

The World of P&I: A Mutual Affair

Development of P&I Clubs and their Role in Casualty Response



February

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 <small>Grounding Day</small>	3	4	5	6	7
8	9	10	11	12	13 <small>Valentine's Day</small>	14
15	16 <small>President's Day</small>	17	18	19	20 <input checked="" type="checkbox"/>	21
22	23	24	25 <small>Jah Wednesday</small>	26	27	28



MLA Fall Meeting, Hawaii
December 4, 2011
Presented by: Sandra Gluck
Gard (North America) Inc.

Overview

- The World of P&I
 - Development of P&I Clubs
 - International Group of P&I Clubs
 - Mutuality
 - “...liabilities, losses, costs and expenses incurred in direct connection with the operation [acquisition or disposal] of the Ship...”
 - Named Risk
 - Expansion of Covers/Multiple Entries
 - Service Culture
 - Casualty Response
 - Potential Participants
 - Role of the P&I Club
 - Notification
 - Marshal/Coordinate Response Resources
 - Strategic Considerations
-

Overview

- **The World of P&I**

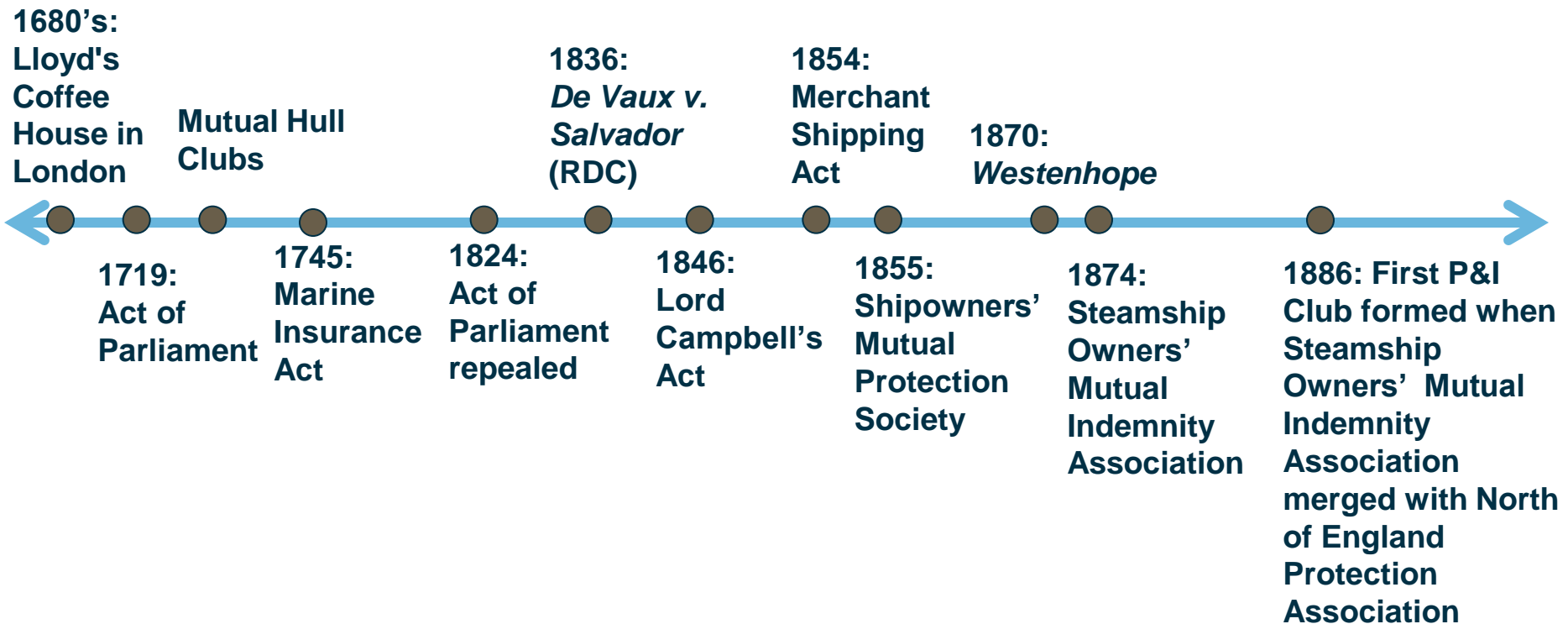
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The Origin of P&I Clubs



