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MARINE ADVISORY PROGRAM

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Buying Insurance for Your Charterboat

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If you operate a charterboat, or other small vessel carrying passengers for hire, you have special legal and liability concerns. There are requirements for operator licensing, safety equipment, drug testing, and so on. Similarly, the kinds of insurance you need are unique, in part because maritime law places extraordinary burdens of responsibility on the master of a vessel. The vessel owner is responsible for all damages resulting from “negligence,” which has been interpreted very broadly by the courts to include any situation in which a crewmember or passenger gets hurt, other than intentional self-injury.

Agents and Underwriters

Agents sell policies. Underwriters are corporations that invest the premiums and maintain pools of money for paying claims. To spread the risk some underwriters purchase reinsurance from other companies, called *re-insurers*, located in London or elsewhere. Some agents, called *direct writers* are essentially salesmen for specific underwriters; others are independents who may place your policy with any of several underwriters. Some agents simply sell off-the-shelf policies, while the best can build policies for specific uses, or customize policies for individual operators.

Components of a Vessel Policy

Vessel package policies may have numerous components, but the primary two are:

- ***Hull and Machinery***, which covers the vessel and its attached parts, including engines and electronics.
- ***Protection and Indemnity (P&I)***, which is a broad form of liability coverage.

Hull and Machinery coverage is based on *agreed value* or *actual value*. Generally, agreed value is preferable because it is established at the time of the policy purchase, usually on the basis of a marine survey. *Replacement value* is even better, but usually too expensive, or simply unavailable.

Hull policies are either *all risk* or *named hazards*. All risk is more inclusive and is better for the vessel owner. With a named hazards policy, the owner can recover only for losses resulting from causes listed in the policy, and that list usually is pretty short. All risk policies cover losses from any cause *except* those listed, which normally includes only a few causes like acts of war and losses resulting from use in criminal activity.

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Hull and Machinery covers not only the entire vessel in the case of collision, fire, or sinking, but also individual components like electronics, deck machinery, and engines. Even an engine with some years' use may be covered if it suddenly breaks. Normal wear, and damage due to improper or inadequate maintenance, usually are not covered, nor is loss of revenue due to engine breakdown. Coverage of engines and other machinery varies from one company to another.

P&I *indemnifies* (pays) someone for personal injury or property damage caused by your vessel or suffered while a passenger aboard your vessel. It also pays to defend against lawsuits brought against you due to the above, and in many cases the chief function is to pay for an out-of-court settlement to prevent expensive litigation and potentially more costly damage awards.

What a plaintiff stands to gain in a lawsuit is limited by the circumstances and severity of the loss as well as the amount of the vessel owner's assets. Courts commonly adjust awards downward to reflect *contributory negligence* or the degree to which the plaintiff's actions contributed to his or her injury or loss.

The purpose of a Hull and Machinery policy is to get the boat back into operation as quickly as possible, and the purpose of P&I is to defend you in litigation, and to protect your assets in the event of a personal injury or damage award.

Some P&I Considerations

Coverage limit. How much P&I coverage do I need? The standard insurance industry answer is—all you can get. Or, more specifically, what is the value of your business and personal property that would be jeopardized in a major claim?

Typically, marine P&I policies provide \$300,000 or \$500,000. This is *per incident*, not per person. Ask about excess coverage, often provided by a secondary underwriter, in amounts up to one or two million dollars. (Cruise lines require charterboats that serve their passengers to carry a minimum \$1 million P&I policy.) The price of excess insurance is relatively low because it is less likely to be needed. A premium increase of a few hundred dollars can double the coverage.

Pollution. P&I policies usually cover accidental discharge of pollutants, such as fuel or oil, resulting from an accident. If not standard, it should be obtainable as a rider. Pollution cleanup in a remote location can be very expensive, and the vessel owner is liable. Pollution insurance does not cover intentional discharges, nor does it pay fines.

