

# MORTGAGEES ADDITIONAL PERILS (POLLUTION) INSURANCE



Mortgagees additional perils (pollution) insurance (MAPP) responds to the extent of a bank's financial loss following a major oil spill, for which the vessel is held liable, and the vessel or the policy proceeds are sequestered to contribute towards the claim.

## WHEN WAS THE EXPOSURE FIRST IDENTIFIED?

Following the "Exxon Valdez" oil spill in 1989, the US\$3.5 billion costs incurred (approximately US\$6 billion in today's money) highlighted this risk. The subsequent draconian rights of recourse contained in the Oil Pollution Act of 1990 (OPA90) potentially provide unlimited liability, which could render the sublimit provided within an entry to a protection and indemnity (P&I) club that is a member of the International Group (IG) inadequate in the event of a catastrophic pollution incident in American waters.

It is considered that under OPA90, rights under a maritime mortgage may be held secondary to the compensation rights for clean-up costs and therefore the need for separate balance sheet protection for the financiers is clear.

## WHAT TRIGGER POINTS MUST TYPICALLY TAKE PLACE TO CAUSE A MAPP CLAIM?

A pollution spill for which the vessel is held liable which exceeds the pollution sublimit offered by the protection and indemnity carrier resulting in the seizure of the vessel or the total loss proceeds to contribute towards claims.

## WHAT HAPPENS IF TWO OR MORE VESSELS ARE INVOLVED?

Typically an entry into an IG P&I club provides coverage as per the limit shown per entry. Therefore it has always been held that if more than one vessel is found liable, the P&I limits are aggregated.

## DOES THE POLLUTION SUBLIMIT TAKE PRECEDENCE OVER OTHER PROXIMATE CAUSES OF LOSS?

Yes. By way of an example, should the proximate cause of the spill be a collision, the pollution sublimit will still apply.

## WHAT LIMITS OF MAPP PROTECTION SHOULD I BUY?

The insurance should be based on the outstanding loan amount which is typically uplifted by between 10-20% to cover additional costs and interest. The uplift is at the discretion of the individual bank and would need to be substantiated in the event of a claim.

## WHAT SUM INSURED SHOULD A BANK REQUIRE?

The insurance should be based on the outstanding loan amount which is typically uplifted by between 10-20% to cover additional costs and interest. The uplift is at the discretion of the individual bank and would need to be substantiated in the event of a claim.

## DO ALL P&I CARRIERS OFFER THE SAME LEVELS OF COVERAGE?

No. Whilst IG P&I clubs usually offer substantial limits (currently US\$1 billion for oil pollution liability under a mutual entry), non IG clubs cover varies enormously and typically offers much lower levels of protection.

It is vital that each P&I policy is reviewed on a case-by-case basis to identify the levels of coverage provided and ensure MAPP is adapted to provide the correct protection for the mortgagee. Marsh Maritime Advisory offers this service as part of the pre-drawdown consultancy service.

## DOES MAPP PROVIDE LIABILITY PROTECTION FOR THE BANK?

No. It is intended to meet a pollution claim against the borrower which exceeds the limit of liability purchased.

## COULD A MORTGAGEE BUY LIABILITY PROTECTION IF IT HAS CONCERNS?

Yes. By way of example, banks in the lease sector are recognised as having a potential liability. In its capacity as owner, a lessor is named in a more prominent manner on a P&I certificate of entry and is therefore more vulnerable

to litigation. To protect themselves, lessors can therefore buy lessors liability insurance, which provides, inter alia, costs of defence cover. A policy of this type can be adapted to provide corresponding protection for mortgagees, if required. It should be noted that whilst most financiers will have liability protection at group level, these policies will typically contain exclusions that preclude recovery of marine liabilities and therefore a separate policy to cover this exposure may be beneficial.

## WHAT TYPES OF VESSELS ARE MOST EXPOSED?

The greatest hazard is generally considered to be oil carrying vessels trading to the United States of America. The United States is not a signatory to certain conventions which allow an owner to limit liability following an oil spill incident. As such a vessel in U.S waters could be held strictly liable.

## IS THE US THE ONLY HIGH RISK AREA?

No. Other countries have not ratified the international conventions and some countries may choose to ignore previously ratified conventions due to public outcry following a spill. The conventions themselves may allow limitation to be over-ridden in the case of negligence on the part of the owner.

*Marsh Maritime Advisory recommend as an absolute minimum, MAPP is purchased on all vessels carrying large quantities of petroleum products irrespective of trading area and on any high value loans. Best practice would be to have MAPP for all vessels within the loan portfolio.*

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