

IUMI 2005 OHC Workshop

H&M Claims "leakage": Causes, concerns, and solutions

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Presentation Outline

- Introduction
- Claims "leakage" defined
- Sources of leaks
- Coverage limits and exclusions
 - Inadequate maintenance
 - Ordinary wear and tear
 - Design error
 - Unseaworthiness
 - Crew negligence and incompetence
- Difficulties of denial
 - Inconsistent enforcement of limits and exclusions
 - Poor information on the nature of the claim
 - Lack of technical expertise and experience
- Solutions

Claims “leakage” defined

- Occurs when H&M insurer pays a claim that would properly be denied had the right information or expertise been available and/or commercial pressures been available
- Causes of claims “leakage”:
 - Poor information (inaccurate, incomplete, misleading, etc.)
 - Assured is unaware of coverage limits and exclusions
 - Insurer has not consistently enforced coverage limits and exclusions
 - Lack of technical expertise and/or experience
 - Fraud
- Simply put: paying a claim when the terms and conditions do not require it

Sources of “leakage”: Coverage limits and exclusions

- Inadequate maintenance
- Ordinary wear and tear
- Design error
- Failure to provide sufficient information
- Unseaworthiness
 - Subjective standard

NMIP: Inadequate Maintenance Exclusion

- NMIP § 12-3 Inadequate Maintenance
- *"The insurer is not liable for costs incurred in renewing or repairing a part or parts of the hull, machinery or equipment which were in a defective condition as a result of wear and tear, corrosion, rot, inadequate maintenance and the like."*

MIA: Ordinary wear and tear

- MIA§55(2)(c)
- Unless the policy provides otherwise, “the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature...”

NMIP: Design error exclusion

- NMIP §12-4 Error in design, etc.
- “If the damage is a result of error in design or faulty material, the insurer is not liable for the costs of renewing or repairing the part or parts of the hull, machinery or equipment which were not in proper condition, unless the part or parts in question had been approved by the classification society.”

NMIP: Unseaworthiness

- NMIP §3-22 Unseaworthiness
- “Insurer not liable for loss that is consequence of the ship not being in a seaworthy condition, provided that the assured knew or ought to have known of the ship’s defects at such a time that it would have been possible for him to intervene.”
- Subjective standard
- Challenge to investigate

Sources of “leakage”: Timely and adequate information

- Assured obliged to provide (standard in H&M policies)
- Threatened but rarely invoked
- Records maintenance
 - Deck and engine room log books
 - Bell books, fuel and stores consumed, etc.
 - ISM records
 - Master and CE incident report
 - Class report
 - Superintendent’s report
 - Fax, phone and email records
 - Receipted accounts for repairs
 - Retention of damaged parts
- Are crews qualified enough to keep detailed records?

ITC: Crew negligence, incompetence, etc.

- Institute Time Clauses 1.10.83 – Hulls
- Negligence (§6.2.3)
 - Master, Officers, Crew or Pilots
 - Repairers, charterers who are not assureds
- Barratry of Master, Officers or Crew (§6.2.5)
- Provided loss/damage not result from want of due diligence by the Assured, Owners, or Managers
- Crew competence is a major issue for H&M Underwriters
 - Damage more likely with unqualified crews
 - Information for claims processing more difficult to acquire
- Up to 80% of casualties are a result of human error

Difficulties of deny coverage

- Commercial considerations
 - Subjective standard (e.g. unseaworthiness)
- Lack of good information from assured
- Fewer claims handlers with sea-going experience and expertise
- Arbitration
 - Equal treatment of all assureds
 - Have rules been applied?
 - Have rules been applied equally?
 - Is it “use it or lose” it for insurers?

Challenges and Solutions

- Moral hazard increasing with H&M coverage decisions and limits
 - Failure to enforce agreed limits
 - Negligence
- Changes in ownership structures and attitudes
- Educate assureds and insurer staff
 - Raise the issue of denial with assureds when appropriate
 - Review the coverage rules internally
- Develop network of external experts in each technical area
- Crew education, training, recruitment of major importance

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