due to virus (e.g. closure of a port due to infection and ship having to discharge goods with additional costs at another facility), this would also potentially trigger claims under P&I policies as well, even though costs would be ultimately borne by cargo policies.

Concerning loss of hire policies, these insurances are traditionally eligible to pay out claims after physical loss or damage. On the other hand, where such policies may include cover to meet claims due to disruption of maritime trade arising from virus, payment of indemnity may be possible.

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Forgotten in the Pandemic, Our Seafarers Trapped in Ships!

The importance of maritime transport has emerged during this pandemic period. About 90 percent of global trade is carried out through maritime transport, thanks to two million seafarers in working life.

Normally, approximately 100,000 seafarers rotate in a one-month period, however, these crew changes have been suspended because of the port and travel restrictions due to COVID-19. While we are safe in our homes with our loved ones, there are approximately 150,000 seafarers waiting on their ships to go home due to expired business contracts.

Many seafarers have not seen their families for several weeks and months. They want to go home but they must keep working. They are feeling helpless and sadly useless to their families as the distance between them is felt more acutely than ever. According to the special COVID-19 edition of the Seafarers' Happiness Index report the overall happiness level of seafarers has dropped to 6.30 in the first quarter of 2020, from 6.39 since 4th quarter of 2019 with concerns about health and welfare. Although there are many factors effecting happiness onboard, the main reasons in these unpredicted days are shore leave restrictions, limited social activity, and contact with other seafarers to maintain social distance, and inability to reach out their loved ones.

COVID-19 movement restrictions cause seafarers to face additional workloads, such as cleaning and disinfection of the living quarters of the ship, due to their long stay on the ships.

Even in normal times, while there are usually few opportunities for social interaction on board, the seafarers have nothing to entertain during these difficult days. They just work, eat, and then rest in their cabin. They chat with their families or watch movies in their cabins with everyone's own personal communication devices. They feel unhappy and lonely. The absence of environments where they can go ashore and relax and distract them affects their mental states negatively.

In studies conducted, it is clearly stated that irregular and long working hours have negative effects on physical, emotional, and mental fatigue. Ship operators should apply flexibility during working hours and consider the mental health and well-being of seafarers. Increasing workload, extended contracts, and increased stress to provide isolation make seafarers feel stressed, worried, and homesick. Negative mood becomes the risk for the safety and work quality of the ship.

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Our advices to our policy holders ;

- Given the nature of the Covid 19 pandemic, it is very important to raise the awareness amongst crew members so that they are aware of the risks, how the virus can be spread, and precautions to be taken.
- The IMO has endorsed new protocols designed to lift barriers to crew changes. We invite our assureds to review IMO's Briefing dated 07/05/2020.
- ICS published a guideline for ship operators, explaining the right protection measures for Covid 19 outbreak and how to react when a case occurs on board. ICS also released posters that can be placed on ships for information purposes. Ship operators should inform the crew about how to deal with illnesses or what to do if a suspect occurs on the board the ship.
- Implementation of IMO, ICS and ITF guidelines onboard.
- Preparing readily available Covid 19 contingency plan onboard.
- Arranging training courses onboard about epidemic prevention and control in a timely manner
- Ensuring that communication channels are easily available so that seafarers can communicate with their families without interruption
- Arranging increased internet bandwidth on ships and provide phonecards/credits
- Raising the standard of catering and store
- Ensuring open communication, the seafarers need to be able to know what is happening
- Ensuring availability of medications
- Ensuring that adequate materials such as protective equipment (PPE) and disinfectant necessary for food and personal protection are available on board
- Running a COVID-19 emergency drill to check the vessel's capability to respond to a suspected COVID-19 case.
- Formulating a crew changing plan
- Carrying out a risk assessment with a view to minimize the risk of epidemic transmission.
- Assigning a dedicated person to take temperature of seafarers twice a day (in the morning and evening) The measurement results should be recorded and archived.

The current situation has shown that there are serious difficulties in keeping seafarers happy and welfare. Seafarers are not alone during this pandemic, and many helplines have been created for them and their families.

We recommend our policy holders to review and evaluate our recommendations above. It is vital to remain calm and strong during these stormy days. As Turk P&I, we thank our seafarers, our secret heroes at sea, and appreciate their patience.

Current application of pollution fines under Turkish Environmental Code and Port Law

In recent years, it could be clearly observed that the Turkish authorities apply environmental sanctions very strictly. Given the fact that the pollution claims related with owner's liabilities arising out of the discharge or escape from the vessel are amongst the most sumptuous main risks covered by a regular P&I policy, these developments have affected us significantly.

As per Article 20 of the Code numbered 2872, which is the Turkish Environmental Code, the vessels which cause a sea pollution by discharging petroleum products, dirty ballast, garbage and sewage into Turkish waters are imposed pollution fines.

It should worth highlighting that the rates to be applied for these fines have been scaled up significantly after January 2020 and in the current status they are applied 22.58% higher than the previous year. The applicable tariff called "Turkish Environmental Pollution Fine Tariff" which has been effective from 1st of January, 2020 to December 2020 can be found easily from the official gazette, as well as various publishing issued by the actors of marine industry such as underwriters, law firms and local correspondents. It may be said very briefly that the mentioned "Tariff" distinguishes the type and source of pollution into four parts; which are: i) Petrol and petroleum products discharged by tankers, ii) Dirty ballast discharged by tankers, iii) Petrol/petroleum products and dirty ballast discharged by vessels or any other marine vehicles and iv) Garbage and sewage discharged by vessels or any other marine vehicles and takes the GT of the vessel into consideration while imposing the fine. In the subject regulation, it is noted that the polluting vessel shall be fined very seriously in case where the discharged material was of hazardous type and if the polluting party is a corporate body. In addition, repetitive actions are also being punished by increased fines.

Based on our experiences, the authorities are likely to collect these fine in cash rather than accepting a letter of undertaking. The ¼ of fine is deducted in case where the payment is made within 30 days after notification of the polluting vessel's interest. It should be noted clearly that the authorities would not fail to arrest the subject vessel if the fine amount is not paid/or an acceptable security is not put up, although the subject fine is objected before the Administrative Court within applicable period which is also 30 days. Therefore, facing with a pollution fine stands as a critical risk to be taken into consideration and should be avoided for the vessels calling at Turkish waters. On the other hand, as we look up the Environmental Code we see that only 1/3 of pollution fine is applied in case where it is established that the vessel removed the pollution by her own means, yet in practice authorities do not implement this article. As Turk P&I, we had few approaches to create awareness of the said regulation by explaining this to the port authorities on behalf of our assureds however this could not become prevalent application.

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In addition to abovementioned pollution fine, the harbor master's wide discretion which was granted by the current ports law should also be taken into consideration. As per latest regulations in Harbor Law, the harbor master is entitled to charge the vessel for an administrative fine up to TL 5,000,000 under suitable circumstances which are detailed in the subject regulation. On the other hand, pollution is also linked with criminal investigations which could be commenced against the master.
Based on our experiences, it is very obvious that the chance of success against a pollution fine is not very optimistic, that is to say the loss preventive measures such as avoidance of deballasting operations or checking whether the discharge valves were closed are of the essence! Turk P&I would always be ready to assist and guide the assureds in terms of advised preventive measures. On the claims side, in case where you are alleging that you have been fined unlawfully, the solid evidences such as videos, pictures, statements and such records would always be a rescuer.

We wish you safe voyages and clean waters.

Common dangers to be occured during carriage of bulk cargoe

Marine transport has been a significant part of international trade in consideration that the most suitable and ofen the only way of transportation for large volumes of cargo and finished products. Given the fact %85 of transportation is made by sea and also this proportion has been increased to %90 on the current crisis conditions, the importance of the same may be understood clearer. Bulk cargoes constitute an important part of Sea Transportation. Solid bulk cargoes cover a wide range of products. Some of the most commonly carried solid bulk cargoes are coal, cement, grain, sulfur, fertilizer, iron ore and sugar. These type of cargo does not often packaged separately, they are carried in the ship holds in large tonnages.

Many dry bulk cargoes are classified as "dangerous goods" in consideration of the fact that they require special care and attention throughout loading, transport and discharge operations. The solid bulk cargo consists potential danger and thus it needs safe and sensitive handling and shipment.

The most common dangers which arise from bulk cargo carriage may be classified as below:

- Shifting: This must be referred as the greatest danger of all times in bulk carriers. This risk is encountered more often in carriers with grain cargoes, as this type of cargo settles in the ratio of %2 of its volume and this creates a free surface in the holds for this slippery and almost liquid cargo type. Therefore, such cargo is always likely to carry the shifting risks due to heavy rolls during the voyage at sea. This potential danger turns into a real and very serious one as it can even cause capsize of the vessel. In order to avoid this risk, trimming must be made accordingly.

- Falling down from height: Iron ore, quartz and coil cargoes are the ones with high density and heaviness which may cause personal injury, even death in case where they fall down to the deck during their loading operation by conveyors. Especially, during the first loading the cargo which are loaded from the height can damage tanktop of the holds. Therefore, the loading operations must be duly monitored at all times by the duty officers to ensure that no crew is located on deck or cargo operation area. The crew must also be equipped as needed with the special helmets, safety shoes and phosphoric jackets. Another caution that may be taken would be placing wooden pallets on hold tanktops prior to loading in order not to damage tanktop structure.

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- Cargo dust: Dust is one of the most common hazards in bulk carriers. Many solid bulk cargoes are dusty by nature. The small dust particles can easily be inhaled and have adverse effects on health. The crew and or other personnel to carry out the cargo operation might be exposed to high dust content which would cause sneezing and eye scratchiness and therefore avoiding dust, wearing appropriate masks and respirators would protect the crew who are present on the deck during cargo operations. The mask filters must be renewed when they gets dirty and the electronic/mechanical parts of the vessel must also be duly protected against such hazard to arise from the cargo dust.

