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Decoding health insurance for crew

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PLUS: The 2013 Loro Piana Superyacht Regatta: p24 ■ Exploring the Bocas del Toro archipelago: p84

The Picture of HEALTH

WITH THE MARITIME LABOUR CONVENTION, 2006 AND THE SO-CALLED OBAMACARE HEALTHCARE REFORM PLAN MAKING WAVES ON THE REGULATORY ROAD IN THE COMING MONTHS, CAN CREW EXPECT MAJOR HEALTHCARE CHANGES?

BY BRANSOM BEAN

THERE ARE TWO GLOBAL VIEWS WHEN IT COMES TO REGULATION. One — the fewer regulations, the better; and second — more government control is the way to true prosperity. Whichever way you lean, there's no denying that more regulation is affecting the superyacht industry than ever before.

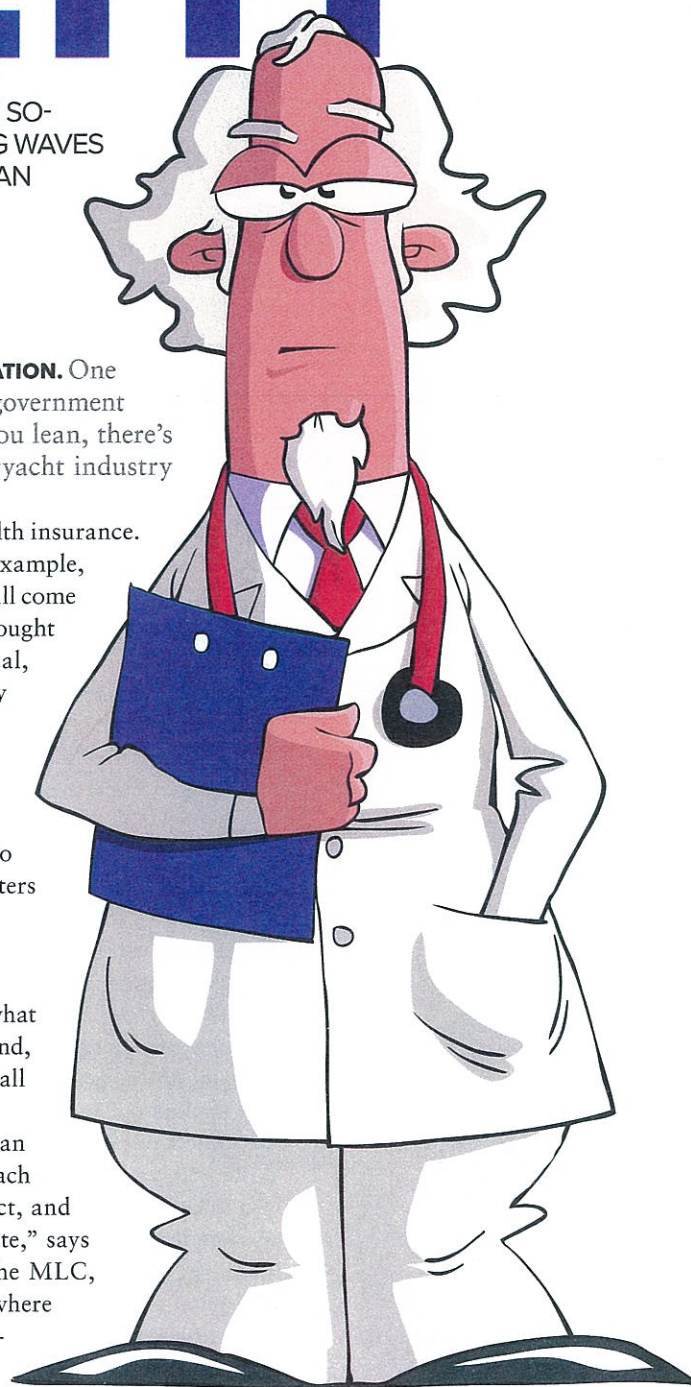
But now it's likely to start affecting your health, or at least your health insurance. Questions abound as the regulation landscape changes rapidly. For example, on August 20, 2013, the Maritime Labour Convention, 2006 (MLC) will come into effect. If you have spared it a second up until now, you may have thought that the MLC meant you could worry even less about health, medical, personal accident and disability insurance — it's all taken care of by the MLC. Isn't it?

Similarly, if you're an American, you just might be thinking that the "Patient Protection and Affordable Care Act" (PPACA or ACA), otherwise known as Obamacare, which will be popping up on American's 2014 U.S. tax forms, could not possibly have anything to do with you. After all, you're on a non-U.S.-flagged yacht that never enters U.S. waters. Right?

