A Series of Four Articles Focusing on Coverages

A Special Reprint from the International Dredging Review, 1995

L.I.G. Educational & Consulting Services

300 1st Ave S., Suite 400, St. Petersburg FL 33701
Phone (727) 578-2800   Facsimile (727) 578-9977
E-Mail: IRG@LIGMarine.com Website: www.LIGMarine.com

Research the Agent Before Buying Insurance

First in a series

By Ian R. Greenway, London International Group

Insurance is a dull topic, and most people would rather ignore it until something happens, at which time they want their claim or problem instantly paid or solved.

The saying "an educated consumer is our best customer" holds true for insurance. This is the first of several articles designed to give you a snapshot of how the insurance of a dredging company works, including some of the pitfalls. The danger with insurance is that you only get to test your investment of tens, or hundreds, of thousands of dollars in a crisis, so you are wise to have detailed information prior to making the investment.

One critical issue in placing your insurance is selecting the agent, broker (or wholesaler) and insurer. The agent is your vital link. Do they understand your business? Are they stable and well respected? If they are dealing directly with the insurers, do they have sufficient knowledge of dredging to properly design the coverage you need? Do they have access to all the insurance companies that could quote your account? If they are dealing with a wholesaler or broker, these same criteria apply.

When choosing among the various quotes from agents and brokers, you need to understand the experience and standing of the insurers offering those quotes. In commercial marine insurance, probably more than most, we have had more than our fair share of fly-by-night operators and outright scams. While many of these have vanished, there is always a new one around the corner. One way for these operations to gain credibility is to use the name of a well-established group of insurers and then make a minor change in the name so that it appears familiar to the customer.

The pedigree of a company is often measured by how long they have been successfully underwriting a particular class of business. Frequently, a new player will come in aggressively and price the policy too low. They may appear financially sound, but experience tells us that they frequently will pull out, leaving policyholders uninsured, or even declaring bankruptcy, unable to pay current claims.

Companies insuring commercial marine businesses, particularly dredging, are limited to a handful. If you are comfortable with a particular agent, let them do the marketing work. If you feel you must use more than one agent to obtain your quotes, it is essential that they do not approach the same company through more than one route, the simplest way to create chaos in underwriters' minds, resulting in a weak proposal.

Most Fortune 500 companies experience a similar problem due to their size. They often use a process called "market assignment," which requires each person in the chain to advise you exactly which companies they are approaching. Any overlap is deadly. A clear, concise flow of your submissions from agent to quoting company will produce the most flexibility and the best potential for full, complete presentations.

Be Sure Employees Are Adequately Insured In Their Proper Categories

By Ian R. Greenway, President & CEO, London International Group

As an employer, your liability to your employees is critical, not only due to the high cost of insuring them, but also to your long term relationship with your employees.

There are three main areas of exposure to your employees that we call Dry, Damp and Wet.

DRY relates to your office, clerical and other employees who work exclusively on dry land sites (not waterside.) This is compensation-based, and assuming you follow the rules set up by the state is an "exclusive remedy" which protects you from tort liability for injuries. This exposure is normally covered by a Workers Compensation/Employer's liability policy, and is frequently described as "State Act" coverage, as the benefits paid are determined by the state.

DAMP refers to the Longshore & Harbor Workers Compensation Act, and relates to land-based maritime workers. You might say "I do not have any longshore or harbor workers." Unfortunately, the Act reaches farther afield, and relates to most waterside occupations. In dredging terms, these workers are often described as "shoremen", and will include the drivers/operators of onshore mobile equipment, land based maintenance workers and other workers. This is also a compensation-based system and is required by federal law to be carried if you have any exposure in this area. The penalties for not carrying this coverage are quire severe, including personal liability of officers of corporations. Coverage is provided by the Longshore & Harbor Workers Compensation Act, commonly endorsed to the State Act Workers Compensation policy, but occasionally written monoline.

WET refers to people on your vessels; your crew. What the law considers crew and what an insurance company considers crew may be totally different. This is often called Jones Act coverage, but this is only part of the story. It also covers marine liability to your employees, including General Maritime Law (Maintenance & Cure and Unseaworthiness) and Death on the High Seas Act. Broadly, the legal principle is to include just about anyone who is on the vessel for the purpose of employment. This includes the captain, deckhands, leverman, winchmen and engineers. What about the cook? He or she is as essential to the vessel as the captain (and many may argue more so!) This is a tort-based liability, usually insured under the crew section of the Protection & Indemnity (P&I) policy. It will commonly exclude State Act, Longshore & Harbor Workers Act and all other compensation-based acts.

