

# THE NEW P&I WORKING LAYER

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AIMU

# \$1,000,000

- It isn't what it used to be
- Everyone in this audience will probably retire a millionaire with 401K, Personal Investments, Home Value and those lucky enough to have Pension Plans.
- \$1,000,000 here, a \$1,000,000,000 there or \$85,000,000,000,000 anywhere.
- What is enough money for the claimant to walk away with?

# INFLATION

- What is \$1MM worth today?
  - In 1981 - \$1,000,000 ----- \$2,400,000 - 2010
  - In 1990 - \$1,000,000 ----- \$1,670,000 - 2010
  - In 2000 - \$1,000,000 ----- \$1,270,000 - 2010
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- CPI Inflation (Consumer Price Index)

# THINGS THAT EFFECT THE P&I LIMIT

- Increased Medical Costs – Healthcare Reform
  - ❖ Medical costs going up as premium(s) remain flat or decrease
- Legal Environment
  - ❖ Court jurisdiction(s) due to plaintiff's residence along with “ambulance chaser attorneys”
- Economic conditions
  - ❖ Reduction in new builds, older vessel(s) in operation and more vessel(s) out of work and on port risk
- Claims department experience – spillage from primary into excess
  - ❖ Setting of reserves and capability of settling claims within primary
- Inflation
  - ❖ \$1M = \$1.27M after standard commission of 15%, \$1M = \$1.08M
- P&I Development
  - ❖ Setting low reserves / Setting high reserves

# THINGS THAT EFFECT THE P&I LIMIT – cont.

- Unfriendly jurisdictions
  - ❖ Claims being settled for much higher amounts to avoid being transferred to another jurisdiction
- Price of commodities
  - ❖ Continuing to increase
- Unrealistic Expectations
  - ❖ High crew counts with the expectation of minimal to no claims
- Mediation and Arbitration
  - ❖ Capability of claims departments in recognizing “unfriendly jurisdictions” and settling to avoid potential jury verdict(s) in certain venue(s)

# BROWN WATER P&I DEVELOPMENT

<b>After</b>	<b>Undeveloped</b>	<b>Developed</b>
<b>12 Months</b>	<b>63%</b>	<b>37%</b>
<b>24 Months</b>	<b>26%</b>	<b>74%</b>
<b>36 Months</b>	<b>10%</b>	<b>90%</b>
<b>48 Months</b>	<b>3%</b>	<b>97%</b>
<b>60 Months</b>	<b>0%</b>	<b>0%</b>

# Approximate Percentages of P. & I. claims

- Crew liability = 50% to 60%
  - Cargo liability = 25% to 30%
  - Third party bodily injury = 5% to 10%
  - Fixed and Floating Object = 3% to 5%
  - Other = 2% to 6%
- Percentages based on dollar amounts

# UNFRIENDLY JURISDICTIONS (Hell Holes)

- South Florida
- West Virginia
- Cook County, Illinois
- Atlantic County, New Jersey
- New Mexico Appellate Courts
- New York City

\*The American Tort Foundation 2010

# Unfriendly Jurisdictions Hell Holes Watch List

- California
- Alabama
- Madison County, Illinois
- Jefferson County, Mississippi
- Gulf Coast and Rio Grande Valley, Texas
- Harris County, Texas

\*The American Tort Foundation

# Unfriendly Jurisdictions

## Hell Holes – Claims Examples

- **Ankle Injury** - The incident arose in Burlington, IA, it ended up in state court jurisdiction in Brooks County Texas due to plaintiff's residence. Settled for \$300K to avoid a potential jury verdict in this venue. In another jurisdiction, this case is worth under \$100K-more in the range of \$70K.
- **Allision** - that was settled for about \$200K higher due to the chance that the case would be transferred back to Texas.
- **Case in the Virgin islands.** Claimant had a resolved Longshore case that had been adjudicated and cited claimant at MMI. Claimant and his attorney then turned around and filed suit claiming JA status. We filed MSJ that he had sought election of remedy and judge denied it. Claimant then sought additional treatment which we denied based on USLH findings. Case remained in litigation and we went to mediation. They asked for \$750,000 and we finally settled for \$95,000. In any other jurisdiction, we probably would have won the MSJ and/or settled for at the most \$15-\$20k.

