

Members' Boat Insurance

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In 1966 seven Swedish Boat Organisations signed an agreement with a syndicate of Lloyd's brokers and underwriters for insurance cover of members' boats. This was the start of the Svenska Sjö insurance ("The Boat Scheme"), which has continued until this day.

Along a similar pattern, the Swedish Cruising Club's Mediterranean Sailors (SXX Med. Sailors) in 1989 started a cooperation with Finnish Alandia Insurance to cover boat risks in the Mediterranean.

The former of these may be described as a mutual insurance, while the latter has pursued a similar effect by limit to the profit that the risk bearer may gain from the enterprise. It may be instructive to see how they have fared with the passage of time.

1 Benchmark Qualities

To really favour members' interests, a members' own insurance should have some characteristic qualities:

It should be *result-based*, for the participants to pay just for the damage or loss arising and to have control of whatever is expended for profit and administration.

It should be *appropriate* in the sense of covering just the risks that can be counted upon in the group insured, which therefore ought to be well defined.

It should cover a *reliable group of insureds* not prone to negligence or deceit, which may be promoted by suitable exemptions, requirements of training or diligence and the latter by membership in a reputable boat club.

It should give offer a *considerable deductible* of an amount that the member can cover personally, not only for promotion of care and reduction of small and costly claims but principally since in a long perspective any insurance is necessarily a negative affair which should be limited as far as possible.

On the other hand, when a loss occurs, an insurance tied to membership offers, as inquiries affirm, a *fair claims handling* practice.

2 The Boat Scheme

The procedure of the Boat scheme was that the Swedish Boat Organizations should set out insurance conditions and adjust claims, while the accumulated annual result of this was to be covered at Lloyd's. An annual result having been presented, a total premium for the coming year was to be negotiated and agreed every year in London. There also came to be arranged an annual meeting in Sweden in which active syndicate members were shown some aspect of Swedish boat life in a common outing to a boat club in some part of Sweden.

With seven leading boat organizations (the Clubs) having a large total membership, the Boat Scheme insurance immediately became one of the largest boat insurance collectives in Sweden. A Boat Clubs' Committee was set up to work out conditions, administer claims, negotiate an annual total premium and work out any further conditions with Lloyd's, while the running claims handling was

contracted out to administrator International Assurance, and later Svenska Sjö AB, from which boat owners could "appeal" to the committee.

For legislative reasons, the Swedish Insurance Inspection early constrained the syndicate to leave the official role of direct insurer to a chartered Swedish entity, for which Swedish insurer Trafik-Bore, and later Trygg-Hansa were engaged, while the syndicate remained as nominal re-insurer but in reality leading underwriter, all premiums and conditions continuing to be negotiated with them in London.

On the Swedish side, the co-operation was conducted by Lars von Malmberg, who annually compiled comprehensive statistics of current losses and results for presentation to the negotiating committee as basis for the annual London discussions of premiums and possible condition adjustments. Through this extensive work, and not least through friendly return meetings in Sweden, annually at crayfish time, good relations were developed and maintained, and Lloyd's remained devoted to the idea of accepting a reasonable premium rate for retaining a good and mutually productive cooperation.

However, with the passage of time, after an exchange of some of the persons engaged in the work and the Committee's loss of von Malmberg, Lloyd's attitude began to change into demanding increasing premiums and criticising proposed conditions, and in 2014 the Club committee decided to limit the cooperation to Trygg-Hansa Insurance as sole risk-bearing insurer. The insurance was also opened to customers outside the Clubs on less advantageous conditions.

At the same time a decision was taken to transform the informal working group into a limited company called Svenska Sjö Intressenter AB, as owners of Svenska Sjö, and for them to divide between themselves the lion's share of accumulated funds in a total amount of 25 million SEK, to be used by the several Clubs as they found fit. The Swedish Cruising Club (SXX) found this to be improper use of boat owners' savings but was outvoted.

