

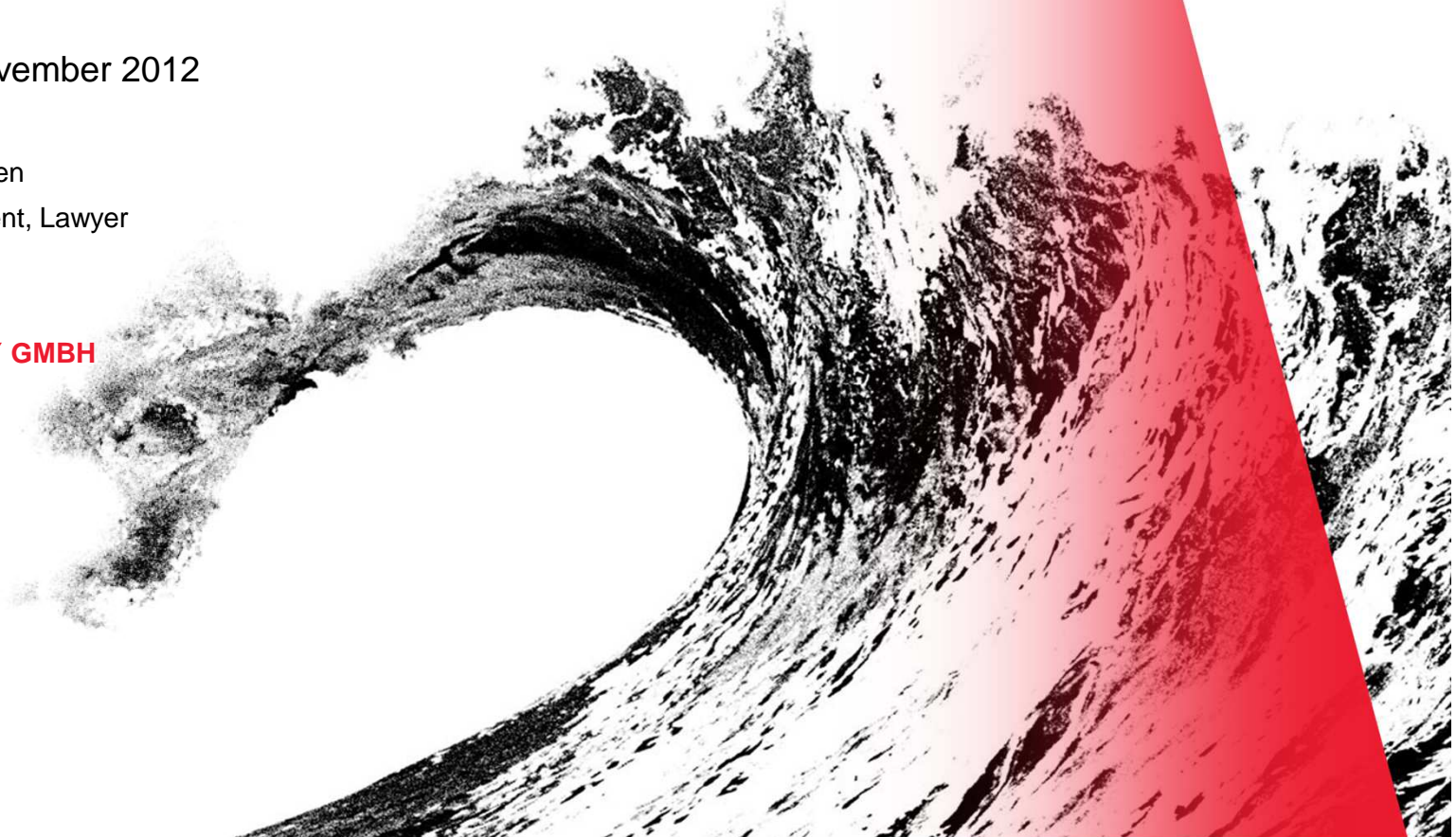


**“RDC and FFO cover” and other issues in the
borderlands between H and M and P and I covers.
- an appetizer with one or two polite provocations.**

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\ Why do we sometimes have problems or discussions finding out where various losses, costs and claims fall?

