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The Shipowners’ Club is pleased to provide this updated guide to additional cover for offshore and specialist craft, which we hope will be an easy reference not only for operators, but also for brokers and other advisers.

This guide examines the risks faced by operators of offshore support vessels, dredgers, construction and maintenance barges, salvage vessels and pipe and cable laying vessels. It is intended to help owners identify potential problem areas when bidding for offshore or specialist contracts, so that an owner and his broker can ask the right questions well in advance, enabling us to find the best insurance solutions.

The Club recognises that a vessel operator’s top priority is to get vessels on charter and keep them working safely, in order to secure a return on investment for shareholders.

Sometimes advice from third party advisers may contain all sorts of legal language and restrictions, to the point where operators get frustrated and wonder if the advisers really understand their business and what they are trying to achieve. In turn, this can lead to the advice not being followed, which can have disastrous consequences.

For this reason, the Club makes every effort to get to know an operator’s business so that obstacles can be overcome in the ever-changing world of offshore contracts and maritime law.
As a member of the International Group of P&I Clubs, which insures over 90% of the world’s ocean going tonnage, the Shipowners’ Club has privileged access to a strong network of brokers and insurers, allowing us to come up with innovative insurance solutions to meet an owner’s needs.

The Rules of the Shipowners’ Club are aligned with those of other Clubs in the International Group. Some risks are common across all types of vessel: collision, pollution, personal injury, damage to docks and other third party property, for example. These risks are covered by the Club and are set out in Part II of the Club Rules.

Offshore and specialist vessels such as dredgers, vessels engaged in salvage or construction projects often operate in a different environment which brings additional risks, not faced by the majority of commercial vessels, where contracts entered into will specify an apportionment of risks between operator and charterers/contractors.

Some risks fall within standard Club cover and some do not. This guide should help operators distinguish between them so that adequate protection through the Club can be put in place.

The Club will cover an owner for liabilities assumed under contract, so long as the contract apportions liability on the basis of common law or contains a clean ‘knock for knock’ provision, meaning that each party accepts liability for its own property damage, injuries to its own personnel and direct third party liability.

Where a contract does not contain such provisions, the Club can work with the owner to suggest amendments to those terms or, if necessary, put in place insurance cover against the contractual obligations imposed by such contracts. This cover is referred to as ‘contractual liability cover’, and it can be purchased on a one-off basis or alternatively the Club may consider offering it on a blanket ‘open cover’ basis.
Offshore contracts such as Bimco Supplytime 1989, 2005 and 2017 versions, as well as Towcon and Towhire, include widely drafted ‘knock for knock’ clauses that clearly apportion liability between operators and charterers. This ‘knock for knock’ provision extends to the other contractors and sub-contractors of the operator and charterers.

However, many charterers insist on amending these industry standard forms, or using their own charter party forms, and these may include terms and conditions that are not ‘knock for knock’. Charterers’ contracts are sometimes drafted by lawyers who have very little experience in the real world of offshore operations.

Sometimes charterers amend the wording of their standard or ‘last done’ contracts without drawing attention to the changes. What appears to be the same contract as before may in fact contain some nasty surprises.

Charterers are often prepared to listen to a well-reasoned argument on certain points, leading to a contract that, while not perfectly ‘knock for knock’, is still acceptable to the Club. Where this requires an owner to buy additional contractual liability insurance, it may be possible to adjust the day-rate for the vessel at the contract bidding stage to take account of such premium. After winning a contract, if an owner discovers that it contains wording with exposure to uninsured risks, it may be possible to buy additional insurance to cover this exposure, though this may be more expensive.

Overall, the review of offshore contracts is very much a joint venture between the Club, the Member and the broker. This is why the Club should be involved at an early stage, to help owners identify the problems and work around them together.
If a vessel collides with a third party vessel, then the liabilities are governed by international maritime law and will fall within normal Club cover. However, if the vessel is under contract to an oil major and comes into collision with another vessel working in the same field, then what happens?

Clause 14 of Supplytime 2005 is a useful model to explain this (Clause 14 of the new Supplytime 2017 is similar).

Clause 14(a) is a good preamble defining ‘Owners’ Group’ and ‘Charterers’ Group’. The definition includes the charterer’s customers i.e. the client for whom they are working. If a vessel is working for a construction or dive company, the indemnities provided by the charterers will flow up as well as down the contractual chain. In the 2017 version the definition is expanded further to also include the Charterer’s clients, contractors and sub-contractors ‘of any tier’ (i.e. regardless of how far along the chain they are).

Clause 14(b) (ii) says:

“Notwithstanding anything else contained in this Charter Party... Owners shall not be responsible... for... damage to... the property of any member of Charterers’ Group, including their Offshore Units”.

