PIRACY AND INSURANCE

Don't walk the plank without a parachute

By Brendan Walsh and Jason Odgers

Piracy attacks have nearly doubled since 2006, with the highest frequency being off the coast of Somalia and in the Gulf of Aden. They also are increasing in brutality and ransom demands, and pose a stressful risk dynamic for cargo owners, vessel operators and insurance companies.

The International Maritime Bureau reports hijackings off the Somali coast alone accounted for 92 percent of all ship seizures last year, with 49 vessels captured, 1,016 crewmembers taken hostage and eight crewmembers killed. Somali pirates often capture a fishing or merchant vessel for use as a "mother ship" that allows them to extend their range and assume a disguise of legitimacy.

The IMB used to recommend a buffer zone of at least 75 miles for vessels passing off the Somali coast, but attacks now occur as far as 1,300 nautical miles offshore.

Because of the multitude of diverse interests affected by pirate attacks — vessel owners, crews, charterers, cargo owners, intermediaries, etc. — there can be no single, all-encompassing insurance product that addresses all claims. Initially, the release of a hijacked vessel was seen as the owner's problem alone, with cargo interests in the background until the matter was resolved by the owner, possibly with assistance from their property and indemnity insurance underwriter. In recent years, owners have begun to consider a Declaration of General Average letter so that they might claim contributions from the hull and cargo insurers. However, the academic debate over the legitimacy of a GA declaration in the case of hijacking is ongoing.

Piracy is included as a standard marine peril in most Shipper Interest Cargo Insurance policies. This coverage, however, is strictly predicated on physical loss or damage, and consequential losses aren't covered. Cargo insurance policies exclude claims for delay or loss of market likely to occur when a vessel is seized by pirates and held for weeks or months while a ransom payment is negotiated.

There also is a growing concern as to whether ransom payments made to release cargo or hostages are illegal, and moreover whether the vessel and cargo insurers can contribute to an "illegal" activity. Worldwide, anti-terrorism laws prohibit payments to groups tied to terrorism, and, although there is no established formal link between piracy and terrorism, many suspect that these activities are closely related.

There are a few steps cargo owners and vessel operators can take to manage exposure to piracy-related claims. But there are, unfortunately some exposures that simply cannot be managed through any standard forms available in the market. Most importantly, cargo owners should always secure All-Risk Shipper's Interest Cargo Insurance for all goods in transit.

This product not only will answer claims of loss or damage arising from piracy, but also will pay General Average contributions for which the cargo owner is responsible. Cargo owners also should have detailed conversations with their service providers to determine routes traveled and the risk-mitigation techniques employed by all vessels, especially those traversing known hot spots, including but not limited to the Gulf of Aden, the Somali coast and the South China Sea.

If the routes or mitigation techniques are unsatisfactory, the cargo owner should consider alternative service providers with more acceptable risk avoidance/mitigation practices. Finally, although consequential losses associated with delay or loss of use are generally uninsurable in the standard markets, cargo owners may choose to examine the possibility of securing manuscripted policies through specialty markets that may desire this type of business.

Piracy has matured. The days of walking the plank have now turned into hostage situations with ransom demands. Times when chests of gold and silver were the norm now have become a desire for any cargo with resale value. In response to these changing dynamics, it's always best to sit down with your insurance provider and take a closer look at your risk profile each year. BB

Brendan Walsh and Jason Odgers are senior account executives at Roanoke Trade Services, a subsidiary of Münchener Rückversicherungs-Gesellschaft (Munich Re) and an affiliate of Watkins Underwriters at Lloyd's of London. Contact them at brendan.walsh@roanoketrade.com, and jason.odgers@roanoketrade.com.

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