

Issues facing the Insurer with specific reference to the NATUNA SEA incident

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Introduction

We all recognise that oil spills, great or small, will occur in the future and that there are aspects of them which we can not control, most obviously where and when they occur, the weather and sea conditions and indeed the nature of the oil. However, what we can control we should control and, at the very least, we all have a responsibility to ensure that we learn from the lessons which past oil spills can teach us and avoid repeating any mistakes that may have been made. Equally, we should not forget what we get right when responding to spills and ensure we carry that valuable information forward with us.

The subject of my talk today is the NATUNA SEA Sea incident, and I will be summarising what happened and highlighting what I consider to be the interesting aspects of the incident. I will also be identifying the issues which this incident raises for the P&I Club and the industry at large, and the lessons which we may have learned from this spill, albeit, I believe the response in this case was comparatively efficient. But let me first tell you something about the Insurer, The London P&I Club.

The Insurer – The London P&I Club and the International Group of P&I Clubs

The P&I insurer of the NATUNA SEA is The London Steam-Ship Owners' Mutual Insurance Association Limited (The London P&I Club). The London P&I Club, like the Japan P&I Club, is a member of the International Group of P&I Clubs and, like many of the International Group Clubs, has been in existence for a long time, some 135 years to be precise. The London Club currently insures some 30 million GT or about 1,000 ships.

Approximately 34% of The London Club's membership is managed in the Far East. The Club has a youthful fleet when compared with the world average. The average size of vessel entered in The London Club is, at nearly 30,000 GT, significantly larger than any other Club and, not so surprisingly therefore, 45% of the entered tonnage is composed of bulk carriers and 35% tankers.

P&I insurance is structured in layers. The P&I Clubs which are members of the International Group of P&I Clubs individually cover the first USD5million of any insured liability, they collectively insure the next USD25million, and then collectively re-insure, in the case of oil pollution liability, up to the limit of USD1billion. For insured liabilities other than oil pollution (for example, liability to cargo, loss of life and personal injury, damage to fixed and floating objects, wreck removal) the limit on cover is currently about USD4.5 billion.

The NATUNA SEA Incident

At 0620 hours on 3 October 2000, the 51,095GT/82,169DWT 1980 built tanker NATUNA SEA loaded with 70,190MT Nile Blend Crude out of Marsa Bashayer, North Sudan, and bound for Jinzhou, Republic of China, grounded on the Indonesian rocky outcrop of Batu Berhanti, approximately 320 metres to the south of the southern extremity of the eastbound traffic separation scheme between Singapore and Indonesia. What was particularly interesting about this grounding is the fact that the location is also about 6NM from the NATUNA SEA's Managers' office!

The immediate consequence of the grounding was that cargo tanks 1C, 2C, 3C, 1S and 3S were ruptured and an estimated 7,000mt of cargo escaped into the sea.

The 'Objectives' of this Symposium relate that, since the ERIKA incident in November 1999, there has not been a large oil spill incident, but that there have been medium and small sized incidents and which have stimulated the countries affected to address oil spill response measures. Moreover, Dr Ian White, Managing Director of ITOPF, at this Symposium last year, began his paper by stating that major tanker spills are now exceptionally rare events.

So, how big was this oil spill in the general order of things? It makes sense to ask this question because, to *some* extent, the bigger the oil spill the bigger the issue for the Insurer. Of course, the size of the spill is never the whole story nor necessarily the major issue: some very large spills have cost comparatively little and, conversely, some small spills have cost a great deal!

Table A is taken from ITOPF's Past Spill Statistics. It lists the 19 largest spills, and that of the EXXON VALDEZ for good measure (but which is in fact about number 34).

Firstly, the Table shows that the shipping industry has been careful to spread its oil pollution favours fairly evenly throughout the world. This fact would of course tend to support the PAJ's contention, and indeed that of ITOPF, that the issue of preparedness, response and cooperation is one which needs to be seriously addressed by all countries with a coastline.

Secondly, the Table shows that, at 7,000 tonnes, the NATUNA SEA spill is certainly not in the 'Top 20'. In fact, having consulted ITOPF, I can tell you that the NATUNA SEA spill ranks 135th on the basis of the data recorded since 1967 (when of course the TORREY CANYON grounded off the Scilly Isles of the UK).

The AMOCO CADIZ (number 4) and the KATINA P (number 16) were entered with The London Club, the former being The London Club's *baptism of fire*!

