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P&I INSURANCE COVER: INSURANCE OF OIL POLLUTION RISKS IN MARITIME LAW

Abstract

This article attempts to analyze the insurance of pollution risks in maritime activities. The article mainly focuses on oil pollution. This article also discusses the importance of shipowner insurance for the coverage of damages caused by pollution, focusing on shipowner's liability insurance. The shipowner's liability insurance is the basis of the oil pollution compensatory system, the role of insurance in creating a regime that provides adequate compensation to oil pollution victims and reduces the number of oil pollution incidents. The study briefly discusses the P&I Insurance, CLC Convention, and other regulatory documents in the context of oil pollution.

Keywords: *P&I clubs, "strict liability", "compulsory insurance", maritime adventure, oil pollution, CLC*

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P&I sığorta əlavəsi: dəniz hüququnda neft çirklənməsi riskinin sığortası

Xülasə

Bu məqalə dəniz fəaliyyətlərində çirklənmə risklərinin sığortasını təhlil etməyə çalışır. Məqalədə əsasən neftlə çirklənməyə diqqət yetirilir. Bu məqalədə həmçinin gəmi sahibinin məsuliyyətinin sığortasına diqqət yetirilməklə, çirklənmə nəticəsində dəyən zərərin ödənilməsi üçün gəmi sahibi sığortasının əhəmiyyətindən bəhs edilir. Gəmi sahibinin məsuliyyətinin sığortası neftlə çirklənmənin kompensasiya sisteminin əsasını təşkil edir, neftlə çirklənmənin qurbanlarına adekvat kompensasiya verilməsini təmin edən və neftlə çirklənmə hadisələrinin sayını azaldan rejimin yaradılmasında sığortanın rolunu təşkil edir. Tədqiqat neftlə çirklənmə kontekstində P&I Insurance, CLC Konvensiyası və digər normativ sənədləri qısa şəkildə müzakirə edir.

Açar sözlər: *P&I klubları, "ciddi məsuliyyət", "icbari sığorta", dəniz macərası, neftlə çirklənmə, CLC*

Introduction

After the Second World War not only the public interest in the environment expanded in general. Coastal states had concerns about increasing ship-source marine pollution and oil spills commenced increasing as well (1). Some of the occurred events with tankers demonstrated that oil spills in an environmentally or economically sensitive area could cause irrevocable harm (Gold, 1998: 2).

Oil pollution of the seas emerging from the shipping activity, offshore oil production. The main reason of oil pollution of the seas is shipping. Usually, shipping is deemed to be "a polluting industry". Spilled oil is very contaminated. It can be lethal to adult animals and also may create physiological or behavioral disruptions in species. Oil spills also cause death because they influence normal feeding, respiration, and movement functions not only of ocean wildlife but also of marine life at the seashore. Particularly oil spills are dangerous for birds. An oil spill can lead sometimes to the poisoning of fish and shellfish. Sometimes one can feel the consequences of the oil spills through the oily taste or smell of the seafood. Oil spills are harmful not only to animals,

plants and corals, fisheries, but also affects human activity in the area of fisheries through damaging fishing boats, fishing gear, floating fishing equipment (1).

During the past fifty years environment has suffered oil pollution in case of terrible oil spills in history. The accidents of the Torrey Canyon (March 1967), the Exxon Valdez in Alaska (1989), and the Deepwater Horizon (April 2010) are illustrative examples. Early examples of marine oil pollution led to the adoption of several international conventions (for example CLC and MARPOL conventions). These conventions were implemented in national legislation through various statutes, most of which are enforced through fines (The Geneva Papers on Risk and Insurance, 1991: 58).

P&I Insurance

In many cases, pollution risks and fines are insured by P&I Insurance. This marine liability insurance type, also known as "Protection and Indemnity Insurance" or "Club Insurance". Liability insurance is an insurance type that protects against financial losses of the policy owner due to the damages to both property and health of the third parties that are damaged because of the incident caused by the insured (Keceli, 2012: 24). First P&I clubs appeared in England when protection indemnity clubs are viewed. And, the most developed country in the world in this field is England. But, P&I insurance in other countries developed very much later than it did in England.

A Protection and Indemnity club is a non-governmental, non-profitable association. These clubs based on mutual or cooperative association of marine insurance providers to its members. The members of P&I club consist of ship owners, operators, charterers, and seafarers under the member companies.

