Canadian Board of Marine Underwriters

Annual Meeting Dec 1, 2009

Legislative Report

After a fairly tranquil period which saw relatively little in the way of legislation in the marine environment that involved insurers, several important changes have taken place this year. It was in 2001 that Jerry Rysanek shepherded the Marine Liability Act through Parliament bringing under one law the International Marine Conventions which Canada has adopted and setting the framework for future ones. This year saw some important changes to that legislation.

Bill C-7 – amending the Marine Liability Act

A blockbuster Bill enacting important changes in Part 4 to extract adventure tourism from the Athens Convention, paving the way for compulsory insurance of passenger vessels, amending Oil Pollution legislation including the adoption of the Bunker Convention and updating Canadian maritime law in several areas. There is an excellent explanation of the Bill on the Transport Canada website and this report deals with changes that should be of interest to our members who write Protection & Indemnity coverage, if indeed there are any left standing after the changes.

Passenger Vessels

When the Athens Convention (Part 4 of the MLA) was adopted along with a comprehensive definition of commercial vessels – essentially any vessel being used for a commercial purpose, the adventure tour operators protested that buying insurance under the new regime would put many out of business. After struggling with the problem for several years during which intensive consultation took place, Transport succeeded in arriving at a definition allowing extraction of the problem class from the regime. In addition the mechanism for compulsory insurance of commercial passenger vessels was introduced. Consultation and regulations will complete the process, following which passenger vessels will require passenger liability insurance to a limit of $350,000 times the number of passengers carried. The insurance certification for vessels entered in a PandI Club will be routine, however, as indicated below may be problematic for Canadian insurers.

Bunker Convention

Bunker pollution is every bit as serious as pollution by hydrocarbon cargo pollution. The Bunker Convention applies to any ship carrying mineral oil for propulsion or operation and requires every ship which is over 1,000 gross registered tons to carry a certificate attesting to insurance being in place to limits set forth in LLMC's 1996 protocol. As everyone will no doubt recall the minimum limits of liability in that protocol were set at 2,000,000 SDR's for property damage and 1,000,000 SDR's for personal injury. Those limits applied to vessels up to 2,000 GRT with larger vessels having additional limits of 600 SDR / GRT. The Canadian dollar to SDR conversion

rate is about $1.70 per SDR. Those quick on arithmetic will have converted the numbers to just over $5,000,000 for the minimum plus approx. $1,000,000 for each additional 1,000 GRT.

Defences available to the shipowner for bunker pollution are few and for insurers providing the coverage on the 1,000+ ton vessels they face direct right of action and they may not raise defences available if the claim were made by the shipowner. That means warranties, non-disclosure, late reporting, so near and dear to our hearts, are out the window. Insurers can raise the few defences available to the owner and importantly may limit liability as above even if the owner can not.

The certification requirements were fashioned after those under the CLC Convention applying to tankers which is the exclusive domain of the International Group of PandI Clubs and their $1 billion pollution capacity. Protected by limitation the Clubs could provide an unlimited guarantee of coverage to the limits required under CLC. With the Bunker Convention applying to all vessels and the insurance requirement lowered to 1,000 grt we will see some vessels insured with Canadian marine insurers. Think self-propelled barges, builders risk involving trials, vessels mainly laid up. Can our members issue unlimited guarantees or perhaps with limits that must be expressed in SDR's? How will subscription and primary and excess policies respond? Does this mean all ships over 1,000 tons will have to be entered in a PandI Club?

If the requirement for passenger vessels is on the same basis, i.e. a guarantee that insurance sufficient to comply with Athens Convention (Part 4, MLA) limits is in force, Canadian insurers may be unable to comply.

Those members writing a PandI account may wish to delve further into these questions and seek solutions.

Other changes

A long awaited change grants a Canadian ship supplier a maritime lien for services provided to a foreign vessel. The desire was to create the maritime lien for services provided to Canadian ships also so that Canadian suppliers would have an equal footing with their American counterparts (American law gives them a maritime lien) when a Canadian vessel incurred debts to suppliers on both sides of the border. Half a loaf one might say.

A general limitation period of 3 years was created for proceedings under maritime law. I guess we all have to reprint our policies.

Sister ship arrest remains unchanged, despite vigorous arguments from cargo recovery lawyers (and CBMU) to broaden the scope. Only a minor adjustment to harmonise the English and French versions takes place. The narrow interpretation effectively eliminates arresting a ship as security for a claim on a sister ship unless the ownership is identical. Tramp vessels are careful to avoid transparency in that area.

Rotterdam Rules

Much has been written on the topic, pro and con. We insurers can live with or without the Rules although the benefits seem to favour cargo if one can make sense of the 100 odd articles. The question is whether bad drafting will provoke more litigation than good drafting, or will Cargo and PandI figure it out themselves.

Prediction – Canada will sign and the rules will be adopted in time for the graduation class of students now entering law school, thus guaranteeing them a prosperous career and comfortable retirement.

Bill C-37

A much misunderstood provision requiring anyone writing marine insurance from within Canada to have a federal license. Complex guidelines are used to determine if an insurer is operating in Canada. Buying drinks for Canadians is not on the list so our visitors from abroad need not refrain.

Hats off again to the Canadian Maritime Law Association for their hard work and successes in shaping Canadian Maritime Law for the benefit of all.

Respectfully submitted,

Douglas McRae

Chairman, Legislative Committee

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