Table B shows the specific experience of The London P&I Club. You will observe that since the AMOCO CADIZ incident in 1978 we have been fortunate enough not to be involved in too many serious spills and that the NATUNA SEA spill is the smallest.

Hence, in terms of pure tonnes spilled, the NATUNA SEA incident gave rise to a 'relatively modest' spill, but, nevertheless, it has proved to be a challenging spill for all concerned.

The P&I Club's Function in an Oil Spill

The P&I Club's principal function in life is to indemnify its Members when they incur insured liabilities, or, to put it bluntly, to pay! It will, quite naturally therefore, wish to ensure that what it pays is in all respects reasonable and not unnecessarily inflated.

Accordingly, the first issue facing the P&I Club when a more serious oil spill occurs is the careful monitoring, if not (as will rarely be the case) control, of the response. In many cases, this will mean monitoring the response initiated by Government authorities. This is generally achieved through the good services of the P&I Club's Correspondents (in this case, Spica Services (S) Pte Ltd) and the surveyors and/or lawyers who may be instructed.

However, 'the first telephone call' is likely to be to (if not from!) ITOPF accompanied by the issuance of a request to them to immediately despatch one or more of their very experienced team to the location of the spill.

This case was no exception, and ITOPF set about performing their as always invaluable role of assessing the nature and extent of the pollution incident by way of regular overflights of the affected areas followed by the provision of advice (drawn from ITOPF's experience of attending over 400 spills) to those controlling the response and the P&I Club.

If major oil spills are a rare event, then spills which occur within view of the ship Manager's office window are even more rare! The fact that the address of Tanker Pacific Management (Singapore) Pte Ltd ("the Manager") was Temasek Avenue proved to be a major factor in the response to this incident and which probably distinguishes it from virtually all other spills.

In the case of the NATUNA SEA, the entire Manager's staff, from the Managing Director down, were 'on the ground' and fully committed to a very high level involvement in the response, which extended from mobilising contractors and equipment to getting their own hands very dirty indeed. Simultaneously, they also managed to address their more natural priorities, namely, attention to the well-being of the ship's crew, the ship herself and her cargo with the assistance of their appointed salvors, SMIT.

However, I must also here thank all those taking part in a PAJ training scheme in Singapore at the time of this incident and who so enthusiastically joined in the clean-up effort!

We must also fully acknowledge and recognise the important role played by the MPA, who integrated well with the Managers, and who, having, by force of previous events (most recently the EVOIKOS spill), greater experience of responding to oil spills in the Malacca Straits and elsewhere, formed with the Managers an excellent partnership of experience, knowledge of resources and geography, operational capability, imagination and resourcefulness.

The Managers contracted on LOF 2000 with SMIT International Singapore (Pte) Ltd to salvage the vessel and cargo and who initially sub-contracted Briggs Marine

Environmental Services (as spill managers) and SEMCO/SOSRC (as response organisation) to combat pollution. SMIT successfully refloated the vessel at 0920hrs on 12 October after having first off-loaded the majority of the vessel's cargo from both damaged and sound cargo tanks. No small achievement. The salvaged cargo was trans-shipped and successfully on-carried to its destination in China.

However, well within 24 hours of the vessel grounding, it became clear to SMIT that the pollution aspect of this casualty had become significant and that it would no longer be consistent with the scope of their obligations under LOF to combat the spread of oil, which had by that time reached a considerable distance from the vessel.

It was therefore immediately agreed between the Managers and SMIT that with effect from 2400 hours on 4 October the Owners would take over SMIT's sub-contracts with Briggs Marine Environmental Services and SEMCO/SOSRC, while The London P&I Club additionally contracted with EARL/OSRL, the latter two organisations acting as oil spill response organisations providing both specialist oil pollution response vessels, general purpose boats, booms and equipment, including what would prove to be the all-important Sea Wolves, and personnel.

The MPA required EARL to employ its C-130 fixed wing aircraft to spray dispersants from the air in addition to the spraying of dispersants from numerous vessels. However, in light of the advice of ITOPIF and, subsequently, AEA Technology (UK consulting chemists with specific experience of evaluating the effectiveness of dispersants upon oil) that dispersants would be ineffective on Nile Blend Crude shortly after the oil hit the water, on account of a combination of its relatively high pour point (33°C) and the ambient temperatures, further flights were not undertaken and the application of dispersants minimised.

