PIRACY RANSOM, G A AND MARINE INSURANCE

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ABSTRACT

Vessel attacking and hijacking by pirate of Somalia and ransom demanded and paid by owners drastically happened and at a peak in 2007, continuously happened in 2008 and 2009. The paper is to deal with ransom only that is the most cases concluded with. We discuss the coverage by insurance as well as the contribution by General Average.

KEY WORKS

Ransom, General Average, Particular Average, Duty of assured

TEXT

We quote the definition of piracy in United Nations Convention on the Law of the Sea, UNCLOS 1982 as follows:

“(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).”

It is to stress the factors to constitute a piracy behavior must be “on the high seas”, “outside the jurisdiction of any state” that excludes coastal attacks. While International Maritime Bureau, IMB defines piracy as “an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or
capability to use force in the furtherance of that act.” Thus covers actual or attempted attacks whether berthed, at anchor, or at sea.

Insurance Dictionary define pirate with “....whilst outside jurisdiction any state and owing allegiance to no recognized flag.....for personal gain and not for political ends.” Standard insurance policy state that the piracy robbery is mostly excepted by the “War Exclusion”, “Capture, Seizure, Detention Exclusions Clause”, there must be included by additional covered when additional premium paid1.

However, the definitions or explanation of piracy are no longer meet the practice of pirates behaving. Standard time clause explain the violent theft means the outsiders with violence2, there is also item of piracy, but the coverage is only the damage or loss caused by violent theft or by piracy not the items themselves.

The simplest piracy is only taking money from safe of ships then left immediately. More serious cases are to attack and to occupy ships, swallow cargo, take over properties or cargoes on board, throwing away the crew, or capture ships, cargoes, crew or for ransom only, kidnapping or even forcing crew to forge to be pirates, etc. Compel to be pirate ships or even destructing ships at all.3. Piracy may related with Hull insurance, liability insurance, cargo clause, container insurance, loss of hire etc. This paper deals with ransom case. Detain ships, cargo and Crew for ransom may be the most popular case of modern piracy happened in Somalia.

Piracy attacking is used to happen in narrow waters. Busy line may attract more robbery. Red Sea to Asia is narrow and busy. Red Sea to Europe is the busiest line. The symbolic common points are ships may slow down in narrow waters thus easily to be overtaken. Merchant ships may carry valuable or embargo cargo. Crude oil may more encouraged be the target. Strait of Malacca was the supreme frequency of appearance of piracy was patrolled by fleets of Singapore, Indonesia, and Malaysia after 2004 and pirate disappeared4. While Somalia piracy took its place from 2004 and achieved the highest peak in 2007, more frequently though patrolled fleets by United Nations but it is in vain as too long the coast line and too vast the area. Most hijack cases concluded by taking money from victim. When ransom money more easily to earn and bigger amount been succeeding taken, cases increased fast. To swallow up cargo is no longer satisfy greedy appetite5.

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2 Institute Time Clause, ITC)Clause 6.1.3.
4 There are only two cases happened in Strait of Malacca in earlier 9 months, 2008 in accordance IMB to compare with 33 cases in early 9 months of 2003, seemed patrol fleet succeeded to cease attack case
5 Hicks v Palington(1590 Moore's QB R297 · Royal Boskalis Westminster NV v. ountain(1999)QB
1. PIRACY PERIL AND COVERAGE IN POLICY

Not only attack ships, kidnapping or kill crew, the piracy also take forcible possession of property. There are 239 cases happened in 2006, 77 persons of crew being kidnapped and 188 cases were ransom paid in 2006 and 17 persons were killed in 15 attacking cases in accordance with statistics of IMB. It increased to be 263 cases in 2007 and 64 injury case. Parties are not only to threaten of hull, but also to affect owners’ liability, safety of properties and to cause financial loss. Separate insurance concerned are involved.

Policy still stress personal need not including political ends. Institute Cargo Clause(A) covered risks of piracy but not ICC(B) and ICC(C). Standard policy is used to except the piracy by Strikes Exclusion, War Exclusion, Malicious Acts Exclusion. Institute Time Clause, Hulls only covers hull damage or loss caused by pirates. Capture, Seizure and Detention Exclusion Clause lists hostile Act, mines or torpedoes are exempted, Strike Exclusion lists Strikes, locked out, workmen, or persons taking part in labor disturbances, riots and civil commotions, any terrorist or any person acting from a political motive are excluded. War Exclusion list war, civil war, revolution, rebellion, insurrection and civil strife caused or any hostile act or against a belligerent power, capture, seizure, arrest, restraint or detainment are excluded neither are the consequences. Loss, damage, liability or expenses caused by derelict torpedoes, bombs or other derelict weapons of war are also expected. Malicious Acts Exclusion is to exclude loss, damage, liability or expenses caused by the detonation of explosive and civil commotions. There are some derelict weapons floating on the seas after war in Persian Gulf that could be in contact with hull under their voyage, the damage consequence caused may similar to war. Though may be excluded by war exclusions while it may still be covered with an additional premium to buy the additional independent policy. However, the coverage at an additional war risk premium is frustrated when there any one of the big nations declare of war. The frustration is also include the requisition of flag states, owners’ nationality states. May piracy not been excluded but there is no express warranty that its ransom is covered, too.

