

UK P&I CLUB



UKDC  
UK DEFENCE CLUB  
125 YEARS NEW

# HELLAS HIGHLIGHTS

*December 2013, Issue 28*

UK P&I AND  
UKDC ARE  
MANAGED  
BY **THOMAS  
MILLER**

# UK P&I Club

## Financial Highlights

\$1.6

Total assets  
\$bn

\$473

Free reserves and hybrid capital  
\$m

\$3.86

Free reserve and capital  
per gross ton

113%

Combined ratio

### The UK P&I Club announces the 2014 policy year general increase

At the UK P&I Club's Directors' meeting in Bermuda on 28th October, 2013, it was agreed that the general increase for the 2014 renewal will be 10%. The premium rating increase is in addition to any increase in the cost of the International Group reinsurance premium for 2014 for the mutual Members which will be determined in the New Year.

The Board of the UK P&I Club is well aware that the shipping markets are likely to remain depressed for at least the medium term and that any increase in cost will be unwelcome. However, the decision to make a 10% general increase reflects the Board's determination to restore the Club's underwriting balance and to ensure it is in a strong position to meet the inevitable increase in claims when markets recover.

Overall, the Club's financial position remains strong with the free reserves and capital standing at US\$ 473 million and total assets of US\$ 1.6 billion as of 20th August 2013. Since these figures were recorded at the half year the position has improved with investment income increasing from US\$ 6 million to US\$ 33 million.

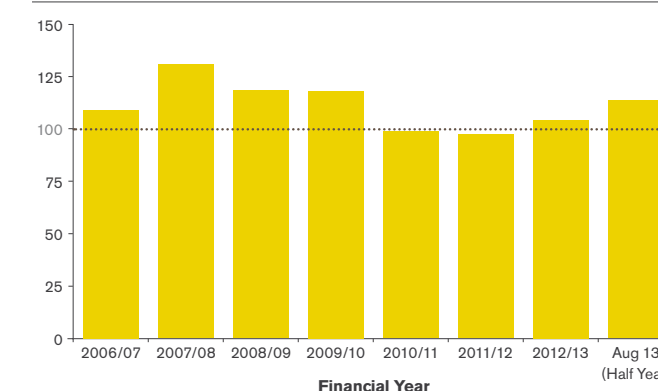
Following the lighter claims years of, 2009, 2010 and 2011, the 2012 and 2013 policy years show a return to the previous pattern of increasing claims costs. In fact the total cost of claims in the first 6 months of 2013 is greater than any other policy year at the same stage of development. It is large casualty claims which are the biggest factor in the overall claims growth in 2013.

The higher claims experience in 2013 has led to the first fall in capital since 2008 although the Club continues to comfortably hold sufficient capital to meet regulatory requirements and rating agency targets. The Club's Standard & Poor's rating continues to be A - with a positive outlook and the Club is rating AA on the S&P Capital Model. However, a combination of claims inflation and large claims has led to an increase in the Club's combined ratio which at the half-year was 113% and outside the Club's acceptable range. This increase in claims of costs now being experienced must therefore be addressed for the Club to maintain its underwriting balance.

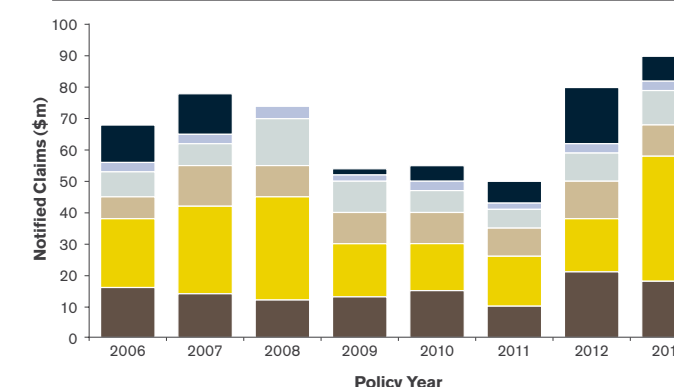
Further details on the Club's financial performance, underwriting results, investment and claims performance can be found in the UK P&I Club October Review 2013 at:

