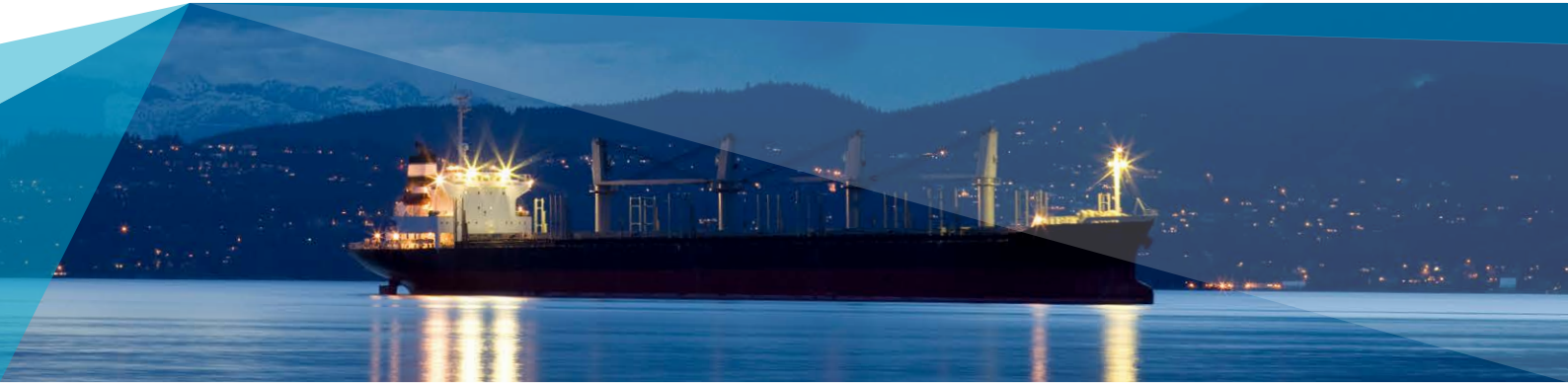


# OWNER ARRANGED MORTGAGEES INTEREST INSURANCE (MII)/MORTGAGEES ADDITIONAL PERILS POLLUTION (MAPP) INSURANCES



## Should an owner ever be allowed to arrange mortgagees interest insurance/ mortgagees additional perils pollution insurance on behalf of the mortgagee?

An issue which continues to be raised periodically by borrowers or their broking agents relates to the mortgagee's supplementary mortgagees interest insurance (MII) and mortgagees additional perils pollution insurance (MAPP) and whether it is acceptable for the borrower to arrange these insurances on behalf of the mortgagees.

By way of background both these insurances (and certain others) are arranged in the name of the registered mortgagee or the security trustee acting on behalf of the financing syndicate. Whilst the mortgagee(s) are the specified assured parties in the policies, the borrower is typically responsible for any premium costs. It is for this reason a borrower/owner occasionally wishes to intervene, optimistic they can negotiate premium savings.

The default response for a mortgagee in the vast majority of occasions should be an emphatic no, it is not best practice or even good practice to allow the borrower/owner to arrange any supplementary insurances on behalf of the mortgagees in the vast majority of scenarios.

## POTENTIAL PROBLEMS WITH OWNER ARRANGED MORTGAGEES INTEREST INSURANCE:

MII responds in the event a peril covered on a primary policy (usually hull and machinery or war) is declined by the primary insurers for certain specified reasons resulting in a financial loss to the mortgagee, which is recoverable from the MII policy, provided the MII policy conditions are met.

The following are some of the reasons why an MII policy proposed by the borrower should be rejected:

- Privity of the assured will jeopardise a claim settlement:

MII responds amongst other things following the non-disclosure or misrepresentation by the owners or any of their agents. As such, in the event the primary claim is rejected due to an alleged misrepresentation or non-disclosure by the owner's broker then the resultant MII claim is likely also to be rejected as the MII loss was caused by the action or inaction of the mortgagee's agent, albeit whilst acting in their capacity as agent of the owner. At the very least this merging of roles will further compound the claim negotiations, at best resulting in MII insurers delaying settlement whilst the matter is investigated. A more likely outcome is a compromised (i.e. reduced) MII settlement or an outright refusal to settle either the primary owner's claim or the resultant mortgagees interest claim.