Basic differences between P and I and H and M – very broad brush view

- H and M insurance is based on a variety of **different rule sets** historically evolved in different markets and is offered by a **mix of mutual and commercial underwriters** and very often with **more than one underwriter on each** «risk».
- H and M underwriting constellation **changes from year to year**, but a LEAD can stabilize this.
- H and M insurance is **more tailor made** and less streamlined than P and I insurance, which has a.o. a common reinsurance and is mostly mutual and with a high degree of standard rules. Some P and I is also sold as «fixed», as well as offered by commercial underwriters and as well and co-branded with H and M
- H and M insurance is based on a **named peril principle or narrow «all risks» principle**, where the main focus is the vessel or other items insured against loss, not 3rd party liability. P and I also names the risks but is also working partly / limited as a «sweep up» insurance, i.e. if not excluded, it is **probably included**.
- **Liability insurance under H and M is «an accessory»** to the main cover against marine perils affecting the vessels and objects insured
- P and I insurance focusses on **3rd party liability** cover for the owners or charterers and not so much on the vessel itself, but what the vessel causes.

\ Various available H and M based liability covers in relation to vessels themselves – some examples:

- **H and M** with no RDC and FFO (running down and fixed and floating objects)
- **H and M** with $\frac{3}{4}$ RDC and no FFO
- **H and M** with $\frac{4}{4}$ RDC and FFO
- All 3 above may still leave something to be caught up by P and I depending on which H and M conditions apply – An important area to make sure there are no holes in the cover. P and I clubs see things differently when it comes to their «sweeping up» function despite their rules being quite identical. **The P and I property damage rule is not so broad that it automatically picks up all that falls outside RDC and FFO.**
- **Owner's P and I** covering some or all of the RDC and FFO depending on the H and M policy AND if separately and additionally taken out with P and I in addition to the general cover. **The default option is that RDC and FFO is not covered by P and I and extra premium must be paid for it. Not cheap.**
- **Charterer's P and I covering CLH** (Charterer's liability to hull) = a **H and M style cover taken out as a liability insurance**: another important potential conflict area between P and I on charterer's as well as owners side, H and M insurer, as well as both sides' FDD insurance and Loss of hire insurance. It can be taken out several times for the same vessel in a long C.P. chain and always in addition to the main covers taken out by the Owners.

P and I may in some areas be a substitute for or a supplement to H and M, but it is not a seamless affair:

- Main examples are the **RDC and FFO covers** that are deliberately placed with one or the other underwriter or in a mix. Already the wide choice of terms, Nordic, German, ITHC etc. may cause confusion, at least in the initial phases of a casualty.
- **Excess Hull liability** as H and M liability limit normally equals insured value – P and I takes over where claims are very high – fortunately not often in use
- Where RDC and FFO is placed 4/4 with the H and M underwriters, there may still be **areas falling outside H and M liability cover** even though the claims arise from the same incident – **potential pitfall ! Does P and I always sweep up liabilities not covered? Different covers in different H and M markets.**
- If RDC and FFO not taken out with H and M for 4/4 or at all, it must positively be taken out with P and I or elsewhere to secure cover. **There is no automatic pick up by P and I.**
- Certain events will be H and M if caused by **movement of the vessel** and P and I if otherwise caused. If P and I it will then often be the more narrow **simple property damage and not FFO**, if that cover is not written with the Club.
- P and I does not cover under insurance for H and M when that results in partly unrecoverable G.A. contributions – a few exceptions exist.

P and I may in some areas be a substitute or a supplement to H and M, but it is not a seamless affair – contd.:

- Where P and I and H and M work well together and trust each other, it does happen that the P and I club assists the H and M Underwriters with a swiftly accepted P and I Club LOU against a guarantee by H and M that they replace the LOU within a week or so. This however is discretionary and cannot be relied upon.
- Certain events will be H and M if caused by **movement of the vessel** and P and I if otherwise caused. If P and I it will then often be the more narrow **simple property damage and not FFO**, if that cover is not written with the Club.
- High H and M deductibles are not covered by P and I, but legal costs for uncovered or below deductible H and M claims may be covered by FDD insurance with the P and I club or other FDD provider.
- Remember to consider if the FDD cover also agrees to settle the opposite party / ies awarded or agreed costs if you do not win the case.