The earnings in Svenska Sjö are continuing but are now paid out every next year as "result bonus" to insured members. Roughly the same amount is taken out, ostensibly for publicity and safety promotion, by the Clubs to be available for Club backing. Total bonus from 2017 is said to be about 4.2 mill. SEK.

3 Aims Compliance in the Scheme

Comparing with the qualities that ought to be pursued in a member-friendly insurance, the Boat Scheme may be seen to qualify as follows.

The Scheme is essentially *result-based* to the extent that its profit is returned to members as bonus in the proportion in which they have paid premiums. The disbursement of some ½ of the annual profit to participating organizations will diminish the value to insured members but may well be lower than the dividends paid out in commercial insurances. For insured boaters who are not members, both the higher premiums charged and the bonus withheld from them make their insurance marketable and not result-based.

Concerning the *propriety* of the insurance, the Scheme covers a well-defined group, and it has been improved through *member influence* exerted by amendments based on the experience of organized boaters. Annual statistical presentations and extensive discussions within the committee has made for coverage of members' typical needs. By comparison, earlier commercial insurances persistently and concordantly exacted a special penalty for sea damage incurred after the 15th October each year without regard to general complaints from boaters of difficulty getting boats out of the water at the stated date – a practice that seems indeed to have been the real impetus for starting the Boat Scheme.

As for *reliability of the group insured*, the partaking Clubs are well-established and have close contact with their members and a developed tradition of good seamanship. Their insurance conditions contain special diligence requirements with a provided set-down in case of non-compliance, while compliant members are given a premium reduction for nautical competence. A low damage record verifies the quality of this group as reliable boaters.

In the original Boat Scheme the use of *deductibles* was apt to promote the boat-owner's long-term interest. Members were given a choice ranging from low deductible of 1% of boat value (min. 2,000 SEK) to high deductible of 10% of the value, the latter having half the premium of the former. Under such options, a careful boat-owner would profit from choosing the highest amount he can count on handling without serious effects to his private economy. This author chose the high deductible amounting in his case to 15,000 SEK, paying an annual premium around 800 SEK instead of double that amount, which was calculated, and has turned out to be a cumulative saving over time.

The new insurance offered through Trygg-Hansa no longer announces these alternatives; the effect of higher deductibles that may be asked for is calculated on request and is hardly seen as a viable alternative. Offered deductibles are instead similar to those of other insurers: normally 2,500 SEK, reduced by certain safety measures and by 500 SEK per claim-free year down to minimum 1,500. Thus, lowered deductions are used to encourage caution and vigilance instead of lowered premiums which are the normal and effective instrument for that purpose.

The *fair claims handling* within the Boat Scheme is furthered by its ultimate member control through the Committee and has a good reputation, member polls having indicated a considerably higher customer satisfaction index than other insurances in the boating field.

4 Alandia's Mediterranean Insurance

The Mediterranean Sailors was formed in 1988 as a club associated with the SXX. It grew quickly and presently has over 3,000 members, which is small compared to other boating groups in Sweden. Its sailing sphere is the Mediterranean Sea, but since members regularly reach that goal by traversing European canals or outside waters, much attention is devoted to these other areas as well.

From the foundation, members had reported difficulty finding suitable insurance cover both for the Mediterranean and for the way down there, and there

was a need for a cooperating partner. This was found in 1989, when Alandia Insurance on the island of Åland announced interest and a fruitful cooperation could begin.

When negotiating this insurance, the Med. Sailors were just over 1,000 members, and it was conceived as impossible to start a cooperation like that of the Boat Scheme. For member influence it was instead agreed that the Sailors should prepare conditions for discussion with Alandia, while the desired result relation was achieved by agreement that Alandia's expenses and profit should not exceed 30% of the total premium income, for which Alandia would account each year.