# Unfriendly Jurisdictions

## Hell Holes – Claims Examples – cont.

- Ankle sprain - where suit was filed in State Court for St. Clair County, Illinois. This case was worth at most \$50K in other jurisdictions. When plaintiff demanded \$900K, it went to trial where judge awarded plaintiff \$400,000. It settled for \$125K on appeal.
- · Death Claim - Death occurred in Crockett County, Texas. Defendant was struck in the face by the top half of an assembly he was trying to adjust while under pressure. Claim brought by parents of an unwedded adult male with no children. Claim was brought in Nueces County, Texas based upon the residency of one of the defendants. Claim of parents would have ordinarily been worth about \$600,000 in its originating jurisdiction, without consideration of the decedent's contribution. Case mediated to an impasse with plaintiff's demand at \$13 million because of high verdict rich history of Nueces County and surrounding area. Case was tried with parents receiving approximately \$3.2 million before apportionment of fault among defendants and decedent.

# Unfriendly Jurisdictions

## Hell Holes – Claims Examples – cont.

- Fractured tailbone - Plaintiff slipped while acting as deckhand on a fishing tour vessel. Plaintiff struck his tailbone on the edge of a bench when he caught himself. Plaintiff had poor employment history and limited economic damages. Injury itself should have resolved itself within 8 weeks. Claim was brought in Nueces County, Texas where injury occurred. Liability was certain, but damages were limited. Claim should have been resolved for \$80,000 or less, without consideration for venue. Due to venue considerations, plaintiff could have recovered \$250,000.00 for the injury. The case settled at mediation for \$200,000.00

# LEGAL FEES

- What is the average per hour Attorney Fee?
- Complicated Accounts
- Thousands in Legal Fees before Indemnity is Paid

# WORKING CONDITIONS

- Job market – what are the hiring practices? Drug & Alcohol Screenings? Past injury histories? Are there skilled workers?
  - ❖ Safety Programs / Training Programs
  - ❖ Safety Incentive Programs for Employees
  - ❖ Employee Turnover
  - ❖ In what region/jurisdiction are crew hired
  - ❖ Pre-employment screening
- Is there a Scheduled Maintenance Program for the vessels in the fleet?
  - ❖ Inadequate, expired, or malfunctioning safety equipment
  - ❖ Hull integrity or seaworthiness
  - ❖ Engine hours which can be an early warning sign of fire, explosion, or engine failure.
  - ❖ Detection of hazards such as rusted ladders, oily decks, fraying lines etc.

# WORKING CONDITIONS – cont.

- Where will the Insured be working?
  - ❖ Just as important as residence/jurisdiction of crew
  - ❖ Premium and deductible triggers
- Crew Boats – how many passengers are they carrying?
  - ❖ Who are they servicing (rigs/energy markets)
  - ❖ Are basket transfers involved
- Communication – language barriers
  - ❖ Breakdown in commands (handling line(s), making a tow and vessel maneuvering)
- Nationality – what is the Nationality of the Officers and Crew
  - ❖ Hiring practices of country, including physical/medical history of crew being hired
- Any Environmental Issues?
  - ❖ Crew exposure to any harmful contaminants and/or their fumes.

# Loss Control

## ■ Loss Control

- ❖ Senior Managements Involvement in Risk Control
- ❖ Conditions of vessel(s)
- ❖ Poorly maintained vessel(s) are the primary cause of bodily injury claims and result in higher frequency of claims

## ■ Survey Requirements

- ❖ Assured's vessels should be surveyed every two to three years.
- ❖ Focus should be on older and higher valued vessels
- ❖ Surveys on motor vessels should list the amount of engine hours on each engine.

## ■ Recommendation(s)

- ❖ A letter should be sent to the broker listing recommendations. Depending on the severity of the deficiency, the underwriter should give deadline(s) for all to be completed.
- ❖ Underwriter should require a signed letter from the Assured on their letterhead confirming that all recommendations have been complied with.