This protects owners from claims for damage to all property and equipment in the field, provided there is a contract between the owner of that equipment and the vessel’s charterers, which has the effect of making that party a member of ‘Charterers’ Group’.

This important clause goes on to say that charterers indemnify the vessel owner in respect of such claims, meaning that if one of the charterer’s other contractors claims from the vessel owner directly, then such costs can be claimed back from the charterers.

One further very important part of the Supplytime indemnity clause is that it will still apply:

“even if... such loss... [or] damage... is caused by... act, neglect or default of Owners’ Group... [including] the unseaworthiness of the vessel”.

This wording is critical to the success of the ‘knock for knock’ concept. Without these words, charterers and their lawyers would argue that operators should be liable for damages to their property, including huge consequential losses if charterers could show that the claim was caused by the operator’s negligence, act or default.
Sometimes the words “even if caused by...” are amended to read: “unless caused by...” which completely changes the meaning and prejudices the whole intent of a ‘knock for knock’ contract.

Some charterers’ liability clauses state that a ‘knock for knock’ concept will apply ‘unless claims are caused by gross negligence or wilful misconduct of operator’.

The problem is that these words are subject to different interpretations in different jurisdictions, and are also highly subjective. Such wording should be resisted.

The whole purpose of the ‘knock for knock’ concept is to provide a clear allocation of liabilities between operators and charterers (and their other contractors), irrespective of who is at fault.

In contrast to many bespoke charterers’ contracts, the Supplytime indemnity clauses do not refer to third party liabilities. The Club will cover a collision between an insured vessel and another vessel in the field, which is not owned by or on contract to the charterers, in exactly the same way as the Club would cover an insured vessel in collision with a third party vessel in a traffic separation scheme.

Sometimes offshore contracts contain wording making operators liable for third party liabilities ‘arising out of the operation of the vessel under this contract’. Such wording should be resisted, as it is not ‘fault based’: the vessel could be held liable for something for which the vessel is not to blame.

To summarise this point, if the contract is silent on third party liabilities, then that is acceptable. However, if the contract mentions such liabilities, then these should be apportioned on a ‘knock for knock’ basis; otherwise additional contractual liability cover will be required.
In most countries, the applicable maritime law gives vessel operators the right to limit their liability for property damage and personal injury, according to a formula based on the gross tonnage of the vessel. However, different laws apply in different countries and can be applied inconsistently.

Club cover includes a provision that the Club will only reimburse Members up to the sum to which they would have been entitled to limit liability, under the applicable law (unless of course, in law, the operator loses his rights to limitation). If a contract provision waives such statutory right to limit liability, then Club cover would generally not reimburse any sum above the limitation amount.

Clause 14(d) of Supplytime 2005 and Clause 14(c) of the Supplytime 2017 are ‘right to limit’ clauses and their wording should be strictly followed.

Charterers will sometimes ask ‘why should support vessel operators be entitled to limit liability if they cause US$ 20m in damages?’ One answer is that it is based on the risk/reward ratio – the support vessel may be earning thousands of dollars per day against hundreds of thousands per day for the rig owner, and millions per day for an oil company. Consequently charterers, rig operators and their insurers can absorb large losses in contrast to a support vessel operator. Also, the oil company and rig owner will already have their own insurances, so there is little point in forcing vessel operators to double-insure the risk.

If charterers request that the right to limit is waived, this request should be declined. If the waiver cannot be removed, it may be possible to agree to a fixed figure limit and buy contractual liability insurance up to that amount. Occasionally this limit will correspond to the insurance deductible of the oil company or rig owner.
The Supplytime 1989 form contained an MHH in Appendix C. However, the Supplytime 2005 and 2017 forms do not have MHHs because the unamended ‘knock for knock’ provisions are considered to give operators sufficient protection against claims from other parties working in the field.

However, in some cases charterers refuse to extend their indemnity to include all of their other contractors, sub-contractors and/or customers. In such a case, an MHH is still a useful tool to have in place.

If the vessel damages a rig and there is no appropriate indemnity in place, the vessel operator could find himself directly liable to the rig owner, not only for the cost of repairs but also for lost revenue, which could quickly add up to millions of dollars.

For this reason, if a charterer’s ‘knock for knock’ clause does not expressly include his contractors and sub-contractors, (including the owners of any rig to which the vessel is ordered), then charterers should be pressed to agree to an MHH. If they refuse, then it may be possible to negotiate a fixed limit for rig damage (for example, to a figure equivalent to the rig owner’s deductible amount), with a full indemnity from rig owners above that amount. The Club could then assist in buying specific insurance cover for this risk.