The International Landscape

If they share anything at all, both MLC, 2006 and PPACA are somewhat short on clarity...for now. The PPACA is very much a work in process and, although the MLC has been in the pipeline for a long time now, it's not all that precise...by design.

"No straightforward answer can be given. Remember, the MLC is an international convention; to become law it needs to be adopted by [each member] country; the ILO needed a consensus, so it's a balancing act, and adoption and interpretation might differ from [flag] state to [flag] state," says Wolf Dietz of Pantaenius. "But everyone needs to remember that the MLC, designed as a minimum standard for the commercial shipping world, where applicable, doesn't necessarily mean sufficient [protection] for the individual needs of yacht crew."



Here's what the Convention does specify in Title 4, Regulation 1, which spells out the basic health requirements:

1. Each member shall ensure that all seafarers on ships that fly its flag are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care whilst working on board.
2. The protection and care under paragraph 1 of this Regulation shall, in principle, be provided at no cost to the seafarers.
3. Each member shall ensure that seafarers on board ships in its territory who are in need of immediate medical care are given access to the member's medical facilities on shore.
4. The requirements for onboard health protection and medical care set out in the Code include standards for measures aimed at providing seafarers with health protection and medical care as comparable as possible to that which is generally available to workers ashore.

The Convention applies to any size yacht engaging in commercial activity on international voyages. Dietz says that yacht crew may have heard that the MLC makes health, medical and insurance an owner problem, which, he says, is not the case, also pointing out that the coverage is not defined in the Convention itself.

Mark Bononi of MHG Insurance Brokers takes a firmer stance. "The MLC does not change a thing," he says.

The yacht owner is liable for crew healthcare costs if the crewmember is occupationally injured or develops an occupational illness, as has always been the case. "Here's where the confusion stems from," Bononi explains. "The MLC states that the vessel owner is liable for crew medical costs." However, to satisfy the MLC, the yacht owner only has to provide "financial security" to cover costs for repatriation, death or long-term disability from occupational injury, illness or hazard; again, Bononi notes, how exactly to prove this is not spelled out in the Convention and will be subject to port state inspectors' interpretation. "It could be through providing health insurance for crew; it could be through proving that the owner has an escrow account with money in it for medical costs. It's not certain," Bononi says.

There are, technically, no MLC health insurance plans. "However, the Convention is open to

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interpretation by each flag state, which means that if a vessel shows it has insurance for its crew and the vessel passes its MLC inspection, then its health insurance is technically compliant," Bononi says.

A vessel's insurance coverage will typically include three sections: hull insurance, protection and indemnity (P&I) and medical payments. P&I clubs — cooperative associations that cover risks via P&I insurance — have agreed only to underwrite the recognized liabilities. These clubs, according to Bononi, have worked with flag states to get their policies fully compliant with MLC, so if a vessel has coverage through them, they should be set.

But this does not include all-encompassing health care for crew. While the owner might be liable for injuries on board, ashore is another matter. "You cannot assume that there is in fact a liability on the part of your owner; you need to delve carefully into applicable laws and flag state rules," Dietz says. "That's when separate medical cover gives you real peace of mind." In fact, Bononi says that P&I clubs and carriers still prefer to have a crew health insurance/PA policy standing in front of theirs, and in many cases they even require it. Regardless of MLC, personal insurance coverage is still a crew problem. "It's still on the crew to make sure their needs are met," he says.

The United States of Things

The U.S. has been making headlines with the Patient Protection and Affordable Care Act over the last several years. Its advertised goal is a noble one: to make sure that no one is denied health care.

If you get everyone to buy insurance, especially those who probably won't need it right now (i.e., the young, the healthy, the well-paid), then you have money to pay for those who are more likely to need it (i.e., older, less healthy and those with long-term health issues). Among many items, the PPACA prohibits insurance companies from discriminating against people with pre-existing conditions, dropping people who get sick from plans and has done away with lifetime coverage caps.

But there is still a lot of confusion over PPACA, and businesses tend to dislike uncertainty. What is certain is that important aspects of PPACA begin coming into effect for U.S. tax year 2014, which means that when you file your U.S. tax return in 2015, you will have to explain to the IRS what you did about your health





“For certain U.S. citizens living abroad, there will be an exemption. If you are eligible for the foreign-earned income exclusion, then you will be exempt from this tax also,” says Richard Maloney, a U.S. lawyer and accountant and partner in Maloney & Kennedy. Maloney spends a lot of time dealing with the tax affairs of American expats. “The exclusion is available under a subjective test, which means the expatriate must have a tax home, i.e. main place of business or employment where he/she is permanently or indefinitely engaged in a foreign country, thus a legitimate resident in that country, or a qualitative test — he/she spends at least three hundred-thirty days a year outside the United States.”

“There is uncertainty at present whether or how the ACA might affect insurers when there is a U.S. national covered under the [vessel] policy,” Burr Taylor of Sturge comments from his European base. “Hopefully it won’t; however, further clarification is being sought.”