- Liquefaction of cargo: Liquefaction could be defined as a condition wherein a solid bulk cargo are turned into an almost fluid level. The most common cargo types which highly carry such risk can be exampled as iron ore fines, nickel ore and concentrated minerals. Liquidation could take place due to vessel's movements (rolling, pitching and pounding) caused by the impact of sea/waves, which compact the cargo and constitutes a free surface which may have negative effect on the vessel's GM by decreasing her stability. The type of bulk cargoes must be widely researched by the C/O's prior to loading. It must be ensured that the rate of moisture/humidity does not exceed the allowable limits. This could be also checked during the voyage regularly in the holds.

- Structural damage: Over time, heavy cargoes place heavy loads on the ship's structure and can cause structural damage. As the heavy cargoes have low stowage factor, these cargoes occupy a small area and thus the tank top has a sufficient strength and be suitable to carry heavy cargoes like iron ore, nickel ore, bauxite and other heavy cargo types. The capacity of tank top strength can be found in the stability book. In case where the cargo is loaded above allowable limits, it cause a high stress (excessive bending and shearing forces) which would lead capsize of the vessel in time due to heavy structural damage.

- Oxygen depletion: In the carriage of some types of organic cargo, such as wood, paper pulp and agricultural products may cause serious oxygen depletion and forming of carbon dioxide in the holds and other closed areas where the cargo is loaded. Therefore, these cargoes which are innocent in the first appearance may cause life threatening circumstances. As these holds and places are not ventilated accordingly, some fatal dangers may occur. In the content of The IMSBC code lists, following cargoes are specified to be oxygen depleting: coal, direct reduced iron, sponge iron, sulphide concentrates, ammonium nitrate and linted cotton seed. Different kind of hazardous gasses such as carbon monoxide, carbon dioxide, hydrogen sulphide and hydro carbons may come out of these cargo types. Thus, crew's entrance to closed spaces must be allowed only if these areas are duly ventilated and measurements in this regards are made through regularly calibrated equipment. Emergency entrances may be carried out with SCBA.

- Corrosion: Some cargo types such as coal and Sulphur may lead serious damage due to corrosion. Bulk coal cargoes are usually stored outdoors and their rate of humidity increased by encountered adverse air conditions. Wet Sulphur is highly corrosive and although the accumulated water in the holds are soaked through the bilges, the remaining water could still shows reaction and release sulphuric acids. The coal cargo consists high humidity and sulfur even though after the same is washed with fresh water and it may release acids that might corrode parts of the ship.

- Contamination: Preparation of cargo holds for the next carriage can be classified as an essential stage for bulk carriers. Any neglect in such preparation may lead contamination, water ingress and loss of cargo. The remaining/dusts of prior cargo can contaminate with the present one and that may not be acceptable by the receivers. For instance, cement cargo may concrete and unrefined sugar may turn into syrup. The possible leakage from the hatch covers and bilge systems as well as manhole leaks located in the ballast tanks in the holds must be regularly checked. In addition, unreturned check valves of the bilges in the holds and tank sounding and air ventilation pipes must also be checked on regular basis.

- Fire: Bulk cargoes are generally accepted to carry a great risk of fire as many bulk cargoes such as coal, Sulphur, cotton and fishmeal are likely to heat automatically as a result of oxidation during the voyage. Coal specifically spreads methane gas which is highly flammable when mixed with air and that may cause explosion. Also, the heat can be produced when the cotton cargoes are subject to friction. The security rules to prevent fire on board shall be strictly obeyed.

As established by international law, including the international liability regime of Hague-Visby Rules, the sea Carriers are contractually obliged to care the Cargo and liable to ensure the Cargo is delivered on the same condition (as quantity and quality) as it has been loaded. Within this frame, The IMSBC code must be applied strictly for the safety of solid bulk cargoes as well as for the application of good marine manners.

BUILDERS' RISKS INSURANCE
(Insurance Period and Insured Value)

Builders' Risk Insurance, in general, covers all risks -subject to exclusions- that would occur during the course of construction process, including launching and trial periods until final delivery to the Owners of the vessel. Guarantee Period contained in the Building Contract and Conversion works may also be covered under Builders' Risk Insurance.

Similar to Hull & Machinery insurance, there are several forms of cover for Shipbuilders, such as Nordic Marine Insurance Plan, American Institute Builder's Risk Clauses and German Marine Insurance Conditions.

Institute Clauses for Builders' Risk 1.6.88 Cl.351 is the main cover used in insurance contracts in Turkey.

Unlike other types of insurance, the value of the vessel in a Builders' Risk contract increases with every work done or equipment installed until final delivery to buyer, where the vessel reaches her final value. Due to gradual increase of the value, the project owners have misleading perception on when to commence the insurance cover and the insured value of the vessel being built.

At the initial stage of building project, where there are only steel plates in the yard, the perception of the project owner is that the risk for the insurance is almost none, therefore there is no need for insurance cover. Only at the later stages of the project, with the increased risk, the need for insurance is remembered.

What is missing in this perception is that the insurer whom provides cover for Builders Risk has also enough knowledge of the project stages and possible risks involved in each stage of building process.

While the FCV (Future Contract Value) or CCP (Completed Contract Price) – the final value of the vessel during delivery- is used on Builders' Risk insurance covers. The pricing is done by taking the gradual increase of the risk for each stage of the building process into consideration.

The period on the insurance cover is determined by the building project duration, however possible extensions is also considered. For this purpose a monthly extension rate is determined and written on the cover note. The extension period is also the time where the risk is almost at its zenith point.

Due to increased risk during this period, the monthly extension rate is usually higher than the cover rate. This reflects the risk pricing of the insurer described above.

While there are several models on pricing, the mentality is as explained above.

Insuring the project in later stages of building does not only lead to reduced appetite for insurers and risks finding adequate cover, but also does not provide any benefit to the project owner in terms of premium saving. In contrast, the premium paid for the insurance with commencement of cover at later stages is almost the same as the commencement of cover in initial stages of the building process. This leads to unnecessary retention of the risk for the project owner in initial stages.

Although the wording used for conversion projects is the same Builders' Risk Cover wording, the risk analysis, modeling and pricing is done in consideration of the high risk even in the initial stages of the project.

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Safe Navigation And Importance Of Voyage Plan

Nowadays, vessels are equipped with the most advanced electronic aids to navigation as the technology allows, this however cannot prevent marine accidents completely.

To minimize the marine accident risks, these are mainly related to the aforementioned processes;

a. complying with local and international rules in terms of navigation safety,
b. use of devices that are maintained within a plan and that work properly and
c. formation of the crew working onboard with well trained and competent staff.

As it is well known, the voyage plan is the most important resource that is prepared where various information from many different sources is gathered and it should be followed carefully throughout the voyage to complete her journey safely from departure to destination. Likewise, the voyage plan should be prepared in accordance with the relevant rules and regulations and in the light of accurate information. Preparation of the voyage plan is standardized by the International Conventions for the Safety of Life at Sea (SOLAS)[1] and Standards of Training, Certification and Watchkeeping for Seafarers (STCW)[2]. Besides, other auxiliary publications and resources[3] of the International Maritime Organization (IMO) also ensure that the voyage plan to be prepared accurately and effectively.

In brief; the current Voyage Planning regulations obligate the application of four interactive stages:

1. Assessment: It is the stage of gathering all available information concerning the intended navigating area and deciding on the most suitable passage in terms of navigational safety by considering all existing and potential risks and dangers between the port of departure and port of destination. At this stage, ship characteristics, carried cargo on board, environmental and meteorological factors, local and international rules, company rules and regulations, and other factors that may affect the safety of navigation should be taken into consideration.

2. Planning: The intended voyage plan at this stage is drawn on appropriate scaled charts and all other necessary information is to be recorded as well. Apart from the sailing charts, other nautical publications should also be accessible for ease of watchkeeping officers' reference. The voyage plan should be prepared berth – to – berth and should include the navigation areas under pilotage too. It is worth mentioning that this issue (berth – to – berth) has been

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in discussion for many years, however, marine accidents are still experienced during sailing under the pilot conn due to incomplete and/or inadequate voyage plans.

3. Executing: It is the stage of executing the voyage plan by watchkeeping officers. The plan should be implemented by the master and officers in charge. During performing of the voyage, prevailing conditions should be taking into consideration at all times. The master is obliged to check that the plan is always in force and in use.

4. Monitoring: Safe navigation can only be maintained with close and continuous monitoring of the plan. Thus, the vessel's progress on the route should be monitored during the voyage. The predicted and encountered conditions should be compared by the master and watchkeeping officers. In case of inconsistency, the plan should be reinterpreted and changed where it is deemed necessary.

Any negligence and/or omitting during performing the aforementioned stages with the contribution of other negative factors can cause serious loss of life and property, as well as extensive harm to the marine environment. Various cases in the past had revealed that the disruptions in the voyage plan had caused suppressing safety of navigation and consequently experienced many undesirable consequences.

In May 2011, a general average was declared due to the $ 13 million cost incurred as a result of the grounding of a container ship, departed from Xiamen Port, China immediately after departure with approximately 8,950 TEU cargo and 8,000 tons of fuel. As a result of the investigation, it was concluded that the sailing chart in use for the area was not updated in accordance with the latest notice to mariners and that the voyage plan was incomplete. Some of cargo-interests who have been invited for contributing to general average brought the matter to trial and court decided that a defective voyage plan would mean that the vessel was not seaworthy at the time of departure. Thus, plaintiff (cargo-interests) would not be included in general average. The case is currently under discussions as per Hague-Visby Rules and still considered by the competent court. Once the legal process is completed, it may also be considered as probable that the insured is not considered under coverage for the aforementioned reason and may suffer grievance during compensation procedures.