Shore excursion. Your vessel policy covers your passengers only while onboard the vessel. As soon as they set foot ashore they are off your policy unless you have shore excursion coverage. Land management agencies like the U.S. Fish and Wildlife Service, U.S. Forest Service, and Alaska State Parks require it. Generally shore excursion pertains only to *accompanied* visits to shore, not drop-offs. Coverage of unaccompanied drop-off passengers is unobtainable through marine underwriters. Operators doing unaccompanied drop-offs should require passengers to sign a services contract that spells out safety issues and contains a hold-harmless clause that absolves the operator of liability.

Divers. Vessel insurance does not cover people in the water, and most vessel underwriters will not cover sport divers, period. Some, in fact, may cancel your coverage if they learn that you are doing dive business. PADI (Professional Association of Diving Instructors) has a dive charter vessel insurance program, but *it does not cover divers in the water*. The only liability coverage for sport diving is written not for vessel operators, but for dive masters and instructors, although the vessel operator can be named as additional insured. Insurance

protection is not available for dive charters unless the divers are under the supervision of a licensed instructor or dive master.

Crew coverage. If you have crew on your boat, they must be specifically covered in your P&I policy, and you will pay for each included individual. Do not buy crew coverage for only one crewmember, if you have more than one, on the assumption that not more than one will get hurt at a time. This can be grounds for policy cancellation.

Passenger medical payments. Good charterboat policies include passenger personal injury coverage, as a “damage control” measure. The limit is relatively low—between \$500 and \$10,000—but there’s no deductible, and the injured doesn’t have to sue or even file a claim. The vessel owner picks up the doctor or hospital bill, and sends the receipt to the insurer for reimbursement. This coverage protects both the operator and the underwriter against more expensive claims by aggrieved individuals, who have suffered minor injuries but go for a big settlement if they aren’t treated well.

Personal effects. Some but not all P&I policies cover personal effects (crew and passengers), and those that do may have high deductibles (\$200-\$500). The assumption in the insurance industry seems to be that (1) most people have homeowners policies that cover cameras, binoculars, fishing rods, clothing, etc., and (2) people who are careless enough to drop those items overboard would be too embarrassed to blame the boat operator and claim compensation. These assumptions may or may not be correct, but be sure to know what personal effects coverage is included, and decide if more is warranted. A personal effects policy is another good “damage control” measure to ensure that no one leaves the boat unhappy.

Breach of Warranty Coverage

Breach of warranty coverage is designed to protect the mortgage holder of the boat. It pays off the loan (up to the limit of the policy) even if a loss occurs when the boat is being used at a time, in a location, or for a purpose that is not covered by the policy, a condition that would otherwise void all coverage.

A Word about Assumption of Risk Forms and Liability Waivers

Assumption of risk is a form that the client reads and signs, signifying that the client understands the boat trip is an inherently dangerous activity. Some marine insurers say that the assumption of risk form may, in litigation, contribute to the perception that the operator is cautious and prudent, which may result in a final settlement lower than would otherwise be the case. The *liability waiver* is a form that attempts to get the client to agree not to sue if an incident occurs. Marine insurers generally agree that the liability waiver form is worthless in most cases, and most don’t require it. One exception would be a hold-harmless contract for unaccompanied shore excursions, as mentioned above.

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Safety Equipment and Insurance Rates

Premiums are based, in part, on the underwriter’s subjective evaluation of the risk associated with the vessel and operator, and the owner can convey an impression of safety consciousness by exceeding the minimum legal requirements for safety

equipment. Although most uninspected (“six pack”) vessels cannot be brought to the standards of stability, bulkheading, fire retardant materials, and other factors required of inspected vessels (“Subchapter T-boats”), many can be equipped to T-boat standards. By carrying items like Coast Guard–approved liferafts, bilge alarms, carbon monoxide detectors, and EPIRBs you can demonstrate a commitment to safety even if your vessel doesn’t qualify for a Certificate of Inspection.

