



Transport Canada Update

CBMU Fall Conference 2019



Transport
Canada

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Canada

What's New and on the Horizon?

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Passenger Insurance Regulations

- Came into force on January 11, 2019
- Vessels carrying passengers are now required to maintain a minimum of \$250,000 of liability insurance coverage, multiplied by the passenger capacity of the vessel
- Vessels must provide proof of insurance

Passenger Insurance Regulations

- The regulations apply to domestic voyages
- The regulations do not apply to vessels involved in adventurism tourism
- The regulations generally do not apply to pleasure crafts
- Charity Events: remuneration or profit is a key factor in determining the applicability of the regulations

Passenger Insurance – Charity Events

Regulations apply when:

- A vessel owner is using their craft to transport individuals in exchange for them making a donation;
- An individual offers a boat ride as a prize to a charitable organization;
- Guests have to pay a “dock access fee” or an entry fee at the club instead of paying for passage.

Regulations do **not** apply when:

- A volunteer vessel owner is using their pleasure craft to transport individuals at a camp and receive no remuneration or profit.
- A pleasure craft owner offers rides as part of a community event, but there is no direct profit for the community, club nor for the owner of the vessel.

Passenger Insurance – Certificates of Entry

- The regulations require that a proof of insurance is carried on board in the form of a Certificate of Entry, issued by a P&I Club, or a Certificate of Insurance
- TC inspectors are aware that the Certificate of Entry may not explicitly refer to passenger risks, but this is standard coverage for P&I Clubs (i.e. Club Rules)
- Some “Certificates of Entry” may be entitled “Certificate of Insurance”
- Inspectors may ask for proof that the amount of coverage is adequate to cover the liability of all passengers being carried

Passenger Insurance – Amphibious Vehicles

- One operator had difficulty obtaining insurance and was only able to secure partial insurance (half of vessel's capacity) due to perceived risk
- Significant financial impact on operator (seasonal operation)
- Another operator was able to obtain full insurance under a fleet policy
- This issue will likely resurface in 2020 and there may be questions as to why/how these vessels are treated under different policies

Wreck Removal Convention

- *Wrecked, Abandoned or Hazardous Vessels Act* (WAHVA) Came into force on July 30, 2019
- Part 1 sets strict liability for any wreck that results from a maritime casualty and becomes a hazard
- Section 24 requires vessels of 300 GT and above to maintain insurance, or other financial security, and carry a State certificate for wreck removal costs (located, marking and/or removing)
- Canadian fleet = 1620 vessels (compared to 440 over 1,000 GT subject to Bunkers Convention)

HNS Convention Update

- On April 23, 2018, Canada ratified the 2010 Hazardous and Noxious Substances Convention
- Currently, there are 5 states parties: Norway, Canada, Turkey, Denmark and South Africa
- Need 12 states to ratify with 40 million tonnes of bulk HNS reported in those states (currently at 9.7 million tonnes reported)
- Estimate to reach entry into force requirements in 2022 or 2023

International Issues – Problems with Non-P&I Club Insurers

- The International Oil Pollution Compensation Funds (IOPC Funds) provide compensation for oil pollution damage resulting from spills of persistent oil from tankers (115 states)
- The Audit Body of the IOPC Funds is currently undertaking a review of issues arising from incidents involving the IOPC Funds and insurers who are not members of the International Group of P&I Clubs

International Issues – Problems with Non-P&I Club Insurers

- The IOPC Funds have faced difficulties when dealing with some non-IG insurers
- IOPC Funds suffered losses of at least \$14 million as a result of incidents involving non-IG insurers, which is equivalent to 1.2% of the total compensation paid by the IOPC Funds
- While this is relatively small, the number of cases is growing:
 - 6 active cases involving an IG P&I Club
 - 5 active cases involving a non-IG insurer

International Issues – Problems with Non-P&I Club Insurers

- The Audit Body noted:
 - Inconsistency between the documents to certify the evidence of the 1992 CLC insurance and the underlying insurance policies
 - Insolvency of the non-IG insurer
 - Uncooperative action of the non-IG insurer
- The IOPC Funds met with the Joint Liability Committee of the Lloyd's Market Association on how IUMI could assist the IOPC Funds in dealing with issues arising from non-IG insurers
- This issue affects **all** IMO liability conventions with compulsory insurance

