

COVID-19 and Marine P&I: How Club Rules Compare

The pandemic's impact on global trade and safety at work has raised questions about shipowners' ongoing operations and their protection and indemnity (P&I) coverage.

Until recently, these quarantine rules received little attention as they were infrequently tested. The current pandemic has, however, placed them under a spotlight, exposing certain differences in drafting – leading owners to question whether cover might vary from one International Group (IG) P&I club to another.

With that in mind, we have examined those differences and compared what the clubs have said about the cover they offer.

Clubs Issue FAQs

To date, 10 of the 13 IG clubs have issued FAQs setting out, in varying detail, what is and is not covered under their rules. In most areas, the clubs are very much aligned:

- If a seafarer contracts COVID-19, they will have the same cover afforded for any other illness.
- If a seafarer, sick with COVID-19, has to be repatriated or substituted, normal cover applies.

Similarly, if a ship has to deviate to land a seafarer who has contracted (or may have contracted) COVID-19, the usual costs should be recoverable, provided the deviation is reasonable (please see our comments below). All clubs encourage members to discuss the need to divert a ship at the earliest opportunity, so that prompt assistance can be given.

Most clubs provide good advice about how to deal with difficult cargo-related issues. Although many cargo issues arising out of this pandemic may involve a club's discretion, clubs appear to be largely pragmatic and sympathetic to shipowners' difficulties. What about cover under the quarantine rules?

Quarantine Rules

Most clubs' quarantine rules involve a number of elements:

1. **There must be an outbreak of an infectious disease that results in a loss.**

Recoverable losses may include:

- Disinfection of the entered ship.
- Disinfection of cargo on the entered ship.
- Disinfection of persons on board.
- Quarantine expenses.



Actual and Suspected Cases of COVID-19

How clubs might deal with actual and suspected cases of COVID-19 also raises questions. In Steamship's FAQs (Item C(3)), the club considers the situation where, "The vessel is subjected to a period of quarantine ... due to an outbreak, or suspected outbreak on board."

The club concludes that it does not matter whether there was an actual outbreak: "Because the vessel is being subject to quarantine, cover will apply."

What about the other clubs? Skuld and Gard ask: "If the vessel is subjected to a quarantine order as a result of the nationality of the crew or previous port of call, what costs and expenses are covered?"

Both clubs conclude that costs associated with the quarantine order would not be covered, because a disease is not present on board. It is unclear how they would deal with the Steamship situation, where quarantine was imposed due to a suspected case of COVID-19 that turned out to be negative.

The same questions could be asked in relation to Britannia's, JPIA's, and Swedish's rules, which require an outbreak of an infectious disease, though not necessarily "on" the ships.

As with the aforementioned deviation issue, it is essential that shipowners contact their clubs to discuss specific issues as they arise. We would expect all clubs to be sympathetic to the demands of the situation.

Regulatory Issues

The longer the pandemic continues, the more difficulties will arise with respect to flag state and class requirements regarding certification and so on. All have implications for ships' seaworthiness and possible prejudice to club cover. As ever, early and open discussions with clubs are vital.

What may be recoverable under "quarantine expenses" is broadly stated in the rules of some clubs ("...costs and expenses, other than the ship's running costs and expenses," (Gard)) and very specifically in others (see Steamship's rule 25 xii). Ultimately, however expressed, they probably cover similar risks — with one possible exception referred to below.

2. The infectious disease must be on the entered ship before cover under the quarantine rule is triggered.

For example, North's Rule 19(9) states that cover is for: "Additional expenses incurred by a member as a direct consequence of an outbreak of infectious disease on an entered ship"

Compare that with SOP's Rule 13, which simply states: "Additional expenses incurred by the member as a direct consequence of an outbreak of infectious disease, including quarantine and disinfection expenses"

The latter suggests that the outbreak of infectious disease does not have to be on the ship — meaning it could trigger claims where a member's losses merely result from an associated outbreak (such as the current pandemic). Such losses would include quarantine, disinfection expenses, and "net losses to the member (over and above such expenses as would have been incurred but for the outbreak) in respect of fuel, insurance, wages, stores, provisions, and port charges," but would not necessarily be limited to just those costs.