The Coast Guard marine safety office in Alaska has implemented a voluntary safety equipment program for uninspected passenger vessels, known as the “five star program.” Although the Coast Guard has suggested that the program eventually may result in reduced insurance rates, so far that has not happened. As the number of “five star” participants grows, however, pressure may be brought to bear on underwriters to reward those who exhibit the highest level of safety consciousness.

Remember, vessel policies require compliance with all pertinent laws and regulations, including existing safety equipment standards and operator licensing terms.

Shopping Around

When applying for coverage, state clearly and thoroughly the activities your business will encompass, including navigation season, offshore limits, and any personal use. Underwriters grant a significant discount for each month a vessel is laid up. As your operation changes, or if you agree to provide services other than those originally outlined, you must inform your insurance company and in some cases apply for riders or changes in coverage.

Keep in mind that a large number of agents or brokers write with a relatively small number of underwriters. This means that if you price shop with different agents, chances are they will be approaching the same underwriters. If you are doing this, let each agent know which underwriters already have been approached.

In some cases, it may be possible to form or join a group or association to negotiate lower rates. For example, the National Association of Charterboat Operators (NACO) has teamed up with a national broker to offer a program that appears to be less expensive than an individually purchased policy. Local associations also may be able to arrange special rates. However, be sure to compare coverage and features as well as rates.

Insurance rates to some extent are negotiable. Underwriters make their profits by investing the money you pay as premiums, so they want your money. When the stock market is strong insurance companies compete for customers, which puts you in a position to bargain for the best rates. Conversely, if profits in the market are poor and marine losses are high, companies can be more choosy about whom they insure, and rates go up.

Minimizing Exposure

Most passenger vessel claims are for minor injuries, often the result of slipping, tripping, or losing balance and falling. For elderly and/or overweight individuals, a minor fall can result in broken bones or more severe consequences. And one study shows that 90% of bodily injury claims involve elderly and/or overweight individuals.

Select an agent with extensive marine insurance experience, especially charterboat experience.

Passenger Vessel Insurance Checklist

Go for the highest P&I available. Consider \$1 million minimum, or more if exposure is greater.

Choosing an Agent

- Select an agent with extensive marine insurance experience, especially charterboat experience. A specialist can get you the best policy, and can actually save you money in some cases by eliminating a commission you might otherwise pay to a middleman.
- Use an independent agent who works with several underwriters.

Picking a Policy

- Pick a U.S. domestic company, with at least an “A” rating.
- Get a Hull and Machinery policy that pays on agreed value.
- Determine whether Hull and Machinery coverage is *all risk* (other than specified exclusions) or *named hazards*. The former is more inclusive and usually a better deal.
- Check deductibles. The higher the deductible the lower the premium, but in the case of minor damage you may end up paying most or all of the claim.
- Check operating limits, and mandatory lay-up. Five months is typical.
- Try to check the underwriting company’s claims payment history with other operators.
- Remember that policy terms are flexible and negotiable.

Selecting P&I Coverage

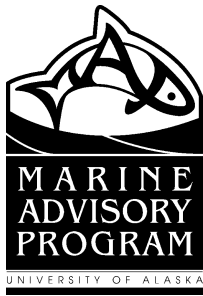
- Assess your own exposure, and what assets you have to lose. Unless you have little in business and personal assets, go for the highest P&I available. Inquire about excess coverage. Consider \$1 million minimum, or more if exposure is greater.
- Get passenger personal medical on top of the full liability coverage.
- If you have inboard engines, be sure to get pollution coverage.
- If passengers will leave the boat during the trip, get shore excursion coverage.
- Don’t forget crew coverage for any employees on the boat.

Other Considerations

- Find out who does claims adjustment, and how to reach that person any day and hour.
- Read your policy carefully, and ask your agent or underwriter to explain any terms or clauses you don’t understand.

Remember, a marine policy doesn’t just insure a boat, it insures a business.

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