

## SECTION 4 Dennis Nixon Marine Insurance

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Small research vessels present the same liability and risk issues as the biggest vessels in the fleet: equipment can be lost or damaged, the vessel may need the services of a salvor, and crew and scientists aboard can be injured or killed. Depending on the type of coverage purchased, each of the above risks may be covered.

There are two principal types of marine insurance policies: (1) hull, and (2) protection and indemnity (P&I). Very simply, the hull policy generally protects the value of the property itself, while the P&I policy covers damage done to others by the vessel and its operators. In the research vessel community, the purchase of hull insurance depends upon the legal status of the vessel in question. If it is owned by the federal government and operated under charter by an academic institution, the operator may not purchase hull insurance using federal funds. Why? The federal government, as a matter of policy, has chosen to self-insure all property risks. If the vessel is privately owned but federally funded for operations, the hull insurance may be paid as an overhead expense (if approved by federal auditors). The government's rationale is that it can afford to self-insure. P&I insurance, on the other hand, is required of all small research vessels funded by NSF in the amount of \$15 million, with a minimum deductible of \$10,000. With that as a general introduction, each policy will now be examined in more detail.

## The Hull Policy

It is a brave soul who has attempted to read his vessel's hull insurance policy. It has been variously described as "obscurity itself" by a noted admiralty scholar, and a "labyrinth of verbiage" by a federal circuit court judge. An important point to realize is that a hull policy is ~~not~~ an "all risk" insurance contract; rather, it only insures against loss from a list of "named perils." Another critical issue is that courts consider the contract of marine insurance to be ~~uberrimae fidei~~ -- a little bit of Latin for "of utmost good faith." That means that the court expects full and honest disclosure of all material facts related to the condition of the vessel. If you are not completely up front when the vessel is first insured, the contract can be voided if the material misstatement leads to a loss. In one reported case, a vessel owner "forgot" to notify his insurance carrier that he had begun to store gasoline for a tender in one of the ship's ~~water~~ tanks. When the tank leaked and the vessel burned, the contract was invalidated because the owner had failed to reveal this significant change.

The subject of valuation on a hull policy can be problematic. A new vessel is commonly insured for its construction cost. After a few years, however, as the vessel ages, the owner and underwriter must come to an "agreed value" which will be paid if the vessel is lost. The reason for this depreciated "agreed value" is to eliminate what is known in marine insurance as a "moral hazard" when the owner would actually benefit more by sinking his vessel than selling it.

After the hull value is agreed upon, navigation limits will be specified. If one's plans do not include extensive voyaging, seek relatively confined navigation limits (say, no more than 25-50 miles from a safe harbor), and your premium will be lower. The rate charged is expressed as a percentage of the vessel's agreed market value. Previous claims on the vessel and the size of the deductible have a large part in the pricing decision as well.

The heart of any hull policy is the so-called "Perils Clause." It commonly reads:  
Touching the Adventures and Perils which the Underwriters are contented to bear and take upon themselves, they are of the Waters named herein, Fire, Lightning, Earthquake, Assailing Thieves, Jettisons, Barratry of the Master and Mariners and all other like Perils that shall come to the Hurt, Detriment, or Damage of the Vessel.

That language is lifted from a policy first used on the good ship *Tiger* in 1613. (This is a business very slow to change.) The first category mentioned, perils of the seas, is the most important in the policy. Generally, courts have found that perils of the seas are of an extraordinary nature or arise from irresistible force or overwhelming power and cannot be guarded against by the ordinary exertions of human skill and prudence. This is the classic "heavy weather" loss. Damage caused through natural decay, worms, or ordinary wear and tear would not be covered under this clause. The concepts of fire, lightning, and earthquakes causing damage are easily understood; the term "Assailing Thieves" covers losses occasioned by the criminal acts of those who gain access to the vessel by force. "Jettison" refers to the intentional act of throwing some part of the vessel or its cargo overboard for a sound reason. For example, if a primary winch broke free and was crashing around the deck causing collateral damage and could not be secured without

risking injury to the crew, it could be allowed to slide overboard and be a compensable loss. "Barratry" has been defined to mean any unlawful act committed by the master or crew, contrary to their duty to the vessel's owner, whereby the latter suffers injury.

In subsequent years, an "Additional Perils" clause was added to include losses from latent defects and the negligence of the crew -- as long as the owner has used "due diligence" to provide a seaworthy vessel. Undermanning and the failure to follow up on a surveyor's list of required changes are examples of cases where courts have found a failure of the due diligence requirement.

