

THE P&I COLUMN



Jonathan Hare
Senior Vice President
Counsel
Maritime Law &
International Group
SKULD
www.skuld.com



FINES & P&I COVER

Fines and insurance cover do not generally sit well together. The purpose of criminal penalties is to punish and the authorities responsible for enforcement do not like to see the guilty party passing on the financial cost to an insurer and thereby neatly dodging any punitive effect. This attitude is perfectly understandable yet P&I Clubs do in certain circumstances reimburse members for fines.

One of the practical difficulties is that fines are sometimes imposed in the absence of conduct which can be regarded as criminal in any ordinary sense of the word. P&I Clubs routinely handle cases where penalties have to be paid for incorrect cargo documents. There is in reality often no cargo shortage or misdescription and no intent to deceive but it is seen in some jurisdictions as a documentary defect which provides a sufficient basis to earn some dollars. The same motivation often lies behind fines for alleged failures, sometimes very trivial, to properly declare items on board such as medicines or cigarettes..

P&I Clubs cover fines, but only in very limited circumstances. There are four categories of fines, which are generally covered, namely breach of immigration laws, infringement of customs regulations, incorrect cargo documentation and accidental pollution. It is this final category that presents most challenges. It is important to understand that it does not include deliberate or operational discharges. Environmental crimes have come to have a high-profile, especially in the United States but also in Europe. MARPOL violations can give rise to swingeing penalties and it is sometimes incorrectly stated that these are routinely covered by P&I Clubs.

Pollution fines generally bring to mind oil in the water but Club cover is wide enough to include other forms of pollution. This becomes relevant when considering the increasing exposure of shipowners to penalties for ballast water discharges and air pollution. If there is a case involving air pollution resulting from, for example, a mechanical breakdown, this could be viewed as an accident and if a fine is imposed it may therefore be covered. However, it is likely that in practice most penalties which are imposed will be for discharges occurring during the course of routine operations and in such circumstances the shipowner will not be able to recover from his P&I Club.

Clubs do have the possibility of providing discretionary cover for fines which do not fall within the categories referred to above. Shipowners have the option of going to their clubs and seeking full or partial reimbursement of pollution fines even if non-accidental. However, they should not hold out too much hope. The decision on cover will generally be made by the shipowner members on Club boards will certainly not be sympathetic to operators who have tried to cut corners. Discretionary payments will only be made in exceptional cases and only at the conclusion of a case when all the facts are on the table.

Governments sometimes express an aversion to any form of insurance cover for fines. It would be far more straightforward if penalties were confined to cases where there is genuine fault. The problem is that the scope of environmental crime is sometimes so wide that it can extend to conduct which is not criminal in any ordinary sense of the word. However, even the very limited cover currently available for some of these types of fine is controversial and is likely to come under close examination in years to come with the increasing focus on penalties for infringement of regulations governing air pollution and unlawful ballast water discharges.