

PASSENGER & GAMING VESSELS

Underwriting Concerns

**Presented to: American Institute of Marine Underwriters
December, 1995**

Presented by: AIMU Technical Services Committee

1.0 INTRODUCTION

The fastest growing and perhaps the most dynamic segment of the marine industry is the passenger vessel and gaming vessel market. Presently, there are over 5,500 such vessels in service in the United States. The types of trades that these vessels are engaged in can generally be segregated into the following categories.

- Tour and excursions
- Dinner cruises
- Overnight cruises
- Car and passenger ferries
- Ecotourism (whale watching, etc.)
- Casino gaming vessels
- Permanently moored restaurants and casinos

Adding to the complexity of these risks is the fact that most of these vessels can be found operating in environments ranging from rivers to lakes, bays, and sounds, to offshore. A recent trend within this industry has been the proliferation of gaming vessels, of all types and sizes. Currently, games of chance are legal aboard vessels in twenty seven out of fifty states, with several states debating the issue of legalized gambling.

Consequently, marine underwriters can expect to see submissions for an increasing number of large diverse passenger and gaming vessels. While there is much opportunity, there is also much risk. This paper seeks to address those aspects of these risks which present somewhat unique underwriting concerns. They can be generally categorized as . . .

- Hull and property risks

- P&I risks
- Valuations
- Catastrophe/hurricane exposures

2.0 HULL AND PROPERTY RISKS

Historically, passenger vessels have been owned and operated by marine companies, often small family owned businesses, that were experienced in the operation of vessels. Today, due to the advent of casino gaming, we are seeing large, non- – marine companies, such as Harrah's, Hollywood Casinos, etc. displacing the traditional passenger vessel owners and operators. These companies generally have little or no experience with vessel operations.

An example of the consequences of this can be found in the difficulties experienced with the recent delivery of a large, newly built gambling vessel, which is to be permanently moored in Biloxi, MS. This is a 3 deck structure that is built atop 9 old, inland hopper barges (3 abreast and 3 fore to aft), at a shipyard near Morgan City, LA. Although completed near the end of 1994, it sat at the shipyard for nearly 9 months before it was delivered. The problem was the delivery of this unwieldy structure, from the shipyard to the location in which it was to be placed in service. It was too wide to go through the intracoastal waterway, and had to be towed offshore, but it was not designed to be towed offshore! Therefore, obtaining insurance for the voyage was a major problem. Fortunately for the owners and unfortunately for the shipyard, the contract called for the shipyard to be responsible for the delivery of the vessel.

In August of 1995, a perilous 3 day voyage was eventually made, with the use of several tugs. Good weather prevailed and the vessel arrived safely, with only light damage. Not surprisingly, suits over the delay and loss of revenue have already been filed.

Any navigating vessel that carries passengers for hire must be US Coast Guard inspected. This should not eliminate the underwriter's concerns, however, as there are underwriting concerns which the regulations do not address.

An even greater concern may be warranted for permanently moored vessels, such as floating restaurants and casinos. These vessels are not subject to Coast Guard regulations, since they are not capable of navigation; but since they are in the water, they are also not subject to the same requirements as would be comparable shoreside structures. Being neither fish nor fowl, these vessels are often of unique design and construction, and present a variety of safety concerns. The following brief discussion addresses inspected and uninspected vessels separately.

2.1 Inspected Vessels:

US Coast Guard regulations are general in nature, with broad application, and are often the result of negotiations with industry and other interests. As is relates to passenger vessels, USCG

regulations primarily address life saving and fire fighting concerns. Further, they do not address ordinary underwriting concerns, such as P&I exposures. An owner that boasts that his or her operation “complies with all Coast Guard regulations” is not, necessarily, a good risk, as it is only in compliance with the standards required by law. In this sense, the rules and regulations are no substitute for a proactive loss control program. A good, proactive operation will have its own safety program that uses Coast Guard regulations as a baseline upon which to build.

Still, a Coast Guard inspected vessel is a distinctly better class of risk than an uninspected vessel. In addition to the fire and life safety exposures, USCG regulations address:

- The structural integrity of the hull
- watertight integrity of deck openings and hatches
- vessel stability
- manning and licensing requirements for the crew.

Of all of the areas, perhaps, vessel stability is the most important. A USCG inspected vessel will have both its intact and damaged stability reviewed. Intact stability involves an analysis of stability under normal operating conditions, including the combined effects of wind and wave action. Damaged stability involves the vessel’s ability to survive the flooding of one or more compartments, from a collision or grounding. For inland and coastal vessels, the one compartment standard is applied, meaning that a vessel will not sink or capsize as result of the flooding of any one compartment. A two compartment standard is applied for ocean going passenger vessels. Exceptions to current Coast Guard regulations may be granted, however, for older vessels, which are often “grand fathered in,” unless there has been “substantial conversions.” For example, there are USCG inspected passenger vessels operating, on inland waters, that do not meet the current one compartment stability standard.