The first year of this small insurance started with three total losses, one being the sinking by fire of its most expensive object and another raising belated suspicions of a possible insurance fraud.¹ This gave a total deficit for Alandia which might well have wiped out the whole project, but Alandia undertook to spread out the losses over the coming years, while the Sailors through their *Odyssé* gazette started an intensive campaign to encourage diligence and loss-avoidance. As an example of its effect, a member whose boat was stolen a few days before Christmas but stranded on a Spanish shore through the thieves' lack of seamanship sacrificed his annual Swedish highlight Christmas to fly straight down to Spain and guard the boat against otherwise likely looting until after the holidays it could be brought to a boatyard for repair.

The cooperation continued into the 2,000s but never came up to more than about 300 insured boats. Around 2005 other commercial actors entered the scene and offered insurance on a much larger scale, and in 2007 the Sailors agreed with Alandia to allow non-members into the insurance, which nevertheless made an unequal battle against newcomers like international insurance broker Pantænius, who had a solid base of German and other boat owners and attracted also many Swedish Med. Sailors by offering low premiums. In 2009 the Med. Sailors signed their last amendment of the Conditions. The Club participation of the insurance was then as few as some 170 boats, and the regular meetings were replaced by occasional contacts and a written account annually sent from Alandia.

In 2016 Alandia underwent a reorganisation and announced the phasing out of its scarcely profitable Mediterranean Insurance. The contact person on Åland was dismissed, and further cooperation ceased without any notice from Alandia. A member insurance had come to a definite end.

5 Aims Compliance in the Mediterranean Insurance

A basic problem of the Alandia Mediterranean insurance was that it addressed an *inadequate number of potential insureds*. However, when it was founded, it fulfilled an important function in that the Sailors had found no alternative, and in this respect it remained an esteemed partner until leave time.

1 A boat notified stolen at Nice harbour and compensated as total loss was later reported as sailed by the same owner into a Trinidad harbour. Investigations into the matter failed.

The agreement of limiting insurer gain and administration costs was about the only possible means of achieving a *result-based* system and in fact worked well during the currency of the insurance; indeed the insurer's handling of the first year's unexpected loss was a rescue action necessitated by the lack of a safety valve which should have been built into the system in the first place.

The Alandia insurance was worked out on the basis of the Sailors' requirements and prepared through amicable agreement between the parties and took account of the Sailors' very special needs: covering the transit to the goal, the ~~parts of the~~ actual ambit normally used for sailing, with extra-payment for members announcing intention to make departures beyond it, and with exemptions deliberated for particular risks that might be encountered in the area. As an example, Albania was not a basically covered area until conditions were known to be safe there. The insurance has certainly been as *appropriate* to members' needs as can be achieved.

Sailors choosing the Mediterranean area are normally older and experienced boatmen who can be counted on to be honest and to observe care and seamanship. The participants of the original group were all members of the well-established Med. Sailors of the Cruising Club, and their claims record, after the first calamitous year, is good. On the whole they have certainly fulfilled the *reliable group* requirement.

Also, while claims adjustment was made without direct influence of the Sailors, the close relationship and dependence between the insurer and the Club has made for a claims adjustment devoted to the fulfilment of the agreed insurance purpose. There has been no complaint of Alandia's *claims handling practice*.

What, then, might be the reason for the *member flight and final collapse* of the Alandia member insurance?

Rather clearly, it has much to do with *insufficient size and capacity*. Although the Sailors later grew to over 3,000 members which was an indicated possibility at the start of the insurance, 1,000 is a small number to even out risks, as became clear from the first year's portentous result. There is also a likelihood that a relatively small insurer from a northern country may have less capacity for economic claims handling and repairs than a larger one in a central location, such as the expansive *Pantaenius* enterprise, representing five dominant German insurers and largely taking over Sailors' members on deserting the Alandia insurance.

