

The role of the marine surveyor- a P&I club's perspective¹

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'...The ship wherein Theseus² and the youth of Athens returned had 30 oars, and was preserved by the Athenians down even to the time of Demetrius Phalereus for they took away the old planks as they decayed, putting in new and stronger timber in their place...'

per Plutarch³ in Life of Theseus

Like their predecessors of ancient times, the marine surveyors of today inspect and make recommendations in respect of the state of seaworthiness (or lack thereof) of a vessel. Unlike their predecessors and unsurprisingly, their role has expanded.

This article discusses the role of the marine surveyor from the perspective of a protection and indemnity ('P&I') club. Save where expressly stated, the term *marine surveyor* refers to both the club's loss prevention team (or internal surveyors) and external surveyors. Whilst examples refer to the practices of the Standard Club Ltd, Standard Club UK Ltd, Standard Club Ireland DAC and Standard Club Asia Ltd (collectively, 'the Standard Club'), the views expressed herein remain solely those of the author.

Definition

The International Institute of Marine Surveying (IIMS) defines '*marine surveying*' as:

'...The service provided to maritime and transport organizations in general and the production of guidance reports for all other bodies connected with maritime operations or maritime trade...'

From a club perspective, the *raison d'être* of the marine surveyor is the timely and cost-effective prevention of losses to both the member and to the mutual. The role of the marine

¹ This article is a summary of a presentation delivered by the author at the International Institute Maritime Surveyors Conference (IIMS) in Singapore on 2 August 2018

² Theseus was the mythical king and hero of Athens who slayed the Minotaur – a creature which was half- bull and half-man- which lived in a labyrinth in Crete - and to whom 7 young men and 7 young maidens from Athens were sacrificed annually that is until it was slayed by Theseus. The tale continues that the ship which Theseus used on his victorious mission to Crete was preserved in the Athenian harbour as a memorial for several centuries after. She had to be maintained in a seaworthy state, for, in return for Theseus' successful mission, the Athenians pledged to honour the god Apollos each year thereafter by sending a religious mission to the temple of Apollos on the island of Delos using the ship of Theseus. She was accordingly surveyed regularly and any wood that wore out or rotted was replaced. It became unclear as to how much of the original ship remained over the centuries, giving rise to the existential conundrum referred to as the Ship of Theseus Paradox whether after the effluxion of time, she should be considered 'the same' ship of Theseus.: <<https://en.wikipedia.org/wiki/Theseus>>

³ Greek- Roman essayist (45- 127 AD)

surveyor in preventing losses is for convenience, discussed under three sub-headings below:-

- i) Ship's standards and risk reviews.
Ensuring that the club continues to underwrite ships and members of appropriate quality and at the appropriate rating;
- ii) Operations and claims handling support.
Where required and in the event of an incident, to provide expert loss prevention assistance including the gathering of evidence and provision of technical opinion and other guidance to the membership of the club and the club's claims team;
- iii) Promoting loss prevention and raising safety standards.
Identifying risk triggers, providing guidance in respect of loss prevention, raising safety standards and promoting a culture of safety and loss prevention amongst the membership and the wider shipping industry.

I. Ship's standards & risk reviews

The fate that befell the hull clubs, forerunners of the modern P&I clubs, approximately two centuries ago, was recorded thus:-

'...The hull clubs developed into notorious "rust bucket clubs" where poor hulls presented more claims on ever decreasing funds. Many hull clubs closed in the ... early- and mid- 19th century...'⁴.

To ensure that the P&I club underwrites ships and members of appropriate quality (and presumably to avoid the fate of the hull clubs), the entered vessels and their members are subject to a system of surveys and inspections which must be satisfied or they risk their covers becoming compromised. At the Standard Club, these surveys include the class survey, flag state inspections, ship risk review (SRR)/ loss prevention survey as well as the member risk review (MRR).

a) Class surveys

It is a condition of P&I cover that a vessel remain in class throughout the period of its entry. To that end, classification society surveyors are key to ascertaining whether vessels to be entered and entered with the club are and remain, respectively, approved by class⁵. Members of the Standard Club are obliged to report recommendations by class promptly⁶; comply timeously with the rules, requirements and recommendations of class⁷; permit inspection and provide information on class to the club⁸, failing which club cover may be compromised⁹.

