



Insight Article

The collision aspects of P&I – Comparison between Scandinavian and English conditions

Liability for collision with other vessels is in Scandinavia traditionally closely linked to Hull and Machinery insurance. Hull Insurance was introduced first and collision liability which was a potentially big risk for which owners needed protection followed. In Norway, the set-up whereby the claims are handled by a leading Hull Underwriter who acts on behalf of all the co-underwriters, has functioned well over the years.

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Gard as a P&I Club traditionally covered Norwegian vessels with Hull and Machinery Insurance under the conditions of the Norwegian Plan. In the seventies, Gard started to insure vessels with Hull Insurance on foreign terms. The English conditions, ITC Hull, only cover 3/4 collision liability and the cover is limited to damage to and property on board the other vessel.

Gard provides P&I cover for vessels which are insured on standard Hull conditions¹. However, should the standard Hull conditions be altered to exclude part of the cover, the owners will not automatically be covered for the part excluded under the P&I policy. There must be a specific agreement with the Club for collision liabilities and other third party liabilities, which are excluded under the Hull Insurance, to be included in the P&I policy.

In cases where Gard provides 1/4 Running Down Clause (RDC) and Fixed and Floating Objects (FFO) cover in order to complement the English Hull conditions, the Club is directly involved in claims handling in collision and FFO cases. English Hull Insurance does not operate in the same way as the Scandinavian system, which has a leading underwriter who handles the cases and acts on behalf of the other underwriters. Therefore, with 1/4 RDC covered under the P&I policy the Association has a relatively important interest in collision cases and will, in co-operation with its Members, instruct solicitors, arrange for the survey of the other colliding vessel and take the necessary steps to protect the interests of its entered vessels.

Guarantees

Exchange of guarantees, Club Letters of Undertaking, is important in order to avoid delay and costs to Members. In cases where Gard provides 1/4 RDC cover counter security for the 3/4 collision liability will be required. This could cause some problems if not agreed beforehand. Lloyd's of London underwriters do not give guarantees. With Hull Insurance placed all over the world, it may be difficult to establish a satisfactory counter security in time. When requested to provide a guarantee the Association must, in every case, consider whether the counter security offered is satisfactory. Developments in recent years have proved that it can be difficult and time consuming to collect security monies from the various underwriters. It is in an owner's interest to have carefully considered the problems he may face in this respect in the event of a collision. When GARD started to offer 4/4 RDC cover, the placing of guarantees became more simple. With 4/4 collision liability only the Club will be involved on the liability side; 100 per cent of the liability to the other vessel will be for the account of P&I, subject to deductible.

Claims handling

The standard deductible applied in a collision case, is USD 3,000. With this low limit, Gard is involved in nearly all the collisions that its Members' vessels experience. Some Members agree to a considerably higher deductible, but Gard's assistance may also be required by such Members nonetheless. Gard's Defence rules cover handling of claims for damage sustained by entered vessels if the claim is below standard deductible under the Hull Policy or a maximum of one per cent of its insured value. Under the English system all third party liabilities are dealt with by the Club and consequently reported to the Club's local correspondents. With non-Norwegian officers on board vessels entered on Norwegian Hull Conditions, Hull cases are frequently reported to the Club. The officers may not be familiar with the Scandinavian system or the operators of the vessels may have failed to inform the master of the relevant insurance cover. The local correspondents are unlikely to have sufficient information and, in most cases, will not have time to have cover confirmed by the Club. Steps to protect the vessel's interests have to be taken and, when the Club receives notification of the incident, the case will have to be referred to the owners or their Underwriters. Under the Scandinavian system it may be argued that collision and related liabilities can most effectively be dealt with by the Hull Underwriters. The Hull Underwriters will be concerned with the damage to their insured vessel and will therefore always get involved. This might be right. However, a serious collision will often result in claims for personal injury and/or death, pollution, wreck removal etc. Excess collision liability may also form part of the claim. In cases where 1/4 or 4/4 RDC cover is provided by the Club, the Club will be heavily involved. Of course it is always necessary and important to co-operate with the Hull Underwriters because of their interest in the vessel.