Close attention should be paid to the wording of MHHs, to ensure that they include not only property damage but also personal injury and consequential damages.

In summary, all contracts should contain a carefully worded indemnity in respect of charterers’ property, and also in respect of the property of their contractors and sub-contractors. If they do not, then ideally an MHH should be put in place.
Personal injury claims can be very expensive, as well as having an unacceptable human cost.

A supply vessel working in a busy field will see visitors not only from charterers, but also from any number of other people who are also working in the field. Charterers will often use the vessel as a taxi or to accommodate their personnel. Some of these individuals may be from countries where large personal injury awards are commonplace.

It is doubtful that the Master knows who all of these people are working for, or whether suitable indemnities are in place between their employers and the vessel. Therefore it is important to ensure that sufficient contractual protection is in place to indemnify the vessel from claims made by such people, albeit Club cover can respond, in common law, for the liabilities of the vessel to persons other than passengers and crew (Rule 2, Section 3).

The indemnity wording of Supplytime provides adequate protection, as Clause 14(b) of the 2005 form and (Clause 14(a) of the 2017 form) states:

“Owners shall not be responsible for... personal injury or death of any member of the Charterers’ Group”.

Ideally all non-Supplytime contracts should contain a similar wording (including the definition of ‘Charterers’ Group’) to protect the vessel not only from claims brought by charterers’ personnel, but also from all other people to whom the vessel might cause personal injury. This would include such people accessing the vessel temporarily and those working on any offshore installations the vessel may be servicing.

This may seem straightforward, but there have been cases where a charterer had indemnified the operator for their personnel, but only when they were on board the operator’s vessel and this indemnity then ceased when they were not aboard the vessel. The operator asked “what happens in the transition stage between the vessel and the rig, if they get hurt in a personnel basket or fast rescue craft, or when jumping from the vessel to a rig landing stage?” Instead of having lawyers arguing whether someone was ‘on’ or ‘off’ a vessel at the precise moment of injury, it is much better to have a clear indemnity in place so that no such arguments can arise.
Rule 2, Section 10 of the Club Rules states that the Club will cover liability arising out of towage by the vessel, but only if such towage is carried out in accordance with approved industry contracts such as the UK, Netherlands, Scandinavian or German standard towage conditions; Lloyd’s Standard Form of Salvage Agreement (‘LOF’); Towcon or Towhire.

Where any other towage contract is used, it should include a ‘knock for knock’ clause covering the object towed and cargo on board or associated with it, as well as personal injury, death of charterers’ (the ‘hirers’) personnel and also third party liabilities arising out of the tow.

In many cases, especially working in oil fields, there will be no direct contract between the vessel and the object towed. Care should be taken to ensure that all objects towed by the vessel are covered under the ‘knock for knock’ provisions of the contract entered into with the vessel charterers. This must include an indemnity in respect of all property and people of charterers’ contractors and sub-contractors.

In FPSO and vessel berthing operations, the contract should include a clause stating that all towage shall be performed either on terms such as UK, Netherlands, Scandinavian or German standard towing conditions, or on ‘knock for knock’ terms. The clause should include an indemnity from the charterers in case the owners of the towed object, or third parties, bring claims directly against the towing vessel as a result of the towage.
If a vessel performs salvage duties to save life at sea, then normal Club cover remains in place. However, Part V, Rule 28 states that there shall be no recovery from the Club where the activity of vessels “intended for salvage operations”, causes claims during salvage operations.

Most offshore vessels and many harbour tugs are capable of carrying out salvage duties and have equipment fitted to perform such activities. It is important to let the Club know in advance if any vessels are intended for salvage operations.

Rule 4 sets out the cover available for such specialist salvage vessels, upon prior agreement by the Club. In brief, this reinstates standard Club cover during the salvage operation and also covers oil pollution from the vessel being salvaged, as well as covering third party liabilities arising out of salvage operations.

This cover will have its own limits and an additional premium may be required, especially if cover is requested to cover the actual third party liabilities arising from a salvage operation.

Offshore contracts often require operators to provide salvage services to vessels and equipment belonging to charterers and their contractors, and that operators waive any claim for salvage so that such services will be provided for no payment, other than the daily hire. Clause 18 of both the Supplytime 2005 and 2017 forms contains important protection for operators in such circumstances.
Certain operations carried out by vessels can be so unusual that the risks associated with them fall outside standard P&I Club cover. These operations are known as ‘specialist operations’ and they are set out in Rule 28. These include, for example, dredging, cable or pipe-laying, construction or maintenance work, and pile driving. However, due to the ever-changing technology of offshore operations, this definition is a guide only and not a definitive list.