Carried by wind and tide, the oil spread rapidly, breaking up into various slicks and which, to varying degrees, affected the waters of Singapore, Indonesia and Malaysia. The amount of oil on the water provoked a substantial response involving a large number of vessels and personnel, principally over the period between 3 and 15 October. However, identifying the most appropriate equipment to use at sea in the response to this high viscosity oil was a problematic issue for those in command of the response effort, and it was the nature of the oil itself (quite awful stuff!) which fairly soon dictated that the containment and recovery method should be employed.

At sea, that tends to mean careful surveillance leading to the accurate deployment of boats, booms, skimmers and, in the case of this particular oil, which had become mixed with considerable quantities of debris, Sea Wolves. In addition, pragmatism and imagination were also the agents of progress as it became apparent that good old but adapted bum-boats and grabs operated from crane barges were an important resource. It also means the intelligent deployment of booms in strategic locations to prevent the oil reaching sensitive areas and the protection of fish cages with plastic sheeting.

I must at this point express our and the Managers' particular gratitude to the PAJ for the swift, efficient and no-nonsense provision of their four 250 metre booms, skimmers and other equipment through the good services of SOSRC, who store the

PAJ's equipment in Singapore in permanent readiness. I am told by the Managers that this equipment was released within 11 hours of the Managers' request. Since that request was made at 0100 hours, I consider the making of contact, the agreement and execution of the contract and the mobilisation of this equipment from SOSRC's premises within 11 hours to be fairly commendable.

Highly sensitive areas of Singapore, in particular recreational beaches, were affected, including Sentosa, St John's and the surrounding islands. The Singaporean response was concentrated upon cleaning up the largely solidified oil from the beaches, the highly viscous nature of the oil making this task less difficult than one might have thought at first glance. The viscosity was so high that it rested on top of the sand and did not sink in; it was therefore *relatively* easy to remove. General contractors employed by the Managers together with members of their local staff and (and this is a fine example of imagination and ingenuity) the Managers' small army of Turkish fitters, who were flown in specially and proved extremely hard working and diligent in the execution of orders, undertook the initial cleaning. Thereafter, contractors worked on under the supervision of The London P&I Club's correspondents, the appointed surveyors and the MPA, who continued to oversee the response.

As far as the Indonesian sector was concerned, the Managers led and orchestrated the pollution response effort, which involved the direct employment of, amongst others, some of the fishermen who had suffered the temporary loss of their livelihoods and who, consequently, would be able to receive remuneration for clean-up work in lieu of fishing. In all, some 500 Indonesians gained work carrying out the clean-up of the Indonesian coastline using equipment provided by contractors employed by the Managers. The Indonesian clean-up operation proceeded very successfully, albeit, the Managers had to pull off a further miracle of sorts on the island of Lengkhana in removing approximately 25,000 bags or 300 tonnes of collected oil and debris. They were collected and shipped out for disposal by incineration, whereafter the Managers arranged environmental reinstatement to an impressive standard.

As regards Malaysia, the oil came ashore in Malaysia on 12 October affecting a twenty kilometre stretch of coastline on the south eastern part of Johore, to the east of Singapore, together with five offshore islands. The clean-up operation in Malaysia was organised by the Department of the Environment (DOE) and carried out under the supervision of the local District Officer by volunteers, mostly fishermen in the first instance, and subsequently by contractors employed by the DOE. ITOPF monitored the operation on the ground together with local surveyors instructed by the The London P&I Club's Correspondents. The clean-up operation was completed successfully on 20 November.

The Issues facing the Insurer

Financial Exposure

The liability situation is relatively straightforward in that both Singapore and Indonesia are signatories to the International Convention on Civil Liability for Pollution Damage 1992 ("the 92 Liability Convention").

Under the 92 Liability Convention, the vessel's limit of liability is approximately USD29million. While it is expected that total clean-up costs and expenses and pollution damage/third party claims will not ultimately prove at anything approaching this figure, in the unlikely event that clean-up and pollution damage was to exceed USD29million the Owners would be entitled to establish a limitation fund in either Singapore or Indonesia and all claimants in those countries would have to prove their claims against the one fund, while the Owners would also be entitled to a credit against the fund to the extent that they have incurred costs and expenses directed to preventing or minimising pollution damage.

