



NewsBoard

Canada's best liability insurance market

Winter 2013

Season's greetings
from the (ESR) Markel team...

Merry Christmas
and Happy New Year!

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Marine Liabilities Demystified

Marine Liability insurance has a reputation for complexity which stems more from the often arcane language of the forms than the principles. The London market, the birthplace of many marine forms has revised the mainstream hull and cargo forms but the liability wordings which were conceived outside of the Institute are less approachable. Marine liability products fill the gaps created by the exclusions found in the non-marine policies. Unfortunately those exclusions are by no means standard. The usual CGL exclusions pertinent to this discussion are "care, custody or control", ownership, operation, maintenance and loading and unloading of a watercraft. Contractual liability may also come into play. It is not unusual for 2 brokers to be involved in an account, one being a marine specialist. It simply is impossible to adequately cover the marine exposures without knowing what is excluded in the non-marine program. Voila, a perfect opportunity to snoop. Once you have determined what the exclusions are you can begin shopping to cover the exposures.

Protection & Indemnity (PandI, P+I or P&I)

Certainly a formidable name for liability insurance for a boat. Simple enough - does the insured own any watercraft? If so P+I is the product. Large commercial risks requiring very high limits are placed with mutual insurers referred to as "Clubs". The Shipowners' Club operates in Canada, is licensed and is where large risks are best

placed, particularly where there are pollution exposures. Ships can limit liability so often \$5,000,000 or \$10,000,000 is adequate and these limits are available locally.

Things get a touch more complicated when the watercrafts are used for specialist operations, construction, dredging, pile driving, blasting, where the exposures vary tremendously as do the premiums to cover them.

Towers Liability

Towing is usually done under a contract which absolves the towing vessel from liability for damage to the vessel being towed and from third party liability for damages done by that vessel while under tow. There may be an indemnity included whereby the towing vessel can transfer any claims from third parties to the towed craft. If the client engages others to tow vessels it is important to obtain a copy of the towing conditions in whatever form they may take. Similarly, if the client does the towing the written conditions should be filed with the underwriter. Be careful if there is cargo on board of the towed vessel as cargo is generally excluded and must be insured separately, with notation that subrogation is waived. Liability to crew is also excluded but they should be covered by Worker's Compensation.

A complication arises when some of the liability is covered under the direct damage Hull and Machinery policy, an oddity of the marine world. Do yourself a favour and make sure all the liabilities are covered by liability forms.

Non-Owned watercraft/ Charterer's

Are there vessels involved in the operations that are used for the Insured's purposes? They could be rented, chartered in the marine vocabulary, borrowed, used to ferry workmen or materials, perhaps the CEO's yacht used for entertaining clients. Again, check to see what coverage is provided under the general liability policy for watercraft. If there is a written contract -

charter party, booking note, contract of affreightment, rental agreement, purchase order or invoice with mention of "conditions", get a copy. If vessels are being used to transport dangerous products, virtually anything on the hazardous list, ask about Cargo Owner's Liability. Generally speaking the shipowner is responsible for the cargo, but if it is improperly packed or prepared for shipment or mis-declared to the carrier a claim could find its way back to the shipper. Some of the environmental protection legislation is not shy about infringing on the marine sector.

Charterer's Liability is the dressed up product covering liabilities assumed under the contract for damage to the vessel being chartered and third party liability arising from the use of that vessel. There is no doubt that charter parties are complex.

The main reference book is over 1,000 pages in its 24th edition. The good news is that all you have to do is get a copy of the contract to the underwriter. He or she has the job of evaluating the exposures.

Ship Repairer's Liability

Basically simple although the form is a dog's breakfast after some poorly implemented changes. Originally it covered claims arising from ship repairing activity with a 6 months "discovery" period, cutting



off the completed operations coverage. Later the form was amended to cover claims arising during the work, retaining the 6 month's period to discover and report claims. CGL underwriters used to provide the long tail completed operations coverage, but no longer. Work needs to be done here but if the client does any repairs or maintenance on a ship this is the coverage. It can be amended for other shipboard activities where a marine policy is required, e.g. people taking measurements or samples, performing inspections, etc. The so-called discovery period can be extended to 12 months. It takes the form of an exclusion which, at 6 months, in fact may conflict with established minimum prescription periods.

Wharfinger's Liability – (Marine people love old names.)

This covers a dock or landing owner for vessels in his care, custody or control while at those facilities.

Add some husky lads and a few lift trucks for loading and unloading and you have -

Stevedores Liability

This form covers claims arising from loading and unloading vessels. Be careful about territorial limitations. Negligent loading in Canada can result in injury or damage at destination.

Add a building for reception and delivery of cargo and you have -

Terminal Operator's Liability

This form wraps up the care, custody exposures and loading/unloading although in all cases a general liability policy is required for the premises exposures.