Meaning of collision

The Scandinavian Hull Conditions also cover contractual liability for collision with assisting harbour tugs. The English conditions do not. In addition, the definition of collision is different. The Norwegian Marine Insurance Plan (the Plan) defines collision as direct contact with the vessel and excludes use of equipment. Under the Institute Time Clause (ITC) conditions, contact by the Member's vessel's anchor with another vessel is considered a collision. Under the ITC a distinction has to be made between collision with vessels and other property, FFO. Under the Scandinavian system the Hull Insurance would cover both liability to the other vessel and to property outside the vessel. For example, a vessel collides with another vessel which in turn damages a pier. Under the Scandinavian conditions this would be a matter for the Hull Underwriters. Under ITC Hull, 3/4 RDC liability to other vessel would be for the Hull Underwriters whilst the 1/4 RDC and liability for damage to the pier would be a P&I matter.

Other hull conditions

At present, Gard has a total of about 995 entered vessels with RDC or FFO cover, 4/4 and 1/4 cover on about 855 and FFO only on about 140. Most of the vessels with only FFO are insured on American or Japanese Hull Conditions, vessels with 4/4 RDC will be insured on different Hull Conditions. Only a small number of the Norwegian flag vessels have extended their P&I cover to include collision and striking. Ultimately, it will be a question of premium; the reduction the owners might obtain from the Hull Underwriters as compared with the additional premium the P&I Club will charge.

Underwriters' co-operation

The Hull Clubs have an efficient organisation to Handle claims and Gard has co-operated well with them over the years when dealing with collision claims in cases where P&I is also involved due to personal injury, death, wreck removal, oil pollution etc. Of course, from time to time discussions and disputes arise on the so-called "border line cases". In these cases, it has to be decided whether there has been a collision according to § 194 of the Norwegian Plan or the liability is excluded since it was caused by the use of anchor, moorings or other equipment. Alternatively, the Club may face expenses or a liability as a consequence of an avoiding action. An avoiding action, or "Sue and Labour", does not fall within RDC under the English ITC, whilst under the Norwegian Plan it applies to all aspects of insurance. For instance, in a case where the risk of a collision is imminent and the other vessel runs aground or collides with a third vessel or object in order to avoid the collision, then liability to the other vessel would be considered an avoiding action. The liability would have to be compensated by the underwriters on whose part liability had been avoided. If a collision was prevented, the Norwegian Hull Underwriters would have to pay. On the other hand, if the vessel were covered in accordance with English conditions, the Club would have to pay.

Cargo

Hull insurance does not respond to liability for cargo on board the entered vessel in the case of a collision. Such liability is usually excluded under the Hague and Hague Visby-Rules and the owners of the cargo and their insurers can then only recover from the other vessel a proportion of their loss, equal to the percentage of fault of that vessel. The Collision Convention of 1910 does not allow the claimants to recover from the vessel more than the vessel's share of liability. However, the United States of America is not a party to the Convention. Under the law of the United States the owners of the two ships at fault are jointly and severally liable to claimants (other than the owner of the other ship at fault), even in respect of damage to property. In such a situation the cargo owners might be able to recover the whole of their loss from the non-carrying vessel, provided there is some degree of fault on the part of the vessel. The non-carrying vessel will then claim a proportion of the loss back from the carrying vessel. This may be avoided by the insertion of the "Both-to-Blame Collision Clause" 2 in the contract of carriage whereby cargo interests agree to reimburse the owners of the carrying vessel for such liability. The clause may not be valid in some circumstances and, if so, the amount paid will be compensated under the P&I policy. The Collision Convention provides that the colliding vessels (where both are to blame) are jointly and severally liable in respect of any death or personal injury caused by the collision and the claimants may be able to recover damages in full from either one of the vessels. Liability between the vessels is then apportioned according to the degree of fault. For a further comparison of Hull conditions see Gard News 105.

Footnotes

1. Rule 36 provides cover for damages to any other person incurred as a result of a collision with another ship to the extent that such liability is not covered under the Hull Policies, provided the policies are on standard terms.
2. It is a condition of Club cover that the Both-to-Blame Collision Clause shall be inserted in all charterparties, Bills of Lading, Waybills and other contracts containing or evidencing the contract of carriage used in international trade. The clause reads: "If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set-off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact". This clause is necessary to preserve the carrier's contractual defences and obtain indemnity from cargo carried on the Ship where a collision has occurred and US law applies.