Besides, defective voyage plan would affect adversely trading of the vessels even as any accident/loss has not occurred. For instance, some countries who are signatories of Memorandum of Understanding (MOU) monitors vessels' route tracks particularly in the traffic separation zones of inland waters, and the vessels acting in violation of the International Regulations for Preventing Collision at Sea (COLREG) are subject to enhanced controls by Port State on arrival of her first destination port(s). In case of determining any defect on the voyage plan during the controls, the vessel may be under a risk of arrest and master may personally be punished with considerable fines.

The above examples demonstrate that omission on the voyage plan can cause problems on a wide range difficulty from the arrest and fines of the vessels to raising discussions whether the vessels are seaworthy or not.

Needless to say that the matter is of great importance from insurance point of view as well. Casualties caused by violations of navigation safety and defective voyage plans also increase insurance costs and cause serious financial burden for both insured and insurance companies. Thus, the matter is also taken into account during risk assessments of fleets that have previously experienced such damages.

In this respect, we as TPI Insurance recommend our insureds to ensure their navigational devices are always in good working condition, perform all navigation devices and navigational aids maintenance and services on due time, keep corrected up to date all kind of nautical publications, particularly sailing charts which are one of the main instruments of navigation safety.

[1] SOLAS Chapter 5, Annexes 24 & 25
[2] STCW Convention, Section A-VIII/2, Part 2 (Voyage Planning)
[3] IMO RESOLUTION A.893(21) adopted on 25 November 1999 (Guidelines for Voyage Planning)

Contractual Liabilities Concerning Seaworthiness Warranty

It has not been uncommon to see that charterers may request that owners contractually agree to a vessel's seaworthiness for the full duration of voyage on contracts of carriage by sea.

Owners should bear in mind that such contractual warranties may jeopardize P&I cover. Even though P&I insurers have their own sets of respective rules, a generally accepted practice is that P&I insurer warrant Owners assume liabilities no wider than Hague-Visby Rules in contracts they may enter.

A review of Hague-Visby Rules shows that references inherent to seaworthiness of a ship are presented on Article III Section 1, which state;

The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

(a) Make the ship seaworthy;

(b) Properly man, equip and supply the ship;

(c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

According to Hague-Visby Rules, "exercising due diligence" means to take reasonable precautions to make the vessel suitable for the planned voyage. There are no provisions that the Owner, i.e. the Carrier, is required to absolutely warrant seaworthiness, beyond whatever is stated in above Article; and that the Carrier is only required to keep the vessel seaworthy before and at the beginning of the voyage.

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It may be therefore assumed that, should the cargo interests be able to evidence the Carrier did not exercise due diligence before and at the beginning of the voyage, such lack thereof may be within scope of P&I covers.

Furthermore, any loss of and/or damage to the cargo, which may arise following an incident that may render the ship unseaworthy in course of voyage, would not be deemed Carrier's liability in view of Hague-Visby Rules Article III Section 1. It must be of course assumed that Carrier showed due diligence before and at the beginning of the voyage.

Where the Carrier may assume contractual liabilities concerning seaworthiness throughout the voyage, it must naturally follow that the Carrier is also assuming liabilities above and beyond Hague-Visby Rules. This may jeopardize the Carrier's P&I insurance cover, subject to P&I insurer's rules.

We recommend that prior assumption of contractual liabilities that may affect insurance covers, Owners review such terms within scope of their insurance covers as well.

Master's duty of care during loading/unloading operations and Turkish Supreme Court's current considerations on FIOS

The masters, who act as the highest officer and as owner's representative in a vessel, have been assigned with set of serious of legally binding responsibilities in addition to their duties of vessel's management.

These responsibilities given under Turkish Commercial Code numbered 6102 are specified in the articles between 1088-1118. According to such rules, the master is obliged to act cautious in all his works, especially in the fulfillment of contracts that fall to him as per article 1088 of TCC as otherwise he shall be liable for his negligence to all parties concerned with the vessel and cargo as per article 1089, including the passengers. TCC provides that neither following the owner's order nor the owner who deliberately instructs the master will work to relieve the master/and or the owner from liability. In article 1090 of the TCC, it is stipulated that the master must provide the seaworthiness of the vessel by ensuring that all the documentation regarding the vessel, cargo and the crew is suitable, yet apart from these primary responsibilities, this article aims addressing the master's liabilities linked with loading/unloading/ handle/stow/care which are sourced from Hague and Hague Visby Rules Article III and Rule II and as per article 1091 of the TCC in the light of current Supreme Court practice in Turkey.

The article 1091 of TCC stipulates expressly that loading and unloading operations must be carried out in accordance with their intended use and with the applicable Maritime rules under master's duty of care even if it is done by private stevedore company. In the second paragraph, the responsibility of master of paying attention to the vessel not being overloaded, and to ensure that the holds are

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proper to accept protecting the Cargo subject to transportation is highlighted. Under the lights of verdicts in Turkish courts, the master's such responsibilities seems to be remaining wherein Turkish law is applied to interpret terms of carriage even though these operations are carried out by third parties rather than the carrier.

As per TCC article 1112, the master shall perform his duty of care on protecting Cargo during the voyage in line with the best benefit of the Cargo interest, yet we shall try to demonstrate the current considerations of Turkish Supreme Court in a case where the Cargo operations beyond the master's control and where FIO/FIOS and/or other protective terms for L/S/D exist to save master from the liability.

Referring to the one of the latest decision dated 25.02.2020 of Turkish Supreme Court 11th Civil Law Division (Please see 2018/451E, 2020/2010K)the liability insurers for transportation filed a recourse action for the indemnity which was paid to its assured regarding the yatch that was alleged to have damaged whilst carriage between United Arab Emirates to Marmaris Turkey. The local court decision was dismissed based on the fact that the stevedore company and its legal position could not be specified accordingly. In the subject court file, the attorney of the carrier stated that as per the bill of lading, law of Genova/Italy should be applied and therefore the carrier should not be liable for the Cargo carried on deck, however as the reverse side of the B/L could not be provided, the court advised that the jurisdiction clause was not proven, thus held that master must comply the duty of care in TTC article 1178. The court also added that as per TCC 1243, any terms previously agreed to directly or indirectly relieve/limit the owner's such liability would be void and thus such clauses must be dishonored.

Ultimately, the master's supervision obligation in accordance with maritime procedures will be of paramount importance in limiting the liabilities of owner in case of damage caused by negligence in stowage and lashing, thus master's duty of care must be performed as required during cargo operations.

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Lay-Up practices, minimum standarts on board and effect to insurance cover

As per the directive of "The Procedures and Principles to be followed by the vessel during Lay-Up", issued by Turkish Maritime General Directorate, it is stated that "All vessels to be remained in lay-up condition must have valid P&I certificates during their stay as the same must cover port risks such as pollution, wreck removal, salvage costs" which is applicable for Turkish flag vessels and/or Turkish owned/managed foreign flag vessels.

As a result of negative COVID-19 pandemic effect on maritime trade, one of the preventive measures are taken by ship owners is lay-up decisions in order to minimize their costs. This situation forced shipowners to examine the condition of their P&I coverages on different lay-up conditions, as well as to exercise minimum standarts to be provided on board during their vessel's stay at idle position. Therefore we would like to share our expectations and general seaman practices with our assureds as an insurer point of view.

Lay-up Plan and Site: Definition of lay-up is required minimum 30 days idle position in our Rule Book. Therefore a Lay-Up Plan must be prepared subject to potential longer stay in order to ensure safe condition in which lay-up site would be the key factor. A description of the lay-up site must be provided with particular focus on the sea and weather conditions. The lay-up site must also be approved by the local authorities as heavy wind affected areas and heavy traffic areas (due to wash affect) must be the subject of particular considerations. The lay-up plan should also particularly include the envisaged need for propulsion power and describe the availability of tug assistance in the lay-up area.

Mooring/anchoring arrangements: Maintenance routines of anchoring and mooring arrangements must be provided including distances to shore and to other ships along with numbers and spares. The arrangements should preferably be approved by the vessel's Class Society (if available) but other competent bodies (i.e harbour master of current location) may also be used. The anchor windlasses and mooring winches which are in use or under constant tension must be the subject of frequent testing and maintenance to ensure that they function properly at all times. Daily safety

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patrol checks to be effected by watchmen on mooring ropes to be frequently inspected and remain tight at all times. Fenders (if necessary) of adequate size and number to remain in place on vessel's port & starboard sides.

Requirements of Class and affect to insurance cover: We, as TPI Sigorta require that the Class is changed into the status of "laid-up" to facilitate a return of premium. Annual and other mandatory surveys must be carried out in accordance with Class rules. Also all class rules and regulations are followed at all times during the lay-up, and it would be taken into consideration that any suspension of Class will lead to termination of the insurance cover. Under all circumstances, the owner should keep the P&I club fully informed about a vessel's changing status. If the vessel is laid-up for an extended period of time, P&I club could reserve the right to inspect the condition of the vessel on reactivation. Once the lay up period is completed uneventfully, in order to be able to gain return premium for lay-up period, the Insured must submit all official documents (such as deck / engine log books, class letter, etc.) those can be an evidence to vessel's lay-up condition.

Minimum Safe manning and Routine Duties: The Flag State's requirement (on certificate) as to minimum number of crew for the different lay-up situations must be maintained. If watchmen and routine maintenance as described in the lay-up plan are contracted out to third parties, these arrangements must also be described in the lay-up plan. Planned periodical checks of mooring lines, fenders, drafts and tank/cargo hold bilge soundings to be carried out and to be recorded on daily log books. All fire doors and watertight doors to be closed in all compartments except from those fire doors that facilitate crew access. Vessel's entrance to be kept free at all times of obstacles in case of emergency for free and quick access. Watchmen to be always in possession of a dedicated portable V.H.F. / mobile phone for emergency use. A list of emergency call numbers to be posted at all times for watchman/crew use. All logbooks / record books to be properly implemented and maintained by watchmen/crew at all times. All debris occasioned to be collected and disposed of frequently.