What may make PPACA really interesting for everyone, not just U.S. taxpayers, is that the IRS will be monitoring and enforcing it. International business people know well that the IRS has a reputation for reaching beyond international boundaries. “Not only is [the] PPACA complex litigation, many of the operative rules will be regulatory, i.e. regulations issued by the Health and Human Services Agency,” Maloney says.

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insurance or come up with a good reason why PPACA doesn't apply to you. And not just any insurance will do. It must be approved. Currently, the only approved group plan that is aimed at the yachting industry is GeoBlue.

Think it doesn't apply to you if you don't reside in the States? “The rules around residency are interesting and certainly tend to be gray at the moment,” says Tim Slee, global sales director of BUPA International. There is, or perhaps more correctly, should be an exemption. Remember, if you are a U.S. citizen, you must file your annual U.S. tax return, even if you're not a U.S. resident. Most providers seem to be drawing the line at a minimum of six months out of the country, but nobody seems sure.

If you do not have insurance, or cannot prove you have insurance, you will be subject to a penalty tax. “The rules may vary by state. Therefore, it is safe to say that Obamacare is a moving target right now. [As it stands], when fully phased in in 2016, the minimum [penalty] tax will be \$695 per person. The tax will be higher for many people,” Maloney says. “When phased in, it will be 2.5 percent of household income that exceeds the income threshold for filing a tax return. ... And take note: per the [U.S.] Supreme Court, this is a tax, not a penalty, and will be administered by the IRS.”

Indeed, wait and see seems to be the standing phrase, but it makes planning harder.

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Cover Your Bases

So what should crew be doing? Some, like Slee, tend to think the captain should be responsible for the crew. "There has been a noticeable change in crew expectations over the last decade — it used to be 'pay-as-you-go,' but now there is tacit acceptance that the yacht captain is responsible for his or her crew," he says.

But not everyone agrees. "Yacht crew are just a little more diligent now; they don't automatically assume the owner will take care of them anymore.

Bottom line, education and professionalism have increased dramatically," says Bononi. He stresses that it's up to each individual to make sure that they have the necessary coverage for their specific needs, even if that means buying additional coverage over and above what the vessel provides.

And the sooner you start, the better. "Health insurance only gets more expensive the older you get, so getting on board early with a comprehensive health policy can help with some of those future costs," says Slee.

"It's imperative to offer captains and crew a benefit-rich crew medical insurance policy, which offers coverage 24/7/365, during work on board and time off — some crew medical policies also

extend the coverage to land-based family members," says Maria Karlsson of Superyacht Insurance Group in Fort Lauderdale and St. Maarten. "The P&I Insurance 'Medical Payments Section,' on the other hand, covers captains and crewmembers 'while in the employment of the Assured and signed onto the yacht, ashore and afloat,' as it says in the American Yacht Form R12 policy wording, and may not cover the crew during vacation time or if doing rotational work. The P&I coverage is not solely sufficient to rely on as crew medical insurance, and it doesn't provide the same level of medical and accident benefits than a separate crew medical policy."

The crew health insurance policy should act as a primary to the P&I and should pay claims on a first-hand basis. Karlsson points out that some P&I insurance policies that include the "Medical Payment Section" also provide coverage for "Disability Income Insurance" and "Accidental Death and Dismemberment" (AD&D). It may not, therefore, be necessary to also have those benefits included in a separate crew medical insurance policy. However, it's important for captains to review the P&I policy to make sure that the "Medical Payments Section" is included and that the limits of insurance are sufficient, or else it's advisable to increase the limits or add a secondary policy that includes benefits that are deficient.

"My advice is to attentively review the yacht's P&I and the crew medical policy together to make sure that, combined, they offer adequate benefits and coverage limits to protect the captain and crew," Karlsson says. "The P&I clubs have grouped together to be in full compliance with the MLC, 2006, in accordance to the vessel's flag state, but it's wise to ask the P&I club for a document and keep it on file to be certain."

Other issues to keep in mind — if Americans are struggling to get their arms around nationalized insurance, other countries have had it forever, so crew from countries with national health care have another reason not to think about all this — they never had to. "Aussies, Brits and Kiwis tend to say, I'm on National Health, all I have to do is get back home, so they run out and buy some cheap travel insurance," says Dietz. "But most travel insurance cover is over after just a few weeks and might not cover the incident." As Bononi says, "We just need yacht crew to talk to people who really know what's going on."

"If you're a captain relying on your P&I club, you need to read it very closely; contact the P&I club in writing and get written confirmation [of coverage] directly from them," says Dietz. And if you're crew taking a new position, check the yacht's insurance package and make sure you're covered from all sides. **DW**