Moreover, once the flight had begun, about 2006–2007, the replacement of members by outsiders was not contemplated to further the aims of a membership insurance. Outsiders without loyalty to the Club and inaccessible to the influence of club media are hard to reach and persuade of the particular benefits of a Club insurance. Looking at insurance alternatives they will base their choice mostly on matters such as low premiums and low deductibles, the latter appearing in themselves as a boon to a non-engaged insured party.

The final impetus to the breach was of course the organizational change at Alandia. The new leaders had no interest in the member insurance and abolished the Sailors' insurance immediately and completely, offering henceforth Mediterranean insurance only as an alternative to the Swedish one, thereby abstaining from all carefully elaborated conditions adapted to the special

situation prevailing in this part of the world. This can hardly be seen as an advantage to future life or development of that insurance.

6 Comparison and Final Observations

The need and advantage of a *large insured collective* is well illustrated by our examples of the Swedish Boat Scheme and the Mediterranean Sailors. The former could draw potential customers from a total membership of some hundred thousands, while the latter at the time had only about one thousand members. The small-collective problem lies not only in the lacking risk division re-lected in the first year's result of the Med Sailors – a situation solved at the time by effective action on Alandia's part – but also in the scarcer resources for the setting up and administration of the system. The small collective may have to rely largely on unpaid functionaries who may carry on for a while but may be disposed to turn to other pursuits as time passes. Also, the small group is likely to be thrown upon a less resourceful insurer without the larger one's means of economic service and claims handling.

A result-based insurance need not necessarily have lower premiums than competing commercial ones. An important difference may lie in the claims handling practice. The member insurance is naturally inclined to generosity in this respect, while a commercial one is likely to be more stingy in order to keep premiums down, which is generally seen as a primary bait for catching customers.

Such restrictive claims practice may be illustrated by the the tragic *Navicula* loss, one of many claim refusals by leading oversea insurer Pantaenius.

Experienced sailors C and G Bertel set off from Gibraltar, having as they understood it orally obtained an extension of their European insurance to the Canary Islands, where they were heading. Encountering hard weather at sea they turned for safety into Tangier (Africa), and after another attempt towards their goal met with more hard weather and made for Mohammedia further south the coast. Off the port their boat capsized through a breaking Tsunami wave, the wife being drowned and the boat lost. Refusing cover to C, Pantaenius denied the said oral extension and alleged that the admitted European insurance extending 200 miles from European coasts exempted Africa and would thereby exclude any waters nearer Africa than Europe, and that in any case it would have become avoided through the visit at Tangier. The District Court, affirmed on appeal, held – observing that insurance conditions not negotiated but imposed by an insurer must be interpreted in the customer's favour – denied the "nearer Africa" argument and held that both the Tangier visit and the attempt at Mohammedia were justified emergency actions and further that, the fatal loss being within 200 miles of European coasts, the insurance applied whether or not the alleged extension was valid.

The insurer had expended several hundred thousand SEK in legal fees but finally withdrew a lodged Supreme Court appeal, while C's action was aided

through a collection in the Club, his modest counsel costs being transformed, upon winning the case, into a fund for distressed sailors in G's memory.²

The importance of a *reliable and trustworthy* insurance group is perhaps rather favoured by the group being small and transparent than large and anonymous. In the Med Sailors it has been promoted by the popular and widely read *Odysse* gazette, while in the larger group of Alandia's Swedish insurance there is no corresponding common contact medium, and the members are more anonymous. But the element must be guarded also by vigilant supervision, and there the strong insurer has an advantage.

A Swedish industrialist had found his family uninterested in sailing and found little use for his sailboat. One autumn day he reported the boat stolen from its harbour north of Stockholm and received full cover from his Swedish Alandia insurance. More than a year later the boat was found sunken in a deep and inaccessible spot of the Stockholm archipelago, and Alandia spent a considerable amount in raising it. It was found to have been deliberately sunk: transducers to echo sounder and speed log removed and hoses to open seacocks cut off, personal belongings removed while identifiable equipment was left on board. As the owner could show that he was away at the time of sinking he did, however, escape indictment for insurance fraud.

