Running Down Liability Coverage in Insurances

While P&I insurance basically covers the liability of the insured against the third parties, H&M (Hull & Machinery) insurance covers the damage to the insured vessel. When we check their background, H&M coverage providers are more risk-loving investors, while P&I coverage providers are the shipowners themselves. P&I was formed based on the fact that shipowners wanted to come together to guarantee their liability risks. This distinction is important for a better understanding of the following assessment.

In our article, the most commonly used British ITC Hulls conditions are taken into consideration and although the information given is valid for other conditions such as Nordic Plan, DTV-German clauses, some practices may be different. Since the insurance contract is a trade agreement, it should be remembered that the terms of the trade agreements may be modified upon consensus of the parties.

P&I and H&M insurances are both distinct and complementary to each other. The most basic example of their complementarity nature is the collision liability and liability to fixed and floating objects, which are known as RDC/FFO in short form.

Although RDC / FFO (Running Down Clause / Fixed and Floating Objects) are used together under the Collision Liability in practice, they are different in terms of content and insurance they are subject to. In this article, they will be evaluated as separate coverages as it should be.

RDC- Running Down Liability Coverage:
The running down clause is the liability against the third parties arising as a result of the collision of an insured ship with another one. Opponent ship's owner, the owner of the cargo onboard of the

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opponent ship, those on board of the counter ship or the parties incurring damaged due to environmental pollution caused by this collision are considered within the scope of 3rd party.

While the Collision Liability was initially covered by the H&M Insurers, since the insurers did not want to carry more than 3/4 of the collision risk, the remaining 1/4 of the risk was borne by P&I, in other words the shipowners undertook their remaining risks under coverage. With the institutionalization and specialization of P&I insurers over the past period, the entire collision has been seen as a liability risk and in practice 4/4 of this risk has started to be undertaken by P&I insurers.

Today, H&M insurers can also provide full coverage for RDC. However, the facts that the coverage provided by H&M is limited to the insurance cost of the insured ship, the collaterals such as the required guarantee letter, bank guarantee are provided faster by the P&I insurers, the deaths and injuries that will occur on board of the opponent ship are excluded from the RDC coverage given under H&M, and the ability of P&I insureres to act more rapidly because of its structure, come to the forefront specifically for this coverage.

The division of coverage between H&M and P&I also causes a number of problems in practice. Difficulties arise in obtaining the collaterals to be requested by the counter party, and more importantly, since the ship's value is taken as the basis in the coverage provided under H&M insurance, there is a problem in determining the ship's value. There is also a weak coordination between the H&M and P&I insurers in cases such as dealing with the damage caused by the collision, distribution of costs, wreck removal, death and injury to be caused on the opponent ship.

FFO- Liability for Fixed and Floating Objects:
Since RDC and FFO are generally considered together as we mentioned above, it may lead to misunderstanding by many insureds. Unlike RDC, FFO assures the liability damages arising from the collisions of the insured ship with fixed and floating objects outside the vessel. The most common is the damage given by the insured ship to the docks and/or port cranes. Again unlike RDC, FFO is completely out of coverage in H&M insurance without any distinction such as 3/4 - 1/4. (In Nordic Plan and DTV-German clauses, FFO can be evaluated under H&M insurance.)

Since the purpose of creation of the P&I insurance is to cover liability risks that are not covered by H&M, in other words, to become a complementary to the H&M insurance, the FFO damages excluded in H&M insurance are also covered by P&I.

In some cases, the problem of whether to consider a floating object as a ship or not is encountered. RDC will be activated if it is considered as a ship and FFO will be activated if it is considered as a floating object. This issue is not only related to insurance coverage and distribution of H & M / P & I coverage, but also closely related to the laws and rules to be applied. For example, in case of a floating object, the issue is resolved within the framework of local laws / courts, while collisions with a ship are subject to international rules such as Colreg (International Regulations for Preventing Collisions at Sea). In other words, while the RDC coverage is regulated by international rules, there is no regulation for FFO, and it is subject to local law / rules.

The sharing/transitions between H&M and P&I in the RDC coverage and the consideration of the FFO coverage under P&I reveals the importance of insurance and insurer selection once again.

Türk P&I is one of the scarce insurers that provide both H&M and P&I insurance coverage and provides a great advantage to our shipowners in eliminating the lack of coordination arising from the said insurance coverages.