Simple, you say. Just take your employees, divide them into the three categories and insure them accordingly.

Wrong!

The problem is that they do not simply stay in their own category. They keep moving across the divides. Unfortunately, it is not your decision where they are covered. This is determined when they hire an attorney and ultimately go to court.

The biggest problem is that these jurisdictions frequently overlap. Employees on a dredge in U.S. territorial Waters can claim to be seamen or not. If they say they are not seamen, they claim under Longshore benefits; if they claim seaman status, we switch to the various marine acts. On the other side, someone could be 100 miles inland, picking up a part for a dredge or other vessel, and successfully claim that they are "in service of the ship." Thus, seaman status applies.

Let me explain. Suppose you have a crew member you transfer onto land to help in the disposal area, and he is injured. You have a policy for P&I, which may (as is becoming more common today) require crew to be named. Even when named, most P&I policies contain an exclusion for benefits payable under the Longshore and Harbor Workers Act. If the attorney files a claim under that Act, the P&I insurer is likely to deny coverage.

More serious is that you bring a shoreman onto a dredge or vessel to do some work. This person is injured, and claims seaman status. Not only is this dangerous, especially with a "crew scheduled" policy (which would not cover him as he was not named,) but this can be extremely expensive, as the dollar amount payable typically runs four to five times the State Act benefits.

Your agent must solve this problem, either by negotiating some form of reporting coverage or temporary addition for those "occasional" crew, or by use of maritime employers liability coverage. In addition, if you have a scheduled crew type of policy, you must ensure that all additional or replacement crew are notified to the company in due time.

In all these areas, you must be sure your agent understands these exposures and properly structures the coverage. It is essential that you convey to the agent exactly who does what in your organization.

Cost

The cost of your employee insurance is probably one of your largest insurance-related expenses, and is derived from three factors. Your reaction to these factors, regardless of the agent, will greatly affect the ultimate price.

Market Forces

These go beyond pure insurance forc and relate to the unique operation of dredging companies and to the continuing broadening of the "seaman" status and the ever-increasing claim awards in this field. The most critical issue is a complete and accurate presentation. While this is largely the agent's problem, you will win only if you take the time to give the agent(s) all the proper information. They will then be able to present your operation completely to the insurance company. consider including in the submission your safety plan, O.P.A. compliance plan, a history of your company, loss bonus plans and everything else that makes your operation stand out from the others in the field.

Most important, use the market assignment technique described in my last article "Research the Agent Before Buying Insurance" (IDR, February 1995, pg. 14.)

Payroll/Employee Allocation

Together with your agent, you need to properly allocate your employees among the dry, damp and wet categories and insure them accordingly. If your exposure to damp or dry is truly limited, buy that insurance on an "if any" basis. Make sure you are not double-counting any employees. It is not necessary to include tne payroll of your crew unde Longshore and then again count as crew in the P&I policy.

Loss History/Safety Control

This is the area over which you have most control. In the long term, your premium has to be a factor of your losses. If you control your losses by aggressive risk management and safety plans, this will produce significant savings in your premiums in all sections of coverage. Keep in mind that the more you prevent or reduce accidents, the better your employees will react, and downtime will also reduce.

Dollar for dollar, this is the best investment in your long term insurance costs. You should have an independent safety audit at least annually, by either a loss control engineer from your insurance carrier or an experienced independent loss control engineer. Even with good loss experience, new techniques and upgraded practices make it essential to have such a report. Make it available to your potential insurer to prove your commitment that will, in turn, produce cost advantages by way of savings or lower increase than your competition.

Reprinted from International Dredging Review, May 1995

Insuring Your Liabilities

Third in a series of articles about insuring dredging businesses.

By Ian Greenway, President and CEO
London International Group

One of the most critical issues of your insurance is your liability to third parties. Claims may be few and far between, but unfortunately, in the litigious society of today, claims can be large. they can wipe a business out in one easy step.

There are really four types of liabilities you need to be concerned with in most dredging operations. These are: vessel liability; towers and collision liability; general liability and excess liability.

VESSEL LIABILITY

This arises out of the use and operation of your vessels. These are most often covered under a Protection and Indemnity (P&I) policy, and simply give you coverage in the event the operation of your vessel injures a third party (most commonly another vessel owner or operator.)