Fire risks: All cargo tanks, pump rooms, cofferdams and cargo lines must, as a general rule, be kept gas free during lay-up. Hot work is only permitted if a valid gas free certificate is kept on board. All fire alarm systems must be fully operational during lay-up. The ship's normal fire fighting systems must be also available and ready for use, remain in position, maintained certified (in adequate number as appropriate) as valid certificates to be available at all times. If fixed fire fighting systems are disconnected (CO_2 tanks) for any reason, substitute systems must be operational and approved by Class. İn general practice, sufficient number of fire hoses (at least two) to be permanently paid out from appropriately located hydrants of vessel's fire-fighting system. Watchmen/Crew to be familiar with the operation of the fire-fighting equipment (as applicable). But most importantly the emergency fire pump should be regularly inspected and maintained in a fully working condition to ensure its reliable operation.

Engine Room and Maintenance of Equipment: All sea valves below the waterline to be maintained closed and secured with the exception of those corresponding to fire-fighting and cooling of diesel generator when in operation and if applicable The water level in the pump room and engine room bilges must be checked regularly and bilge alarms systems for all spaces must be maintained in normal operation. The lay-up plan must also include specific items in accordance with the manufacturers' recommendations as to the preservation, maintenance and operation of machinery and other equipment to prevent damage occurring as a result of the items not being in normal us.

We, as Turk P&I Sigorta would like to state that we are ready to share our further and detailled suggestions to our assureds regarding lay-up conditions before and during subject period and wish to safe and uneventful days to shipowners and crew members at on-going pandemic situation.

Salvage Contracts & SCOPIC

Some marine incidents become complex and complicated and often require quick decisions as they happen suddenly and unexpectedly. That is why, the shipowners should prepare emergency plans that will ensure a coordinated, rapid, and effective response in the event of a potential emergency and ensure that the ship's personnel are adapted to these plans.

In this circular, we will talk about the salvage, one of the important issues that can be encountered at sea.

What is Salvage?

The action taken to rescue a vessel, her crew and cargo from hazard and danger at sea is called salvage. To establish a valid salvage claim, the following issues are considered.

✤ **Existence of marine peril, e.g.**

- Capsizing
- Sinking
- Collision
- Grounding
- Fire
- Engine Failure
- Heavy weather damage

- Providing a salvage service voluntarily and not because of an existing contract or duty,

- Partial or complete success of the salvage service

A formal contract is not necessarily required in a salvage attempt. Because the assumption here is that a prudent shipowner, who is in danger of losing his ship and his cargo, will accept the salvage terms offered even if time does not allow the negotiation of the above situations. In other words, a salvage is the request of the third party who voluntarily helps to rescue the ship and cargo from a danger. However, the shipowner still has the right to reject any offer of assistance and can make an arrangement with a professional salvor of his own choosing.

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The salvage situation starts with acceptance of the salvage offer of the salvor by the shipowner whose vessel is in distress and in this context, the arrangement is contractual. In other words, the salvage agreement is not a contract for the services with a pre-agreed fee. Instead, it requires a court or arbitrator to decide regarding the award to be paid to the salvor upon completion of the service by considering the followings:

- The extent of success of the salvage
- The value of the rescued property
- Whether a reasonable effort was made to protect the environment
- The extent of potential danger faced by the salvor during salvage service
- Whether the salvage was completed within a reasonable time frame
- Sea and weather conditions
- Whether there were other alternative salvors around
- What can happen to the rescued ship if she is not saved
- All the articles listed within the relevant sections of the 1989 Salvage Convention.

✤ **Important 2 Articles of the 1989 Salvage Convention.**

• Article 13 – Salvage Award

A Salvage Award is paid by both the ship and the cargo interests pro rata to the salved value and is insured by their property insurers, the H&M and cargo underwriters, respectively. The amount of the award cannot exceed the salved value of the vessel and other property. If there is no value saved, there is no payment. The "no cure no pay" principle. This clause is applied to prevent salvors from partially recovering the wreck and then claiming the full award.

• Article 14 – Special Compensation

The impracticability of the “no cure no pay” principle has been realized, especially after the increase in oil transportation and marine pollutions causing environmental disasters. This clause is primarily concerned with paying salvors even if there is no property left to be salvaged in order to prevent environmental damage. To claim a special compensation, it must also be proven that the ship itself or its cargo is threatening to damage the environment.

However, this article caused some uncertainties as follows.

- The lack of compensation was unsatisfactory from the salvor’s point of view when intervention was made to rescue a ship in open sea that had no threat of environmental damage to the seas.

- Shipowners and P&I insurers are faced with the obligation to pay special compensation more often than expected, as salvors are deemed sufficient to apply Article 14 regardless of the extent to which the threat to the environment is protected, even in the case of a relatively low pollution risk or a relatively minor pollution.

- All parties were also disturbed by the uncertainty in the evaluation of special compensation and the assess of the "fair rate" amount to be paid for the service of the salvor.

✤ **The SCOPIC Clause (Special Compensation P & I Club Clause)**

Due to the aforementioned uncertainties, the SCOPIC clause was agreed in 1999 as an alternative instrument to Article 14 of the 1989 Salvage Convention.

Basically, SCOPIC is based on the principle of setting a fee on the tariff as compensation for the salvage services performed and the salvor's costs in operation. In other words, SCOPIC clause is the method of determining the special

compensation to be paid to the salvor. If this clause is included in the LOF contract, the salvor cannot claim the provision of Article 14 in this case and the fee is determined under SCOPIC clause. Services performed after incorporation of the SCOPIC clause are evaluated based on the SCOPIC tariff, and the services performed before incorporation of the clause are evaluated within the scope of Article 13.

✣ **The Lloyd's Open Form (LOF)**

Lloyd's Open Form, officially "Lloyd's Standard Salvage Agreement Form" and commonly referred to as LOF, is an important contract used in salvage operations. This form, officially starting in 1908 and published by Lloyd's of London, is standard and is called "open" because it does not specify a specific sum for the salvage service. As we mentioned above, "salvage" is not a service contract, it is an agreement to provide a service with the hope of "award" and it works with the principle of "no cure no pay".

As time progressed, studies were carried out considering the changing conditions and developing sensitivities, and a simpler new version of the form was published in 2000. LOF 2020 is currently in use and the contract is subject to English Law.

The primary role of the salvors for centuries was to save property, the ship and its cargo. However, today, the most important task of salvors in salvage operation (beyond saving lives) is to prevent environmental damage.

✣ **Role of H&M and P&I Insurers in the Salvage Process**

H&M insurers monitor the salvage process because they will usually be responsible for compensating the shipowners. The liability of the (P&I) insurers will arise in the presence of the potential claims against the shipowner by the third parties during the salvage process. (for example, sea pollution). If the incident is a salvage situation, it is the H&M insurer who is liable, while the incident turns out to be a wreck it is the P&I insurer who is liable for the cost of wreck removal.

For contracts where the SCOPIC clause is incorporated, the shipowners or their P&I insurers must provide $ 3 million security in the form of bank or Club letter within 2 business days. If the amount of the security is considered too high by the ship's interests or too low by the salvor, the amount can be decided later. If the letter of guarantee cannot be delivered to the salvor within the specified period, the salvor has the right to withdraw from SCOPIC remuneration and to continue the salvage operation under LOF as though SCOPIC had not existed.

We would like to draw your attention to a point that P&I insurers may refuse to issue a security in case of non-payment of calls, breach of warranty rules or other breach. After all, it is agreed that the payment any SCOPIC remuneration is a potential liability of the shipowners and subject to the terms and conditions of the P&I insurer.

Unfortunately, accidents do not only happen to others, and our advice to shipowners is to always be ready and prepared for possible situations.

BUILDERS' RISKS INSURANCE (Refit and Conversion)

Builders' Risk Insurance, mainly covers risks of a new built vessel that may occur during the course of construction process, including launching and trial periods, until final delivery to the Owners. Conversion and refit works are also covered under Builders' Risk Insurance.

Refit works: Refit works involves removing old or obsolete equipments and installing new ones. Scrubber installations to comply with new emission standards should also be considered under refit work. However, local insurance companies generally consider these types of installations under planned maintenance or ship repairers liability insurance and do not require Builders Risk Cover. Nowadays refit term is only used for renovation of yachts.

Conversion works: is used for material changes to alter the operation of the vessel. Giving length or changing type of vessel is considered under Conversion. Such as changing a RoRo vessel to a livestock carrier, giving length to a passenger or container vessel to increase capacity, etc.

Both Refit and Conversion works require high degree of engineering and planning, and increased risks for insurers.

In order to insure such a high risk, insurers consider several factors. The experience of the yard that the work will take place is a major factor for consideration. Due to increased risk of fire for such operations, the proximity of the fire station and the fire extinguishing equipments of the yard is considered. In order to evaluate above mentioned risks, insurers appoint surveyors that has experience in yards. The main Survey form is used for such Surveys is called JH 143 Shipyard Risk Assessment form.

In a new built project, the risk is limited for insurers during the initial phase of the project and gradually increases, this leads to premium accumulation for insurers. In Conversion and Refit works, the operation is done on an already built vessel where there is significant risk in the very beginning of the project that is equal to vessel value. This limits the ability of insurers to collect a reserve premium. The period of a refit/conversion is usually far shorter than a new built. In consideration of all of the above factors, the insurers request higher premiums than originally requested from a similar new built project.

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Other factors that are taken into consideration for insurers are earthquake risks for the location of the yard, the launching systems to the water and sea trials.