Mutual Hull Clubs

- **1719:** Act of Parliament
 - Royal Exchange Assurance
 - London Assurance
 - “Clubs” or Mutual Hull Underwriter Associations formed on a mutual non-profit basis
 - **1745:** Marine Insurance Act – prohibited insurance of vessels in excess of their value
 - **1824:** Act of Parliament repealed
 - Noon GMT on 20 February became the Mutual Hull Clubs’ policy year
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The Development of P&I Clubs

- The Protecting Clubs

- **1836: *De Vaux v. Salvador*, (1836) 4 A. & E. 420**

- Held that damage caused to another vessel in a collision was not recoverable under the standard policy of marine insurance in use in the London market

- **1846: Fatal Accident Act**

- Better known as *Lord Campbell's Act*

- Ship owners may be liable for loss of life and personal injury

The Development of P&I Clubs

- **1854: Merchant Shipping Act**
 - Shipowner's right to limit liability to cover death and personal injury claims to value of ship + freight (value deemed to be not less than L15 per ton)
- **1855: First Protection Association, the Shipowners' Mutual Protection Society, was formed**
 - Now known as Britannia Steamship Insurance Association Ltd.

The Development of P&I Clubs

- The Indemnity Clubs

- **1870: *Westenhope***

- Vessel carrying cargo bound for Cape Town
 - Diverted to Port Elizabeth; ship sank and cargo lost en route to Cape Town
 - Court held that ship owner could not rely on exclusion clauses in contract because of deviation

- **1874: First Indemnity Club formed**

- Steamship Owners' Mutual Indemnity Association

- **1886: First P&I Club**

- North of England Protection Association merged with Steamship Owners' Mutual Indemnity Association

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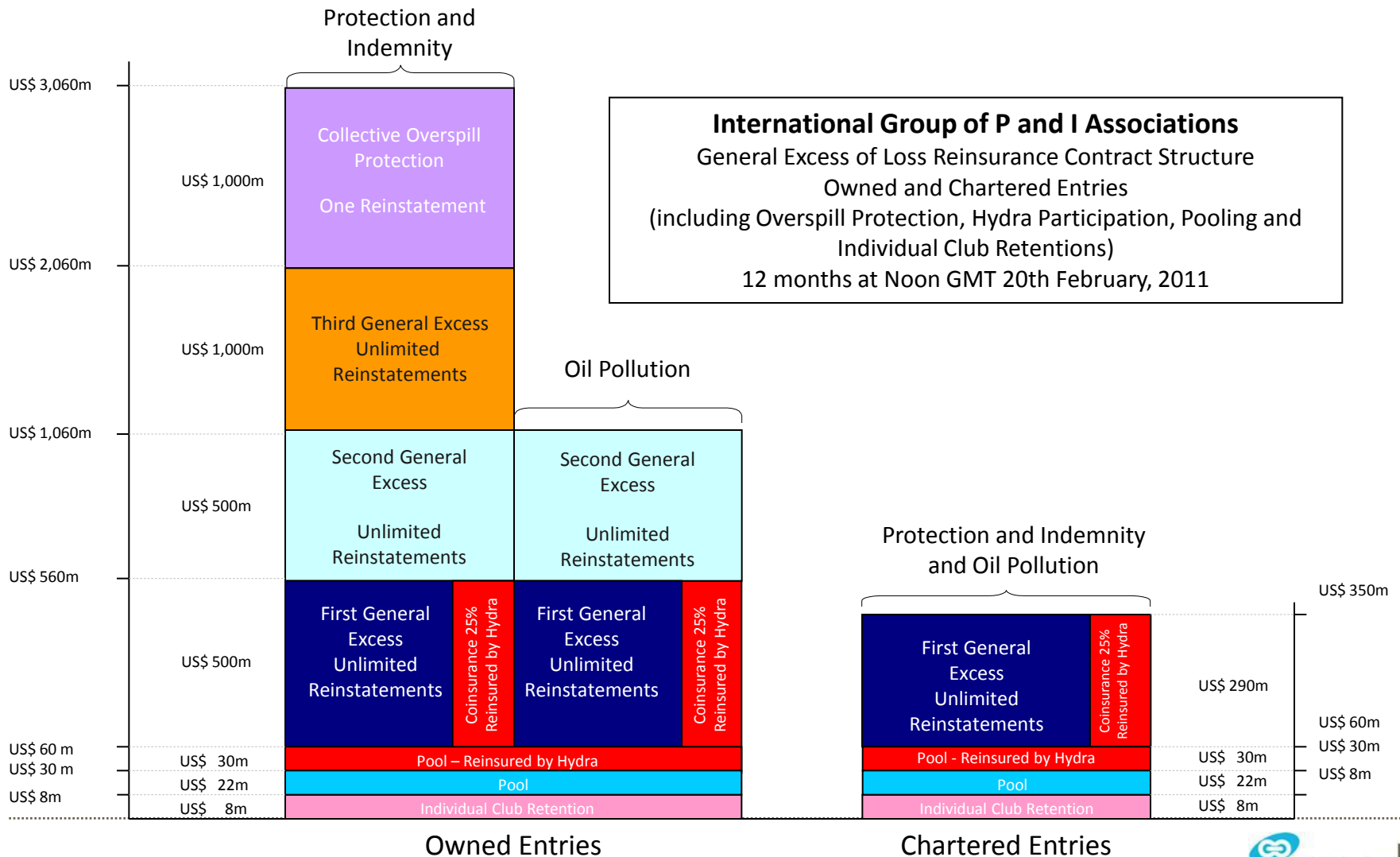
History of International Group (“IG”)