A still better class of risk is a vessel that is classed by the American Bureau of Shipping (ABS). An ABS classed vessel meets all ABS requirements for its class, as well as all Coast Guard regulations. For inland and coastal passenger vessels, the classification that is usually given is A1 River Service. ABS’s “river” classification includes lakes, bays, and sounds, as well as coastwise service (up to 20 miles offshore). There are very few ABS classed passenger vessels in service within the United States, but some of the larger, new vessels under construction will be ABS classed. ABS rules do not tend to be oriented towards preventing losses (more so than Coast Guard regulations), but do not address many ordinary underwriting concerns, such as P&I exposures.

2.2 Uninspected Vessels:

This primarily involves permanently moored vessels that are not capable of navigation. These are often large floating casinos, restaurant, and shopping malls. These maritime like structures are typically mounted atop barges or old riverboat hulls. Such vessels are usually permanently moored alongside a dock or terminal. These can be stand alone facilities or may serve as a staging area for passengers departing or returning from cruises. A single account might include

both permanently moored, uninspected vessels with theme restaurants and shopping, as well as Coast Guard inspected excursion vessels.

Two of the primary exposures to underwriters for these types of risks are fire and partial submersion or sinking. Often, these structures will be designed by a naval architect or a professional engineer. ABS Marine Services, Inc. also provides consulting services, in the design of such vessels. But the engineer's involvement is often constrained by the owners limitations or requirements. Moreover, the engineer's responsibility generally does not include common hazards, such as the electrical, heating, and cooking systems. Permanently moored vessels are generally only subject to local fire codes, which vary widely in requirements and enforcement. Combustible materials and inferior designs are frequently used in construction, without compliance with the property and life safety codes that would be applicable for comparable shoreside structures or passenger excursion vessels.

Despite the fact that these are often new multi-million dollar structures, they are often built atop old vessels or barges, which should have been scrapped years ago. Hull wastage and deterioration of internal structural members are often severe. Problems with leakage and regular pumping of the bilges are common.

The problem is exasperated by the fact that most of the internal watertight subdivision of these vessels are gone. Many owners store supplies below deck and cut through watertight bulkheads, to allow easy access from one compartment to the next. In the event of a leak, that goes unnoticed or that the bilge pumps can not handle, water will flow from one compartment to the next, sinking the vessel. Many owners will try to correct the leakage of a hull by foaming in compartments, with poly urethane foam. This is not good practice and can create several serious safety problems. In short, many of these impressive maritime like structures, even though new, may be kept afloat by foamed compartments, bilge pumps, and luck.

3.0 P&I EXPOSURES

The P&I exposure is a major element of these risks; there is not only the crew but there can be hundreds, possibly thousands, of passengers aboard a vessel. We have been fortunate in that there has not been any catastrophic loss of life aboard passenger vessels in the United States, in modern times. With the proliferation of river gaming vessels, often operating in already crowded harbors, our luck might change, with tragic consequences. This is a major concern to the Coast Guard Search and Rescue (SAR) division. Swift currents and cold water make rivers a hostile environment and rescue capabilities are limited. The Coast Guard is presently considering developing new standards for what it terms High Capacity Passenger Vessels (HCPV) and is accepting comments, but the necessity of additional regulations is being questioned by the passenger and gaming vessel industry.

The primary P&I exposure to underwriters is for injuries to passengers and crew members. Statistics from the Passenger Vessel Association (PVA) show that nearly 50% of all P&I injuries are from slips and falls, being about evenly split between passengers and crew members (usually waiters and waitresses).

Here, the insured's attitude towards safety is the key. Do they have a formal safety program? Some of the essential elements of a proactive P&I safety program would be:

- Pre-employment screening program.
- Safety training and orientation for marine and non-marine crew members, especially for new hires, some of whom may never have worked aboard a vessel before.
- A periodic self inspection or audit program that is designed to identify and correct deficient conditions before they cause an accident.
- Marine crews are required to receive training for life saving and fire fighting, but do the non marine crew members receiving any training? Key non marine crew members should receive training in first aid, CPR, and the Heimlich maneuver, which are not required by USCG regulations.
- Claims handling procedures should be in place, to ensure that P&I claims will be properly handled, when claims are reported. Early, aggressive claims intervention tends to resolve P&I claims more efficiently.

An interesting aspect of the P&I exposure for passenger and gaming vessels is what constitutes a Jones Act seamen? Certainly, the crew members are seamen, but what about non marine personnel, such as waiters or waitresses, bartenders, card dealers, etc?

