

International Group of Protection & Indemnity Clubs

EMSA Places of Refuge
Black & Caspian Sea States
Lisbon 2019

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IMO Assembly Resolution A.949 (23) Dec. 2003 – preamble

“**CONSCIOUS OF THE POSSIBILITY** that ships at sea may find themselves in **need of assistance** relating to the **safety of life** and the **protection of the marine environment**,”

“**RECOGNIZING ALSO** the need to balance both the **prerogative of a ship** in need of assistance to seek a place of refuge and the **prerogative of a coastal state** to protect its coastline,”

What is a Place of Refuge - IMO Res.A.949

- “**Place of refuge means a place where a ship** in need of assistance **can** take action to enable it to stabilize its condition and reduce the hazards to navigation, and to protect human life and the environment”.
- “The issue of places of refuge is not a purely theoretical or doctrinal debate ***but the solution to a practical problem***”

Prestige - Bay of Biscay, 2002



Stolt Valor - Arabian Gulf 2012



Stolt Valour – Arabian Gulf 2012



MSC Flaminia



Maritime Maisie, Sea of Japan, December 2013



Maritime Maisie



Maritime Maisie



MSC Napoli, Lyme Bay, January 2007



Insurance Covers During Emergencies

Important note -

None of the insurance covers which are in place during the daily operation of a ship become ineffective or invalid by virtue of a ship seeking a place of refuge either in a safe haven e.g. in the case of the *MSC Napoli* or a designated port e.g. the *Modern Express* in Bilbao.

In all such cases the Hull and Machinery and P&I cover remained in place, the ships remained on cover and cover certificates were effective.

IMO Liability Conventions and Limitation Convention (LLMC)