<http://www.ukpandi.com/publications/article/october-review-2013-129467/>

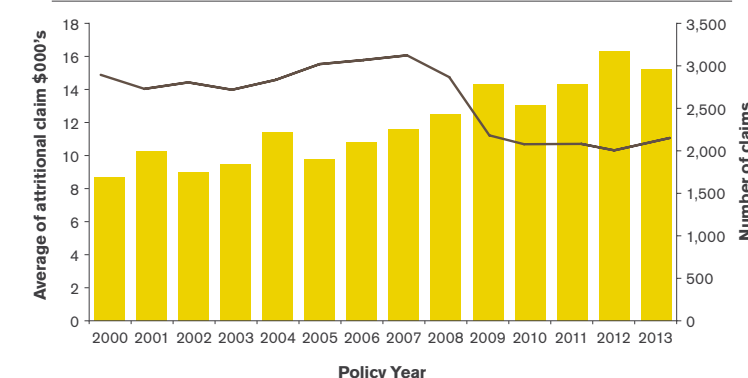
Combined ratio for financial years 2006 – 2014



Net notified claims at 6 months for policy years 2006–2013 (\$m)



Attritional Claims (<\$0.5m) - average cost and claims frequency at 6 months for years 2000–2013





# Events

## 2013 Finance Seminar and Principals' Dinner

Every November Thomas Miller (Hellas) Ltd hosts two popular events in the UK P&I and UK Defence Clubs' Greek calendar. This year the annual Finance Seminar and Principals' Dinner was held on the 7th November at the King George Hotel in Athens.

The delegates, including staff from several key Members and brokers, heard Thomas Miller P&I (Europe) Ltd. Chairman and CEO, Hugo Wynn-Williams, report on the UK P&I Club's financial situation. You can read more about this in the finance article earlier in this edition. Hugo was followed at the seminar by Jana Byron from Thomas Miller (New Jersey) Inc. who spoke on US Bodily Injury Claims: Exposure to non-US carriers. An overview of Jana's presentation is included on page 6.

The evening function, a principals' dinner, was held at the Acropolis Museum. The dinner also marked the occasion of Mr Dino Caroussis stepping down as Chairman of the Board of Directors of the UK P&I Club. The event was the most popular yet with about 140 guests and Thomas Miller staff attending. In recognition of Mr Caroussis' service to the Club he was presented with a framed antique town plan of Chios dating back to about 1588.



Principals' Dinner





# US Bodily Injury Claims: Exposure to non-US carriers – A summary



## **Jana Byron**

Following graduation from law school, Jana worked as Editor-in-Chief at a leading trade publication on international export controls published in the US and Japan. She then went on to seven years of law practice in New York City as an attorney specializing in maritime matters. Jana joined Thomas Miller (Americas) in November 2005 and handles both Defence and P&I claims. She is also a member of TM(A)'s Bodily Injury Team.

## **Rising cost of claims**

Despite the number of personal injury and illness claims stabilising, the per capita cost of the individual claims has risen by over 300% in recent years. In fact, individual injury and illness claims now cost more Club dollars than cargo claims. The Club believes that this claim inflation is driven by the global crew shortage, which in turn has driven up the value of contractual compensation payments, advances in medical technology that allow up to provide better medical care – though at a significant cost – and a post-2008 significant increase in the value of jury verdicts in the US.

When you look at the breakdown of where in the world a claim arises as opposed to where the claim is brought, an interesting trend emerges. Overwhelmingly, when a claim arises in the US it stays in the US. What this trend shows is that the US is such a plaintiff friendly jurisdiction that claimants and their lawyers will fight to stay there. Today, more than half of UK Club's bodily injury claims over US\$100,000 are brought in US courts. As there is generally no legal cost recovery in US courts (each party pays their legal fees regardless of who wins), there is little risk to the claimant because he is not required to pay his lawyer anything out of pocket. Shipowners also face a growing threat of juries awarding punitive damages in maritime cases.

Finally, there is an evident jury bias against corporations and US juries are not afraid to award millions upon millions to a plaintiff for injury and illness claims that go to trial.

