

WEDNESDAY—NOVEMBER 17

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Introduction To the Problems of Marine Insurance In the Fishing Industry In the United States

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The problems of marine insurance, whether in the Caribbean area or in the United States, are everywhere of the same kind and of the same urgency. The complaints in the fishing industries, as far as the United States is concerned, refer to insufficient insurance protection, and are especially noticeable in the Boston, Mass., area, in the New Bedford, Mass., area, and the Tampa, Florida area. In other coastal areas of the United States there prevails comparatively greater satisfaction with the present status of marine insurance in the fishing industries.

Before discussing in detail the problems involved, it would be profitable to make clear what we mean by marine insurance in the fishery industries. Marine insurance in the fishing industries includes two fields of insurance which are completely different and therefore deserve separate attention. These are "hull insurance" and "protection and indemnity insurance".

In hull insurance, the most important phase involves the vessel itself, and the vessel forms the basis of the insurance. Therefore, in each type of marine insurance in which private companies are the entrepreneurs the vessel is the first object of consideration. The insurer will investigate, for instance, how well the vessel is built, whether it can safely carry fish, ice and men, the type of marine engine used, and whether it is a steel ship, a wooden ship, or a composite ship. With hull insurance most insurance policies specify in the policy a certain value of the vessel which represents the limit of the payment obligation of the insurer.

Hull insurance may be subdivided into four general divisions—sailing vessels, auxiliary sailing vessels, steamers and motor vessels. This last category is the most important as far as the fisheries are concerned. Hull insurance may be placed on trip risks or it may be placed on an annual or time basis. A trip insurance policy is one whose terms are mainly geographical; that is, a risk insured from one port to a fishing area and return. An insurance on time is limited entirely by the date of attachment and the date of termination. In the United States, there is, by law, no limit to the time for which a policy may be written. However, it is customary to write hull insurance on fishing vessels for one year.

The hull insurance policy usually includes a collision clause under which the hull insurance underwriter assumes responsibility for damage to other

vessels by collision. This clause excepts, however, any liability for removal of obstruction under government direction for injury to harbors, wharves, piers, stages, or other similar structures subsequent to collision, or for loss of life or personal injury. These excepted risks can be covered by "protection and indemnity insurance", commonly called "P & I Insurance." However, P & I is a very broad insurance against nearly all liabilities of the vessel owner or his employees.

Marine "protection and indemnity insurance," means insurance against legal liability of the insured for loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person. Whereas the hull policy protects the owner or charterer of a vessel against loss to his vessel, the P & I policy covers his legal liability risks in the operation of his vessel.

The protection afforded under a P & I policy may be grouped into three broad classes:

1. Liabilities with respect to persons
2. Liabilities with respect to other property
3. Unusual expenses to comply with government regulations and fines and penalties incurred by violation of law

A brief description of each class may be helpful in understanding the variety of liabilities with which a ship operator may be faced.

It is the responsibility of the operator to see that persons who have a right to be on board a vessel, *do not come to harm through his negligence*. This group includes the crew, ship visitors, passengers and stevedores working on or about the ship. The operator is also liable for unusual expenses incurred in getting sick or injured seamen to shore, and for the maintenance and medical care plus wages to the end of a voyage of seamen disabled by sickness or injury. He is also responsible for the care of such seamen left at foreign ports and the cost of getting them home when they have recovered.

The hull-insurance policy, in most cases, *includes a collision clause* under which the hull underwriter assumes responsibility for damage to other vessels by collision. This clause excepts, however, as printed out above, any liability for removal of obstructions under governmental direction, for injury to harbors, wharves, piers, stages or other similar structures consequent on collision, or for loss of life or personal injury. The P & I policy, subject to its terms and conditions, covers these excepted risks, except the "engagements of the insured vessel." There are other causes of damage to property, for which the P & I underwriter assumes responsibility, such as, a vessel that creates a wash that may cause other vessels to break their moorings or to be forced against dockers or driven ashore; similarly, a vessel that may be so negligently navigated as to crowd other vessels, causing collisions or stranding, a ship's tackle that may fail, causing cargo to be dropped on barges or lighters lying alongside.

A ship operator may be put to unusual expense by the enforcement of quarantine regulations. He may also have to pay fines or penalties for violation of federal, state, local, or foreign laws or ordinances by the owner, the

master, or his agents. The P & I policy, subject to its terms and conditions, assumes liability for these unusual expenses.

In short, just as the hull underwriter endeavors to cover losses resulting from the hazards to which hull is exposed, so insofar as practicable, the P & I underwriter covers the liabilities imposed by law or regulations upon the ship operator. Should the ship operator by special agreement or consent assume liabilities for which he is not legally responsible, such liabilities are not covered by the P & I policy.