It is, consequently, even more unlikely that the 92 Fund Convention will come into play, but, for completeness, Singapore is a signatory to the 92 Fund Convention, while Indonesia is not. Accordingly, further funds would theoretically be available to claimants in Singapore up to the 92 Fund Convention's limit of USD175m, while unsatisfied claimants in Indonesia would need to successfully challenge the Owners' entitlement to limit liability under the 92 Liability Convention. However, since an Owner's right to limit liability under the 92 Liability Convention is only denied in circumstances where it is proved that the pollution damage *'resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result'*, and there is no suggestion of such being the case here, there can be no issue over the Owners' right to limit liability under CLC should such in fact become necessary.

Although the impact of the spill on Malaysia was relatively modest, again for completeness, I should mention that it is the 1969 Liability Convention which is applicable there and under which the Owners would if necessary be entitled to limit their liability separately to about USD8 million.

Reputation and the Prompt Settlement of Claims

The International Group of P&I Clubs can generally pride itself on the commitment and ability of the individual P&I Clubs to promptly settle claims. However, the P&I Clubs obviously have an obligation to ensure that claims are properly supported and justified. In this regard, they will at all times have in mind two fundamental principles which underpin the operation of the 92 Liability and Fund Conventions.

Firstly, the principle emphasised by Dr Ian White last year, that response measures must be technically justified and meet the test of "reasonableness". Secondly, that claims for loss and damage must fall within the definition of 'pollution damage' if they are to be entertained. The 92 Liability Convention defines 'pollution damage' as follows:

"(a) Loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;

(b) the costs of preventive measures and further loss or damage caused by preventive measures”

As is normal, the claims arising in the NATUNA SEA case essentially fall into two categories: the oil pollution clean-up costs incurred by the Owners’ Managers, the MPA and the Malaysian DOE, on the one hand, and the third party damage claims submitted in Singapore, Indonesia and Malaysia by those who assert they have suffered loss and damage as a consequence of the spill, for example fishermen, who have been prevented from fishing and whose boats, nets and equipment may have been damaged by the oil.

The costs of clean-up incurred directly by the Managers and the P&I Club under contracts with the mentioned contractors have been settled. As regards the MPA’s claim, we were hoping to reach agreement with the MPA within at least the anniversary of the spill, but discussions between the MPA, The London P&I Club, ITOFF and the IOPC Fund continue. Nevertheless, our discussions are reasoned and constructive and I am confident that matters will be resolved shortly.

Third party claims in Singapore and Malaysia have not been significant and have been largely resolved. Third party claims in Indonesia have yet to be resolved, and are substantial, but it would be inappropriate to say more about such claims at this time other than to say that we will endeavour to ensure that whatever claims are put forward are considered in an equally reasoned and constructive fashion. If the two principles stated above and which underpin the Conventions are fully understood and respected by both sides then resolution of these claims should not prove to be too problematic.

Control and Efficiency

It will be evident from my above account of the NATUNA SEA incident that I consider the response initiated by the Managers in close and good cooperation with the MPA was very largely successful. However, and in common I venture to suggest with every other spill response, the response came short of being a counsel of perfection.

The issues which have been brought to my attention include the coordination of the deployment of resources and/or the issuance of instructions to the spill managers and the various oil spill response contractors. It is terribly easy to be wise after the event, but, plainly, any lack of coordination and of a good single management structure when there is a more major oil spill will lead to duplication of effort, unnecessary cost, delay and a less than efficient response. This state of affairs, to the extent that it existed in this case, is said to have arisen in consequence of the co-existence of essentially two spill management teams and a failure at the very start to agree, as between the Managers and the MPA, who the spill management team and contractors were to be and/or to provide them with clear terms of reference. Equally, those who hold themselves out as professional spill managers must be capable of instilling a high degree of confidence in those who are relying upon them to manage the response to a spill and any perceived lack of know-how, relevant experience or decisiveness is likely to cause difficulties.

The heat of the moment is not an easy time to be entirely focused and clear-minded, and the instinct to get out there and 'do something' is, understandably, going to be a very difficult force to resist. I very much hope there will not be a 'next time' for this particular combination of ship Manager and the MPA, but, if there is, I believe the experience gained by both parties, not to mention the London P&I Club, in this incident will place them all in good stead to even more smoothly respond to the next spill.

Conclusions

Let us now endeavour to draw some conclusions.

I have provided an account of the NATUNA SEA incident and explained how it may be viewed as a very unusual case on account of the fact that the spill occurred on the ship Managers' 'doorstep' and therefore provided a quite rare opportunity for the Manager of the distressed ship to be directly involved with the response in partnership with the MPA.

