

On the Legal Adjustment of Marine P&I Insurance Contract

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Abstract—P&I insurance means that the shipowner pays the membership fee to the P&I Association according to the agreement in the P&I insurance contract, and the P&I Association provides protection and compensation for the potential liability risks, possible losses related to the operation and the expenses arising therefrom of the ships owned or leased or managed by the shipowner. P&I insurance is a special kind of marine insurance. With the increase of marine risks and the development of marine liability system, its position in marine insurance is increasingly prominent. However, China's legislation on P&I insurance is still not perfect, and there are still gaps in the legal adjustment of P&I insurance. In view of this, based on the perspective of the legal adjustment of marine P&I insurance contract and the prospect of future norms, this paper conducts research, hoping to deepen the research in this field by combining the legislation and practice of common law countries and the basic theory of marine insurance contract law, so as to make the relevant legislation in China more perfect.

Keywords—P&I insurance, legal adjustment, maritime law, law of insurance

I. INTRODUCTION

Indemnity insurance refers to the guarantee and compensation of the ship owner to the indemnity association according to the provisions of the insurance contract, and the potential liability risks provided by the indemnity association, the possible losses related to the operation and the expenses caused thereby. The insurance law of the People's Republic of China (hereinafter referred to as the "insurance law") and "maritime law" is not clear to ship insurance regulation, which leads to controversy in practice, for a long time to Chinese mutual association regulation and the ship insurance contract dispute settlement is the dilemma. For a long time, the academic community has discussed the issues related to ship insurance from various angles, but no consensus has been reached on many issues (Qian, 2021). Most mainland law countries regard shipowner Mutual Insurance Association as a non-profit association, with financial regulatory authorities as the leading role and joint registration departments jointly supervise it. For example, Japan is supervised by the financial director appointed by the Tibetan minister, while South Korea is mainly supervised by the Financial Supervision Authority set up by the Financial Commission. Whether the regulation of ship insurance and compensation insurance contract, or the supervision of ship insurance and compensation insurance industry, the development process and actual regulations of foreign countries can be used as the reference of relevant legal regulations in China.

II. THE NATURE OF THE OFFSHORE INSURANCE CONTRACT

Sea insurance contract, it is to point to the applicant and the insurer signed, by the insurer is responsible for the ship, goods, freight and related interests in the loss of the sea natural disasters and accidents, the property insurance contract that the applicant pays the insurance premium. Marine insurance and indemnity insurance is a kind of Marine insurance contract. It is the guarantee and compensation that the shipowner pays the membership fee to the indemnity association according to the agreement of the contract, and the indemnity association provides for the potential liability risks, the losses related to the operation and the expenses caused thereby. The scope of maritime insurance, mostly refers to the ship insurance.

A. Marine P&I Insurance is a Kind of Mutual Insurance

Insurance is different from general commercial insurance, its most fundamental point lies in the "mutual". This reciprocity was reflected in the early stage as the mutual protection between the member shipowners, who acted as the dual identity of both the insurer and the insured. The insurance contract is usually signed by the entire owner as the insurer. When one of them suffers a risk, he is the insured, and the other owners compensate him as the insurer, and if the other owners suffer a risk, he is in the position of the insurer and compensates the other owners. In other words, in this kind of insurance, the member owner is both the insurer, and the insured, can enjoy the right of compensation, and to perform the obligation of compensation, all the owners implement the principle of mutual assistance, co-protect the responsibility, with the risk. The association organized by the shipowners was only a loose union of individuals (Ai, 2005). The "reciprocity" of insurance and compensation insurance is mainly reflected in the following aspects: first, loss sharing and risk sharing; second, the same goal and experience sharing; third, the fight against catastrophe and share financial resources; fourth, similar quality and equal treatment.

B. Marine P&I Insurance is a Kind of Supplementary Nature of Insurance

In the shipowners protect compensate association, for example, the collision clause is based on the association of the London ship insurance clause, the latter stipulates the insurer to the insured ship and his ship collision liability is only responsible for them, and the owner is responsible for the rest, therefore, the owner protect compensate association will the responsibility into their coverage, and the responsibility of ship carrier is not responsible for. The insurance clause of the shipowner mutual insurance association in China is also determined according to the ship

insurance clause of the People's insurance company of China. The latter provides that the insurer covers the insured due by the collision between the insured ship and other ship or touching any fixed or floating object or other object, that is, the insurer covers the collision liability of the insured ship. Therefore, the Chinese Owners' Mutual Insurance Association does not cover this, but only covers the partial collision liability risks, such as personal casualties caused by the collision, the loss of goods or other property loaded on the insured ship.