Multi-Marine Liability

For the belt and suspenders clients wrap up all these products in a multi-section policy and add a Bumbershoot marine and non-marine excess liability policy.

Marina Operators and Boat Dealers

Quite similar to a garage policy. Care, custody or control (docks, storage, repairs, hauling and launching), repairs and maintenance. Operation of non-owned and owned watercraft. Floor plan if boats are sold - demonstrations, deliveries to be included.

Marine General Liability Policies

These policies are General Liability policies extended to cover excluded marine operations. The major problem is the application of exclusions present in the general liability field but not in the marine policies. It is often not clear if, for example, faulty workmanship in repairing a vessel is covered or not. Mould, dust, spores, etc. are not exclusions in the marine contracts. Important? Clearly, yes if the marine exposure is a terminal shipping cement or concentrates.

There is a quick exposé of the marine liability products. Keep your eye on the exposures not covered by the Property/Casualty program and get help from your friendly and knowledgeable marine underwriters who can help you navigate a safe passage.

Douglas (Doug) McRae, September 16, 2013

About Markel International

Markel International is a London-based specialty property and casualty insurer. It is a subsidiary of Markel Corporation of Richmond, Virginia, U.S., and writes business through its two commercial entities known as Markel International Insurance Company Limited (MIICL) and Markel Syndicate 3000, a 100-per-cent Markel-owned Lloyd's corporate syndicate.

Markel Corporation is rated:

- A (Excellent) by A.M. Best
- A (Strong) by Standard & Poor's.

Our People

Diane Brisson



Q How did you get involved in the Insurance Industry?

I was a stay at home mom and at one point had to make a change and applied at a placement agency where they sent me to work for Dale & Company (an insurance brokerage) for a period of 3 weeks but I stayed on much longer. I did secretarial work and was interested in becoming a marine underwriter and when asked, I jumped at the chance and have never looked back.

Q What is your current role?

My current role is Assistant Vice President & Montreal Marine Manager. We have a fantastic group of highly experienced marine underwriters: Anna Tonin, Matthieu L'Affeter, Andy Gordon and Doug McRae, with Vicky Branco as our Technical Assistant.

Q What brought you to this role?

I was 28 years with my previous employer (always in the Marine Department). When the opportunity of working with Elliott Special Risks (ESR) to help develop a Marine Division was presented, I agreed to take on a new challenge. It has been almost two years now and I can confidently say we have made ESR known as a Marine Player.

Q If you could summarize the top 3 most important skills of a person in your role, what would they be and why?

Passion: I believe if you are passionate about your work this will transfer to the department and they will in turn be passionate about all the different aspects of marine insurance.

Listen: I believe listening to what your team has to say about what they hear in the market place, how the rates are being affected, any additional coverage being offered, etc., helps to keep us competitive. What your team has to say (whether good or bad) and keeping ones' mind open to all suggestions is a definite asset to building a strong effective team.

Humour: To be able to let go and have a good laugh helps the department to release any tension they may have and helps to bind the department as a team.



"Meet the Team" from left to right.
Douglas McRae, Matthieu L'Affeter, Diane Brisson, Andy Gordon and Anna-Maria Tonin

Our People

Q What type of advice would you provide to a new person either currently in or considering entry into our industry?

I would say that a career in insurance has not been properly promoted to students and/or others entering or presently in the work force. You have to find your niche, by working part time with a broker or an insurer or even an insurance/marine adjuster. A great way to do this, if possible, is to cross-train within various departments so you can get a feel for what turns you on and makes you get up and go every morning. It gives the individual an overview of what goes on behind the closed doors of each operation, and he/she might be quite surprised at what they like and are good at. Insurance is a fantastic career - this is confirmed by the fact that a large majority of employees remain in the industry their whole careers and ESR is a prime example.

Q What do you enjoy doing for extracurricular activities?

I have an active life with family (4 grandchildren) and friends. When they aren't keeping me busy, I love taking walks, going to the movies, reading and of course, travelling.

Gerry Clayton



Q How did you get involved in the Insurance Industry?

Like many people, my career start was a happy accident. After university I worked for a year to save money to do some travelling in Africa. When I returned to Canada I began the typical search for a job, more specifically, for a career. Again, like so many people, a relationship was the key to opening the insurance door. A relative of mine had a friend in the industry who was hiring. Lucky for me I got the job and in the fall of 1993 I joined Eastern Marine Underwriters, a marine MGA in Montreal owned by Maurice Jaques. In the beginning, I wasn't sure that first job would become a career. I am very fortunate that it has. I have been able to continue growing and developing in what is an important and dynamic industry.

Q What is your current role?