Hijacking or piracy attacking may be the similar with war or war like damage. Since there is no express warranty on the policy there need re-define of piracy and piracy ransom. Most cases happened under the shadow of political ends, such as. the leading person to attack is the general of Somalia coast guard in “Bonsella” case.

\[674 \cdot \text{case no. S 706, 6} \cdot \]
\[6 \cdot \text{Big states means Great Britain, USA, France, Russia and China.}\]
2. GENERAL AVERAGE

General Average is defined in Article 66 (2) of Marine Insurance Act, MIA, 1906 and Rule A of York-Antwerp Rules as ”There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the purpose of preserving from peril the property involved in a common maritime adventure.” Based on the definition, there must be some basic factors to constitute general average as follows:

2.1 common adventure and common peril are facing,
2.2 necessary measures to be taken immediately,
2.3 measures taken are intentionally and voluntarily, if not, is neither voluntarily nor intentionally,
2.4 reasonable and careful, as unnecessarily action taken must be arguable afterwards,
2.5 GA act not for saving part of property as PA not GA,
2.6 sacrifice and expenditure must be extraordinary, and direct consequence can be contributed.

GA is more a shipping practice than a law regulation. There were longtime shipping practice that merchant understand they should contribute the loss occurred for the common safety of the adventure until covered by insurer. However, policy refer to the practice that only tangible property should contribute GA. Human lives are un-assessable and valueless, need not nor contribute when lives either sacrificed or survived.

Marine insurance covered loss of property insured and contribution of GA. There is a common factor that if it is caused by an insured peril or not. There is also another key point that is if there is still proceed left at end of the adventure. If there is nothing left at the end of adventure, cannot be taken as GA, either as there will be no contribution at all.

Concluded above-mentioned, there are important conclusion that the payment should be for the common property and safety, intentionally, extraordinary and reasonably. If ransom is paid, the following considerations are important for contribution:

2.7 If the threatening is separately to any one property or only human lives, the ransom paid is only PA.
2.8 Ransom amount is to be surveyed if reasonable or not. The amount must not higher than amount insured.
2.10 Property only should contribute the ransom when human lives are all together threatened by the piracy.

2.11 Ransom may in breach of the criminal law or anti-terrorism rule of states concerned and not be contributed by parties concerned.

As the contribution will be paid by different policy of property, the piracy peril is covered or not is important to confirm by each party.

3. NATURE OF RANSOM

Ransom payment against release of ships seemed is the most popular results for piracy case happed recently. It seemed becoming the main resource of revenue by those political corruption states. That means personal purpose does not remain the piracy ends. Ransom amount reached to be 30 million in 2008.

There are two ways of ransom payment; one is in kind of cash payment and another way is settled down by cargo. Either one has been justified as GA. The ransom justified as GA since 1590. Some case piracy may threaten to damage environment in addition to threaten lives of crew or passengers. Ransom may be covered by P&I if not allowable as GA. Contribution therefore P&I concerned. No matter cargo related, ship related, hire related, container related or war coverage related, there are underwriter or re-insurer concerned with. Since piracy is recognized as covered peril, ransom is covered, too. We discuss one by one as follows:

Basic coverage in Article 6 of Institute Time Clause, 1983 list loss or damage to the subject insured caused by:

1. ...... 
2. Violent theft by persons from outside the vessel,
3. Piracy
4. Perils of the seas, rivers, lakes or other navigable waters
5. Fire, explosion
6. Violent theft by persons from outside the vessel
7. Jettison
8. piracy
9. Breakdown of or accident to nuclear installations or reactors
10. Contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbor equipment or installation
11. Earthquake, volcanic eruption or lightning.