⁴ Hazelwood and Semark, *P&I Clubs Law and Practice*, 4th edition, 2010 para.1.19 at p.5

⁵ e.g. see rule15.1(1) *P&I and Defence rules for the 2019/2020 policy year of the Standard Club* <<http://www.standard-club.com/media/2768106/pi-and-defence-rules-and-correspondents-2019.pdf>>

⁶ *supra* r.15.1(2)

⁷ *supra* r.15.1(3)

⁸ *supra* r.15.1(4)

⁹ *supra* r.15.2

b) Flag state inspections

Flag states possess powers to inspect and audit a vessel on its register¹⁰. It is also a condition of P&I cover that the member complies with all statutory requirements of the ship's flag state relating to the construction, adaptation, condition, fitment, equipment, manning and operation of the ship and must at all times maintain the validity of such statutory certificates as are required or issued by or on behalf of the ship's flag state, including in respect of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code) and International Ship and Port Facility Security (ISPS Code)¹¹.

c) SRR

In accordance with guidelines issued by the International Group of P&I Clubs (IG), most clubs require new vessels to be entered with the club or vessels meeting certain criteria (e.g. sea-going vessels aged 12 years or more) to undergo a Loss Prevention Review or (Ship Risk Review (SRR, as they are referred to at the Standard Club.

SRR's may be undertaken by the internal or external surveyors. It involves amongst others inspections of the hull, ship structure, maintenance, navigation procedures and records as well as the ship and safety management systems onboard¹². Where an external surveyor is appointed, the criteria for selection of surveyors include their experience with the ship type, location, availability and pricing.

d) MRR

Empirical evidence suggests that members with better quality of operations tend to experience fewer claims. Additional to SRR's, the Standard Club P&I Rules ('the Rules') provide for MRR's¹³ to be carried out over the member's operations at their offices. In practice, MRR's tend to be carried out on new members or where there has been a significant change in operations of the member.

The scope of the MRR includes a review of the member's safety and environmental management systems. In concept and in practice the MRR is truly reflective of the ethos of the club as a mutual. It involves the club's loss prevention team coming alongside the member, understanding its business, its decision-making processes as well as the challenges faced and having done so, providing appropriate support to the member to improve loss prevention.

Incidentally, the Standard Club's loss prevention team is multi-disciplinary. They comprise master mariners, naval architects, ship production engineers and specialist surveyors. This

¹⁰ e.g.; In Singapore, for instance, these powers are provided by the Section 206 of the Merchant Shipping Act and Section 22 of the Prevention of Pollution of the Sea Act :

<<https://www.mpa.gov.sg/web/portal/home/singapore-registry-of-ships/flag-state-control/flag-state-control-inspections>>

¹¹ *supra* Proviso (5) r.15.1

¹² Includes inspections over the hull, structure, lifting appliances, ballast tanks, cargo spaces, cargo operations, navigation procedures, engine room operations, maintenance, environmental compliance, Safety Management System, personal safety, safety equipment, accommodation and manning, security

¹³ n.5 r.15.4 *supra*

unique blend of expertise enables the team to meet the routine needs of the club as well as the more bespoke needs of individual members.

Most, if not all clubs subscribe to the belief that ship and operations surveys such as SRR's and MRR's surveys are in the collective interests of the member and the wider membership. Accordingly, cover may be compromised in the event a member fails to co-operate to allow for an SRR or MRR¹⁴ or if the member fails to comply with recommendations made by the club following a SRR or MRR¹⁵. Where there is an infraction of the Rules in the case of a SRR in respect of new ships or renewal, the club may additionally decline an application, impose conditions or refuse renewal¹⁶.

Club surveyors and underwriting

At the Standard Club, its loss prevention and underwriting teams work closely. The club's surveyors analyse and evaluate claims trends and risk triggers year-round. Their findings are fed back to the underwriters who are thus equipped to finesse the rating and assess the club's risk appetite. Over the years, the Standard Club's team of surveyors and underwriters have internally developed an effective desk top pricing tool for this purpose¹⁷.