Market conditions and competition eventually affect the commercial decision process of insurers, however no compromise should be made on technical evaluation of the risk. With high degree of technical evaluation, both the insurer and the yard will benefit in the long run and any material damage and more importantly any risks to the lives can be minimized.

Risks and preventive measures regarding RO-RO shipping.

Ro-Ro shipping is safe, cheap and practical form of transportation which is highly preferred due to many advantages it serves. This mode of transportation not only reduces the transportation costs, but it also satisfies the speed which is needed in the commercial life as the vessel stays in the port for shorter period.

The term "Ro-Ro" is an abbreviation of the words "Roll on- Roll off". This form of transportation is used for transporting other vehicles such as cars, trucks and even trains on board. Ro-Ro shipping is usually carried out by regular lines called "Liners". The main advantage of this shipping form can be deemed to be less damage risk- as there is no deck loaded Cargo-, less waiting and of course less expenses.

Despite above counted advantages, there are some disadvantages which should be specially considered for this form of shipping. In this article, we would like to highlight some of these claim types. Actually, TP&I has many assured who are in Ro-Ro business in practice, thus we shall mention about frequently seen claim types in this regard, in Ro-Ro vessels, which carries Claims risk both for the passenger and the Cargo itself.

In order to minimize the risks to passengers, the following general practices should be taken into consideration.

Despite all necessary precautions in terms of equipment which would have taken by an owner, the passengers are still can be subject to serious injuries occurred in consequence of slipping, falling and tripping etc. Especially in summer times, the slippers worn by the passengers are extremely slippery, thus the stairs, door thresholds, covers or steps must be painted with anti-slip painting. Remarkable posters for cautionary reasons would work as well!

The announcements which contain all necessary safety information on possible risks before departure and arrival must be in order. The posters must be hung in places where passengers are located and if possible, they must be put into the seat pockets.

The lightening must be adequate in the stairs, stairwells and walking trails and if not so, warning signboards and posters would help.

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The locations where the passengers are not allowed to enter must be locked and this prohibition must be shown by a poster.

In order to prevent spill of hot beverages, protective lid/cover must be used accordingly, so as to avoid burning due to contact with hot content.

Another frequent type of claim is squeezing between gates by sudden closing of the same. For avoidance of such risk, which could unfortunately find children in many cases, there must be protective stoppers. Same can be applied for windows as well. Needless to say, but little kids must always be accompanied during voyage.

Another risk we face in Ro-Ro vessels are the ones which occur during berthing and departure, such as hitting by the rope, squeezed feet under hatches and falling down by losing the balance. These risks must be prevented by locating appropriate barriers such as ropes, chains and doors where necessary, which would be supported by a crew in charge to organize the vessel's loading and/or discharge.

The cargo damages encountered in Ro-Ro ships is mostly caused by lashing. Lashing (vehicle fixing) operations should be carried out in accordance with international safe lashing standards and should be applied to all vehicles without exception. At the same time, it is essential that the crew performing the loading and discharging operations has to be experienced and expert in their job. It is also of great importance to comply with the cargo plans.

In order to minimize the risks that may cause cargo damage, the following general practices should be taken into consideration.

All of the parking areas in the ship must be marked with height marks.

It is necessary to make sure that all the hatches and / or ramps are clear both on the arrival and departure of the ship. Entry and / or exit should not be allowed without clearance is approved by Officer in charge.

During the ship's vehicle entrances, announcements should be made at certain times and after the engines of the vehicles are stopped, it should be checked by the drivers that the hand brakes are pulled, signs and posters should be hung on the parking areas in this direction.

Passenger crossings should not be allowed in areas within the ship where vehicle passes are located.

In-ship lashing of loaded vehicles must be done completely.

Vehicles with top-heavy or slack loads should not be allowed to enter the ship.

Entry to the ship should not be allowed, especially the trucks with lowered chassis and / or modified and / or additional accessories (especially the fenders, lowered front or rear bumpers) mounted which cause the damages during the ramp crossings.

Motorcycles must be properly secured against falling over.

In this difficult period we are in, we wish all our seafarers safe and calm seas.

Navigation Risks In Narrow Channels

On 23rd of March 2021, one of the largest container ships ever built, EVER GIVEN, had run aground at marker 151 km during Suez Canal transit and caused a delay and cost at a level effecting to global trade. She has lodged in the channel against both banks of the canal due to sandstorm and gust wind exceeding 40 knots in the early morning on March 23.

It is estimated that the costs to global trade is about $400 million for hour, based on the approximate value of goods that move through every day, according to Lloyd's List. The vessel is being held by Suez Canal Authority at Great Bitter Lake and a fine with an amount of 916 million USD was imposed against the vessel.

On the opportunity of this incident that actually interrupted world trade, we would like to brief about the risks of navigation in narrow channels and straits which are located at different parts of the world and enables reducing the costs of sea trade by shortening the sea trade routes.

Factors to be Considered in Narrow Channel Navigation:

- Traffic Density: During transiting a narrow channel, the dense traffic is obviously should be expected much more than that in open seas. Eventually, this will bring higher risk of collision particularly in confined waters with relatively sizeable vessels. During entire transit, utmost attention against the vessels in the vicinity has to be drawn by Masters, navigating officers and lookouts.

- Navigation and Conning Practices: As practically as possible, all available means of electronic equipment for safe navigation such as ARPA, ECDIS, AIS, echo sounder, etc. have to be in use all times. That has to be born in mind that the devices are of no use without knowledge and experience of operators. During transit, plotting at very short intervals is very important to determine exact position of the vessel as it helps in finding out the available depth, obstructions and such similar aspects while in transit.

Another challenging aspect of transiting a channel is at the points of turning, which require maximum application of navigating skill and experience in such vicinities with lesser room. The Master must also check on the right timing to initiate the turning, even though the pilot is generally familiar with local waters. The vessel should always maintain safe speed considering characteristics of the channel. Engines must be ready at all

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times for maneuver. In other words, it must be ensured that the vessel adheres to the COLREG at all times but particularly rule nos. 6 (Safe Speed) and 9 (Narrow Channels) while transiting a narrow channel for the safety of vessel as well as to avoid any legal implications, in case an adverse situation arises.

- Communication: Another best practice to be implemented to avoid any misfortune during transiting a narrow channel is to have a crystal-clear communication with the Vessel Traffic Services (VTS) as they have full of knowledge and clear idea on all vessels transiting the channel. Obeying their instructions and meet the requirements will ensure a smooth transiting operation. Likewise, bridge-to-bridge communication has also vital importance to clarify and understand intention of surrounding vessels, particularly those stand to pose a danger to the safe transit of your own vessel.

Apart from external communication with VTS and other vessels in the vicinity, communication between Master / navigating officer and pilot must be loud and clear all times. Any language barrier, lack of communication or misunderstanding may easily conclude with an incident.

- Environmental Factors: Local currents in the channel must always be taken into account as the vessel's precise positioning is greatly deviated by effect of current. A head current, flowing against the vessel's course causes reducing the vessel's speed but, in most cases, enables better steering. On the contrary, a following current on the other hand might bring in lack of steering. Such critical points ought to be kept in judgement while transiting a narrow passage.

The wind forces affect vessels both during sailing conditions and berthing operations. In general, the vessels with larger windage areas such as cruise ships, container carriers etc. is effected with large side forces and large yawing moment. Therefore, wind force and direction has always to be taken account particularly while transiting of such vessels.

Besides, there are also some hydrodynamic phenomenas such as, bank effect, suction and squat. Simply, bank effect and suction are encountered when transiting in close proximity to a bank, especially when the depth isn't sufficient and the vessel is relatively sizeable. Combination of these effects cause the vessel's bow to move away from the bank and the stern to move towards it. Squat also cause decreasing the vessel's aft draft while navigating with higher speed, correspondingly may cause errors in maneuvering which can lead to grounding or collision.

Although the pilot on board is (supposedly) well aware of the local conditions, the vessels are the ones that must bear the responsibility along with the pilot to ensure such effects do not jeopardize safe navigation in the channel.

New directive on incentive for aged Cargo vessel owners and the issue of insurance

Latest legislation on governmental incentive for replacement of aged cargo vessels with newly-built ones which was drafted by Turkish Ministry of Transport and Infrastructure has been published in Official Gazette on 28.04.2021and since then this issue has been a hot topic which is being discussed by various actors of Turkish maritime sector.

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Having graduated from Istanbul Bilgi University, Faculty of Law in 2008, she completed her one year legal training at Nsn Law Firm which is specialized on commercial and maritime law and qualified as lawyer of Istanbul Bar. She moved to The United Kingdom for her post graduate education and obtained her LLM degree in International Commercial Law at Kingston University, London by writing her thesis on e-bill of ladings and worked at Nsn Law Firm as attorney in her return, being active in litigation of various commercial disputes. She has joined Türk P&I as claims executive in 2016.

According to new legislation, The Turkish Ministry of Transport and Infrastructure shall provide financial support to shipowners whose vessel was 20 years and over, as well as suitable to be turning into scrap and let these owners built a new vessel through this governmental aid. As per the wording of said legislation, the government aims to establish "Sea-environment protecting, effective, safe and sustainable transport within the cabottage, as well as in international waters. The type of vessels which are subject to this regulation are the liquid bulk cargo, solid bulk cargo, container, general cargo (mixed cargo) or special purpose classes of ships, weighing 1,000 GT or more. Moreover, the regulation also stipulates that the newly constructed vessel must either be under National Ship Registry or the Turkish International Ship Registry. Further to this, the vessel must be operated under Turkish flag for five years from the date of registration. The new vessel which will be built in Turkey according to this law, also cannot be sold, transferred or rented for operation under another flag. The legislation additionally mandates the domestic contribution rate of %50 for the construction to be at least 50 percent, including labor so as to enliven the local economy in this manner.