*“Despite the number of personal injury and illness claims stabilising, the per capita cost of the individual claims has risen by over 300% in recent years.”*

## **Minimising risk of bodily injury and illness claims**

While this environment makes for costly and challenging times, the UK Club is committed to helping our Members minimise the risk that bodily injury and illness claims in the US present.

## **How do we do this?**

By emphasising early and thorough investigations of any incident in the US that involves a US person or requires immediate medical care. Ships are sold, documents are lost and memories fade and it is out experience and a complete investigation can be impossible to recreate months or years after the fact. We also have a network of attorneys in the US that specialize in injury and illness claims, as well as the Club's “Bow Tie”/Risk analysis, PEME and Ship Inspection Programmes.

Finally, the Club has claims handlers around the globe that specializing in “people claims”. In the US, the Club's specialists are members of the TMA Bodily Injury Team. The Team has over 100 years of collective experience in handling personal injury and illness claims. Team members have extensive trial experience in federal and state court. Team Member attend mediations on Member's behalf and have an extremely interactive and proactive involvement in putting together a case strategy along with the Member and the Member's attorney. The Team organizes an the Annual Bodily Injury Team Round Table for US and Foreign Flag Owners and Operators in the Club's New Jersey office and authors the TMA Bodily Injury Newsletter for Members. The team also meets monthly to discuss TMA bodily injury claims and issues, provide advice to claims executives on early case assessment, strategy, estimating and trouble shooting particularly costly complicated or challenging claims.



# The Legal and Insurance Aspects of Slow-Steaming

On 17th April 2013, Rod Lingard attended the Green4Sea Forum and spoke on, “The Legal and Insurance Aspects of Slow-Steaming”.



**Rod Lingard,**  
**Syndicate Manager**

Rod, a master mariner with degrees in nautical studies, law and an MBA, joined the Sunderland P&I Club in 1987. Rod was formerly manager of the Sunderland office and moved to London in 1998. He has particular experience in cargo and collision claims.

## What's the problem?

On one side the owner has an obligation to follow the charterer's slow-steaming instructions under the charterparty yet on the other the owner has the usually implied obligation under the Bill of Lading to proceed with due dispatch. Due dispatch means the most direct route at the fastest speed. There is legal authority that an unreasonable delay is a deviation. A deviation in this respect is a departure from the contractually agreed voyage that deprives the carrier of the defences and rights of limitation that are usually available under The Hague or Hague Visby Rules.

## Implications for cover

As many Members will be aware a deviation has implications for P&I cover.

There are also other insurance implications. Slow-steaming brings issues of, increased inspection, extra maintenance and crew training. It is possible that there may be problems with an insurance claim where there is an engine breakdown and there has been a history of slow-steaming. Depending on the policy wording then the hull underwriters may look at issues of deliberate or negligent mismanagement.

Similarly, in General Average maintenance and training will come under close scrutiny as cargo look to avoid contributing their proportion of General Average by trying to show that the carrier has failed to exercise due diligence to make the ship seaworthy before and at the commencement of the voyage.

There is little case law in connection with slow-steaming. In the PEARL C the owners chartered the ship on an amended NYPE form for 9-12 months. The charterparty contained a performance warranty that the ship was capable of steaming at about 13 knots in good weather conditions. It was common ground between the parties that the warranty only applied on delivery. The charterparty incorporated the Hague Rules and a London arbitration and English Law clause. The charterers withheld hire alleging that there had been a breach of the utmost dispatch obligation under clause 8 and that the charterers could deduct lost time due to slow-steaming under the first part of clause 15. The matter went to arbitration and the tribunal held that in respect of 3 out of 16 voyages there had been deliberate slow-steaming as that was the only reasonable explanation. The tribunal went on to find that there had been a breach of clause 8 and a net loss of time under clause 15. The owners appealed arguing (1) that the tribunal had been in error by converting the performance warranty into a continuing warranty and (2)

the Article IV Rule 2(a) Hague Rules Defence, “Error by the master in the navigation or management of the ship”, was available to them. The matter went to the High Court and Popplewell J. held that there had been no error by the tribunal. The judge confirmed that it was appropriate to use the warranted speed as the benchmark against which to assess if the ship had proceeded with the utmost dispatch and in the case of a deliberate decision to slow-steam the error in the management of the ship defence was not available to the owners.