II. Operations and claims handling support

From time to time, the clubs through their extensive network of correspondents are called upon to assist their members in appointing external surveyors to assist with operational matters (e.g. pre-load steel surveys).

More frequently however, marine surveyors provide claims handling support to the clubs and their members following an incident and a claim. The role of the marine surveyor in this respect is to safeguard the interests of the member and/or to minimise post-incident exposure.

To that end, the club's loss prevention and claims team work closely. The club's surveyors are the first port of call for members and the claims team who seek technical and/or loss prevention advice. In turn, the claims team alerts the club surveyors in respect of any trends of incidents which may amount to a 'risk trigger'. Where appropriate, the club's loss prevention team investigates, analyses and reports their findings in respect of these trends to the club and membership and make appropriate recommendations completing a virtuous cycle of effective loss prevention.

Apart from club surveyors, following an incident and/or a claim, the club may appoint external surveyors (who may be anywhere in the world depending on the location of the incident) to assist with investigations, fact-gathering, to advise and where appropriate, to testify as witnesses of fact and/ or as expert witnesses.

¹⁴ r.15.3.2; 15.4 the Rules

¹⁵ r.15.7 the Rules

¹⁶ r.15.13.1 the Rules

¹⁷ The Desktop Risks Assessment Tool (DRAT) is an easy-to-use and quick and preliminary desktop assessment application which provides for an overall assessment of a risk object and the member.

Due to space constraints it is not possible to list all the attributes of the ideal marine surveyor to assist with operations and claims handling. Suffice to select three below.

a) Competence

Despite its antiquity, the marine surveying profession lacks an established and universal system of accreditation, certification and/or qualification. In appointing external surveyors to assist in an incident or a claim, the Standard Club for instance largely (although not exclusively) relies upon recommendations from its global network of 650 correspondents located spread in over 130 countries who effectively function as its hands, ears and eyes on site.

It goes without saying that the club expects surveyors to be honest and candid about their qualifications and experience. P&I claims can and do involve high stakes. Cases have been known to collapse due to expert witnesses overstating their competence. Some eventually prove incapable of withstanding the rigours of cross-examination. It is imperative that the club and member are assured that their appointed surveyor is the right person for the job.

Accordingly, if a surveyor considers the scope of his instructions to exceed his competence, the club must be able to expect frank disclosure from the outset. The same goes for any potential conflict of interest.

Often overlooked but of equal importance are 'house-keeping' competencies on the part of the surveyor. At first blush, these competencies may seem unimportant but the price for giving scant regard to them can be far-reaching with irreversible adverse consequences for the member and the club. A sample of these 'skills' includes the following: -

- i) Clarity as to the precise scope of one's instructions e.g.; whether one is appointed as a gatherer of fact or provider of expert opinion or both;
- ii) Good co-ordination with other service providers;
- iii) Clarity as to the identity of the appointing principal;
- iv) Regular updates to the appropriate person at the principal's office;
- v) Diplomacy and not jumping to conclusions;
- vi) Not handing over documents or granting access of key information and documents to the opponent surveyors without prior permission of the principal and club; and
- vii) Prompt, clear and relevant reports including provision of estimates of exposure at the earliest possible opportunity albeit provisional with periodic reviews, as appropriate and as matters develop.

b) Cross disciplines

The extent of P&I cover is wide-ranging and often involves marine claims which are multi-faceted in nature. Ideally, the appointed surveying firm possesses competent multi-disciplinary expertise to attend to all aspects of a P&I claim. The reality however, is that there exist few such one-stop shop surveying firms. The chances are even more remote that any one surveyor possesses all the required expertise to investigate the full range of P&I claims. It is therefore reasonable to expect a surveyor to know and be able to provide recommendations to the club of specialists in their locality (e.g. cargo, chemical, fire or metallurgy experts).

More importantly, a surveyor ought to be able to work well with other professionals across-disciplines, be they on the same or opposing sides of a claim. Many a dispute can and have

amicably and efficiently settled with the assistance of surveyors and experts agreeing on the parameters, the real issues and working in tandem to narrow the competing interests of the parties involved.

c) Independence

It is the duty of the surveyor to assist the member and club so that they are best-placed to advance their claims or to meet the claims against them. At the same time, the surveyor has an overarching duty to remain independent and objective.