- As P&I Clubs were developing in England, similar Clubs forming in Scandinavia, particularly after passage of Harter Act (many Norwegian ships regularly traded to U.S.)
 - **1897:** Assuranceforeningen Skuld formed in Oslo
 - **1907:** Assuranceforeningen Gard formed in Arendal
 - **1899:** London Group of P&I Clubs formed by 6 Clubs for claims-sharing arrangement
 - **1951:** London Group expanded cooperation regarding purchase of market reinsurance
 - **1981:** International Group established
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International Group P&I Clubs

- American Steamship Owners Mutual Protection and Indemnity Association, Inc.
 - Assuranceforeningen Skuld
 - Gard P&I Bermuda Ltd.
 - The Britannia Steam Ship Insurance Association Limited
 - The Japan Ship Owners' Mutual Protection & Indemnity Association
 - The London Steam-Ship Owners' Mutual Insurance Association Limited
 - The North of England Protecting & Indemnity Association Limited
 - The Shipowners' Mutual Protection & Indemnity Association (Luxembourg)
 - The Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Limited
 - The Steamship Mutual Underwriting Association (Bermuda) Limited
 - The Swedish Club
 - United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited
 - The West of England Ship Owners Mutual Insurance Association (Luxembourg)
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International Group Reinsurance



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Mutuality

- As insurers, members' premiums (and sometimes additional amounts or "supplementary calls") allow Club to pay for all claims, reinsurance and administrative expenses. If there is a surplus, can be returned in whole or in part to the members or transferred to the Club's Reserve
 - Therefore, each member shares risk of other members and has interest in who becomes a member
 - As insureds, members have right to be indemnified for losses/liabilities incurred in connection with specific vessel entered.
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“...liabilities, losses, costs and expenses incurred in direct connection with the operation [acquisition or disposal] of the Ship...”

- Cover afforded by the Association to the member is subject to the Club’s Statutes and Rules
- Cover is limited to liabilities, losses, costs & expenses incurred by the Member (a) in direct connection with the operation* of the Ship; (b) in respect of the Member’s interest in the Ship; and (c) arising out of events that occur during the period that the Ship is entered for the relevant risk with the Association [Gard Rule 2.4]
- *Cover for legal costs (FD&D or “Defense” cover) also includes acquisition or disposal of the Ship

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P&I: Named Risk Insurance

- Liabilities covered:
 - Liability arising from carriage of cargo
 - Pollution liability arising from accidental discharges
 - Liability for death or injury to crew members (including contractual liabilities), passengers, stevedores, other third parties (e.g. pilots, surveyors)
 - Liability for damage to fixed and floating objects/property (unless covered by terms of hull policy)
 - Liability for collision damage not covered under hull policy (e.g. personal injury/loss of life, pollution, wreck removal of own ship, damage to cargo on own ship) or in excess of limit of hull policy
 - Wreck/Obstruction removal
 - Fines: customs, immigration, contraband, pollution (arising from accidental discharges)
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P&I Insurance Cover

- “Losses, costs and expenses” – incurred by member
 - Diversion expenses (for purpose of e.g. securing treatment of sick person, searching for missing person)
 - Expenses in dealing with stowaways and refugees
 - Unrecoverable general average contributions
 - Measures taken to minimize loss (sue and labor)
 - Disinfection and quarantine expense

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Defence Cover (FD&D)