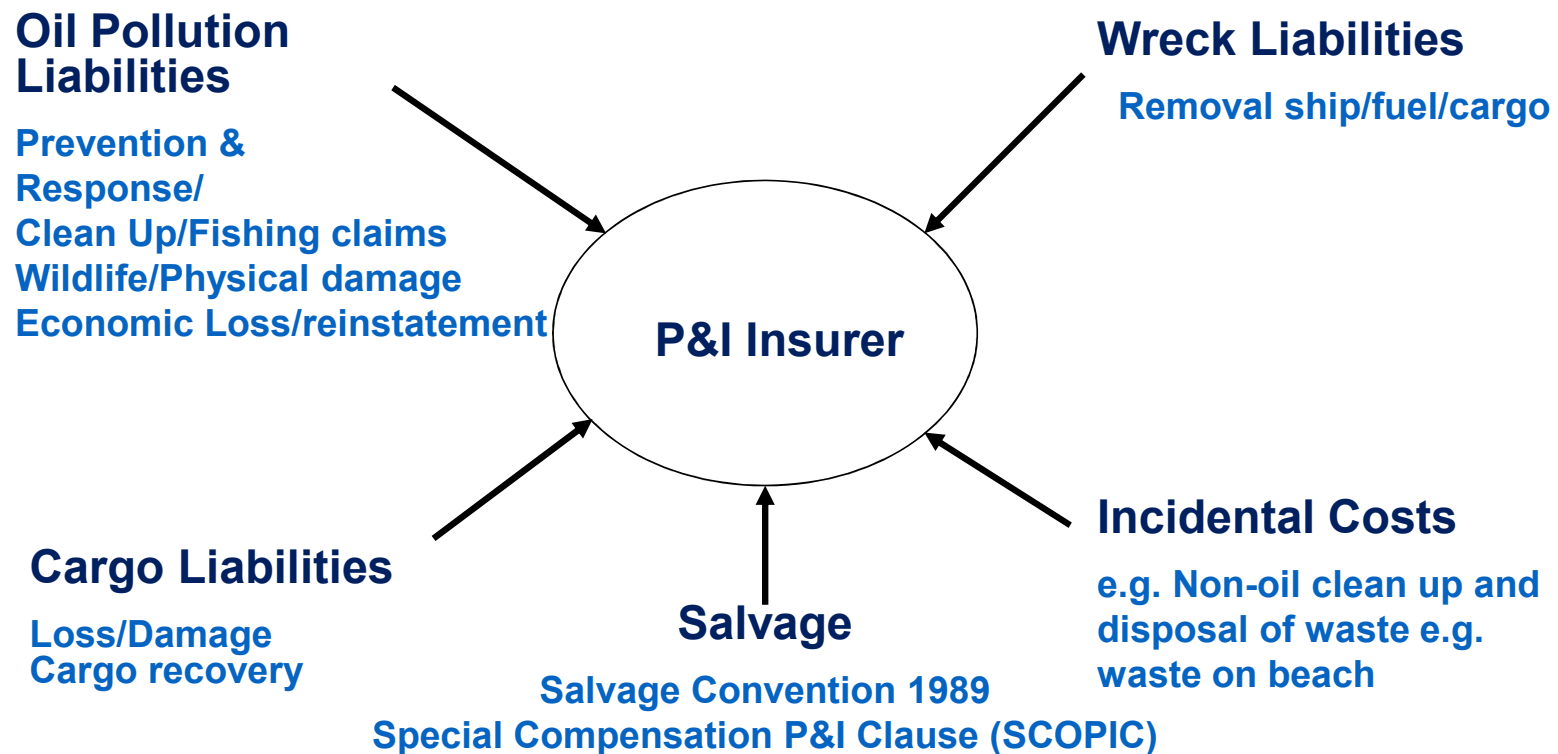
In force internationally

- Civil Liability Convention, 1992
- Bunker Convention, 2001
- Wreck Removal Convention, 2007
- **Not in force** - 2010 HNS Convention (consolidated 1996 Convention and 2010 Protocol)

Limitation Rights under the Limitation Convention

- LLMC, 1996 (51% increase in limits apply from June 2015)

P&I Cover for Actual and Potential Liabilities



Statutory Liabilities CLC & Bunker oil conventions

- Bunker and cargo oil prevention & clean up – Strict liability
- Salvage – Salvage Convention 1989. Obligation to reward salvor for “useful result”
- Wreck removal including loss of cargo/containers may be subject to law in force in jurisdiction

Contractual Liabilities

- Salvage – LOF/SCOPIC
- Cargo claims – Subject to terms of carriage contracts e.g. Hague-Visby, Hamburg Rules

1992 Civil Liability 2001 Bunkers Convention Liability & Financial Security

Comparison of oil pollution regimes under current legislation

Duties and Obligations	1992 CLC	Bunkers & Nairobi conventions
Liability on owner	Strict – limited defence	Strict – limited defence
Limitation permitted	1992 CLC Limits	LLMC '96 - 51% increase from June 2015
Mandatory financial security (Blue card guarantees) & State Party verification certificates	Yes	Yes
Liable parties, as defined in the Conventions	Owners / right of direct action against insurer	Owners / right of direct action against insurer

Liability and insurance for claims subject to LLMC 1996

Claims subject to limitation	Claims not subject to limitation
<p>3rd party claims arising from loss of or damage by or to cargo</p> <p>Property damage</p> <p>Costs in respect of pollution</p> <p>Injury and death to crew/passengers</p> <p>Wreck removal?</p>	<p>Wreck Removal and costs in relation to the removal, destruction or rendering harmless of hull and cargo, subject to conditions made by State at ratification/accession</p> <p>Salvage Award – normally limited by agreement to the salved value of ship and cargo or special compensation for protection of the environment</p>

The 2007 Wreck Removal Convention

Has it made a difference?

- The WRC should assist decision makers in States that receive a POR request
- Owners strictly liable to locate, mark, remove hazard/wreck in the EEZ of a State Party including the territory and territorial sea, **subject to conditions established in the instrument of ratification/accession**
- Mandatory insurance requirement / **duty on State Party to certify insurance**
- Rights of direct action P&I insurer
- Limits for purpose of compulsory insurance is consistent with LLMC 96 –51% increase in limits from June 2015
- States that ratify 1996 LLMC may remove the right to limit under Article 2.1 (d) and (e)
- Theoretical strict and unlimited liability on the shipowner for wreck removal and specified associated costs

Summary

- Casualty could occur in extreme weather - unavoidable maritime risk
- Well coordinated, immediate State response and effective continuous liaison with shipowners/insurers may preserve vessel/cargo and minimise consequential health & navigation risks & environmental impact/damage
- Liability insurance to cover actual/anticipated direct and third-party claims arising
- Incumbent on States to ratify/accede to liability Conventions as soon as possible implementing liability provisions in law
- Effective implementation in domestic law minimises risk of legal uncertainty
- Legal certainty reduces risk of protracted legal actions and delay in payment of costs to Affected State

Conclusions

- No need for “panic response” e.g. a PoR Convention
- Managing maritime casualties is a sophisticated and complex exercise but the expertise is there
- Stakeholders can collaborate to minimise risk by:
 - (i) developing and implementing effective emergency plans
 - (ii) streamlining communication and decision-making processes
 - (iii) Ensuring transparency
 - (iv) Working collaboratively
 - (v) Building mutual confidence