

## The Fisherman and His Insurance

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Any discussion of marine insurance should start by first establishing the frame of reference in which the discussion is presumably to be confined. Any given problem has manifold aspects, depending on whether you are an underwriter, agent or vessel owner.

The writer speaks as a consumer of insurance, and owner of a menhaden purse-seiner fishing the east coast of Florida. As such a consumer, the writer's technical knowledge of insurance is limited and the following remarks should, therefore, be interpreted liberally and in the broad sense. Since marine insurance is a technical business, sweeping generalizations may be made which will cause underwriters to cry out in anguish. However, there are few vessel owners who are interested in the technicalities of the trade; their interest and primary concern is in the broader aspects of the protection available to them through insurance.

First, what are the risks to which a fishing vessel owner is exposed—excluding the risk of going broke because of weather or market conditions:

1. He can lose his vessel at sea or damage its hull or machinery severely.
2. He can be sued by crew members for injuries sustained while in his employment.
3. He can be sued by third parties who come aboard his vessel but are not members of the crew, i.e., "lumpers" or un-loading crews.
4. He can suffer damages resulting from the operation of his vessel, such as collisions, damage to wharves and buoys, etc.
5. He can suffer a host of smaller aggravations and expenses because of the operation of his vessel or because of the neglect of his Master.

For each of the risks listed above there is an appropriate type of insurance available to protect the owner:

1. Hull insurance, with or without machinery protection.
2. Protection and Indemnity insurance—so-called P and I—which immunizes him against damage suits for injuries to crew members and from a host of minor sources of loss, including certain collisions and injuries to un-loading crews.

There are a variety of hull insurance "forms" available to the buyer. The selection of the proper hull form is important and the choice between the American Institute Time Hull Form, the Inland Vessel Form, with endorsements, or the Menhaden Form should be made only after careful consultation with the agent. The writer recommends the American Institute Time Hull Form, complete with "Inchmaree" or machinery clause. This form, while not the cheapest available, seems to offer the best all-round coverage to the vessel owner.

For the present discussion it is assumed that the average fishing vessel owner is not the type who studies his policy carefully and seeks to interpret the technical phraseology. How can such an owner assure himself that he is prudently purchasing the right insurance from the right underwriter? A few basic suggestions might well be in order:

1. Select an agent to handle your business who is a specialist in marine fishing vessel insurance; a firm specializing in tug-boat insurance is preferable to a firm whose major effort is in the life insurance field. There exist firms who specialize in marine insurance for the fishing industry and in the long run they will serve the owner better.
2. Request that your agent advise you of the underwriters with whom he intends to place your insurance; if you are ultra-conservative, ask your banker to check the underwriters for you, particularly to assure that they are licensed to do business in your State.
3. Determine through inquiry among friends in the industry how the underwriters in question have settled claims in the past. Remember that insurance is worthless to you until you are in trouble. If, when you are in trouble, you have to sue the underwriters, the court may well award you your claim—but you will be getting your money the hard way.
4. Keep in mind that a good sea-worthy vessel under good management can always be insured at a price you can afford. If the inquiries you make seem to indicate the underwriters under consideration are slow, difficult to deal with and niggardly in their settlements, advise your agent that they are unacceptable.
5. Look at the other side of the coin: don't expect any underwriters to insure a sloppy, poorly-maintained vessel with a poor captain. Remember that you have a continuing warranty to the underwriters to keep her seaworthy, even though the underwriters surveyor may have passed her when the policy was first written.
6. Avoid excessive "shopping around" for insurance—insurance markets are just as sensitive as shrimp markets. If four or five brokers are busy selling the same load of your shrimp you can expect a soft market to result; the same principle holds true for insurance.
7. Don't buy your insurance on price alone, for an energetic agent can supply a policy tailored to suit almost any purse—but he will do it by deleting protection clauses which may be badly needed when an accident occurs. Stick to a standard hull form and make the "deductible" as high as you can afford.

