

Salvage & Marine Firefighting Regulations - a P&I Perspective

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Structure of the Club system

- 13 Clubs
- Insuring over 90% of the world's blue water fleet
- Duality of role in a mutual– the assured (Member) is the owner & the customer
- Similar duality at industry level – compete amongst each other but work together in the International Group:

“Individually competitive, the International Group of P&I Clubs brings together the collective influence of the mutual clubs as a force for security and stability in international maritime trade.” [www.igpandi.org]

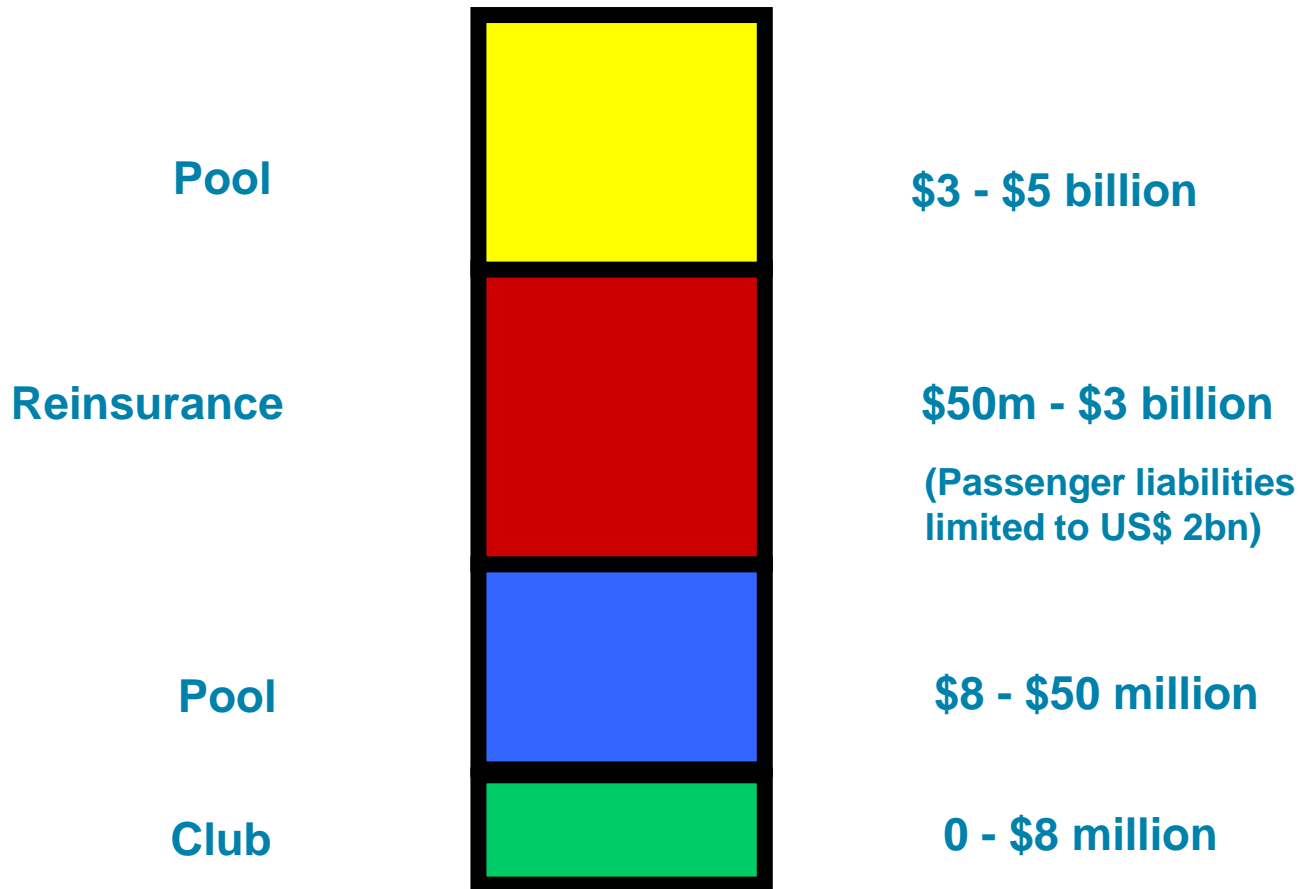
The International Group of P&I Clubs



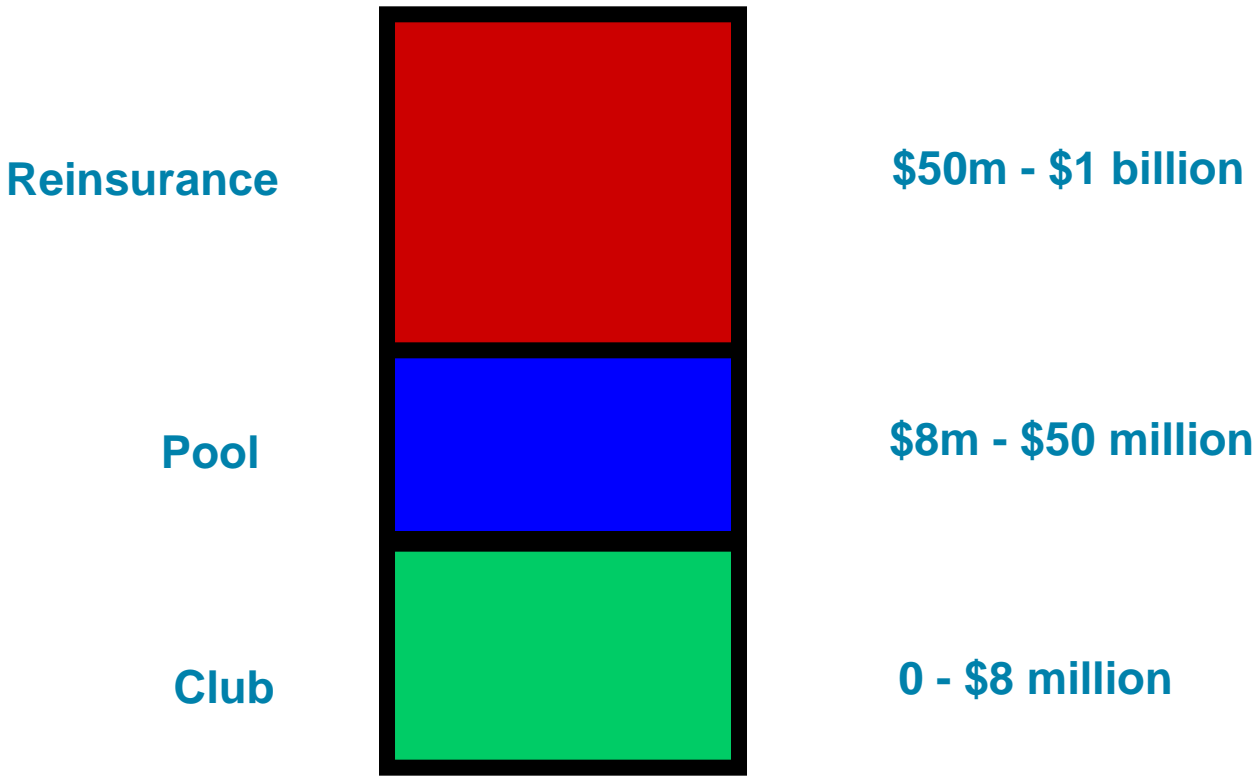
Structure of the Club system

- **International Group (IG) is an effective vehicle for:**
 - **Pooling of claims**
 - **Purchase of world's largest marine reinsurance contract**
 - **Providing “at cost” insurance**
 - **Providing unparalleled limits of cover:**

Cover – excluding pollution



Cover – pollution



Sharing expertise – IG sub-committees

- But IG also enables effective sharing of expertise & experiences for benefit of shipowning community
- Various sub-committees - e.g. personal injury, ships standards, bills of lading, salvage, pilotage, etc
- Representatives from each Club