Currently I am Assistant Vice-President & Marine Manager for the Vancouver office of Elliott Special Risks.

Q What brought you to this role?

I originally came to Vancouver on a year-long secondment from Toronto with another insurance company. I enjoyed Vancouver so much I decided to stay. Elliott's was looking to start a marine department in Vancouver. After meeting some of the Elliott and Markel International people we thought it was a good fit, so two marine colleagues, Alain Matkin, Art Heaney and myself joined Elliott's in May 2012.

Q If you could summarize the top 3 most important skills of a person in your role, what would they be and why?

Most people, of course, think that insurance is a numbers game and from one particular angle this is true. But at the root of the business, marine insurance is a service industry. All service industries are first and foremost about people. It is about the people you work with, the insurance brokers you service, and the insureds that choose to protect their assets with Elliott Special Risks. So, while I could point to a number of important skill sets, I would really emphasize that being effective in our industry rests on communication. Communicating with colleagues, or as I call them, internal clients, as well as communicating with brokers, or external clients, communicating effectively with people is a critical component to success in our industry.

Q What type of advice would you provide to a new person either currently in or considering entry into our industry?

The insurance industry has been good to me and I feel that it offers many exciting opportunities for people already in the business or for people contemplating a move within the industry. Many young people may not realize the exciting opportunities in marine insurance and I am sure they would be surprised to see so many dynamic and successful people involved in our business. At the same time, young people have so much to offer our industry - they are creative, natural networkers, effective team players, and forward looking. In a nutshell, I would tell them to "try the industry on for size" - we may just surprise you.

Q What do you enjoy doing for extracurricular activities?

I enjoy being active and take pleasure in being in beautiful British Columbia. I have a special interest in rugby having been involved in the game for much of my life and I still enjoy refereeing rugby and mentoring new referees.



"Meet the Team" from left to right. Art Heaney, Alain Matkin and Gerry Clayton.

Recent judgments

Ghost case cast out of court

No ghost here! In 2010 Trajan Fisca bought a commercial building in the Waterloo District. A few months after his \$650, 000 purchase he heard that his building may be haunted. Stephen Kramer made the off the cuff comment over a few beers that in one of the 3rd floor offices there appeared to be movement but to his knowledge no one was in the office. After hearing that comment Fisca filed a lawsuit against the association and the 2 real estate agents who handled the sale. His claim stated that he should have been made aware of 'the existence of a death and/or murder' prior to the sale of the 1922 building. He was asking for 1 million dollars in damages claiming that the rumour of a ghost living in his building was costing him business and making it hard for him to lease his building. The defence claimed that Kramer was only joking. Fisca did not have any evidence of a ghost residing in his building thus Justice James Sloan dismissed the case without even going to trial.

2013 Waterloo Region Record

Slippery snow is not a surprise

William Edbrooke was found liable for an automobile accident and Mr Tran was awarded \$136, 578 for injuries suffered in the collision. The incident occurred when Mr Edbrooke was driving 'slowly and cautiously' down a familiar snow covered hill. He approached the stop sign but because of the weather and road conditions his vehicle slid through the intersection and hit Mr Tran's southbound vehicle. Justice James Williams maintained that due to the fact that Mr Edbrooke knew the road to be slippery he was thus liable for the accident. Justice Williams served his

verdict with the explanation, "Mr Williams was not met with a hazard of which he had no prior warning or indication." Had it been a piece of black ice the verdict may have not been in Mr Tran's favour.

Source: Thompson's World Insurance News



Record \$4.95M in damages awarded in worker's insurance claim

4.95 million dollars! That was the amount ordered payable to Luciano Branco by the insurance companies AIG and Zurich. Mr. Branco was a welder working for Kumtor Operating Co, a subsidiary of the Saskatchewan based Cameco Corp. He was working in a gold mine in Kyrgyzstan when he was injured as a steel plate fell on his foot. In June 2002 he went to the company doctor for assessment after he found his local doctors were not able to treat his injury. His injury was reported to the company and the medical reports showed that he had suffered permanent damage. The insurance companies put up delays on his claim and refused to pay even though the company doctor found the injury to be permanent. When the matter finally went to the court the judge was less than impressed, "This failure to pay and continual court applications instigated by Zurich with no reasonable justification were nothing short of torturous on Branco." Luciano Branco was once a hard-working, athletic, proud man who went to feeling ashamed and suffered acute mental distress all due to an injury on the job and the insurance companies refusal to pay. "The actions of AIG and Zurich establish a pattern of abuse of an individual suffering from financial and emotional vulnerability," the judge added. The \$4.95M award was the largest of its kind against a Canadian insurance company.