Case Study – *Agia Zoni II*

- Product tanker 1,597 GT, built 1972, Greek flag
- Laden with 2,194 MT of heavy fuel oil, and 370 MT of marine gas oil
- Sank at anchor, on September 10, 2017 in Greece
- Some 500 tonnes of oil were released upon sinking
- Limit of liability under 1992 CLC: € 5.41 million



Case Study – *Agia Zoni II*

- Insured with Lodestar Marine Limited, a fixed premium insurer. The insurance policy has a limit of liability of €5 million
 - The ship did not have any hull insurance.
 - Under Greek law, any ship sailing to or from a Greek port or terminal must be insured for the obligations of wreck removal towards the Greek State, up to the limits of liability specified within the LLMC, which amounts to SDR 1 million (€ 1.22 million)
- There is an under-insurance issue as it covers all P&I risks, not just oil pollution liabilities
- A limitation fund was established at € 5.41 million

Case Study – *Agia Zoni II*

Claims/Damage to date:

- 373 Claims = € 94.64 million
- 132 paid by IOPC Funds = € 11.27 million
- 120 other potential claimants
- 0 claims paid by the shipowner or insurer



Case Study – *Agia Zoni II*

Problems with Case:

- Insufficient insurance to cover oil pollution liabilities
- Un-cooperative insurer and not making interim payments to claimants
- Salvage and wreck removal caused further oil pollution and difficult to separate costs
- Difficulty in assessing clean-up claims
- Greek Public Prosecutor is investigating cause of incident and current information points to a deliberate and negligent action
- Shipowner has very few other assets
- IOPC Funds likely will have to pay substantial sums without ability to recover

International Issues – Breaking Limits of Liability

The CLC and LLMC provide for a virtually unbreakable system of limiting liability, but recent court decisions have brought into question the test for breaking the limit of liability

Article 4 of LLMC: *A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probably result*

International Issues – Breaking Limits of Liability

In *Prestige* case (2002 sinking), in December 2018 Spanish Court awarded €1.439 billion in pollution and pure environmental and moral damages, equal to the London P&I Club's policy cover



International Issues – Breaking Limits of Liability

- Concerns expressed by ICS, IG of P&I Clubs, IUMI and others of potential implications on global liability and compensation regime
- IMO Legal Committee seeking to develop a “unified interpretation” on the test for breaking the shipowner's right to limit liability under the IMO conventions
- Important that all affected stakeholders are fully engaged in work and the test for breaking limitation be preserved – including insurers and re-insurers

Review of the *Marine Liability Act*

In 2018, Canada's compensation regime went through significant improvements :

1. Unlimited compensation through the Ship-Source Oil Pollution Fund - eligible claims of victims and responders are now 100% compensable
2. Expedited simplified process for small claims (under \$35,000)
3. Emergency funding (up to \$60 million) in case of major incident

Review of the *Marine Liability Act*

In its review of the Trans Mountain Pipeline Expansion Project, the National Energy Board recommended:

The Governor in Council, in conjunction with Transport Canada, should review the federal marine oil spill compensation regimes with regards to compensation for non-use values, for Indigenous and non-Indigenous communities, including any non-coastal communities that may be impacted as a result of a marine oil spill.

Review of the *Marine Liability Act*

The Government of Canada's response:

Looking ahead, the government will further assess the scope of losses that could be addressed by Canada's liability and compensation regime for marine oil spills. For example: non-use value, cultural losses and long-term environmental damage.

Carriage of Goods / Cargo Liability Regime

- The *Marine Liability Act* requires the Minister of Transport to report to Parliament every 5 years whether the Hague-Visby Rules should be replaced by the Hamburg Rules
- The last 4 reports recommended to maintain the Hague-Visby Rules
- The next report is due January 1, 2020

Carriage of Goods / Cargo Liability Regime

- In April 2019, TC consulted stakeholders, including the CBMU on the following questions:
 1. Are the Hamburg Rules relevant and should Canada adopt them?
 2. Are the current Hague-Visby Rules adequate?
 3. Should Canada modify its regime to incorporate other elements like in other countries?
 4. How would this affect alignment with major trading partners?
 5. Are there other elements in the regime that need reforming?
- Following the tabling of the Report to Parliament, there may be opportunity to further explore limited reforms to the regime

Public Information

- TC is developing a new “hub” on its website for information on marine insurance requirements, liability and compensation
- The goal is to create a centralized source with easy-to-understand public information
- Look for some information to be updated soon and for new pages to launch in 2020
- Will update CBMU and provide links

Thank You! Any Questions?

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