- A servant cannot serve two masters:

Allowing the owner's broker to arrange the corresponding MII policy at the instruction of the owner results in a number of actual and perceived conflicts of interest which are detrimental to the mortgagee and in some circumstances also detrimental to the borrower:

- An owner's broker instructed to arrange the MII on behalf of the banks will undoubtedly be under pressure from the owner to arrange MII to comply with the terms of the loan agreement at the cheapest possible cost, ignoring any coverage considerations. This will result in cover being arranged by the owner's broker on the most basic MII wordings available rather than a more comprehensive wording used by an MII specialist. This may be a conscious decision or merely out of ignorance as the enhanced MII wordings are written by an MII specialist broker and as such are typically much broader in scope and coverage than "standard" wordings.
- An owner's broker seeking to obtain the cheapest terms may choose to arrange the MII policy as part of a package policy covering for example hull, hull interests, war, and MII.

This is detrimental to both borrowers and mortgagees as it raises a clear conflict of interest. To elaborate, in the event of an incident the claims leader of the package policy is

confronted with the dilemma that if they refuse the primary claim to the borrower for the full claim amount, then a much lower amount is potentially payable to the mortgagees. Whilst this may seem of no concern to the mortgagee the likely outcome is that pressure will be put on the mortgagee by the borrower not to accept the MII settlement whilst the borrower pursues the insurers through the legal system endeavoring to collect the full amount. With a separate MII policy the mortgagee can recover their net loss from their own policy leaving the owner and/or the underwriters of the MII policy to pursue the primary insurers independently or collectively if they feel a recover is achievable.

- Lastly, in the event of a claim or a foreclosure situation, the preferred outcome of the owner and the mortgagee may diametrically conflict. If the owner is permitted to arrange the MII policy then the mortgagee is reliant on the agent of the owner to impartially protect the interests of the mortgagee whilst potentially under pressure from the broker's primary client (the owner) to protect their position. This leaves the mortgagee either reliant on an agent whose priorities may be elsewhere or to undergo expense of identifying and appointing an independent specialist to protect their position.

All of these potential problems and pitfalls can be avoided by simply saying "no" to a request from the borrower whose request may seem innocuous at the start of a transaction.





## MOVING ON TO MORTGAGEES ADDITIONAL PERILS POLLUTION (MAPP)

MAPP responds in the event the collateral asset is held responsible for a major oil spill for which the pollution limit of liability provided by the liability insurer proves insufficient. The subsequent seizure of the vessel or the total loss proceeds to contribute towards the clean-up costs, and the resultant default in the debt servicing allows the mortgagee to recoup the MAPP policy sum insured, being the amount advanced to the borrower.

Therefore, unlike MII, the benefits of the mortgagee arranging the MAPP insurance themselves may appear less obvious as the circumstances leading up to the default in debt servicing are clear cut. However, there is one fundamental reason why a mortgagee should still insist they arrange their own MAPP insurance:

An MII and MAPP policy placed by a specialist acting for a mortgagee will ensure the claims leader of both the MII and MAPP policy is the same. This ensures that should an incident occur the claims leader of the MAPP policy will look at the circumstances objectively rather than potentially looking to avoid the claim, passing the claim to the other supplementary (i.e. MII) insurers .

To elaborate: 95% of the world's international trading tonnage is insured against its primary liability risks in one of the protection and indemnity clubs (the so called IGA group). The IGA group clubs are mutual (i.e. owned and run by and for the benefit of the owner members). IGA clubs will look favourably on claims,

looking to pay wherever possible. However payment by the protection and indemnity club of a liability claim does not automatically mean a subsequent loss to the mortgagee will be viewed as an MAPP incident. Confronted with a multimillion dollar loss on the MAPP class of business, a class viewed and rated as risk adverse, could easily result in the MAPP claims leader rejecting the claim alleging the responsible vessel was, for example, unseaworthy, out of class, outside her pre-agreed trading area, or any one of a number of reasons which would push the claim towards the MII insurers and away from the MAPP insurers. MII insurers for their part would conversely decline the claim arguing the IGA club had paid and therefore the correct policy the mortgagee should look to for settlement is the MAPP. This subsequent delay, dispute, and potential litigation is completely avoidable if the mortgagee's specialist broker arranges both policies with the same claims leader. As claims leader for both MII and MAPP the underwriter will look at the merits of the claim objectively deciding impartially whether the claim should be considered an MAPP incident or an MII incident.

The above document illustrates conclusively why a mortgagee should reject an owner's request to arrange the MII/MAPP insurances protecting the mortgagee in all but a small minority of cases.

Marsh Maritime Advisory are familiar with the both MII and MAPP insurance policies with regards to policy wordings and insurance markets and can assist mortgagees and other financial institutions in arranging suitable supplementary insurances to protect the funds advanced against a collateral asset.

For further information on this matter, please email Marsh Maritime Advisory on [mma@marsh.com](mailto:mma@marsh.com) or contact your local Marsh representative.

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