Source: CBC News

Civil lawsuits cost Toronto millions

City vehicles, golf balls, road and sidewalk maintenance and inclement weather costs Toronto millions of dollars. Since 2000, the City of Toronto has paid out more than 200 million to civil lawsuits. The city budget chief, Shelly Carroll, maintains that poor city services are partly to blame for the settlements. Road and sidewalk maintenance led to 773 cases, the city's response to inclement weather led to 640 cases and police activity led to 256 cases. Even though 200 million is a large amount of money, the 200 million over the time span is not unreasonable, Shelly Carroll says. She further adds 'By and large we have reasonable lawsuits. We don't have a nutty, litigious society like the United States'. The number of settlements have declined slightly over the years but the chance of getting a large settlement has increased. Slips and falls, damage by trees, human rights complaints and descriptions cases are also added to the list of cases settled. All of this information had been obtained by the Toronto Star through the Freedom of Information request.

Source: Toronto Star

Stranger than fiction

You get what you deserve



This guy's case actually won him 4th place in the Stella's Awards. Jerry Williams from Little Rock, Arkansas, was awarded \$14,500 plus medical expenses for being bitten on the butt by his next door neighbor's pet beagle. Although the beagle was said to be chained in its owner's "fenced yard", Williams still filed a claim but did not get as much as he desired for obvious reasons. The jury knew that the beagle had been provoked prior to biting Williams in the butt because Williams had climbed over the fence into his neighbor's yard and repeatedly shot the dog with a pellet gun.

Crying over spilled drink

Amber Carson of Lancaster, Pennsylvania, was paid \$113,500 by the restaurant on the orders of the jury because Carson slipped over a soft drink spilled on the restaurant floor and broke her tailbone. The restaurant was obviously shocked at the verdict because Ms. Carson herself had thrown the drink at her boyfriend 30 seconds earlier during an argument. We all know that restaurants have to have quick service but 30 seconds is insane! Whatever happened to people being responsible for their own actions?

Note: Content in our "Stranger than fiction" column comes from secondary sources rather than original court documents, so Elliott Special Risks cannot guarantee the accuracy of the material featured.

Cruise Control versus dumb customers



Mrs. Merv Grazinski of Oklahoma City, Oklahoma, purchased a new 32-foot Winnebago motor home. However, on her first trip home, from an Oklahoma University football game, she set the cruise control at 70 mph on the freeway, leaving the driver's seat to go at the back of the Winnebago for a sandwich. It didn't come as a surprise when the motor home left

the freeway, crashed and overturned. Predictably, Mrs. Grazinski sued Winnebago for failing to give this useful information in the owner's manual. Naturally the Oklahoma jury awarded her with \$1,750,000 and a new motor home. To avoid further confrontations with such insane customers, Winnebago actually changed their manuals.

Tripping over your own toddler

No job can be as boring as working for an insurance company, right? Wrong! There are times when funny claims are presented and even more unbelievable, they get paid!



Kathleen Robertson of Austin, Texas actually won this case and was awarded \$80,000 by the jury, which of course was comprised of her peers and friends, for tripping over a toddler and breaking her ankle. The toddler was running inside a furniture store. The store owners were baffled when the final verdict was read out. That is understandable so, for the running toddler was Robertson's own son. Maybe the store should now place a rack where customers must deposit their little ones.

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The information in this newsletter is intended to be general in nature and should not be construed as specific recommendations, nor as a substitute for the advice of a professional insurance broker who is familiar with a client's particular exposures or circumstances. Aussi disponible en français.

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Our Products

Marine Program (MAR)

Our Marine program is designed to offer a variety of products covering a wide range of risks. We offer a multitude of liability, hull and cargo coverages. We also provide various excess marine liabilities.

We place great emphasis on the relationship between insured and the insurer providing superb personal service. Our marine underwriters have superior knowledge and experience, enabling them to handle a comprehensive range of risks with substantial limits.

Coverage features:

- Up to \$15M in-house capacity with access to higher limits
- \$25M Protection & Indemnity capacity on passenger vessels
- Complete, made-to-measure solutions
- Flexible underwriting criteria
- Quick and efficient service

Coverage enhancements:

- Boat Shows
- Excess marine liabilities
- Inland Transportation
- Marine Installation
- Warehouse coverage

Target Classes:

- Charterers / Stevedores / Terminal / Wharfingers
- Hull & Machinery / Protection & Indemnity
- Marinas / Boat Dealers
- Marine Builders Risks
- Marine Cargo
- Ship Repairers



Please see our office directories for contacts in your area.

Electronic funds transfer

The insurance industry continues to be targeted by organized cheque fraud artists. At the request of several clients, we can now accept electronic transfer of funds (EFT).

If you wish to use these facilities for account settlement, please contact Laetitia Bourdin at (514) 849-4992 or lbourdin@elliottsr.com.



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