



Modern language for a modern maritime industry

MARINE INSURANCE IS ONE OF the oldest types of insurance, dating back thousands of years to the Babylonian traders who assumed the risks of the caravan trade through loans that were repaid with interest once the goods arrived safely. The Phoenicians and the Greeks applied a similar system to their sea trading, and by the early part of the 14th century, marine insurance was widespread among Europe's maritime nations.

In London, merchants, ship owners, and underwriters met to transact business at Edward Lloyd's Coffee House, which opened in 1688 and became known not only for its coffee, but also as a source of marine insurance. By the end of the 18th century, Lloyd's was no longer a coffee house, and had become one of the first modern insurance companies.

While the maritime industry is one of the oldest known to man, the industry and the business environment in which it operates have changed. Today's marine insurance policies therefore should not read like ancient history, and their language needs to clearly detail the term of the insurance contract to be effective. Significantly, in keeping with this principle, the United Kingdom Financial Services Authority last year required the imple-

mentation of "contract certainty" on all insurance contracts.

OLD-FASHIONED LANGUAGE

Unfortunately, many marine policy forms have not adapted to changing times, leading to lengthy (and costly) debate when it comes to settling insurance claims.

To help avoid court battles, the Insurance Services Office (ISO) has frequently revised its standard general liability policy form to improve the clarity of policy language. Since 1986, the standard occurrence commercial general liability (CGL) policy has been revised seven times. In addition, ISO publishes a number of standard endorsements which are also frequently updated. ISO's forms and endorsements are available to its participating insurance companies, as are forms from the American Institute of Marine Underwriters (AIMU).

Using the guidelines from ISO and AIMU, marine underwriters have introduced one combined policy form to provide comprehensive, seamless marine and general liability (GL) coverage. This is of great importance to the marine industry because the courts have occasionally struggled to separate the coverages on issues such as contractual liability and debris removal.

A recent 2nd Circuit court case involving personal injury to a worker of a company hired to clean tank barges confirmed that a marine GL policy was indeed a marine contract and could not be separated into GL and marine components. The policy provided both CGL and Ship Repairers Legal Liability coverage and the court concluded: *"The two sections of the policy operate seamlessly to provide coverage that is primarily marine in nature ... (and) the policy is custom-built to fill the gaps that traditional marine insurance policies ... leave in maritime-industry coverage."*

TIME FOR A CHANGE

An extensive examination of marine forms in the marketplace today reveals that very few companies have incorporated current ISO CGL language into their Marine GL forms and endorsements. As a result, in the event of a claim, marine insureds may be faced with the realization that their policies did not provide the seamless coverage expected.

A prime example is the additional insured endorsement, which is frequently used to provide blanket additional insured status to other entities wherever named insureds have agreed. Previous versions of the blanket additional insured endorsement have been

interpreted by the courts as providing coverage for the sole negligence of the additional insured, even where the named insured has no culpability. Newer editions limit such coverage. Since many marine insureds are using older versions of this language, their policies may be providing much broader coverage to additional insureds than the named insured realizes or was contractually obligated to provide. These named insureds will undoubtedly be surprised to find that the marine policies for which they paid significant premiums may now be less valuable to them because the limits of liability may have been eroded by claims against such additional insureds.

This is just one example of the many changes to the ISO CGL policy that companies have failed to incorporate into marine insurance policies in the marketplace today. Other significant changes not incorporated include the treatment of mobile equipment and electronic data, the definition of advertising and personal injury, and the addition of

volunteer workers as insureds. Costly gaps in coverage or, at the very least, extensive litigation costs to determine the intent of the policy, are sure to result.

USEFUL GUIDELINES

Given the choice, it is unlikely that a company wants to have its business settled within the courtroom. Therefore, it is wise to adopt specific procedures to make sure insurance policies meet a marine business's specific needs, policy language is up to date, and there is an understanding of how claims will be handled. Marine companies can reduce their risk by:

- Taking an active part in the insurance buying process;
- Looking for terms and conditions that meet their specific needs;
- Making sure information on an insurance application or policy is accurate;
- Obtaining a complete copy of the policy and paying particular attention to any exclusions;
- Exploring possible claims scenarios and how they will be handled.

Like many courtroom battles, insurance coverage disputes can be costly and time-consuming. Fortunately, the marine industry can purchase effective insurance and take advantage of it when a claim needs to be filed, as long as they have taken the time to consider their purchasing options and carefully understand the terms of their coverage.



Jeffery Kaufmann
Chief Underwriter
Marine & Offshore Energy

Joseph Abruzzo
Underwriter, Marine & Offshore Energy

John Moy
Regional Underwriting Manager

Dennis Kane
Chief Operating Officer — Americas

Jeffery Kaufmann
Chief Underwriter
Marine & Offshore Energy

Joseph Abruzzo
Underwriter, Marine & Offshore Energy

James Thielebeule
Regional Underwriting Manager

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