III. SCOPE OF LIABILITY OF THE ASSOCIATION

The relationship between the association and its members is not only the industry organization and its members, but the other's specific contractual relationship and assumes specific obligations to each other. Therefore, from the perspective of the contractual legal relationship between the two, they have independent legal status and rights and interests, and even have some opposition (Shi, 2021).

The insurance scope of ship insurance insured by CSSC is as follows: 1. crew liability and liability for personal injury of third parties; 2. cargo liability; 3. oil pollution liability; 4. Liability for debris removal; 5. collision liability and touch liability except ship insurance; 6. fine, smuggling and towing liability, etc (Product and Service — Insurance and indemnity Insurance, 2023). And the risks of the People's Property Insurance Company of China in the shipowner protection and compensation liability insurance (2009 edition) is: 1. Personal injury and illness; 2. repatriation of the crew of the insured ship; 3. Personal articles; 4. Compensation caused by the wreck of the insured ship; 5. navigation; 6. resettlement of smugglers and refuters; 7. human life; 8. liability for collision; 9. damage and loss of property; 10. liability for pollution; 11. liability for debris removal, etc. As mentioned above, the risk items covered, although not identical, are essentially much the same. Therefore, the author is more inclined to define the ship insurance through the limit of the coverage.

A. *The Regulation of Non-commercial Insurance*

Non-commercial ship insurance and compensation insurance refers to the non-profit insurance activities provided by the ship mutual insurance Association and other organizations to its members in order to guarantee and compensate for the liability risks not covered by the ship insurance. Non-commercial ship insurance contract generally refers to the ship insurance contract signed by China shipowners mutual Insurance Association and its members. Non-commercial ship insurance and compensation insurance contract is a single insurance contract in the unconventional sense, but it is composed of membership certificate, association regulations, etc. Its common nature is non-profit. Therefore, non-commercial ship insurance and compensation insurance is a non-profit ship insurance and compensation insurance provided by shipowners' mutual insurance association and other organizations.

B. *The Regulation of Non-commercial Insurance*

Commercial ship insurance and compensation insurance refers to the for-profit insurance activities provided by insurance companies and other organizations to guarantee and compensate the liability risks insured by the ship owner, the operator, the manager or the lessee in the operation of the ship in the activities of the ship insurance. Commercial ship insurance for the main body of the nature of commercial insurance companies, in our country has a lot of Marine insurance commercial insurance company also provide commercial ship cover insurance business, such as China, China or the earliest points cooperation with foreign claims association, and the ship insurance into the domestic market of commercial insurance companies. But internationally, not only insurance companies provide commercial insurance business, some insurance associations also provide fixed rate, profit-oriented commercial ship insurance business. Although the name is commercial ship insurance, it is obviously different from non-commercial ship insurance. Strictly speaking, commercial ship insurance is not a kind of mutual insurance, but a commercial insurance product with the same content as non-commercial ship insurance. Commercial ship insurance is a kind of fixed rate commercial insurance provided by commercial insurance companies, which has the attribute of ordinary commercial insurance, which is different from non-commercial ship insurance.

Both commercial and non-commercial indemnity insurance are within the scope of the indemnity association, but based on the different nature of the contract, the law applicable when adjusting the contract should be different.

IV. REVISION OF INSURANCE UNDER THE REVISION OF THE MARITIME LAW

In the Maritime Law (revised draft for soliciting comments), the Chapter 14 Marine insurance contract stipulates that the compensation liability of the mutual insurance association for other members shall refer to the provisions of this chapter. Based on the previous analysis, the nature of maritime insurance and compensation insurance belongs to the category of liability insurance. Can all maritime insurance be adjusted to the revised Maritime Law? This paper believes that the classification should be adjusted based on the nature and classification of the Marine insurance contract.

A. *The Current Situation and Problems of the Existing Legal Regulation Practice*

It is commercial ship insurance and compensation insurance first, to the insurance contract signed with commercial insurance company, the court will express as the ship owner protection and compensation insurance contract, namely commercial ship insurance as the specific name of the insurance company, in order to distinguish from non-commercial ship insurance and compensation insurance. For ship owners and other subjects to insure ship insurance and compensation insurance from domestic and foreign commercial insurance companies, the court generally directly recognizes it as a kind of commercial insurance, and it is also a kind of maritime insurance contract, so it is regulated by both the Insurance Law and the Maritime Law. Below this