For instance, where the facts and evidence are plain, the surveyor should have the fortitude and diplomacy to timeously advise the club and member that upon a true assessment of the evidence, the technical position of the member may or may not be as robust as initially anticipated. This would provide the member and the club with an opportunity to review their posture and the strategy with legal advisors.

In cases where the surveyor is appointed as an expert witness, his obligation to be independent is even more pronounced¹⁸, and is regardless of the party who appointed him.

III. Promoting loss prevention and raising standards

That marine surveyors play an important role in raising safety standards and promoting a culture of safety and loss prevention in shipping cannot be overstated.

For example, a unique feature of The Standard Club is its 'Safety and Loss Advisory Committees' ('SLAC's') of which there are three: Asia, Europe and London Class¹⁹.

The SLAC's are managed by the club's Loss Prevention team and the members are drawn from senior technical and marine managers from amongst the club's global membership, who possess the requisite experience and expertise to grapple with complex issues and who have enough authority to act on the findings within their own organisation.

The SLAC's have proven successful in their 22 years of existence at the club. They examine both individual claims and claims trends as means to determine the root causes. They provide direction for the Standard Club's loss prevention initiatives by recommending preventive measures as well as discussing the implications of new regulations, review loss prevention initiatives and other topical subjects affecting the maritime industry.

Additionally, the club devotes significant resources to publishing articles, guidance notes and web alerts to increase awareness of loss prevention and safety issues within the

¹⁸ per Lord Wilberforce in Whitehouse v Jordan [1981] House of Lords: '*...Whilst some degree of consultation between experts and legal adviser is entirely proper, it is necessary that expert evidence presented to the court should be, and should be seen to be, the independent product of the expert, uninfluenced as to form or content by the exigencies of litigation. To the extent that it is not, the evidence is likely to be not only incorrect but self-defeating...*'

¹⁹ The London Class SLAC focuses on inland waterways' claims, whilst the Asia and Europe SLACs examine the claims generated by the Standard Club's 'blue water' business. All divisions meet twice a year.

membership and in the wider shipping community²⁰. The club remains constantly alive to current risks whether they arise from new technologies²¹ or ancient threats²².

All year round and around the world, the club conducts and participates in seminars and provides training for its members at seminars and conferences, sharing freely of its experiences and the lessons gleaned over the course of many years of experience in loss prevention.

The club also collaborates with other organizations to improve safety and loss prevention. Two examples from the Standard Club include the “*Be Cyber Aware At Sea*” and the “*Human Element*” initiatives, both of which produced various publications and films to raise awareness in respect of precautions to be taken to prevent cyber-attacks at sea and to reducing incidents at sea caused by human lapses, respectively.

Conclusion

From a club perspective, the role of the marine surveyor today to make shipping safer and more efficient is a wide- ranging, evolving and indispensable one. As to the qualities of the ideal marine surveyor, it is appropriate to reflect upon the description which is well-encapsulated by the International Association of Classification Societies (IACS) as below:

‘...The utmost care and discrimination have been exercised by the Committee in the selection of men [and women] of talent, integrity, and firmness as Surveyors, on whom the practical efficacy of the system and the contemplated advantages must so materially depend; the Committee have in their judgement appointed those persons only...who appeared to them to be most competent to discharge the important duties of their situations with fidelity and ability, and to ensure strict and impartial justice to all parties whose property shall come under their supervision...’

-Classification societies – their key role – IACS, 2012

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²⁰ See < <http://www.standard-club.com/loss-prevention/about-loss-prevention.aspx>> and < <http://www.standard-club.com/news-and-knowledge> >

²¹ See e.g. Technology Bulletin, September 2018 < <http://www.standard-club.com/news-and-knowledge/news/2018/09/technology-bulletin-september-2018.aspx> >

²² Web Alert: BMP5 and Global Counter Piracy Guidance < <http://www.standard-club.com/news-and-knowledge/news/2018/09/web-alert-bmp5-and-global-counter-piracy-guidance-printed-copies-out-now.aspx>>