As per this regulation, the shipowner (who is referred as the beneficiary in the content of law) is obliged to present three types of insurance policies to the authorities; i) The first one is to cover against various construction risks listed in the Regulation, such as damages caused by inaccurate design or failures in the process of launching. ii) The second form of cover will be a typical hull and machinery cover which will be valid for five years and the annually renewed policies will be submitted to the authorities. iii) The third and quite arguable type of insurance policy which the shipowner is obliged to submit is a P&I (Protection and Indemnity) policy which covers the maritime claims set in the article 1352 of Turkish Commercial Code. It should be noted that the referred cover is much more comprehensive than the existing ones in the global maritime practice of decades, thus in order

to make this regulation actually work, the cover stipulated in the new law must be narrowed down to a content which is matching with the prevalent protection indemnity cover. Another option for serving the purpose of this legislation would be underwriters 'design of new product/type of cover in this regard. We will all see what tomorrow brings in respect thereof. In any case, the fact that our government has taken a step towards to rejuvenation of commercial fleets should be regarded as a pleasing development in terms of Turkish maritime trade.

Neptune Declaration

Even though the volume of maritime trade did not encounter same harrowing drops in certain areas of industry in wake of COVID-19, the human factor in sustaining this primary method of moving goods around the globe deservers a closer look.

This obviously means the seafarers, who have remained instrumental in ensuring the ships have continued to trade safe and sound even in most difficult situations, both in course of pre-COVID and COVID eras.

For many seafarers, the pandemic only meant their working conditions have degraded from difficult to humanely impossible.

One of primary indications of the pandemic for seafarers was the crew change crisis, which has resulted in around 400,000 seafarers stranded on ships because of coronavirus-related travel bans.

Local authorities, who are concerned about further possible spread of pandemic due to seafarers, have taken steps prevent disembarkation of crew, and crew changes were heavily curtailed with restrictions enabled by national authorities with aim to prevent the spread of COVID-19.

This has made impossible for many seafarers to return to their homes after completion of their contracts. Even where seafarers were able to depart ships, lack of meaningful ability to travel due to disruption in air travel meant the crew members were stranded for prolonged periods.

This means that the seafarers, who are primary human factor and drivers of the maritime trade, may possibly face threats to their physical and mental health due to uncertain periods of being stuck at ships of their original employment.

Unfortunately many seafarers are already employed under hardly ideal conditions, with their shifts sometimes extending to seven days of work a week and twelve hour shifts a day. Such grueling work for duration of months as stipulated in their contracts also mean it is not only the seafarers' health that is at risk, but third parties and environment who may in wake of potential incidents which may be contributed by overworked seafarers.

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Following his graduation from Istanbul Technical University with a degree in Mathematics Engineering, Umut started his marine risks insurance career in 2005 at Anadolu Insurance Company. He later joined Aon ve Omni as an insurance and reinsurance broker. In 2014 he took the position as Underwriter of Turkish P&I. Umut's responsibilities include establishment of Company's risk and business acceptance criteria, review and guidance of rating practices and application of these practices to both prospect busines and portfolio, and ensuring smooth and continuous run of the Company's reinsurance treaty programmes. His articles on various insurance related topics continue to be published in maritime and insurance sector periodicals.

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Working at sea beyond their contracted hours can result in fatigue, which increases the risk of accidents on board, maritime incidents and environmental disasters.

In order to allay these dangers to seafarers' wellbeing and the wider maritime industry, more than 800 companies and organizations have came together to declare the Neptune Declaration on Seafarer Wellbeing and Crew Change. The Declaration focuses on four primary areas as follows.

- Recognize seafarers as key workers and give them priority access to COVID-19 vaccines
- Establish and implement gold standard health protocols based on existing best practice
- Increase collaboration between ship operators and charterers to facilitate crew changes
- Ensure air connectivity between key maritime hubs for seafarers

Turk P&I is pleased to count itself among the signatories of Neptune Declaration.

For Safe Boating...

We've listed a few of the most common sort of damages below, with some advices on how to stay safe and avoid them while cruising on those hot summer days. Your yacht is your most expensive investment and our advices may help you to protect your savings and to have a pleasant holiday without any problems during your fun time at sea.

The risks we will discuss below can also help to make sure that you have the proper insurance coverage to protect your yacht.

Fire

Although fire is among the less common type of yacht claims, they can result in the total loss of a yacht. We hope you never encounter such a nightmare.

The risk of fire tends to increase in direct proportion to the age of the yacht. According to our experience, fire damage can commonly be caused by faulty wiring, corrosion, problems during fuelling, and aging of the hoses etc.

Add the periodic inspection of firefighting equipment to your list of things to be done before each sailing. Thoroughly inspect your fuel tank, all hoses, and connections on a regular basis and, if necessary, engage technical experts for these tasks. Regular checks of the fuel system are very important. Old fuel tanks, circuits and connections can cause leaks due to corrosion, resulting in fire.

In addition to a problem with your yacht, it is possible that you will be affected by a fire that may occur on another yacht docked inside the marina. For such cases, you should get information about the mooring distance of the yachts in the marina, the fire response speed and capacity

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of the marina beforehand. Also, it is very important to pay attention to the classification of the marina, especially in terms of damages caused by bad weather conditions, which we will talk about in the next section. In addition, carefully review the liabilities section when signing the contract, you will make with the marina.

Bad Weather Conditions

Global warming leads to an increase in extreme weather events. To give an example from our country, the events that took place in Ayvalık last May and in different parts of our country during the winter season before, with different intensities, caused material damage that cannot be ignored. Although it was formed because of tectonic movement, the small-scale tsunami that occurred after the Izmir earthquake can be counted among these natural events.

Make sure your yacht is properly secured at the boatyard or marina so that it does not slide or rock due to the waves. This will help to prevent your yacht from repeatedly hitting the dock or shore. You can consider using a boat lift or suspension system so that your yacht is less exposed to heavy waves and wind, especially during heavy storms.

Always be aware of the weather conditions and place additional bumpers at the points of your yacht in contact with other yachts and the quay during heavy weather times for protection against friction.

Always check the weather forecast before sailing. Sometimes a day that starts out sunny can quickly turn into a dark afternoon storm. If a sudden increase in wind and choppy waters occurs, this may be a sign of an approaching storm and get your boat back to shore as soon as possible and tie it securely to its mooring.

Grounding & Collision with Underwater Object

Contact with the seabed is one of the most common types of damage. You may not encounter this risk on the routes you follow constantly, but for a new destination, make sure your captain knows the route to be followed. If it is a route not taken before, consult with local boat owners and captains who know the area. If possible, your captain can make a preliminary examination with a smaller boat to get a better sense of the area. There may be many obstacles or incorrectly marked channels that may harm your yacht on an unfamiliar route, and you should consider taking a different route if it is not possible to obtain a pre information. Make sure your insurance policy covers the geographical areas you intend to travel to.

Floating debris may occur in the sea after severe storms and weather conditions, so do not go out to sea immediately after such weather and let the debris make their way out to sea.

Collision with Another Boat

The most common incidents of collision occur with jet skis and motorboats due to their speed and often hiding in blind spots.

In case of poor visibility while cruising, slow down and check that your navigation lights are operational and not obstructed by other objects on your yacht. Have at least one flare, navigation light, a sound-generating device (such as a whistle, horn, or siren), a first aid kit, anchor and a life jacket for each person on board.

Thievery

Fortunately, there are several precautions that can be taken to prevent theft of your yacht and/or utility boats. You can set up a security alarm on your yacht, just like at home. You can install a camera system in important areas of your boat and that you keep and store camera footage on a regular basis.

Take care to keep your yacht in marinas / dockyards, where strict security measures are taken and regularly controlled 7/24.

Fortunately, we do not encounter the theft of yachts often, more commonly we encounter the theft of boats, pedalos, navigation systems, security equipment. To ensure full protection against loss of property, we strongly recommend that you create a complete inventory and ingredient list of the goods on your yacht and forward it to your insurance agent, along with photographs, before signing the policy.

Machinery Damages

In general, the most effective method of preventing machinery damage is to carry out a regular maintenance.

Before and after each trip, also at regular intervals;

- Check the oil filters regularly.
- Check the engine oil level.
- Make sure that the fuel hoses are not damaged.
- Check the propeller and engine belts for wear and replace them if necessary.
- Check if the water intake is clean and free of debris.
- Make sure that propeller is free of caught fishing line etc.
- Check the fuel tank vent.
- Check that the bilge pump hoses are clear of debris that could cause clogging.
- Check hydraulic fluid and coolant levels.

Aging and wear of machinery parts are also common situations and damages caused by normal wear and tear are often excluded under a yacht policy.

Before you go on a long trip, it will be easier for you to use a readily prepared check list.

Injury

Your friends and family, whom you will enjoy for a wonderful trip on your yacht, may not be as experienced as you are against possible dangers. The slippery deck surface can cause to lose balance, trips and falls, and in the event of injury, you may be responsible for medical costs. It is important to keep the deck dry all the time, to keep materials such as lifebuoys and life jackets well-maintained and ready for use, and to have a first aid kit with sufficient supplies. As a yacht owner, taking a first aid course can also save lives.

Do not serve hot drinks and not allow using cutlery while the yacht is on the road (during the trip). Encourage the passengers to sit towards the back of the yacht instead of the bow while underway.

We hope you will not encounter any problems, but do not forget to inform your insurance agent in time if an

incident occurs. Try to gather as much evidence as you can about the incident until the technical experts appointed by the insurer arrive. For example, if your yacht contacted with a boat, do not forget to take photos of the damaged area on the other boat, take a video recording, get the contact and insurance information of the other party and the identity information of the boat owner. Your insurer will assist you with the appropriate repair of the damage with its expert team.

We wish you a pleasant journey with your loved ones away from problems.

Fair winds and following seas.