As far as hull insurance is concerned, the difficulties arise from the fact that the premium, which is the amount that has to be paid by the insured to the underwriter, is mainly determined according to the value of the vessel which in case of loss must be replaced. A difficulty arises with the question whether the insured should receive the full replacement value and, if so, what is considered the replacement value. If a vessel was bought in 1934, it has certainly depreciated considerably; the insurer has to pay much less when he must present to the insured a 20 year old vessel or the monetary equivalent or when he must pay for a completely new vessel of the same size and the same type. That there are great differences in these two values may be seen from the fact that according to a Fish and Wildlife Service estimate, the accrued book value of the United States fishing fleet in 1953 was \$326,565,000, and the replacement value (i.e., if replaced by new vessels) was \$568,400,000.

Many difficulties arise from the fact that the insured wants to keep the insurance premiums low in order to keep the general business expenses low. However, in case of damages, the insured often is disappointed when he receives only payments commensurable with the low premium which are either insufficient to cover the repair cost of the vessel or insufficient to purchase a new replacement vessel. Even if both the insurer and the insured agreed to a more realistic insurance premium and to a more realistic damage payment, difficulties arise due to the fact that the underwriter is faced today, in the case of hull insurance, with a great increase in the rate of repair costs. Although the index of machinery costs from 1934 to 1954 increased only about 90 per cent, the cost of repairs increased about 200 per cent. This increase in costs may be due only primarily to the good business of ship repair yards and marine railways which started with the Korean War. It may be due also to high wages for craftsmen employed in such things as marine railways, based on the high living standards in this country.

The difficulties just mentioned are not lessened by the fact that repair costs or wages are temporarily declining. During the past ten years, despite temporary recessions, there has been, generally, an increase of costs and wages. The insecurity laid upon the shoulders of the underwriter regarding costs and wages is a deterrent to stable business.

As far as protection and indemnity insurance is concerned, the difficulties lie in the lack of proper legislation, limiting the liabilities of the vessel owner. It should not be too difficult to determine the proper cost of damages to a person who suffered these damages on board a fishing vessel due to the negligence of the owner. If fishermen would come under workmen's compensation as they do in Cuba, the law would provide for the limits of payment to the person who was damaged. Newfoundland also has such restrictive legislation. However, in the United States, under the common law and under the Jones

Act of 1920, the final decision as to compensation is given to the courts. Widows and children, parents, and other nearest dependent kin may receive damages under the Jones Act.

In recent years the courts have differed greatly in the amounts of damages given to the injured persons for the same type of damages. Much depends upon the jury in the respective case, on the political atmosphere in which the case is tried and on the energy and influence of the lawyers representing the injured persons. The problem in these cases is mostly that of equal justice before the law.

In May, when the writer published an article on "Marine Insurance Problems in the Fishing Industry," it was emphasized that "protection and indemnity insurance" covers also fines and penalties for alleged violations of foreign laws and losses which the insured may incur in connection with such laws. In the meantime, in the United States, Public Law 689, 83rd Congress was approved, on August 27, 1954. Under this Act it is provided that under certain conditions when a fishing vessel of the United States is seized by a foreign country, the vessel owners will be reimbursed by the government for fines and expenses incurred. This Act certainly will have some influence on "protection and indemnity insurance" and should make it possible for insurance companies to lower their premiums.

As long as annual insurance premiums for hull and P & I insurance combined stayed within the limits of five to six percent of the present value of the vessel, few serious complaints as to the premiums occurred. However, things have gone out of bounds. In a pamphlet "Crisis in the Fishing Industry," published by Everett S. Allen in 1953, the insurance rate at Provincetown, Mass., for a dragger employing 10 to 12 men, is stated to be \$4,500 per year. The same publication mentions that a large Boston trawler with a crew of 17 men pays from \$7,500 to \$12,500 solely for a "P & I policy of \$350,000." The story of the development of insurance rates on a New England scallop vessel is told by Eli G. Braley, President-Treasurer of Hathaway Machinery Company, Inc., as follows:

"In 1951, P & I insurance premiums amounted to \$1,700, at a cost of about \$150 a crew member, met by four notes of \$450 each. In 1952, premiums amounted to \$2,900, approximately \$260 a man, paid by four notes of \$750 each, and in 1953, premiums had risen to \$4,500, a cost of more than \$400 a man."

An attempt was made recently by the Seafood Producers Association of New Bedford and by the Federated Fishing Boats of New England and New York, Inc., to collect data on insurance premiums levied and payments made. The results of this survey as far as the number of answers and cases reported are concerned, were not very encouraging. Excerpts follow of some of the answers which were received by the organization involved. These refer to the year 1953.

1. The owner of a 65 ft. trawler in New England paid for the vessel, valued at \$20,000, a premium of \$1,200 for hull insurance, and \$850 for P & I insurance, limiting the liability to \$50,000.