- Pooling of knowledge and experience
- One voice on common issues
- Pollution Sub-Committee

Vessel Response Plan (VRP) Working Group

- Sub-set of the Pollution Sub-Committee
- Three representatives - West of England, Steamship, Gard
- Analyse pollution-related contracts on behalf of IG to ensure compliance with Club cover - especially indemnities
- Reference point for industry
- Publish guidelines and lists of approved contracts
- QI, OSRO, SMT in US, Canada, Panama, Argentina & China
- Now looking at SMFF contracts

Salvage – the P&I view

- Salvage is primarily the concern of property underwriters
- Only direct P&I involvement is SCOPIC - encouragement to prevent environmental damage therefore funded by Clubs
- Alternative to Article 14, intended to provide additional compensation where salvor fails to earn Art 13 reward
- Part of LOF but must be invoked, security from P&I to salvor
- SCR appointed, from panel administered by Lloyd's
- Code of practice between IG, ISU & property underwriters

Salvage – the P&I view

- Only other P&I involvement is:
 - Unrecoverable cargo's proportion of general average
 - Indemnity from cargo for salvage contributions

- But only if breach of contract of carriage, i.e. unseaworthiness

- General position:

“There is no cover except as otherwise provided in this Rule, or as otherwise agreed in writing...for:

(v) salvage of an insured vessel or services in the nature of salvage provided to an insured vessel and any costs and expenses in connection therewith”

SMFF – P&I input

- As we have seen, not primarily a P&I matter
- But VRP WG nevertheless assessed contracts/funding agreements & prepared guidelines as a service to Members
- Close liaison with each of the contractors - IG “approved” contracts
- Published circulars to Members providing guidance & information

IG guidelines for SMFF contracts

- Owner's representative - right to have SCR-type person attend
- Control – always with salvage master but owner's rep consulted
- Funding – no advance guarantees, fixed limits & haul-off clause
- Salvage remuneration – limited to contract only
- Indemnity – even-handed & simple not gross negligence
- Warranties – salvor fulfils 15 criteria
- Insurance – ensure sufficient to respond to liabilities
- Law & jurisdiction – England preferred but other as appropriate
- Disputed invoices – 80/20 principle
- Interest – 1% or 2% above LIBOR
- Confidentiality – right to consult with insurers

SMFF - guiding principles

- **USCG wants certainty of response**
- **Delays in response while prices/terms negotiated not acceptable**
- **Pre-event contractual and funding certainty**
- **Funding agreement to ensure flow of funds to salvor & therefore his continued engagement**
- **Tankers must incorporate SMFF arrangements into VRP by latest 22 Feb 2011**
- **Tankers only for now (definition as per OPA'90 - see USCG website)**

Different contractors, different approaches

- Question: how do you decide on appropriate terms & set a realistic price in advance and before you know what casualty you're dealing with?
- Four contractors currently in the market:
 - T&T Bisso
 - Resolve
 - Donjon-Smit
 - Marine Response Alliance
- Four different approaches to answering that question
- Note use of LOF – unusual for the US (but must add SCOPIC)
- All contractors have received USCG approval

T&T Bisso

- Own contract, US and non-US version
- In-house standard tariff
- Out of pockets at cost plus 15%
- English law & jurisdiction (non-US version)
- US maritime law/Texas, Houston arbitration (US version)
- Owner's rep can be appointed

Resolve

- **LOF2000 with SCOPIC**
- **If \leq \$750,000 then straight reimbursement at SCOPIC rates**
- **First 24 hours 50% uplift**
- **Subsequent days 25% uplift**
- **English law & jurisdiction (salvage arbitration process)**
- **Owner's rep can be appointed**

Donjon-Smit

- **Three categories depending on circumstances of the casualty:**
 - Category 1 – vessel adrift
 - TOWHIRE
 - SCOPIC rates +20% uplift, OPE's cost + 15%
 - New York arbitration
 - Category 2 – lightly aground
 - WRECKHIRE
 - SCOPIC rates + 50% uplift, OPE's cost + 15%
 - New York arbitration
 - Category 3 – major casualty
 - LOF2000 with SCOPIC
 - Where SCOPIC invoked, SCOPIC rates + 25% uplift
 - English law, Lloyd's arbitration

Marine Response Alliance

- **Comprised of various entities:**
 - Marine Pollution Control Corp. for Emergency Lightering
 - Marine Hazard Response for Firefighting
 - Titan Salvage LLC for Marine Salvage Operations with Crowley Maritime Services tug rates
- **Contractual terms to be negotiated case-by-case, in-house tariffs**
- **Range of rates depending on which entity is deployed**
- **New York arbitration**
- **Owner's rep can be appointed**

What might the SMFF regulations mean in practice?

- VRP requirements becoming ever more stringent - many pitfalls for the unwary when trading to the US
- Tankers only for now but can be sure other vessel types will follow
- DWH means greater media, public & political scrutiny of any pollution or threat of pollution
- USCG will be ever more stringent - their career is at stake
- Spot light will be on shipowner & his insurer in a casualty
- They had better be ready!

What might the SMFF regulations mean in practice?

- Points for insurers to consider:
 - Need to see the contracts your assureds are entering into
 - How will subscription insurance underwriters (e.g. H&M) provide a flow of funding to salvor? What about security?
 - Are claims handlers acquainted with LOF, SCOPIC & Lloyd's salvage arbitration procedure?
 - Arrangements in place with London/US admiralty lawyers - need to act quickly
 - Have response plans ready with updated contact details

What might the SMFF regulations mean in practice?

- Points regarding the response effort:
 - Only one US-based SCR on Lloyd's panel. Where will the owner's representatives come from in the US?
 - Where does the salvor fit in Unified Command structure?
 - What control will the salvor, owner & insurer have in practice, especially post-DWH?
 - How effective will haul off clauses be? Will a COTP really allow a contracted salvor to be de-mobbed?
 - Where Uncle Sam goes the rest of the world usually follows; is this the sign of things to come for us all? Is the EU next?