- Insurance against legal and other costs incurred in establishing and defending claims from business operations (e.g. charter party disputes such as demurrage, safe berth/port, performance claims, off-hire; ship acquisition or disposal)
 - Does not insure underlying liability or loss
 - Can be stand-alone or tied to P&I entry
 - Must be a dispute that arises in connection with the operation of a ship (but can also include, sale, purchase, disposal)
 - Overlap - charterers' cover: e.g. damage to hull caused by unsafe port or off-spec bunkers – considered P&I
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Charterers' Cover

- Risks covered include:
 - P&I risks (e.g. Personal Injury, Cargo, Damage to Property)
 - Damage to Hull
 - Charterers' liabilities for contributions in GA for freight and bunkers
 - Charterers' liability for oil pollution
 - Salvage
 - Detention and similar delay
 - Charterers' debunkering costs
 - War risks (including terrorism)

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Service Culture

- World-wide network of correspondents available to assist members usually on a 24/7 basis wherever their ship/problem may be
 - Many Clubs offer loss prevention services including publications, seminars, participation in drills in addition to claims handling
 - Customization/modernization of covers in response to changing needs of members
 - “Hands-on” Approach to Casualty Response
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Casualty Response

- *Potential Participants:*

- P&I Clubs and Hull Underwriters
 - Vessel Owners, Charterers, sub-charterers, slot charterers, cargo interests (including cargo underwriters)
 - Personal Injury Claimants (e.g. passengers, longshoremen, seamen, heirs, general population)
 - Surveyors, Lawyers, Experts
 - Media
 - GA adjusters
 - Salvors; Salvage Master
 - Special Casualty Representatives (“SCR’s”)
 - Hospitals and other health care providers
 - Government authorities (local and national)
 - Flag State
 - Classification Societies
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Casualty Response

- *Role of the P&I Club:*
 - **To assist and support its member/assured in responding effectively and efficiently to the casualty**
 - Notification
 - 24/7 Emergency Telephone
 - Worldwide network of correspondents with 24/7 response capability

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Casualty Response

- *Role of the P&I Club: (con't)*
 - Marshal/Coordinate Response Resources
 - Priorities: Life, Environment, Property
 - *Life*: work with local correspondents/medical case manager/government authorities to arrange/coordinate timely and appropriate evacuation/treatment/repatriation of injured/ill
 - *Environment*: Spill Contractors (depending on jurisdiction), Natural Resource Experts, SCR's (salvage/SCOPIIC), wreck removal contractors
 - *Property*: cargo surveyors/experts, consider appointment of third party claims administrator for large casualties involving numerous/mass third party claims

Casualty Response

- *Role of the P&I Club: (con't)*
 - Marshal/Coordinate Response Resources (con't)
 - Establish internal team/set up communication/liaison channels (internal and external), including with member/assured and other Clubs/underwriters
 - In serious casualty, consider on-site attendance of P&I Club rep.
 - Depending on circumstances, consider assisting member to appoint media consultant to interface with local/national/international media
 - Possible attendance of P&I Club representative at offices of member/assured (depending upon member/assured internal resources)

Casualty Response

- *Role of the P&I Club: (con't)*
 - Marshal/Coordinate Response Resources (con't)
 - Appointment of legal counsel to conduct investigation, assist with demands for security or efforts to obtain security, interface with government authorities
 - Consider whether criminal counsel should be appointed

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Casualty Response

- *Role of the P&I Club: (con't)*
 - Strategic Considerations:
 - Investigations:
 - Code of Practice between P&I Clubs of the International Group Regarding Access to a Ship Following a Casualty
 - Discoverability of witness statements and survey/expert reports
 - Early evaluation of exposure and possible mitigation
 - Early settlement opportunities
 - Obtaining security/counter-security

Casualty Response

- *Role of the P&I Club: (con't)*
 - Strategic Considerations: (con't)
 - Whether/where/when to commence limitation proceedings
 - (U.S.) Limitation of Liability Act, 46 U.S.C. §183
 - International Convention relating to the Limitation of Liability of Owners of Sea-Going Ships ([1957 Limitation Convention](#))
 - Convention on the Limitation of Liability for Maritime Claims, 1976 ([1976 Limitation Convention](#))
 - Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 ([1996 Protocol](#))

Casualty Response

- *Role of the P&I Club: (con't)*
 - Strategic Considerations: (con't)
 - Forum selection/arbitration provisions, availability of anti-suit injunctions, *forum non conveniens*
 - Recourse: notifications, statutes of limitation/contractual limitations
 - Third party audit of medical invoices, particularly in the U.S.
 - Use of mediation to resolve complex, multi-party claims and high exposure personal injury claims



Thank you!