COVERAGES FOUND IN MOST P&I POLICIES

- Loss of life, injury and illness
- Hospital, medical and other expenses
- Repatriation expenses
- Damage to another vessel, caused by collision
- Damage to another vessel, not caused by collision
- Damage to any other property
- Wreck removal
- Cargo liability
- Fines and penalties
- Costs of resisting mutiny or misconduct
- Quarantine expenses
- Putting-in costs
- Defense costs

You may think that a vessel such as a dredge, which moves very little, has minimal chance of causing bodily injury to a third party. However, there are numerous cases where stationary vessels have been liable for damage, even though no reasonable person could see how they could possibly have prevented such damages.

Take, for example, the dredged moored in the middle of a river, lit up like a Christmas tree, in accordance with all the regulations. A boater at dusk, having seen that dredge earlier in the day, with perhaps a little too much alcohol in his blood, runs straight into the dredge, causing severe injuries to his upper body and head. This is a tragic accident, but it is an accident. Yet the courts may not view it that way. In all likelihood, it will conclude for something in excess of a half-million dollar settlement.

Most P&I policies will properly cover this type of liability, as well as other liabilities arising from your operations. However, certain P&I policies are limited to crew-only coverage, and you want to watch that you do not have that type of policy in effect when you are trying to cover you dredging liabilities. In fact, most P&I policies cover a whole wide range of exposures. Each one is individually written, and as such you have to check your policy for the coverages provided.

TOWERS AND COLLISION LIABILITY

These arise from the use of tow boats, tug boats or self propelled vessels, where they may cause a collision with another vessel or object. The primary coverage for this in the insurance policies can be a little confusing. Most Hull policies provide collision liabilities and most Tug forms also provide towers liability. This coverage is usually limited to the value of the vessel, which in the case of a two, is the value of the tug rather than the value of a dredge or other combination of vessels behind it. It is normally considered that the tug itself is the one that causes the liability, being the source of power. Excess collision and Towers liability is normally found in your P&I policy. It must be carefully noted though that if you do not have the hull of a tug or other vessel properly insured, the excess policy may also be invalidated due to lack of underlying insurance. This is particularly a problem when you may have a very low value tug, $25,000 or less, and you decide that the cost of insuring it becomes prohibitive against the value you would have if you lost it. This problem can usually be overcome simply by having the P&I underwriters endorse the policy to reflect the fact that there is no underlying coverage. Without such endorsement, a gap could exist.

GENERAL LIABILITY INSURANCE

Properly written, this can cover not only your land-based operation, but the operations of a dredge once it has left a site. In particular, you may have dredged material, rocks or other material that you may be putting in a different place. It is not unusual to bind a boater claiming that in the process of putting the material down you caused their engine to kick up, and as in one case I am aware of, injure one and kill one person. Most general liability policies contain a watercraft exclusion that eliminates the very coverage you need for your business. Check with your agent or broker to ascertain that this watercraft exclusion is removed in order to ensure that you are properly covered. This is not inexpensive coverage for the dredging operation, but it is vital.

EXCESS COVERAGES

Also known as umbrellas or bumbershoots, these provide you with higher limits of insurance than can be found in your primary insurance policies, and can sit on top of your current policies to increase the limit of liability by the amount you choose to insure. Most primary policies are for limits of $1 million or lower. Although $1 million seems like a large amount, it can go quickly if a claim arises. Add on top of that the relatively low cost of an umbrella or bumbershoot insurance and you will quickly find that it makes economic sense for your business.

We are frequently asked what limit to buy. While there is no hard and fast rule for that, a general recommendation should be to buy at least as high a limit as you can reasonably afford. As a rule of thumb, you should not look at umbrella limits that are less than the assets of your company. Otherwise, in the event of a severe claim, you may be signing over your company to the claimant. Be sure in particular that your umbrella or bumbershoot covers your liability to crew, as detailed in the last article of this series. *(See "Be Sure Employees Are Adequately Insured In Their Proper Categories," IDR, May 1995.)* That will increase the cost, but it will also ensure that your crew does not walk away as the owners of your business.

All these types of insurance are vital parts of your armory of protection against the legal system. They provide you, not only the cost of the claim, but in most cases the cost of defending such a claim, which can be exorbitant even if you are the successful party. In one case alone in Federal Court it cost the winning party more than $125,000 simply to defend the case.