**It is possible to get around some of these issues by including charterparty clauses and Rod referred to 3 of them:**

## 1) The slow-steaming clause for BIMCO time charterparties

This clause allows the charterers to instruct the master in writing to slow-steam. An oral instruction is insufficient. The clause then provides for two alternatives. Slow-steaming and ultra-slow steaming. The intention is that one of the two options will be deleted. If neither option is deleted then the slow-steaming option applies by default. Slow-steaming is defined as operating at a speed above the cut-out point of the ship's auxiliary blowers and that it will not result in the engine being operated outside the manufacturer's recommendation. Ultra slow-steaming gives the charterer the option to instruct the master to proceed at a speed either above or below the cut-out point of the ship's auxiliary blowers and will not result in the engine being operated outside the manufacturer's recommendation. These options which the charterers have are always subject to the master's obligation regarding the safety of the, ship, crew and cargo and protection of the environment. There are two obligations on the charterers. The first to ensure that there is no breach of the Bill of Lading provisions and secondly that the charterers will indemnify the owners to the extent that the owner's obligations under the Bill of Lading are more onerous than under the clause.

## 2) The slow-steaming clause for BIMCO voyage charterparties

This clause is much simpler and shorter than the time charterparty clause. The main difference is that only the owners are entitled to instruct the master to slow steam. Other than that then the clause follows the time charterparty clause. The clause is also without prejudice to other express and/or implied rights under the charterparty.

## 3) Virtual Arrival Clauses

Virtual Arrival Clauses usually operate when there is a known delay at the discharge port. In such a situation

it is pointless the ship arriving early and so the Master is instructed to arrive at a particular date and time just prior to the ship being required to go alongside. There needs to be a mutual agreement between the parties and an agreed charter clause. Intertanko have two such clauses and BP also have a clause. There needs to be an agreement on how to calculate the ship's performance and how to share the savings. The clause may also provide for a weather analysis service provider to do the calculation.

However, even if the charterparty clauses are used then there may still be problems and issues. The clauses are silent as to who pays for repairs or modifications. The speed and performance warranties elsewhere in the charterparty will still apply. There is also no express indemnity set out in the clauses as to what happens if after slow-steaming the ship is unable to meet the usual performance warranty. In addition it can be anticipated that with the Virtual Arrival Clause the savings calculation is always going to be open to argument and possible dispute. In addition, as with any indemnity, the indemnity is only as good as the indemnifier.

If Members have further questions please contact your usual syndicate contact.





# UK Defence Club

## Financial Summary

FINANCIAL SUMMARY  
to 20th February, 2013

17.2m

Premium income – £

### FINANCIAL POSITION

As at 20th February, 2013 the UK  
Defence Club's financial position was:

16.9m

Net claims incurred – £

2.2m

Investment return – £

52.6m

Assets – £

20.0m

Free reserves – £

Members will be aware that the Board of the UK Defence Club decided that a 5% General Increase should be levied for the 2014/15 policy year. Members will have seen from the Circular which was circulated, that the Board are very conscious of the current state of shipping markets and the continued uncertainty of the claims environment. The cost of litigation has increased considerably over the past few years. Bearing in mind the amounts in dispute and the complicates nature of modern day litigation there is nothing to suggest this will not continue for a number of years. Counterparty risk continues to be an important influence on claims development with Members understandably keen to take protective

steps at an early stage. Financially the Association capital position remains on a sound footing with free reserves of £20.0m and a ratio of total funds to claims reserves of 161% at 20th February 2013. As a mutual, your Board is committed to ensuring that the cost of cover should remain relatively consistent year on year, avoiding the need for significant premium increases.

In addition the Board is committed to retaining the current breadth of cover without altering the underlying terms of cover or imposing mandatory deductibles. That approach is one of the key differentiators between the Association and the majority of its competitors.

**In its 125th Year your Association is committed to its mutual status. Members matter.**

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From everyone at Thomas Miller we wish our Members an enjoyable and festive Christmas period and wish you all every success for 2014.

Daniel Evans  
Regional Director for Greece

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