



SHIPOWNERS

SECURITY FOR SMALL & SPECIALIST VESSELS



▶ Death of a diver

In April 2012, our Member's vessel was transiting Mexican waters when the crew noticed an unusual noise from the port azimuth thruster. A diver employed by Charterers' sub contractors was sent down by the Master to investigate the problem. Whilst underwater, the diver's umbilical cord became trapped when the propeller moved. He was ordered to bail out, but continued to try and untangle his cord. A standby diver was sent down to rescue him, but he sadly died of asphyxiation.

Category
Offshore

Vessel type
Dive Support Vessel



Insight

The Supplytime 2005 charterparty is a 'knock for knock' agreement whereby 'Owners' Group' and 'Charterers' Group' each take responsibility for damage to their own property or injury or death to their own employees regardless of fault. Charterers' Group includes the Charterers' contractors and subcontractors. In other words, the death of the diver was the Charterers' responsibility in accordance with the knock for knock regime.

The knock for knock principles apply even where there has been negligence (however serious) causing the loss. The purpose of the knock for knock regime is to save time and expense in connection with casualties by setting out a simple system whereby each party assumes responsibilities for its own property and personnel regardless of fault and insures against such risks accordingly.



At the time of the incident the vessel was chartered out on Supplytime 2005 terms, subject to English law and London arbitration. Charterers sub chartered the vessel and Sub Charterers, in turn, entered into a further contract with a diving company; the employers of the diver.

Outcome

The family of the diver (who was a US citizen) commenced proceedings in the US against our Member as well as Charterers and sub charterers, seeking compensation in the sum of US\$ 1.5 million. They also placed the vessel under arrest as security for their claim. The Club was able to lend its full support to our Member by providing a Letter of Undertaking for US\$ 1.5million to secure the release of the vessel. In close liaison with our Members, we were also able to take control of matters by engaging in tough negotiations with the Charterers and exerting pressure through commencing arbitration proceedings against them in London in accordance with the knock for knock agreement. As a result, the Charterers reached a direct settlement of the claim with the family of the diver allowing us to withdraw the arbitration proceedings with a contribution from the Charterers for our costs.

Observations

The principles of knock for knock agreements are recognised in English law and the Club is frequently successful in upholding those principles without argument from the other side. However, regrettably, challenges are not uncommon particularly where a relatively large claim has been brought. The Club will always seek to uphold the principles of knock for knock, whatever the size of the claim, as these are a vital feature of contractual and insurance arrangements for our Members.

