

## Follow-up bulletin – Bunker Convention

### Background:

Bill C-7 amended the Marine Liability Act extensively including the addition of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 into Canadian law. Effective January 2, 2010 every vessel laid up or operating over 1,000 gross registered tons which has on board bunkers, lubricants or residue of either must have a certificate issue by Transport Canada attesting to there being in force Protection & Indemnity insurance to limits required by the Convention. Failure to comply can result in detention of the ship and a fine up to \$100,000. The Convention imposes strict liability for pollution damages and allows for few defences. There is direct right of action against the insurer and only those defences provided for may be raised. 90 days notice must be provided in case of cancellation. The insurer does benefit from limitation even if the vessel owner loses his right to limit his liability. The following are the applicable LLMC limits:

Under the 1996 LLMC Protocol, the limit of liability for property claims for ships not exceeding 2,000 gross tonnage is 1 million SDR (The current rate of exchange is approx. Can\$2.00 /SDR)  
For larger ships, the following additional amounts are used in calculating the limitation amount:

- For each ton from 2,001 to 30,000 tons, 400 SDR (Can\$800)
- For each ton from 30,001 to 70,000 tons, 300 SDR (Can\$600)
- For each ton in excess of 70,000, 200 SDR (Can\$400)

The ship owner must file an application, available for download at –

<http://www.tc.gc.ca/marinesafety/oep/environment/liability/liability-application.htm>

Evidence of insurance must accompany the application, the attached form having been approved for use by Canadian insurers. The policy limit must not be less than the vessel's limitation calculated at a rate of exchange of Can\$2.00/ SDR (Current rate = \$1.70 plus a margin for fluctuations in exchange). The form is intended to draw attention to the provisions of the Convention that take precedence over conditions of the policy when bunker pollution is involved.

In cases where more than one insurer provides the Pandl coverage, Transport would *prefer* the certificate to be issued and signed by one insurer. A draft counter guarantee is appended and this may be satisfactory to some insurers. If that solution is not acceptable, the certificate may be issued showing the participations of all the insurers. There may be cases where the preferred solution is to refer the client to a Pandl Club.

As the deadline is almost upon us we hope there is sufficient time to deal with applications for clients insured with Canadian insurers. Should there be any questions, the Legislative Committee will try to assist. We apologise for the short notice but CBMU has been negotiating with Transport Canada to solve some issues. Thanks to their cooperation Canadian insurers will be in a position to retain business when compulsory insurance conforming to International Conventions is required, with passenger vessels soon to be in that category.

## **COMPULSORY INSURANCE UNDER THE BUNKERS CONVENTION**

### **CONDITIONS FOR CANADIAN MARINE INSURERS**

1. The evidence of insurance issued by the insurer (“blue card”) must contain this declaration:

*This is to certify that there is in force in respect of the above-named ship while in the above ownership an insurance contract satisfying the requirements of Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. The Insurer acknowledges specifically the provisions of paragraph 10 of Article 7, which permits direct action against the Insurer and restricts defences to those permitted by the Convention, notwithstanding conditions of the policy to the contrary.*

2. If an amount is shown on the evidence of insurance (“blue card”) as the limit of liability of the ship, it must be in Special Drawing Rights (SDRs), which pursuant to the *Marine Liability Act* is in accordance with the relevant provisions of the *1976 International Convention on the Limitation of Liability for Maritime Claims, as amended by its 1996 Protocol*.
3. If the limit of liability in the insurance contract or policy is shown on the evidence of insurance, that limit must be for a sufficient amount to satisfy the requirements of Article 7 and should that amount be in Canadian dollars, then there must be sufficient margin to take into account potential changes in the value of the Canadian dollar in SDRs.<sup>1</sup> An exchange rate of no less than two Canadian dollars to one SDR (e.g. 1 million SDR = CDN\$2 million) should be used.
4. The Insurer must be licensed in Canada and be in compliance with the Insurance Companies Act and its regulations.
5. In the case of Participation Policies or of insurance contracts or policies with more than one insurer, the lead insurer would issue the evidence of insurance and list the other insurers on the evidence of insurance with the amounts they are insuring. The total amount should be no less than limit of liability referred to above.