What does the owner, with suitable hull insurance, do when his vessel gets into trouble? A few suggestions on procedure seem necessary:

1. If you have a damage claim, and not a total loss, do everything you can to get the vessel to a safe port and to hold down the damages. Govern your actions as though you had no insurance.
2. Advise your agent immediately of the time, place and nature of the casualty so that he may make arrangements for inspection and notify the underwriters. If the damages are severe you would be wise to retain a qualified marine surveyor to represent your interests and advise you. Most policies reimburse you for this expense.
3. Obtain sworn statements, called "protests" in the trade, from your captain and crew detailing exactly how the accident occurred. If a machinery breakdown is involved, try to pin the accident to its original cause, i.e., water-pump failure, fuel pump, drive shaft sheared off, etc.
4. Remember that the insurance underwriters undertake to reimburse you

for expenses you have incurred, that is, *you* make or have made, the necessary repairs and then submit the paid bills, along with the sworn statements of the crew, to the agent who forwards it to the underwriters. The underwriters themselves do not undertake to repair your vessel for you—that is your job.

5. Forget the common notion that when your vessel is in trouble that she automatically “belongs” to the underwriters and that they should attend to towing her to port, having her dry-docked or repaired. The vessel belongs to you and you should provide for her safety and welfare as if you were uninsured.
6. Keep your claim clear-cut and honest and you will generally be paid promptly—or what passes as promptly in the insurance business. Remember that the underwriters are far more adept at spotting “padding” in a claim than you are in padding the claim—they have been in the business longer and have been padded by experts.
7. If, after all this, the underwriters refuse to honor your claim (as they sometimes do), retain the best Admiralty lawyer you can get, but only as a last resort.

Last year, through negligence of an engineer, we had a serious accident with our heavy duty main engine. The damage was so severe that preliminary repair estimates for shipyard work came to \$25,000 with indications it might go higher. After a great deal of negotiation the underwriters agreed to settle for \$20,000 in cash, which was better than repairing the original heavy engine. The damaged engine was removed and a new medium speed V-type engine of slightly less horsepower installed. We came out of the accident well-satisfied, but about eight thousand dollars out of pocket. However, the settlement was advantageous not only to us but to the underwriters as well. The transaction required about five months to consummate owing to the nature of the settlement.

If your hull insurance is in order it would be advisable to examine your position with regard to liability for damages due to injuries to the crew. You warrant to your crew that the vessel is seaworthy in every respect and further guarantee to keep the vessel in seaworthy condition in every respect. If a man is injured or lost on your vessel, a whole chain-reaction of complications sets in and your vessel may be un-seaworthy by respect of a faulty shackle on the topping lift, or some other minor component. She may be perfect in every other respect and unquestionably seaworthy, but if the shackle broke and caused the boom to fall on Captain Casey—you'd better have P and I coverage or Casey is liable to lower a legal boom on you.

Before going into the question of liability for crew injuries a word about the history of such claims might be interesting. Many years ago the crews on merchant vessels were tough and the owners and officers tougher. In those days if a man got sick on board, or hurt, the first mate tried to patch him up. The result was the man either went over the side with a couple of shot at his feet or was dropped in the first port to fend for himself. Occasionally, to everyone's surprise, the seaman recovered and continued work.

The result was legislation to protect the merchant seaman, which went to the opposite extreme and made the seaman virtually a member of the

owner's family. A sage has remarked that "The seaman is the ward of Admiralty law" . . . and it is apparently true. The result is the Merchant Marine Act of 1936, the so-called Jones Act, which, as far as crew injuries are concerned, merely states that the seaman has a right to have his claim against the owner heard by a jury and in such action the rules applying to railroad employees shall also apply to seamen.

This is innocent enough on the surface, but the Jones Act has been stretched to the point where damages were assessed against a ship-owner when one crew member assaulted another during a voyage. The injured seaman claimed that the vessel was un-seaworthy by virtue of an unruly crew member—and, to the owner's dismay, the jury agreed.

If a crew member regularly employed on your vessel is injured in a bar-room brawl, you are legally liable for his hospitalization, maintenance and cure, although it is doubtful that he could sue you for damages. Recently, in New England, a trawlerman was awarded \$25,000 for damages for the loss of a thumb. Similar cases arise every day. The New England situation is acute and sympathetic juries have handed out some staggering awards. The underwriters have countered by raising their rates for Protection and Indemnity insurance to a point where it now costs about \$7,000 per year to put a 10-man trawler crew to sea.