# DIFFERENT LOCATIONS

- Louisiana
- Texas
- New York
- California
- Chicago
- *Writing heavy P&I out of territory*
- PML

# P&I ISSUES

- Crew
  - ❖ **Bigger fleets/crew compliments more commonly associated with severity and frequency of claims**
- Crew Salaries – (Bigger Jones Act Claims)
- Removal of Wreck – Voluntary or Compulsory
  - ❖ **Are we covering voluntary wreck removal where there is no legal compulsion. (Manuscripted Policy Form)**
- 3<sup>rd</sup> Party Liability
- Contractual Liability
  - ❖ **Is tower being released of liability or vice versa and is this being considered or asked by excess underwriters**
- Collision Liability/Tower's Liability
  - ❖ **Is Assured towing their own equipment or for 3<sup>rd</sup> parties**
  - ❖ **Is Assured a dedicated tower to 3<sup>rd</sup> party or parties**
- Damage to fixed and floating objects
  - ❖ **Docks, buoys, bridges and cables.**
- Cargo Legal Liability
- General Average
- Weather Conditions
  - ❖ **Hurricane / Cat. Action Plans**

# OTHER TYPES OF P&I EXPOSURES (THIRD PARTIES)

- Heavy crew exposure (Crew Hiring Practices)
- Type of work (any underground or sub sea cables or pipelines)
- Passenger vessels (Liquor and Food)
- 3<sup>rd</sup> Party passengers (Seniors in Florida on PV)
- Wealthy people aboard yachts (higher costs)

# REMOVAL OF WRECK

- Expenses incurred to remove a wreck - \$50M to remove a rig from the ocean floor
- Limited number of companies able to complete the work
- Locations – remote areas
- Where wreck is located
- Used to be Compulsory – Now Voluntary Wreck Removal

# COLLISION LIABILITY

- Hit a bridge
- Loss of people, loss of cars, trucks
- Toll Bridge – Loss of Revenues
- Cost to rebuild, especially with the price of commodities
- Cargo Legal
- Demurrage
- Legal Defense

# The New P&I Working Layer

- **Brown Water**  
Working layers – First \$5,000,000  
(Average \$3,500,000)
- **Yacht (Size does matter)**  
Working layers – First \$1,000,000 - \$2,000,000
- **Passenger Vessels (Age/Working Status)**  
Working layers – First \$5,000,000 (Individual)
  - First \$50,000,000 (Catastrophe)

# The New P&I Working Layer

- **Energy Business (Depends on the Size of the Company and the Type of Work**

**Working layers – Diving Accounts - \$10,000,000**

**Working layers – Jack Up Accounts - \$50,000,000**

**Working layers – Catering Accounts - \$5,000,000**

**Working layers – Tank Barges, Drilling Operations  
and Vessels that service those drilling accounts –  
Catastrophic Loss - \$50,000,000 - \$100,000,000+**

# EXPOSURE

- 1) **\$4,000,000 Excess of \$1,000,000 - Fully exposed**
- 2) **Limited markets willing to write. More Quota Share opportunities?**
- 3) **Not \$1,000 per mil business any more even excess of \$100,000,000 isn't what it used to be**
- 4) **Underwriting to weather – hurricanes, tornadoes, ice/snow storms, etc.**

# CLAIMS, CLAIMS, CLAIMS

- **What is the claims department experience?**  
**Is the claim staff able to determine the extent of the injury?**
- **Are claims being handled expediently or not?**
- **Is there proactive training on the claims side?**
- **Is there proper claim handling on the primary policy level? Is the proper evidence collected in a timely manner?**
- **Severity vs. Frequency**
- **Late notice to Underwriters – Claims not properly reserved**
- **Long Tail Business**

# Claims That I Remember

- **Burn Victim – Hiring Practices**
- **Heart Transplant**
- **Underage Drinking – Killing Sheriff's Niece in Louisiana**
- **Fist Fight on a Passenger Vessel that never left the dock – causing partial blindness –**
- **Serious Passenger Injury thrown overboard**
- **Dive Support Vessel – Explosion while bleeding water out of a natural gas line – 3 dead – 4 serious injuries**

# Claims That I Remember

- **Line Snapped causing severe brain injury**
- **Removal of Wreck from Hurricane Katrina  
over \$200mm**
- **Full Limits in Legals Reserved  
Katrina Claim  
Transocean – Deep Water Horizon**

# WHAT CAN WE DO AS UNDERWRITERS

- Pricing according to risk
- Underwriting true exposure
- Recognition of primary claims handling/setting reserves and keeping excess underwriters involved as required throughout the process.
- Long Tail
- Need to be properly reserved
- Analyzing the Experience of the Operator and determining any claim patterns
- Deductible Structures
  - Per occurrence
  - Annual Aggregate Deductible