\ Important areas where P and I and H and M do not always agree or potentially may leave unintended holes or cover gaps needing to be discussed and fixed afterwards - where possible!

- **Damage to the vessel** or to **fixed and floating objects** and **collisions** with other vessels that may result in:
 - Pollution
 - Towage
 - Salvage
 - Wreck removal
 - Obstruction
 - General Average with disputed G.A. contributions by cargo owners
 - Charterer's CLH cover being claimed against by owners
 - Loss of Hire
 - Excess hull liability cover
 - Personal injury
 - Loss of use claims by owners of damaged items
 - Further consequential loss claims by others
 - Suit against other vessel, terminal, port, owner of bridge etc.

\ Pollution

- Smaller pollution incidents often occur without a related H and M covered incident first, hence mostly pure P and I matters
- Very few larger pollution incidents occur without a H and M covered / related incident first. Often a lot of H and M and P and I interaction. **Extremely important that cooperation is very smooth, trustful and open.**
- H and M covers the pollution of the entered vessel itself, but not pollution outside the vessel or of another vessel. This is P and I and H and M for the other vessel with possible recourse against the responsible part.
- Measures taken in order to **secure against further pollution** from a vessel before removal to yard for repairs can often be in dispute – is it P and I or H and M, cleaning, plugging, removal of oil.
- Pollution as a consequence of measures taken to salvage a vessel and it's cargo or anti pollution measures taken might be part of the salvage and thus also influence GA contributions.
- Pollution avoided as a consequence of H and M and salvors lightening the vessel is most often still solely a H and M matter, but moving towards grey zone with P and I
- Scopic being invoked forces P and I and H and M / salvors to cooperate and in Scopic this is institutionalized although as many will know not problem free.