I have also described certain of the more central issues facing the Insurer. However, our aim at the outset was to identify the lessons which are there to be learned from this incident in order that we can hopefully avoid the repetition of errors and, hence, unnecessary loss, damage and cost in the future. We can make mistakes, but we should not repeat them! However, we should also take note of what we got right. Here are some thoughts.

The Lessons Learned

1. Agreement on Costs

In my experience, the moment when thousands of barrels of oil hit the water is the worst possible time to be negotiating rates and contracts with spill managers and response contractors! Dare I say the shipowner and his P&I Club are at that moment somewhat over a barrel! The world may be a big place with a huge number of players, but we should be investigating the extent to which pre-agreements can be reached between shipowners and their P&I Clubs, on the one hand, and Government authorities, spill managers and contractors, on the other, most particularly in high risk areas. The Straits of Malacca are of course just such a high risk area and I would like to think that, whether pursuant to discussion with us and/or ITOPF and/or the IOPC Fund, the MPA and the local contractors will be prepared to review their rates against those prevailing in the industry at large. In this regard, the success enjoyed by the ISU, the P&I Clubs and the property insurers in agreeing rates for the purposes of the operation of SCOPIC could serve as a helpful example of cooperation which benefits the industry at large. It would obviously be very helpful if we could avoid or at least minimise the repetitive and interminable hassle over rates and charges following an oil spill response.

2. Management of the Response

In the context of any spill, it is essential to ensure that a clear command structure is put in place in order that the response can be most efficiently coordinated. While this

should be obvious, any state of emergency combined with political pressures will seriously test this principle. As I have mentioned above, the NATUNA SEA response probably did suffer from these pressures and a consequent lack of coordination at times due to an otherwise than entirely clear command structure.

3. Dispersants

I anticipate we may have to agree to disagree with the MPA on this, and the issue of whether or not to use dispersants will often be a difficult one, but I believe that the NATUNA SEA case is a good illustration of the issue being addressed at an early stage and the correct decision being made not to continue with the spraying of dispersants. While time will always be of the essence and the use of dispersants may be justified in the absence of sufficient relevant information about the oil which has been spilled, the clear objective must be to assess the usefulness of dispersants at the earliest possible stage.

4. The Limitations of Trajectory Modelling

An aspect of spill response which can be unhelpful is over reliance on trajectory modelling. In reality, this is an inexact science and its limitations should be recognised such that the 'information' received is treated as an indication of the possible direction of oil in the water rather than a creed for deployment decisions. It may appear that resources were misdirected in the NATUNA SEA incident on account of a little too much reliance being placed upon modelling predictions.

5. Pre-Positioning of Response Equipment

Although the PAJ has made welcome and widely recognised efforts to address this issue, it is probably still the case that on a worldwide basis clean-up resources are insufficient. In this case, there was, fortunately, no lack of technical oil spill response equipment, but it seems there was a lack of basic industrial resources such as open barges and crane barges, which caused delay. It is my understanding that this problem was also encountered during the response to the Evoikos spill. Did we miss that lesson? Will the PAJ's valuable initiative in this area be followed by others, particularly in high risk areas?

6. Claims must Comply with the Fundamental Principles

This observation should be unnecessary, but it is not sufficient for countries to adopt the 92 Liability Convention and the 92 Fund Convention; those representing claimants, whether Governmental or private, must also understand and respect the principles underlying these Conventions. Given that claims arising from the NATUNA SEA incident have yet to be finalised, I am limited in the extent to which I can go into detail, but suffice to say that claims have been presented which reveal insufficient understanding of the requirements for the technical justification of response measures ("reasonableness") and for claims to come within the Conventions' definition of "pollution damage". Furthermore, in light of the security which the 92 Liability Convention represents for justifiable response measures and pollution damage, it is most regrettable that the NATUNA SEA should have been detained in Indonesia for 69 days after she was refloated.

7. The importance of Keeping the Public Informed

In my opinion, the Managers and the MPA got this absolutely right, namely, their dealings with the media and the public's legitimate interest in knowing the facts of this incident. I consider they should both be commended for the way in which they provided regular and informative press releases, thereby addressing the concern of the people of Singapore, and those elsewhere, to know what had happened and what was being done to remedy the situation. If one fails to meet this legitimate need the invariable consequence is that the Press will speculate and sensationalise. That circumstance is extremely unhelpful and should be avoided.

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It is only a matter of time before there will be another oil spill. We need to learn from past experience in order to be ready for the future. We must express our gratitude to the Petroleum Association of Japan for arranging these annual symposia which give us the all-important opportunity to do so.