Last year a New York firm of attorneys advised the writer that an ex-employee of his had allegedly contracted tuberculosis aboard his vessel, and could this matter be settled quietly, out of court? The writer said no, thank you. Some ten days passed and one morning the Federal Marshal handed the writer an impressive document which indicated that the New York attorneys felt that their client's feelings would only be assuaged by seventy-five thousand dollars. It was only when the writer called his agent to notify him of this situation that he learned that it was no laughing matter, and that the underwriters had already paid off on several such claims. The underwriters retained the best Admiralty lawyer in the area and took over the owner's defense. Had the suing crew member undertaken to libel the vessel the underwriters would have arranged a bond so that fishing could continue. In the end the matter was probably settled out of court.

One of the fine provisions of your P & I policy is that it provides for your defense. In Workman's Compensation insurance and other types of similar protection it is necessary to defend yourself, retain attorneys, etc., to the detriment of your regular business.

If a crewman in your employ is injured first make every attempt to see to his welfare and safety. Then notify your agent of the injury and refrain from any statements or communications on the matter except to your agent or the underwriter's attorney.

We mentioned previously a parallel between P & I insurance and Workman's Compensation. Some owners have covered their crews with Compensation insurance in the misguided belief that all parties were thus adequately covered. Workman's Compensation is certainly desirable for men working on shore or in the packing house, especially when reinforced by Longshoreman's and Harbor Workers Insurance. However, a crew member covered by Compensation insurance can settle an injury claim with the owner for, say, \$1000 and give him a written release. The injured crew-

man can then institute suit under the Jones Act for any sum that a sympathetic jury will award him.

Under present legislation the owner's only worthwhile protection for vessel crews is his P & I insurance. It is not only better, but cheaper than Compensation. Based on a rate of 4 per cent of the payroll, Workman's Compensation for a three-man crew of a Campeche Bank shrimper might run \$800 per year, whereas the same three men can be covered with a comprehensive P & I policy for approximately \$375 per year—and this will protect the owner up to \$50,000 in any one accident. Naturally, if claims and awards go up as they did in New England then this economical rate will rise sharply.

The solution to adequate, reasonable treatment for owner and crewman alike seems to lie in legislation to bring into being a Seaman's Compensation Act which applies either to commercial fishing vessels alone or to all merchant seamen, including fishermen. Since merchant seamen have strong unions who have struggled for fifty years to achieve the present status of the law, it would seem most practical to seek legislation applying solely to fishermen.

Such a law would be merely an extension of shore-side Workman's Compensation legislation with special consideration for the problems and hazards of fishermen. With maximum benefits stipulated by law it would be relatively simple for underwriters to offer adequate protection to the crew at a price the owner could afford. In the South this problem is not critical as yet, probably due to the average Southerner's aversion to legal proceedings. The problem has reached critical proportions in New England. In some ports, owners have gone out of business or moved their vessels north to Canadian ports because soaring insurance rates, coupled with foreign market competition, have forced them to do so.

In summation, an owner can still afford adequate insurance coverage for his hull and machinery and he can still, in the South, obtain relatively cheap Protection and Indemnity insurance. With this coverage he can generally avert serious financial damage and can confine his worrying to market conditions and to the next payment on his vessel.

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## **Un Pescador y su Seguro: Un Caso Histórico de Seguro Contra Casco, Protección e Indemnización**

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### *Abstracto*

El costo creciente de seguro de protección e indemnización, así como el seguro de casco y maquinaria, representa un gasto enorme para el dueño del bajel. El autor relata de su propia experiencia un caso de demanda por severos daños en la maquinaria y su reacción a una demanda de \$75,000 por un miembro de la tripulación que contrajo tuberculosis. Se hace mención de los problemas en tratar de poner los pescadores debajo de la ley de indemnización para trabajadores y también se mencionan las responsabilidades legales del dueño de la embarcación pesquera.