CLC convention

This document was the result of the incident of grounding and oil pollution of the vessel "Torrey Canyon". But this incident is not the first or the last one. CLC convention adopted in 1969 and called as CLC 69. Later this document was amended in 1992 and CLC 92 was amended in the year 2000 to increase the amount of compensation. CLC is the abbreviation for "International Convention on Civil Liability for Oil Pollution Damage" and determines the liability of the parties in case of oil pollution damages.

The CLC convention applies to any pollution incident that occurred either in the territory and territorial waters of a contracting state or in the exclusive economic zone (EEZ) of the contracting state (5).

CLC convention can be described briefly in the following points:

- owner of the ship is responsible for the oil spills originating from his/her ship.
- there are very few exceptional cases to this liability to the shipowners in case of oil spills from their ships.
- there is a maximum limit of liability specified in CLC due to the tonnage of the ship. This limit will not apply if the shipowner is at fault.
- the shipowners must take insurance to cover their liability in case of oil pollution from their ships (6).

So, the 1969 Civil Liability Convention has included 'strict liability' and 'compulsory insurance' concepts into maritime law. With the entering into force this convention in 1975, the shipowner causing the pollution was held strictly liable and was permitted to limit his/her liability in some cases for the damages arising from oil pollution. On the one hand, strict liability of the shipowner was issued with the CLC, and indemnity of the shipowner was guaranteed within the pollution liability by imposing an obligation to conclude insurance.

The CLC 1969 Convention was a start in terms of regulations about the environmental liability of ships and after this event, different conventions and regulations arose regarding the same issue. These regulations, also known as International Maritime Organization Conventions, are the following:

-International Oil Pollution Compensation Funds regarding Establishment of a Fund for Compensation of Oil Pollution Damages dated 1971 (IOPC Fund). With this convention, an international fund was established to cover environmental pollution damages. The oil industry was obliged to contribute to this fund.

-International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) (7)

-1992 Civil Liability Convention Protocol (CLC 92) and 1992 Fund Convention Protocol (Fund 92). CLC 1992 was accepted to correct the deficiencies in the Fund Convention dated 1971.

All of these documents are essential for the protection and indemnity insurance. The liability regarding the harms resulting from the pollution is on the shipowner, and the shipowner is obligated to be insured. Insurance about the pollution in question is provided by the P&I clubs (4). The scale of the coverage offered by the clubs regarding oil pollution is described in the club rules as: "The liabilities, losses, damages, costs, and expenses that the member will encounter as a result of the discharge or escape from an entered ship of oil or any other substance, or the threat of such discharge or escape are within the club insurance coverage".

Pollution risks under the coverage of P&I Insurance

When the some of club rules are checked, it is observed that the following risks are covered by P&I clubs:

- liabilities, costs and expenses (fines are excluded) arising in consequence of the discharge or escape from the ship of oil or any other substance or the threat of such discharge or escape (8);

- costs of measures reasonably taken for the purpose of preventing or minimising pollution or any resulting damage together with any liability for loss or damage caused by the taking of such measures (9);

- liabilities arising from carrying oil at the sea as per any contract in which the member or the club is involved;

- the costs or liabilities incurred as a result of compliance with any order or direction given by any government or authority, for the purpose of preventing or reducing pollution or the risk of pollution;

- damages to the cargo on the ship or to the property of the member due to the discharge or escape of oil from the ship, (these damages are within the coverage as considered to be for the third parties. So, the pollution is not only considered to occur outside of the ship;

- damages arising from the oil discharged or escaped from the other ship because of a collision (10).

Conclusion

Based on the above it is seen that oil pollution of the ocean comes from shipping activity and offshore oil production. The main cause of marine pollution with oil is shipping. Some of the occurred incidents in history showed that this maritime adventure could cause irrevocable harm. Oil pollution doesn't harm only the marine life, also there is damage to fishing, tourism industry, ecology which no one can measure in monetary values. Pollution in one country has the potential of negatively impacting the biodiversity of another country. As such, the prevention of marine pollution has been a subject of international laws and conventions. And in this case importance of pollution risks under the P&I Insurance, CLC makes the abovementioned sense. The article answered the questions about which risks are insured by P&I clubs, in which areas CLC convention applies to pollution incidents, and also briefly discussed the regulatory documents in the sphere of protection and indemnity insurance.

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