8Referr to Hicks v.Paliongton case.
9 Piracy threaten destruction of ships to make oil pollution to damage the coast environment.
10 Original full words are as follows "This insurance covers loss of or damage to the subject matter insured caused by

– Perils of the seas, rivers, lakes or other navigable waters
– Fire, explosion
– Violent theft by persons from outside the vessel
– Jettison
– piracy
– Breakdown of or accident to nuclear installations or reactors
– Contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbor equipment or installation
– Earthquake, volcanic eruption or lightning."
Either coverage of violent theft by persons from outside the vessel or piracy should cause loss or damage to matter insured. If threaten is only stay as threaten only, then not constitute any claim payment as true fact of damage not occur at all. Insurance should pay in total if there is sacrifice of ship first without considering of contribution. There is different contributing way of GA between a shipping practice or coverage of policy. When GA is only shipping practice the common property concerned should contribute each sacrifice including any advance money immediately. While when GA is a coverage item, underwriters should pay them in advance without considering there is contribution or not. They then look for recovery from parties concerned.

There is statement that “No claim under this Clause shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against”. The Adjuster’s Association made an example that if there is no war clause covered, general war like risk is no covered, either.

If piracy is not covered by normal war risks, ransom is not covered by normal war risks, either. It means it is important that only coverage item is covered.

Since there is no physical loss or damage when ransom is paid, it is indefinite that ransom can be covered. If ransom is paid, it is even firmer and practical to apply to be Duty of Assured clause. Duty of Assured Clause stated “In case of any loss or misfortune it is the duty of the assured and their... to take such measures as may be reasonable for the purpose of averting or minimizing a loss which would be recoverable under this insurance”. Ransom no doubt is averting or minimizing more serious loss or damage. If the piracy is covered, it is no doubt ransom is covered, too. However, Duty of Assured is also an independent clause, if applied that clause, there will be no other indemnity from other clauses. The Duty of Assured is limited by amount insured and under-insurance is covered in pro rata. The ransom is indemnified by pro rata only.

4. CONCLUSIONS

Physical loss, damage, liability, or expenses caused by piracy is definitely covered by policy concerned. While piracy is covered peril is the only consideration.

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11 Christina Wang, the application and explanation of ITC in Chinese, 2002.6, page 13, 14, 16, 17, and 162-164.
12 Article 11.1” General Average and Salvage: This insurance covers the Vessel’s proportion of salvage, salvage charges and/or general average,......, but in case of general average sacrifice of the Vessel, the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.”
13 Please refer to Article 11.4 of ITC, 1983.
14 Refer to Article 13.1 of ITC.
15 Refer to Article 13.2 of ITC.
This paper would suggest confirmation of the re-definition of the term “piracy” firstly.

Payment of ransom is still disputable in some nations under criminal law or the misgiving that ransom may directly or indirectly to support terrorist in violation with anti-terrorist policy of any state. However, ransom may really save ships, cargoes, property and human lives in fact. If allowed in GA, there must be a contribution. If not allowed in GA, then there is Duty of Assured to indemnify the payment. The only consideration is that if piracy is covered by policy concerned. Early this 2009, there are cases of hijack occurred when vessel is at anchor within port area instead traditionally happened in the high seas. Occupied merchant vessel to force to be pirate ship is not news, either. Crew found it is easier to make money and voluntarily to join to be pirate is also found in reports concerned. There found qualified crew and pirate crew with forgery certificates working together to cheat inspection and take time to attack. Repaint hull with different color with forgery name by each case is also reported by news and IMB. Modern behavior since totally different from traditional piracy, we would suggest it is necessary to re-define the term of piracy to guide normalize.

Designed specifically for ransom policy is published. Policy of Special Risks Insurance and Marine Kidnap & Ransom Insurance for ransom are clear and remarkable. Covered person include the crew of the insured vessel, any supernumeraries and any persons legally onboard such vessels insured with the permission of the Assured and or the vessel’s master, any person who is directly involved in the handling or negotiation of an Insured Event. Insured item include cash, marketable goods or services surrendered or to be surrendered by or on behalf of, or a covered person to meet a kidnap or extortion demand. We believe the policies will meet the requirements of ship-owners, charterers, and operators.

However, we are sure that the calls or premium will be increased consequently if piracy is not effectively eliminated.

REFERENCES

1. Christina Wang, The applications and explanations of ITC in Chinese., 2002.6,

16 2009.1.29 six boat surrounded merchant ship in near Aden bay area, captain set alarm, crew prepare the water fuse and deserted immediately but was overtaken by piracy, then China helicopter and Germany navy came, the piracy run away and ship arrived her destination safely. 2009.1.29 4 persons took onboard a chemical ship when ship anchored at Balongan anchorage, Indonesia, duty officer operated alarm, then piracy ran away. 2009.2.6 six persons, masked, in black cloths, with long knives took on board vessel when ship was anchored at Callao anchorage of Peru, they caught two duty officers and tried to rob bunkers onboard, watch man found and notify the bridge officer and set alarm, crew gathered and piracy ran away, port bureau boat appeared afterwards but did not make any investigation or made report, according to http://www.icc-ecs.org
publicized by Richard Hogg International.


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