kind of circumstance, insurance company is underwriter, the subject such as the owner insured is insured. Under this type is a typical case for Emlin insurance company v. morning shipping group co., LTD., the sea waters insurance contract dispute case (hereinafter referred to as into road 58 wheel case), in this case, for the sea insurance contract, the second instance court thinks the case involving insurance certificate stated insurance class for shipowners compensate insurance level 1, so this case belongs to the Supreme People's Court on maritime court case scope of the provisions of article 40 maritime insurance contract disputes, shall apply the maritime law on the provisions of maritime insurance. Because "insurance law" the 6th regulation: insurance business by the insurance company established according to this law and the other insurance organization that law, administrative regulation stipulates, other units and individual may not operate insurance business. Emlin Company is not an insurance company established in accordance with the Insurance Law of China, so if there is no provision in the Maritime Law, the provisions of the Insurance Law shall not be applied, but the provisions of the Contract Law (now the Civil Code (contract)) and other relevant provisions.

For non-commercial ship insurance, it can be basically divided into two situations in practice, namely, foreign countries and China other countries. Due to the Supreme People's Court on the Chinese shipowners mutual insurance association and Nanjing macro oil shipping co., LTD. Marine insurance contract dispute appeal case about a legal issue of reply and other documents have Chinese shipowners association of non-profit nature and the properties of the social groups, the court usually quoted related documents to China shipowners association of non-commercial ship insurance compensate insurance behavior from "insurance law" and even "maritime law" within the scope of regulation, according to the law, is basically in the civil code of contract under the regulation of the case. Such as Shenzhen light remit oil group co., LTD., v. China shipowners mutual insurance association, the court decided that the ship for the social group legal person, does not belong to commercial insurance institutions, mutual insurance also does not belong to commercial insurance, the case does not apply to the insurance law, the insured contract should be applicable as unknown contract "contract law" (now the civil code (contract)). For foreign associations, the court will basically first determine the non-profit of its association, and then learn from the domestic identification of the Association to try the case. If the case of American shipowners mutual insurance Association v. Diamond International Cruise Line Company, the court holds that the nature of ship insurance is ship owner mutual insurance, not for the purpose of profit. Insurance and compensation association is a mutual insurance organization voluntarily established by ship owners, with risk sharing, and ship insurance is different from commercial insurance. Therefore, the Maritime Law and the Insurance Law are not applicable, and the insurance contract involved in the case should be subject to the contract section of the Civil Code as an unknown contract.

B. The Contract Legal Regulation Mode of Marine Insurance and Compensation Insurance

For commercial ship insurance and compensation insurance contracts, according to the dual attributes of commercial insurance contracts and Marine insurance contracts, they conform to the relevant provisions of the existing regulatory scope of the Maritime Law, and should be included in the Maritime Law. According to the provisions of article 216 of the maritime law, the commercial ship insurance contract in accordance with the agreement, the insured is the ship insurance liability for compensation, and paid by the insured, so commercial ship insurance contract in accordance with the maritime law definition of sea insurance contract, under the "maritime law" regulation.

In practice, both commercial and non-commercial insurance, which are also Marine insurance, have the attribute of maritime insurance, which also belong to insurance contracts, but they are completely different in legal regulations. Non-commercial insurance and compensation insurance can only be regulated by the basic laws of the contract section of the Civil Code, which can not adapt to the particularity of maritime insurance. For the revision of the maritime law, the supplementary liability is stipulated, which can make up for the existing legal vacancy of non-commercial insurance and compensation insurance. First of all, the definition of the non-commercial ship insurance and insurance contract should be made clear. The non-commercial ship insurance contract and commercial ship insurance contract area.

V. CONCLUSION

As for the legal regulation of maritime insurance and compensation insurance contracts, commercial ship insurance and compensation insurance contracts, as maritime insurance, are regulated by the Maritime Law. For those not stipulated in the Maritime Law, the Insurance Law shall be supplemented. There are vague legal regulation of non-commercial ship insurance contract, comprehensive analysis of the nature and existing difficulties of non-commercial insurance, non-commercial ship insurance contract is more suitable for regulation in the Maritime Law. Non-commercial ship insurance and compensation insurance contract is a special Marine insurance contract. Based on the historical homology and high correlation of Marine insurance and Marine insurance, modern Marine insurance and compensation insurance and commercial insurance that cover general maritime risks together constitute the maritime risk guarantee system, and is an important part of the maritime insurance system. Therefore, insurance compensation

For the legal application of the dispute over the insurance contract, the solution should be given in the Maritime Law: give the corresponding definition of the insurance contract, and clearly ensure that the compensation insurance contract is applicable or refer to the application of Chapter 12 of the Maritime Law (Shi, 2021).

CONFLICT OF INTEREST

The author declares no conflict of interest.

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