2. The owner of an otter trawler of 74.5 ft. paid \$4,000 premium for hull insurance for the vessel valued at \$60,000 and \$1,400 for P & I insurance, in which case the liability was limited to \$150,000.

3. The owner of an otter trawler of 92 ft. paid \$4,050 hull insurance premium for a vessel valued at \$90,000; the P & I insurance premium was \$3,000 with liability limited to \$150,000.

4. The owner of a new scallop dredger in New Bedford of 109.6 ft. paid a combined hull and P & I insurance premium of \$6,695.45. The vessel in this case was valued at \$40,000 and the liability under the P & I was limited to \$100,000. In this case a deductible clause of \$500 was stipulated.

b. The owner of another scallop dredger in New Bedford of about the same size paid \$2,375 for hull insurance for the vessel valued \$25,000 (this vessel would cost \$100,000 new). The P & I premium in this case was \$4,500 with liability restricted to \$100,000. A deductible clause of \$500 was included in this case.

6. Owners of two trawlers of 96 ft. length each in Boston gave the following report: They paid \$9,800 premium for an assumed value of \$150,000 and \$5,500 for P & I insurance, with liability limited to \$130,000.

The owners of the vessels mentioned have reported greatly varying damage experiences. The two Boston trawlers had two small damage cases in which no settlement was reached despite the fact that the cases have been pending for over a year. Two otter trawlers in New Bedford reported no damages at all. One trawler in New Bedford reported damages of \$1,400 to the propeller and \$500 personal damages. Both damages were paid by the insurance company. One scallop dredger in New Bedford reported three claims totaling \$9,000 not yet settled after two years had passed since the claims were made. Another scallop dredger reported a claim of \$65,000. This claim was not yet settled at the date of reporting which was nine months after the claim was made.

It may not be easy to find a solution or an improvement of the present boat insurance situation. Some large insurance companies of North America have refused to accept P & I insurance in the fishing industries; in Boston there are only one or two insurance companies left that will do so. However, a few vessel owners in Boston are able to obtain insurance at satisfactory rates for their vessels and this is probably due to the strict safety rules applied by these vessel owners.

When a situation arises where vessel owners in one port can obtain insurance at reasonable rates while other vessel owners cannot, insurance becomes a competitive problem among the members of the fishing industry themselves. In such a case it is hard for government officials to take a stand. They have to take a stand, however, when the operation of a great number of vessels is placed at a disadvantage by excessive insurance costs and when the production of fish is thereby curtailed to an extent that the position of the fishing industry is endangered. The old Roman precept for officials: "Videant consules ne quid res publica detrimenti capiat" ("The administrator should see to it that the nation does not suffer damage") is valid for us today. We must watch that no damage is done to the fisheries of the United States, as viewed from the standpoint of those who are responsible for the status of the national economy.

Introducción a los Problemas de Seguro Marítimo en la Industria Pesquera

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Abstracto

Seguro marítimo en la industria pesquera comprende dos campos de seguro: "Seguro contra el casco" y "Seguro de protección e indemnización". Han resultado muchos problemas al tratar de obtener tarifas razonables para ser cubierto en ambos campos. En los Estados Unidos, las áreas de Boston, Massachusetts; New Bedford, Massachusetts; y Tampa, Florida, son las más afectadas por estos problemas. En el Caribe, Barbados principalmente es afectado por estos problemas. Las tarifas en Boston, Massachusetts, han subido tan alto como 11 y 12 por ciento. En New Bedford, Massachusetts, se reportó un caso en el cual la tarifa subió en un 25 por ciento. En Tampa, Florida, tarifas de 10% y más, se reportan. Puesto que tarifas de seguros muy altas hacen la pesca improductiva y son causa de desempleo en la industria pesquera, es necesario encontrar medios para mejorar la situación de seguros marítimos.

Some Observation on the Insurance of Commercial Fishing Vessels

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This paper has the purpose of clarifying the problem of what the insurance of commercial fishing vessels in the United States of America means for vessel owners and crews on one side and the insurance companies on the other.

The insurance problems facing the fishing industry in the United States itself differ in important respects from one part of the country to another. Insurance problems facing the fishing industries in some of the other countries represented here today also differ, I have no doubt, from the situation in the United States of America. In illuminating points of difference as well as points of similarity, in the mutual exchange of information and views, and in the discussion of unsolved problems, the Gulf and Caribbean Fisheries Institute has an important and constructive role to play.

This paper will discuss the insurance problem in a general way, despite the dangers of generalizations. To begin with, an "insurance market" can often be a dynamic affair that changes frequently and quietly. The supply and demand for insurance are subject to frequent adjustments. Thus, not only are rates changeable but also are the number of vessels requiring insurance and the number of insurers willing to supply such insurance. A new insurer willing to provide coverage in a given area might begin, not with a