AIS-Automatic Identification System and AIS Switch-Off Clause

AIS, regulated by SOLAS (Safety of Life at Sea) Chapter V guidelines, is an automatic tracking system developed for the exchange of navigational information between AIS-equipped vessels and terminals.

The information transmitted by vessels are MMSI (Maritime Mobile Service Identity) and IMO (International Maritime Organization) number, call sign, speed, position, etc.

IMO requirement of AIS installation to all vessels (with some exclusions) became effective as from 2004.

AIS assists in many ways to shipping community. While helping navigation and safety is the key benefit of AIS, such as assisting collision prevention or locating a vessel in case of emergency; AIS also helps governments to control marine traffic and security of shores. For shipowners AIS assists in tracking of their vessels; for authorities and insurers AIS assists in claims analysis; for statisticians AIS assists analysis of world commerce, etc.

As an aid to navigational safety, AIS should always be kept 'on' and data sharing should be continuous.

It can only be switched off in exceptional situations. A ship's master should believe that his vessel or crew is in an immediate danger and switching off AIS will assist in avoiding the treat can be considered an exceptional situation. IMO Resolution A.1106 (29) provides detailed guideline regarding AIS.

However, it has been observed that AIS is switched off or manipulated to avoid detection for performing illegal activities, ship to ship transfers to avoid sanctions in particular. In order to prevent or limit these activities U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) published a recommendation that all charter parties should contain an AIS "switch off" clause to allow termination of agreement in case the AIS is used/switched off against IMO/SOLAS guidelines.

In order to comply with OFAC recommendation, AIS switch off clause is inserted to Charter Parties. However due to lack of a standard wording, each party of the contract try to insert a wording favoring their interest. This led to confusion, unfair terminations and lawsuits, that is not in line with the purpose of the recommendation.

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Halil graduated from Darussafaka High School in 1995 and Maritime Academy of Istanbul Technical University in 1999. He started his marine career at Zodiac Shipping, London. He completed his MBA degree in Risk Management and Insurance at Georgia State University in USA. Before joining Türk P&I as Assistant Manager, he worked as hull and cargo underwriter for Zurich insurance company and later spent 9 years at Omni Broker House as insurance and reinsurance broker. He presented seminars in Risk Management and Marine Insurance, including Exposhipping and his articles are published in local and internetional media.

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BIMCO (Baltic and International Maritime Council) to assist its members and to bring a standard to wordings used, published "AIS Switch-Off Clause" to be used in charter parties. The wording is developed by the assistance of both shipowners, charterers, P&I Clubs and legal experts. The wording can be obtained from BIMCO web site. Both the shipowners and charterers have obligations under the Clause and arbitrary terminations of charter parties is prevented.

Fire safety on boats

You can reduce the risk of fire on your boat by following some simple safety steps. You should know what to do and be prepared if there is a fire on board when you are at sea or docked at the marina.

Common causes of fire on boats can be listed as follows;

- Smoking in closed sections on board
- Stoves and/or ovens left on
- Build-up of butane or propane gas in the bilges
- Wrong wiring
- Gasoline/petrol vapor build-up in the engine bay
- Incorrect stowage of flammable paints and solvents

We may list the precautions which can be taken for fires that may arise from such reasons;

Cigarette

It should be ensured that the cigarette butts thrown into the garbage cans are extinguished and smoking should be avoided inside the boat, especially in the cabins.

Installing a smoke alarm

A smoke alarm can alert you to the risk of fire on board and give you time to escape or alert the emergency services.

Installing Carbon Monoxide (CO) and gas detectors

A CO detector will warn you of toxic carbon monoxide on board. If you have any fuel and/or gas burning device, an engine or a generator on board, a suitable audible carbon monoxide alarm can be fitted for additional security.

If you are using a gas cylinder on board: install a gas detection system if possible. When replacing gas cylinders, make sure all cylinder valves are closed before disconnecting. Frequently ventilate areas where such cylinders are stored, such as closets, enclosed spaces, and bilges to avoid potential build-up of butane or propane gas.

Cooking safety

Never leave it unattended while you cook your meals - in case you needto leave, turn off your stove or oven until you return.

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Graduated from Maritime Academy of ITU in 1991. He served as a deck officer and Chief Mate at Zodiac Maritime, London on various size of OBO vessels, Bulk Carriers and tankers up to 1998. He worked as a Chief Mate and Master Mariner on container vessels at sea and respectively as Marine Superintendent and Marine Insurence Manager at Office in Arkas Holding up to end of 2017. As of February 2018, he joined Türk P&I family as Claims Group Manager.

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Electrical safety

When purchasing electrical products and heaters, always be sure these are marine type. Prefer a trained marine electrician to install, maintain and/or cable electrical components on board, be careful not to overload your adapters - use one plug per socket, do not use multiple plugs or multiplexers, and be sure to use the correct fuse or circuit breaker to avoid overheating.

It should be noted that the battery terminals are connected correctly and that there are no conductors around that may cause the terminals to contact. The liquid level of the batteries should be checked regularly and they should not be allowed to overheat due to overcharging.

Fuel/oil fires

Especially in hot weather, when operating a boat engine, you should ventilate the engine compartment before starting and/or after any maintenance. You should also regularly check the fuel circuits and tanks for any cracks or leaks, as fuel vapors accumulating in the compartment or fuel leaking from the circuits can ignite with a spark from the battery terminals and/or starter motor. Oily cloths or rags should not be left in the engine compartment, the bilge should be kept clean at all times and checked regularly. Before refueling, stop the engine and make sure that all flammable devices are turned off.

Paint and solvent fires

If materials such as paint and solvent have to be kept on board, it should be ensured that their lids are completely closed, well stowed and stored in an spacious area.

If there is a fire on board, the important points to consider are:

In the marina;

- Alert everyone on board.
- If safe, cut off gas, fuel or electricity sources depending on where the fire started.
- Firefight with the nearest fire extinguisher or fire blanket according to the starting point of the fire.
- If you cannot see the burning part due to smoke, cut off the contact of the smoked part with the air by closing all relevant entrances and exits.
- If possible, cool down fire with sea water from outside.
- Never use water in electric and oil/fuel fires other than ordinary fires.
- Make sure all crew are wearing life jackets.
- Call the Fire and Rescue Service.
- Warn neighboring crafts.

In the sea;

- Alert everyone on board.
- Only firefight if it's safe.
- If safe, cut off gas, fuel or electricity sources depending on where the fire started.
- Firefight with the nearest fire extinguisher or fire blanket according to the starting point of the fire.

- If you cannot see the burning part due to smoke, cut off the contact of the smoked part with the air by closing all relevant entrances and exits.
- If possible, cool with sea water from outside.
- Never use water in electric and oil/fuel fires other than ordinary fires.
- If possible throw the fire source overboard.
- If possible, adjust your course and speed to the nearest land.
- Never use water in electric and oil/fuel fires other than ordinary fires.
- If possible throw the fire source overboard.
- If possible, adjust your course and speed to the nearest land.
- Contact the Coast Guard/Fire and Rescue Services and provide your location.
- Make sure all crew are wearing life jackets.
- Prepare an emergency kit (flares, VHF radio, compass) and life raft.
- Do not open the engine panel, if possible cut off the contact of the burned part with the air.

According to the regulations;

- In boats with one or more engines and a fixed fuel tank; There should be 1, 6 kg portable fire extinguisher per machine.
- Boats without cabins, with outboard engines and with portable fuel tanks must have 1, 2 kg portable fire extinguisher.
- 1 x 2 kg portable fire extinguisher should be in the cabin in the boats with cabins.
- Boats with a galley must have a 2 kg portable fire extinguisher.
- In commercial boats, a total of 4, 6 kg. Portable fire extinguisher should be available in engine room, galley, messroom and bridge.
- Fire extinguishers must have certificates and must not have expired.
- The fire blanket should be kept in a handy place in the galley, close to the stove.

Have a nice trip…

Providing of Missing Records and Unpresented Documents During P&I and H&M Condition Surveys, by the Insureds

As TPI Insurance, we have carried out P&I and H&M Condition Surveys of more than 900 ships in the 7,5 years since our establishment. With this number we have reached and the experience we have gained, we can perform numerical analyzes by classifying the deficiencies we encountered during these surveys.

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Upon graduation from Maritime Academy in 1990, Capt. Pamuk joined Zihni Shipping and worked more than 18 years as Master Mariner on board in various size of bulk carriers/tankers for 12 years, and as ISM Manager/Ship Operations Manager/General Manager at shore management for 6 years, respectively. In 2008, he joined as a Marine Surveyor to Kalimbassieris Maritime which is being acted as marine consultants and P&I correspondents of IG Clubs. In addition to overseeing P&I claims and correspondency for Clubs along with his regular loss prevention/damage related surveys, he also attended on various casualties in Turkey, assisted to salvage/towage issues, investigated pollutions and human injuries/loss of life. Then he acted as Head of P&I Department in same company from 2009 until his fall in with Türk P&I Sigorta family as Technical Manager, in the beginning of 2014.

As a result of these analyzes, we have opportunity to reconsider our criteria in terms of underwriting, loss prevention and claims handling, and we also try to inform both our policyholders and surveyors about the deficiencies in practice.

However, as the deficiencies found/observed during these surveys, the tests/inspections that could not be carried out for various reasons during the surveys, as well as the reports/documents that could not be submitted to the surveyors by the ship's crew and/or the management have an important place.

In this article, we will endeavor to explain our procedures regarding these tests/inspections that can be carried out by the ship's crew at the first opportunity after the survey, as well as to share our expectations regarding incomplete/missing reports and documentation with our current/potential policyholders.