In each of the areas above you must be careful how you spend your insurance dollars. Look in particular at deductibles. They can often save you a significant amount of money without drastically increasing your liability.

Reprinted from International Dredging Review, August 1995

Insuring Your Hull, Machinery and Equipment

Last in a series of four articles on insuring your dredging operation.

By Ian R. Greenway
London International Group

HULL

Insuring the vessels of a dredging operation should be quite straightforward, as most policies deliver similar coverage. However, there are a few words of caution. First and most important is to ensure that your vessels are fully covered. Sometimes just the insertion of a few words into a policy can take what is practically full coverage and make it practically no coverage.

For example, one dredging company had a full hull policy, but the details of the policy stipulated that the vessels were covered for a) total loss only or b) fire, lightning, stranding and sinking only. The policy was economical, but obviously left many gaps in coverage for partial losses or from perils other than fire, lightning, stranding and sinking.

If you are aware that you are not covered for such claims, you might want to assume that risk by self-insurance. At least be aware of the perils for which you are and ar not covered, so you can make an informed decision. A full policy is more expensive, but you get what you pay for.

If you own and operate tugs, rather than contracting out your towing, you should be sure that your tugs, towboats or pushboats are covered under a "tug form." This gives you primary tower's liability coverage. (The excess can be found in the Protection and Indemnity policy discussed in the last article, Insuring Your Liabilities, IDR, August 1995, page 9.)

EQUIPMENT

When insuring your equipment, you first have to consider how it is used. If it is permanently mounted to a vessel, adding it to the hull insurance may be the perfect way to go. Mobile equipment presents a different problem.

There are many inland marine policies that offer equipment insurance. These are generally inexpensive, but lack one essential element of coverage for the dredging operation. If you ever move your equipment over water, when you put that piece of equipment onto the barge or vessel you can immediately wave goodbye to your coverage. Most inland marine equipment policies exclude coverage for equipment "while waterborne, except by regular ferry service." Further, this exclusion does not limit itself to sinking, stranding or other marine perils, but takes away all coverage the moment a piece of equipment becomes waterborne. Some equipment policies put this exclusion in the "property not covered" section, some put it in the exclusions and some put it in the actual insuring wording. You must check with your agent to see that it is not there for you, as most dredging equipment goes over water at some point.

LOSS OF USE

The last element of coverage we will deal with is "loss of use." Also called "loss of hire," this is probably the most under-utilized coverage for the dredging operation. If you owned a warehouse, your agent would immediately be selling you business interruption or loss of income-type coverage. This would be used in the event that your warehouse was damaged by an insured peril.

Yet very few dredging operations have a similar "loss of income" policy that derives from damage to that dredge or other critical piece of equipment. Imagine your dredge being out of operation for a protracted period (for example from a fire.) Could your business continue in operation, or would your income stop to a degree that would create financial difficulties for you? If you usually have two or three dredges idle, this may not be the coverage for you. If not, or if you had to spend a large amount of money hiring in a dredge to continue operations, this may be essential for your operation. This coverage is frequently written on a fixed daily amount basis. You would then estimate up front the amount of money you would make in profits and ongoing expenses in the event of a claim. You then pick a period of indemnity. That is the period that you want insurance for (30, 60 or 90 days are the most common.)

With modern vessel equipment, this can often be extended to include even machinery breakdown coverage. For the more mature equipment, that coverage is generally not avail able.

Again, should you choose to self-insure this element of coverage, that is fine, bu you should at least know that it is available Consider the cost against the risk of financia default of your company.

CONCLUSIONS

A wise contractor is one who looks immediately at the low bid to find out what wa left out. Similarly, for marine insurance it i wise to look at the bid to find out what is missing. In this series of articles I have tried to poin out some elements that are essential to your business. You may choose not to purchase them all but you should at least know what you are getting for your dollars. Whoever is the lowest bidder on your insurance should be looked at th closest, to ensure that they have complete coverage and nothing has been left out.

If you have issued specifications to th agent, it is his or her responsibility to ensur that the coverages are all there. You do not wan to find that they are missing at the time of claim. Unfortunately, this is how many policie are tested. It may take you considerably longe to collect from that agent's Errors and Omission policy than from a proper insurance policy.

Each aspect of your insurance requir that time and possibly money be invested to ensure that you have the best product.

As we said in the beginning, an educated consumer is our best customer. As such these are essential elements for the continue success and financial stability of your business

Good hunting!!!

Reprinted from International Dredging Review, November/December 1995