Limit of liability for ships not exceeding 2,000 gross tonnage is 1 million SDR  
For larger ships, the following additional amounts are used in calculating the limitation amount:

- For each ton from 2,001 to 30,000 tons, 400 SDR (Can\$800)
- For each ton from 30,001 to 70,000 tons, 300 SDR (Can\$600)
- For each ton in excess of 70,000, 200 SDR (Can\$400)

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<sup>1</sup> In the last five years (2004-2009), the lowest value of the Canadian dollar was 1 SDR=0.495203 and the highest value was 1 SDR=0.687519.

COMPANY LETTERHEAD

To: Operations and Environmental Programs  
Marine Safety, Transport Canada  
Place de Ville, Tower C  
11th Floor, 330 Sparks Street  
Ottawa, ON K1A 0N5

**CERTIFICATE FURNISHED AS EVIDENCE OF INSURANCE PURSUANT TO ARTICLE 7 OF THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001.**

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<u>Name of Ship</u>	<u>Distinctive Number/ Letters</u>	<u>GRT</u>	<u>IMO Number</u>	<u>Port of Registry</u>
EXAMPLE		1,500	123456	Montreal

Name and address of owner:

Example Inc.  
123 Anywhere  
Montreal Qc H3A 3A6

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This is to certify that there is in force in respect of the above-named ship while in the above ownership an insurance contract satisfying the requirements of Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. The Insurer acknowledges specifically the provisions of paragraph 10 of Article 7, which permits direct action against the Insurer and restricts defences to those permitted by the Convention, notwithstanding conditions of the policy to the contrary.

PROVIDED ALWAYS that the Insurer may cancel this Certificate by giving three months' written notice to the above Authority whereupon the liability of the Insurer hereunder shall cease as from the date of expiry of the said period of notice but only as regards incidents arising thereafter.

\*Article 7 requirement for the ship at 1,500 GRT = 1,000,000 SDR

POLICY NUMBER: 123456

\*POLICY LIMIT OF LIABILITY CAN\$2,000,000

PERIOD OF INSURANCE: From 12:01 a.m. January 1, 2010 to 12:01 a.m. January 1, 2011

This Certificate has been issued in Montreal this \_\_\_ day of \_\_\_, 2009 by the insurer:-

**NAME OF INSURER.**

Name  
Address  
City, Province  
Postal Code

\_\_\_\_\_  
Authorised Representative

\*Optional – Both may be omitted or both inserted.

DRAFT Counter Guarantee

Lead Insurer: ABC Insurance Canada – 30% OF PRIMARY \$5,000,000 PANDI

Policy No. MP

Insured: CDE Limited

Term: December 31, 2009 to December 31, 2010

Vessel: "Example"

In consideration of the lead insurer, ABC Insurance Canada having provided the attached certificate on behalf of all of the Insurers participating on the captioned policy as required under the Marine Liability Act incorporating the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, the undersigned hereby agrees to indemnify ABC Insurance Canada for their proportion of any payments made or required to be made in respect of damages claimed under the policy.

The participating Insurers understand and acknowledge the provisions of the Convention which provide for direct right of action, limit defences and may invalidate policy conditions and the undersigned agrees to pay his proportion of any settlement made by or judgment rendered against the lead Insurer as issuer of the certificate.

If requested by the lead Insurer, the undersigned, will execute a reinsurance binder for his proportion of the policy as if the policy had been fronted by the lead and reinsured by the undersigned for his proportion of the risk. In the event the lead Insurer requires a letter of credit for an outstanding reserve or cash advance for payment of a claim the undersigned will upon documentation of the claim reserve, settlement or judgment provide security for the reserve or remit his proportional amount of the settlement without delay. The decisions of the lead Insurer shall in all cases bind the other participating insurers, however, the lead Insurer undertakes to keep those insurers advised of developments in respect of any claim and cooperate with them regarding the conduct of the claim.

**DEF Insurance FOR 30% OF PRIMARY \$5,000,000 PANDI**

Signed in            this    day of            2009

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Authorised Representative