Alandia nevertheless sued the owner for recovery of the insurance payment, and both instances found that notwithstanding it was a matter of retrieving payment of an already settled insurance claim, he had not shown theft by the necessary preponderance of evidence for an insurance claim and must restore the money.³ An appeal to the SC was withdrawn.

The desirable *high deductible* raises problems. While it is doubtless a factor lowering the cost of insurance and objectively desirable, insurers are often well organized to give good service to resist arguments from outside parties and to arrange economic repair of damage, and it may seem typical that the Boat Scheme insurance does not today announce any high-risk and low-cost insurance for general adherence. An effect is also that by not having cause to raise claims falling under the threshold, the member becomes deprived of the insurer's often valuable services in case of such smaller claims.

Nevertheless, diligent and careful boatowners as well as the collective as a whole would surely profit greatly from a properly calculated high-deductible insurance, and it seems worthwhile that the trade should take more notice of this way of lessening the public's dependence on excessive insurance cover.

Finally, as noted for both examples, a good members' insurance should employ a practice of *fair claims handling*. This does not imply acceptance of all claims, as that would erode a good insurance, but it does involve respect for the client, engendered by a trust of members' honesty and interest in keeping the insurance economical and beneficial for the group. Thus it is striking that the

2 Ocean Sailors' Gunill Bertel Memorial.

3 Södra Roslag DC DT 426/96 in matter T 2394/94 *Carl II*, also reported [1997] LMLQ 565.

two presented membership insurances have few legal disputes and a high customer satisfaction index.⁴

It is not desirable, however, that customers should be over-compensated for losses occurred. Thus though both the original Boat Scheme and Med. conditions might be read as valued, i.e. compensating total loss by the whole insured value,⁵ inordinate such claims were barred by a legal enrichment prohibition⁶ and by an agreed option for the insurer to find and elect a substitute object instead of cash payment.⁷ With the enrichment prohibition now removed from the law,⁸ present conditions base the compensation on market values and not a stated insurance value.⁹ Thus the insured is not placed in a better position than he can show to have existed before the occurrence of the insured loss.

4 Thus in random Marine insurance disputes collected between 2001 and 2008 the author has noted ten cases of denied compensation for alleged boat theft from regular insurers and none from a member insurer.

5 Svenska Sjö provided under 9.4. "Total loss of the boat, where it has not been possible to replace it by one of equal value, is compensated by the insurance value, unless clearly too high", applied by Sweden's Average Adjuster 6 Oct. 2008 PA no. 3090-08. The matter is developed by this author in *A Minor Marine Insurance*, in *Mélanges offerts à Pierre Bonassies* esp. p 378.

6 Applicable under sec. 39 of the 1927 Insurance Contract Act until abolished in 2006.

7 If it takes time finding a replacement, the insurer may have to postpone payment beyond the conditions' one month, which he can do without other sanction than default interest, not damages, Stockholm DC 8 Jan 1996 T 4-19-96. A Swan yacht sunk off Mallorca in the first year of the Med. insurance (under 4 above) could be replaced by a similar boat in the Caribbean and tickets for the crew to fly over to fetch it.

8 The present Insurance Contract Act (2005:104) does not contain an express enrichment prohibition but it is clear from the preparatory works (prop 1998/99:87 p.182) that an insurance is not to confer an economic gain to the insured.

9 So provided under item 12 of the Boat Scheme, with exception for the exclusive Hel Plus insurance (Whole Plus). As stressed by Gothenburg DC19 May 2009 in matter T 7674-07 *Stormpetrel*, where the owner had insured his boat for 1.5 mill. SEK and after its destruction by fire was awarded only 450,000 as estimated by experts, it is for the insured to prove the value even if he is insured and has paid premiums for a higher amount.