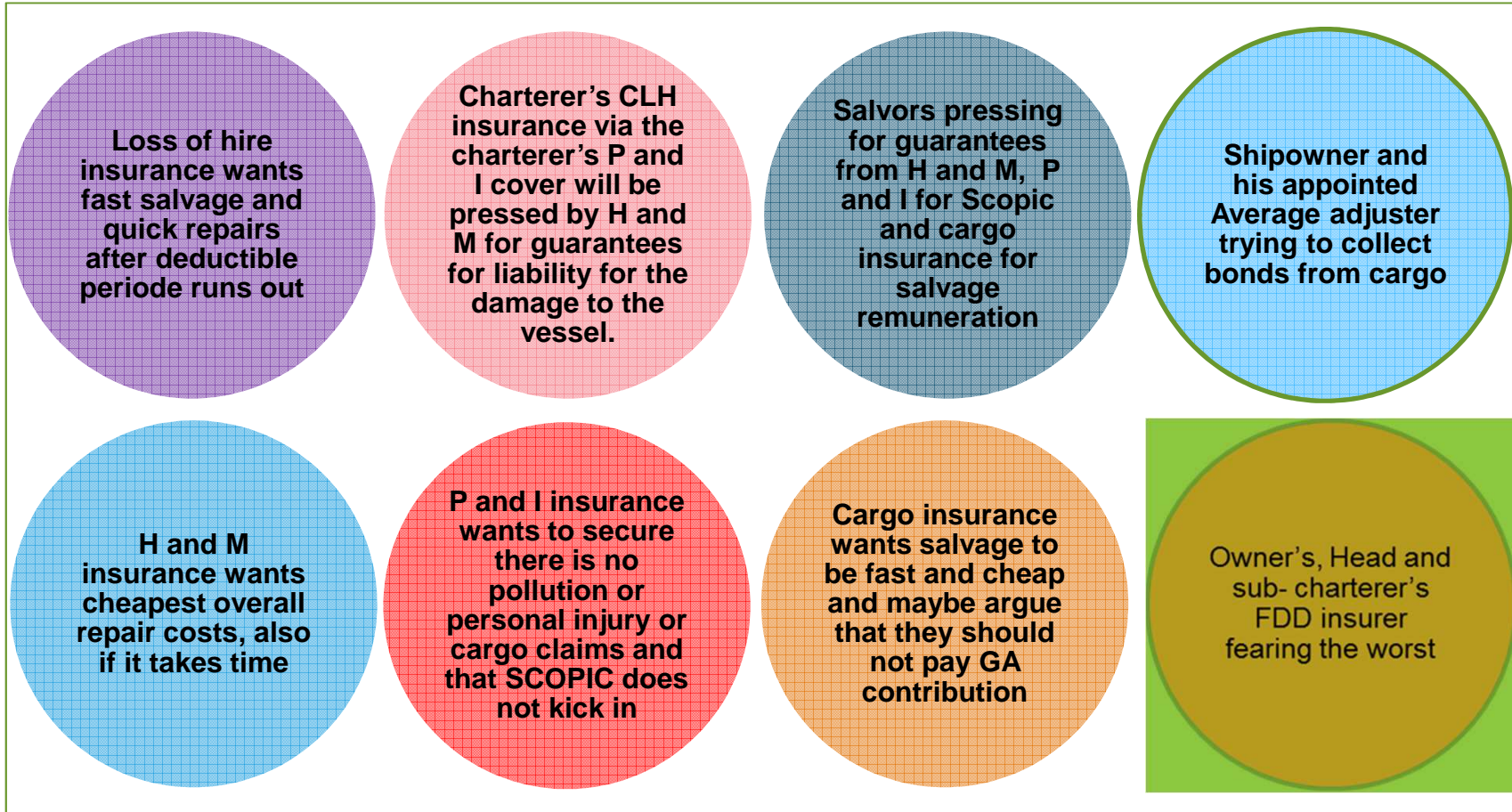
\ Towage

- Not the most controversial area, but be aware that P and I does not cover towage of the vessel **unless it has been agreed to and approved** or it is in and out of the port
- When the vessel is tows, the P and I club must likewise **approve first**.
- Towage when not for pure commercial purposes, is often arranged in connection with an incident involving H and M **removing the vessel to a repair yard** – hence there is often a P and I and H and M cooperation here as well.
- Towage can or can not be **(part of) salvage** but the term is most often used to indicate a removal of the vessel from A to B under a separate towage contract – for instance after salvage has been completed.
- **P and I clubs are generally reluctant to contribute to towage** as P and I cover does normally not extend to additional costs in fulfilling a contractual obligation
- Towage considerations will often form part of **budget calculations** at the H and M underwriters and will also impact on Loss of Hire and GA issues.

\ Salvage

- During salvage there are a lot of potential issues where H and M and P and I need to co-operate and co-ordinate or at least see potential differences and conflicts of interest.
- EXAMPLE NEXT SLIDE:

Casualty: A collision at the roads, and a subsequent grounding due to an alleged unsafe port, leading to a salvage operation: A simplified overview of main interests involved and their possible positions taken – who does what and speaks with whom?



\ Wreck removal

- A vessel becomes a wreck and the H and M underwriters / salvors cannot or will not do more. It then slides from the H and M world into the P and I world. A valid order to remove the wreck will most often be covered costwise by the P and I club. The logic being that the owners have become the rightful sole proprietors of the wreck as the H and M underwriters have abandoned the wreck to them. An order by the authorities to remove it thus becomes a P and I matter = it is considered a third party liability.
- This possible end scenario often causes the P and I and H and M underwriters to talk together already at the early stages of a salvage situation.
- H and M knows what P and I is afraid of and vice versa. And the salvors indeed as well.