Present legal interpretation of seaman's status is that the employee must have a more or less permanent attachment to a navigating vessel and contribute to the vessel's mission or function. Most companies consider only the marine crew members to be seaman, and cover other employees under state workers compensation plans. But the reality is that most courts would look at any permanent employee aboard a navigating vessel to be a seaman. This concept was upheld by the U.S. Supreme Court in the case of McDermott Int'l V. Wilander, (498 US 337, 112, LED 2d 886). Therefore, an underwriter who quotes P&I coverage for an account, based upon the number of marine crew members only, may ultimately find that their P&I exposure is much greater.

Employees aboard permanently moored or fixed restaurants and casinos are most likely not to be considered seamen, because these vessels are not navigating. Plaintiff's attorneys have been attacking this position, however. Their argument is that these are still vessels, similar to fixed offshore platforms (where workers are considered seamen), or ships moored at the docks, and hence the employees should be granted seaman status. Although rulings have come down on both sides of the fence, recent litigation, involving suits by a bartender and a waitress aboard the permanently moored gambling vessel "Biloxi Belle," may resolve this issue, (Pavone and Ketzler V. Miss. Riverboat Amusement, 867 F Supp. 1260 SD Miss, 1994). In both instances, the court held that the "Biloxi Belle" did not have vessel status under the Jones Act. The critical issue being that it was not navigating nor was it capable of navigating, being moored with permanent attachments, without any propulsion, steering, nor navigation equipment. In the case of Pavone, the ruling was upheld by the U.S. District Court of Appeals, for the 5th circuit, (No. 94 – 30241, 5/19/95).

4.0 VALUATION:

It is often difficult to place accurate values on unique floating casinos or restaurants, or on old riverboat hulls, which have nostalgic value and intrinsic appeal. Although reliable new construction costs can be determined, there presently is a very small market for many of these vessels, particularly the gaming vessels. Also, there has already been some over building within this industry, with some new operations already filing for bankruptcy and the vessels repossessed. All of these factors can make the determination of the proper insured value a sticky issue.

Some owners, and even some appraisers, take the view that the earning potential of a vessel must be added onto the cost of the hull, machinery and equipment, which results in insured values that are well above actual costs. Underwriters are cautioned against agreeing to this method of valuation because it is essentially a form of business interruption coverage. Also, it can create a moral hazard, especially if business conditions turn sour.

5.0 CATASTROPHE AND HURRICANE EXPOSURES:

Floating restaurants and casinos along the East Coast and in the Gulf are particularly vulnerable to damages from hurricanes. Not only the high winds, but the tidal surge associated with a major storm, can be disastrous. Many companies are issued permits on the basis that they will move the vessel to protected waters, in the event of a hurricane. The reality is, however, that in the event of a hurricane, the totality of the situation will render most contingency plans useless. For example, the Coast Guard will often not allow the towage of these vessels in winds of @25 Kts or greater, due to their massive size and large sail areas, which make them awkward to tow. Also, breaking the moorings of many permanently moored vessels can be very time consuming. Even if they did reach protected waters, there is still the exposure to hurricane force winds and driving rain, which many of these structures were not designed to withstand.

There is also the potential for devastating damage due to flooding. The type of moorings used on permanently moored vessels vary from substantial permanent structures, such as concrete filled steel pilings (dolphins) with steel collars, to basic mooring lines and cables that lead to shoreside bollards or deadman. Vessels at inland locations are often simply moored within a dredged slip. Many of the vessels that are moored with mooring lines and cables are really only semi – permanently moored. These vessels have removable gangways, and detachable electrical and plumbing lines. Such vessels regularly shift with the rising and falling of the river and can easily be moved to a new location. These type of moorings, especially along river, present a breakaway exposure to underwriters, during times of high waters or flooding.

6.0 CONCLUSION:

As stated at the outset, this industry is one of the most dynamic and fastest growing areas in our present day marine industry. It hold much opportunity for marine underwriters, but passenger and gaming vessel risks should be carefully reviewed by underwriters, as they present many

unique risks and exposures. As with any marine operation, all accounts are not equal. This is particularly true in this booming industry. The owners of these vessels run the spectrum from those who embrace safety, to those who will comply only with the regulations, to those who avoid compliance with regulations.

When considering writing one of these accounts, underwriters should:

- o Conduct loss control inspections by qualified marine surveyors or loss control specialist.
 - Evaluating the risk and making recommendations for risk improvement.
 - Utilize property specialists or fire protection engineers, in the case of large floating restaurants and permanently moored casinos.
 - Be critical of the insured values.
- o A thorough review should be made of the insured's loss control and safety program by a specialist, particularly when P&I coverage is being provided.
 - Loss control and safety programs.
 - P&I claims handling procedures.
 - Determine the account's real potential for P&I exposures.
- o Consider the environment in which the vessel will be working.
 - Permanently moored or fixed shoreside structure.
 - Navigating on a major river in a busy harbor.
- o Hurricane and catastrophe exposure.