3. Some clubs have a proviso, such as the following:

"... however ... no liability shall exist hereunder if the insured vessel be ordered to proceed to a port where it is known that she will be subjected to quarantine." (American Club, Section 11.)

This is troublesome because, in current circumstances, if there is an onboard outbreak of COVID-19 (or it is suspected) during a voyage, the ship is likely to be placed into quarantine in practically every port in the world — whether that port is scheduled or not.

Some clubs seem to have anticipated this possibility. North, Standard, Steamship, and London, for example, make the "reasonableness" of any such decision a matter for board discretion.

Skuld specifically excepts the proviso "where such orders are unavoidable." SOP does not mention such issues and Britannia (and others) refer to cases involving entered ships "which [are] not already under contract"

These differences are confusing, to say the least. It will be interesting to see whether some redrafting is undertaken before the next policy year.

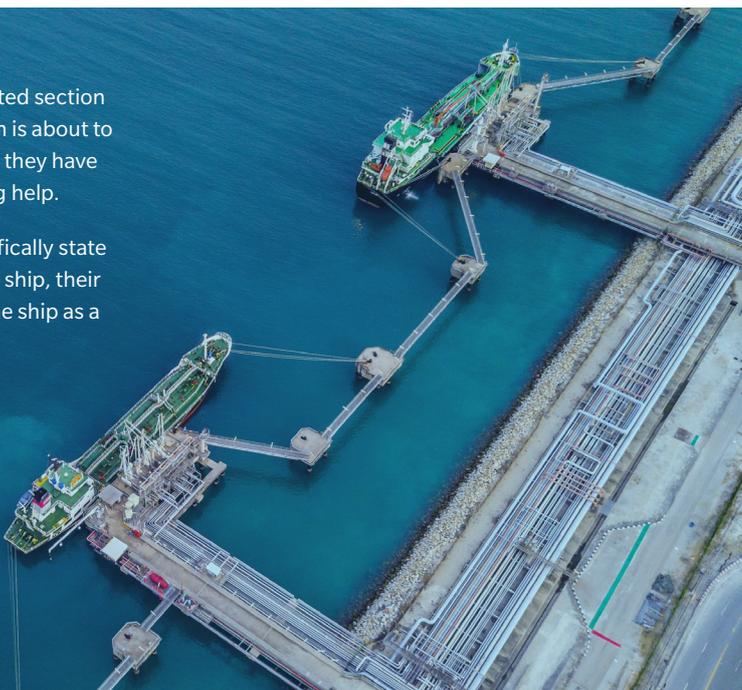
Club Comparison

The following table compares differences in approach between clubs — both in terms of advice and the construction of their quarantine rules.

Club	FAQs	Requirement that infectious disease be on the entered ship?	Proviso relating to diverting to a port that might require the ship to be quarantined?
American	Y	Y	Y
Britannia	N	N ²	Y
Gard	Y	Y	Y
JPIA	N	N ²	Y
London	Y	Y	Y ³
North	Y	Y	Y ³
SOP	Y	N	N
Skuld	Y	Y	Y ³
Standard	N ¹	Y	Y ³
Steamship	Y	Y	Y ³
Swedish	N ¹	N ²	N
UK	Y	Y	N
West	Y	Y	Y

NOTES ON THE TABLE

1. Standard has not published FAQs, but has a dedicated section on its website devoted to COVID-19 issues. Swedish is about to publish its FAQs. Britannia and JPIA emphasize that they have provided detailed advice to all members requesting help.
2. Although Britannia, JPIA, and Swedish do not specifically state that the infectious disease has to be on the entered ship, their rules limit cover to specific losses on or involving the ship as a result of an outbreak of infectious disease.
3. As discussed above.



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