\ Obstruction

- A **vessel** in an impossible situation that has not yet become a wreck may obstruct traffic.
- The obstruction may be temporarily caused by salvors during salvage attempts, or
- It may simply just be the consequence of the vessel being stuck where it grounded (in a canal for instance)
- Obstructions will often but not always fall under P and I insurance but can also be seen as accepted collateral damage during a salvage operation and thus liabilities in that respect may in some circumstances fall under H and M via the salvage award and thus again sometimes under GA.
- When a vessel has become a **wreck** and H and M Underwriters have no interest any longer, **the cover for the wreck removal shifts to P and I**

\Common interests amongst insurers

- P and I and H and M / Loss of hire insurer will often have same interests:
- If obstruction cleared, P and I exposure is reduced towards third parties
- If wreck is avoided H and M insurer avoids huge pay outs and P and I wreck removal orders / pollution
- Fast recovery and redelivery of vessel to owners is an advantage for Loss of hire insurers
- Swift and efficient action by salvors reduces salvage awards (at least theoretically theoretically) and thus as a side kick the P and I Club Scopie exposure might increase. But salvaged values may be higher and that moves the award upwards again.
- Removal of polluting substances in connection with salvage may also reduce pollution exposure for the P and I club and vice versa, removal of bunkers and cargo from vessel in distress by owners and P and I club may ease the work for salvors and thus reduce the Article 13 Award for the H and M underwriters.

Back to some important grey zones – watch out.

FFO and RDC with H and M – does not cover all claims?

Does the P and I Club cover losses for instance suffered by parties who are not owners of the damaged object or where H and M underwriters find the claim falls outside the H and M cover. Different interpretations in different H and M markets and consequently not a clear yes or no from P and I clubs. **It will be an assesment from case to case.**

ADVICE: Always involve P and I Club as well as H and M in the early stages in order that they may together evaluate the situation and despite any cover discussions at least together agree on what is sensible, employment of lawyers to defend case, appointment of good surveyors, local correspondents etc.

Insured value lower than market value:

- Dangerous situation even if tempting. In case of GA, cargo may be entitled to only pay their proportional GA contribution based on the market value of the vessel, even if the vessel was insured for far less. Such «underinsurance» will not suffice to establish a claim for unrecoverable GA contribution or accidental underinsurance against the P and I underwriter. It is not an insurable incident as such but a consequence of a choice made.

What caused the loss in the first place – movement of vessel or something else?

- If it is the movement of the vessel it will typically be the FFO cover (with H and M) and possibly a high deductible – or none at all.
- If it is another cause, it may be a P and I matter = property damage, and sometimes much lower deductible. Difficult area where H and M, brokers and Clubs often disagree, hence evidence collection and open dialogue as early as possible is crucial.

\ Deductibles

- High H and M deductibles will not be compensated by P and I Clubs
- Any cover offered in grey zone areas by Clubs likely to be subject to highest deductibles had the cover been fully written by the Club = i.e. more likely RDC or FFO deductible than for instance third party property damage. But always an individual assesment.
- FDD underwriters may assist where H and M matter / recourse action falls below H and M deductible. FDD deductibles can be high and open ended.

\ Charterer's liability to Hull

- **H and M type** via P and I on behalf of a charterer, but from a liability aspect, i.e. not enough that there is simply damage as it is not the charterer having taken over the taking out of H and M cover from the Owners. **It must be damage that the charterer is obliged to repair as per charter party obligations.** This can lead to a dispute between the Owner of the vessel and his H and M underwriter, or if below deductible, his FDD club on the one side and the P and I Club for the charterer on the other.
- **Repairs to be performed in charterers time** – i.e. before redelivery: a potential horrible clause in a falling market and a blessing in a rising. It also saves the Loss of Hire insurer money and a potential recourse claim.
- Potential conflict area is also where repairs are effected after redelivery in a far away yard. Loss of hire might be cheap and the CLH underwriters, the charterers P and I club, may have to pay both for removal of the vessel to yard, the loss of time at either CP rate or market level and as well as for repairs. **However Owners and their underwriters must of course economize with Charterers' money as well. TALK together!**



I hope it was of interest !
Thank you for your attendance

Bremen, 30 November 2012

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