1. *Physical Tests and Examinations*

Hatch Cover Ultrasonic Tightness Tests:

As it is known, if this test, which is mainly carried out on dry cargo ships and ro-ro ships to see the tightness level of hatch covers, cannot be performed for any reason (except for ships specifically designed using tarpaulins for hatch covers), on the ship's policy guarantee, "cargo wetness reservation" is applied. This reservation that restricts the content of the guarantee is placed as “that the possible damages that may arise from hatch covers will not be under our coverage.

Since this reservation cannot be removed with presenting of any document statement, a second/follow up hatch cover US tightness test to be performed by a survey company approved by the insurer is required.

Internal Examinations of Cargo Holds/Tanks:

In case the internal examinations of the cargo holds/tanks cannot be made for the reason that the ship's holds/tanks being loaded, hatch covers not being able to be opened due to weather conditions or holds/tanks are not being gas-free, indicative photographs should be taken from the cargo holds by the ship's crew to reflect condition of the internal members (hatch coamings, frames, brackets, sounding pipes along with their protection covers, bilges, bilge covers, tank top plating, movable bulkheads etc). In this way, necessary evaluations can be made if approximately 18-20 pictures are shared with us. In case, where gas-freeing is not possible depending on the ship type, latest class reports showing that these cargo tanks have been recently surveyed (preferably within the last 2.5 years and/or during renewal/intermediate surveys) by class surveyors may be sufficient.

Cargo Hold Bilge Wells Suction Tests:

In case this test cannot be performed due to environmental pollution concerns by the Master or the actual cargo condition in cargo holds, a video 1-2 minutes of a video recording per bilge to be taken from all bilge wells of the holds may be sufficient. In this video, it should be seen that the bilge well in question is completely full of sea water, and then it should be observed that the suction operation is completed and the water in the well is emptied.

Ballast Tank Internal Examinations:

In case the tanks cannot be examined due to the actual ballast condition, approximately 6-7 pictures per tank from a minimum of 3 ballast tanks (one from the Fore Peak Tank and the others preferably from two bottom ballast tanks) are taken by ship`s crew at the first opportunity.

In addition, the submission of the "Class Status Report", which includes information on the internal examinations of the ballast tanks' condition by the ship's classification society (preferably carried out within the last 2.5 years and/or during renewal/intermediate surveys), can also help to have information about the condition of the tanks, for necessary evaluation of the insurers.

Ballast Tank Pressure Tests:

In case this test cannot be performed due to the actual ballast condition or the risk of environmental pollution, it may be sufficient to send a 1–2-minute video recording (preferably taken from the bridge or on top of the hatch covers for an overview) as soon as possible by the ship's crew. It is important to see in this video that all the tanks are being pressurized and overflowed through the air ventilation heads.

In addition to this video, a copy of the page containing the note written by the Master on the Deck Log Book of the day of the test, stating that "all ballast tanks pressure tests have been carried out and there are no leaks to the adjacent compartments (to the ballast tanks, to the cargo holds or to the overboard)" should be sent to the insurer.

Emergency Fire Pump Tests:

In case the test cannot be performed due to a technical failure such as insufficient suction, pressure, or environmental pollution concerns, preferably a 1–2-minute video recording should be sent as soon as possible. In this video, it is important that the fire pump, the pump gauges, the hoses connected to the line and finally the water outlet with sufficient pressure can be seen through the nozzle, respectively.

2. Missing Reports and Documents

Latest Class Survey Status Report:

Although the class certificates of the classed ships are still valid, it is important to provide the "Latest Class Survey Status Report", which shows the ship's last class survey dates, future survey date ranges, and above all, if any class

condition or recommendations has been imposed after the last class survey. It is sufficient for this report to be a report prepared after the last survey among the annual/interim/renewal surveys of the ship.

Ultrasonic Thickness Measurement Report:

It is difficult to obtain these measurement report, which are carried out during the interim and renewal survey periods of the ship. Failure to submit both the last class status report and the unapproved thickness measurement report at the same time (by class authority) creates serious problems for the continuation of the coverage.

For this reason, the "class approved full copy" of this report, which could not be obtained during the survey, must be sent to us in PDF format. It is not sufficient to send only the cover pages instead of the entire document.

Oil Analysis Reports for Main and Auxiliary Engines:

Analysis of lubricant and hydraulic oils used in equipment such as auxiliary engines, steering gear, stern tube, hydraulic equipment and particularly in the main engine, at certain intervals (preferably within 6 months or at the intervals specified in the Safety Management System manual) should be carried out.

Although it is thought that the newly changed oils in the system does not require an analysis report time to time by our policyholders, it should not be forgotten that the main purpose of these analyzes is to understand whether the oils circulate properly in the system and whether they are subject to contamination.

Main Engine Performance Report:

This document, which is requested within the scope of Hull and Machinery Condition Surveys, especially during the repair and shipyard periods of the ship, is a requested document to provide information about the performance datas of the main engine such as consumption, temperatures, pressures. in different sea/weather conditions at different RPMs Same can be prepared and delivered to the insurance company as soon as possible following the survey.

Main and Auxiliary Engine Overhauling Reports:

These reports, which show the works carried out by shore-based companies/service providers and sometimes by ship`s crew, especially during the shipyard/repair periods of the ships, provide important references about the latest condition of the equipment and whether the necessary maintenance works are carried out. These reports should be sent to us in a way that includes the most detailed information possible.

Various Measurement Reports:

It is important for the insurer to provide measurement reports such as ME crankshaft deflection, cylinder liner, piston ring, crank pin, megger test measurements, most of which are carried out after shipyard/repair periods, as soon as possible, although not during the surveys. This information is especially important in terms of seeing possible deflections in the mentioned machinery parts and understanding whether these deflections and possible repairs (like grinding) are within the limits acceptable by the class society and/or maker companies.

As a result, it is important to carry out these corrective actions, which we have tried to summarize above, to complete the appropriate documents/images/records and to share them with our company.

When this detailed information is used correctly, it will undoubtedly be an important guide in terms of loss prevention for both the ship`s crew, management, and the insurer in terms of life and ship`s safety.

"Feeling blues" at the sea and its impact on the crew claims

Maritime is one of the most demanding professions in the world. Apart from the difficulties of unexpected events that may be encountered during the sea adventure, the psychological disorders caused by the working conditions that require seafarers to be isolated from social life and their loved ones for months are also among the reasons why maritime is not easy.

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As the Turkish P&I claims team, we witness that the effects of the changes in the psychological state of the crew working under difficult conditions on personnel-sourced claims are at a substantial level. In vessels, which are the workplace of the seafarer, deterioration in mental health; causes undesirable results due to lack of attention, inadequate performance, inability to do the job, disappearance for a long time, being prone to sudden outbursts, irregular behaviors and temper tantrums. Increasing competition, stress and workload also increases the human factor in accidents together with the acceleration of operational processes and shortening periods of port stays. For instance, accident statistics on cargo ships show that 80% of marine accidents are caused by human. (Muslu, 2020). Only human-related accidents cost the shipping industry approximately $541 million annually (Etman and Halawa, 2007).

According to the data of "The Mental Health of Seafarers International Maritime Health", seafarer suicides have increased over the recent years.

In addition, depression, anxiety, panic disorder, post-traumatic stress disorder, anger control problems, alcohol addiction, substance abuse, impulsivity, obsessions, suicidal thoughts and actions have increased. The Covid 19 also had a negative impact on the psychological state of seafarers. The 14-day quarantine period, the problems experienced in the supply chains etc., the delays in crew change plans, the inability to carry out the planned practical trainings and certifications, the crew having to work on the vessel for long periods without breaks can be given as examples. According to The International Seafarers' Welfare and Assistance Network (ISWAN), which is a charity working for the welfare of seafarers around the world, the number of seafarers calling for help has increased significantly in the last 4 years. For all these reasons, it is crucial to support the mental

health of crew and to proceed with preventive programs.

In the light of the above developments, a new field of psychology, i.e. "Maritime Psychology", has started to be given more importance in international organizations such as IMO and EMSA who tend to work more within this frame. Being amongst the most tangible steps for protection of seaman, The MLC Convention (The Maritime Labor Convention, 2006 (MLC, 2006) not only enforced regulations regarding the labor rights, but also contained many sections to improve their working conditions, and the well-being .

Maritime Psychology is a discipline that examines individuals working in the maritime industry as well as the impact of the marine environment on its employees. The specific professionality of this field is coping effectively with the physical and psychological stress factors specific to the maritime field, placement and development of human resources with scientific methods, reducing the risks of human-induced accidents and deaths at sea, supporting the psychological well-being of the crew, reducing costs and managing risks. One of its primary goals is to make the ship environment more peaceful and to ensure that seafarers work in sustainable conditions.

In this context, a company called "Marine Mental Management" was founded by Turkish psychologists and seafarers in our country which provides abovementioned maritime psychology services. During the recruitment process, the company provides candidates with psychological evaluations through tests and interviews to assess whether the candidate was suitable for the company, the position and the common challenges in the maritime business.

In addition, trainings such as anger management, effective leadership, crisis management, psychological first aid are provided to the crew by psychologists. Another service being rendered is interim psychological health checks of the crew during the contract period which would be followed by a psychotherapy support in case of need, provided by psychologists and psychiatrists.

As Turk P&I, we attach a special importance to preventive measures and therefore through this article, we intended to bring the aforementioned company to the attention of our readers, as a recommendation.

We wish everyone safe voyage.

References:

Rathi, S. (4 Mart 2017). The business case for prioritising employee mental health. [Blog post]. Retrieved from https://blogs.lse.ac.uk/management/2017/05/04/the-business-case-for-prioritising-employee-mental-health/)

Etman, E., Halawa, A. (2007). Safety Culture, The Cure for Human Error: A Critique, World Maritime Excellence 8. IAMU Annual General Assembly.

Muslu, A. (2020). Denizcilik işletmelerinde gemi adamlarının bireysel iyi oluşu (1). Deniz Ticareti, 56-59.

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