The collision clause is unusual in that it applies to the damage caused to another vessel in a collision for which the insured vessel is found liable. (Damages to the insured vessel are covered in the Perils clause discussed above). The amount of coverage is limited to the agreed value of the insured vessel. It does not extend to loss of life, personal injury, or damage to shoreside structures -- that liability is picked up in the P&I policy. Vessels normally purchase "Excess Collision" insurance as well for those instances when the physical damages caused are in excess of the valued hull policy. Another alternative, particularly if the vessel is government owned and cannot purchase hull insurance, is to transfer all collision liability to the P&I policy.

The war risk clause is designed to exclude coverage for damage as a result of wars, strikes, or other civil commotions. War risks are broadly defined to include everything from seizure of the vessel to damage sustained from torpedoes and mines dragged from the bottom. Since much of a research vessel's time is spent dragging equipment across the bottom, it is important to add a war risk rider to the basic hull policy.

Finally, the hull policy also contains the closely related "Salvage" and "Sue and Labor" clauses. The Salvage clause simply states that the underwriters will be responsible for salvage charges incurred to preserve the insured property. The purpose of the Sue and Labor clause is to encourage the assured to take all reasonable steps that a prudent uninsured owner would take to protect the insured property. If only P&I insurance is purchased because the vessel is owned by the federal government, both of these clauses can be added to the P&I policy.

### **The Protection and Indemnity Policy**

The traditional name given to the insurance of third-party liabilities which arise in connection with the operation of a vessel is protection and indemnity (P&I) insurance. It is a much more recent type of insurance, dating from the mid-19th century, and thus the basic language and concepts are much easier to understand than the hull policy.

Five categories of loss are covered under the P&I policy. The first category is by far the most important and the principal reason this type of policy was first developed: compensation and medical expenses for the injuries or death of the crew, scientific party, or other individuals aboard the vessel. Members of the crew are entitled to what has become known as "the blessed trinity" of remedies: maintenance and cure, the Jones Act, and the unseaworthiness doctrine. Maintenance and cure is ancient legal remedy provided to seamen, defined as the legal obligation of the vessel owner to "maintain and cure" a seaman injured or taken ill in the service of the vessel. Congress recognized the limitations of this concept in 1920, when it passed the Jones Act, giving seamen injured

through the negligence of their vessel owner the right to sue the vessel owner in federal court for damages. Today, however, the most important legal remedy for an injured seaman or scientist is the doctrine of unseaworthiness, which allows recovery against the vessel if the injury was caused by an unseaworthy condition of the vessel, its equipment, or crew. This is true whether or not the unseaworthy condition is caused by the negligence of the vessel owner, the standard required under the Jones Act. Under the terms of the Oceanographic Research Vessel Act of 1965, members of the scientific party may not sue under the terms of the Jones Act, but courts have held that they may recover using the powerful doctrine of unseaworthiness.

The second category of loss under the P&I policy involves damage caused by the vessel to "any fixed or movable object or property of whatever nature." The language includes damage to docks and piers from collision, excessive wakes, and even damage to stationary fishing gear.

The third category is known as "wreck removal" and covers the expenses of removing the vessel if that removal is required by law -- typically when sunk in shallow water or in a channel.

The fourth category involves fines levied against the vessel by any state, federal, or foreign government as the result of some violation of laws, but this clause will not apply if they result "directly or indirectly from the failure, neglect, or default of the assured ... to exercise the highest degree of diligence to prevent a violation of any such laws." Thus, a fine for negligent operation would be paid if the assured had no knowledge that his crew was negligent or reckless and had made every effort to find crew members who were competent and qualified.

Finally, the last category is for the costs of investigating and/or defending claims arising out of a liability of the assured covered by the P&I policy. This is of tremendous importance in the area of crew injuries, where the costs of defending against such claims can be substantial.

## **Conclusion**

The operation of a small research vessel involves most of the same risks as the operation of a large, blue-water vessel, and thus the operator must seek protection with an appropriate level of insurance. If the vessel is privately owned, both hull and P&I insurance should be acquired. If owned by the federal government, hull insurance may not be purchased, but most charter agreements require the purchase of at least \$15 million in P&I coverage with a minimum deductible of \$10,000. Proof of adequate insurance must be provided to NSF or ONR on an annual basis.

Like a good survey, adequate insurance cover can provide a vessel owner with at least some peace of mind when the vessel goes to sea. Since insurance is typically a vessel's third largest operating expense (after crew and fuel), it pays to know just what one is paying for.