Standard P&I risks such as personal injury, pollution or collision remain fully covered during such specialist operations. What is not covered are claims related to the special nature of the operations, or loss of or damage to the plant or equipment on which the specialist operations are being performed. For example, if a cable-laying vessel has a collision while laying a cable, that liability would still be covered in the normal way so long as the collision did not result from the specialised nature of the operations. However, if the vessel causes damage to the cable, liability would not be covered by standard P&I Club cover.

The Club can provide special cover for the liabilities arising out of specialist operations, for example the liability to third parties arising during a dredging operation in the event that the dredge snagged a third party cable during an operation. Specialist operations can also extend to the activities of commercial divers or remotely operated vehicles (ROVs) operating from an offshore vessel.

Sometimes it may not be clear whether a vessel is engaged in specialist operations or not. If in any doubt it is wise to check with the Club for clarification.
Vessels operating in and around oil fields are exposed to many potential pollution risks.

A vessel may collide with platforms, ‘live’ risers or FPSOs, or might drag an anchor over any number of sub-sea structures, including pipelines, all of which may result in serious pollution. Standard P&I will cover pollution from third party property and vessels, provided the vessel is liable under common law. However, the unique physical and contractual conditions in and around oil fields mean that special care should be taken to address pollution liability.

Once again, Supplytime contains a model pollution clause at Clause 15 in the 2005 and 2017 forms. This apportions pollution liability so that operators accept liability for pollution from their own vessel (except from cargo) and charterers accept liability for pollution arising from all other sources, even if this is caused by the act, neglect or default of operators.

Charterers will often try to delete the last few words ‘even if...’ but this should be resisted.

A further point to consider is that operators often have to rely on charterers to provide a ‘field chart’ showing the location of pipelines, risers, pipeline manifolds, etc. However, the charter party may contain a clause stating that charterers accept no liability whatsoever for the accuracy of such information. This means the onus rests with the Master and operator to ensure the safety of all anchoring or mooring locations.
Offshore and specialist craft can carry some very expensive items of cargo and/or property. It is important to ensure that contracts are properly drafted to indemnify the operator from loss of or damage to cargo and/or property, no matter who owns it.

Some contracts are silent on cargo liabilities, but elsewhere there may be an ‘owner to provide’ clause, which makes the Master responsible for lashing cargo. In the absence of a clear reference to “cargo” in the indemnity clause, this could leave operators facing a large claim for an item of cargo lost overboard.

Charterers may ask Masters to carry ‘items of equipment’ from one country to another nearby country, for delivery to one of the charterer’s other subsidiaries or to a third party. An example would be from Nigeria to Equatorial Guinea or Angola. This may seem perfectly innocent, but in the eyes of local customs officials, this equipment is ‘cargo’ and all customs formalities, including form-filling and payment of duty, must be strictly complied with, otherwise the authorities could take action against the carrying vessel.

In summary, it is important that contracts include a clause indemnifying operators from ‘all costs and consequences’ of carrying cargo.
The Club covers, in Rule 2, Section 12, liabilities relating to the wreck of an entered vessel, including the removal, lighting and marking of such wreck, but only where this is required by applicable law.

In most cases, charterers’ wreck removal clauses will require operators to remove a wreck and/or cargo dropped from a vessel if such removal is ‘deemed necessary’ by charterers or their clients. This wording could potentially enable charterers to call upon the operator to carry out very expensive wreck removal operations, even where the wreck does not pose any real threat to sub-sea equipment.

In certain countries, local authorities may ask an operator to ‘sign over’ his interest in a wreck to a local authority or company. If this is proposed, it is important to take proper legal advice before agreeing.

A contractual extension can be arranged when a contract requires an operator to provide a wreck removal contractual provision.
Charterers often ask operators to provide a waiver of subrogation from their insurers in favour of charterers and their contractors, and that those persons be named as ‘co-assured’ or ‘joint assured’ on the operator’s insurances.

These requests may seem routine, but there are important points to consider. Firstly, sometimes those requesting to be named as a co-assured are not sure what they are asking for when making the request. This can cause confusion.

The Club can only offer co-assurance on a ‘misdirected arrow’ basis, meaning the Club can name charterers as a co-insured, but this will only protect them against claims brought against the charterers, where such claims should have been brought against the vessel owner. An example could be where a member of the vessel’s crew decides to sue the charterers because they are a well-known oil major.

Charterers may think that, by being named/waived on an owner’s insurance, this reduces the need to buy their own insurance. This is incorrect and charterers should be reminded that they will need to arrange insurance for their own insurable interests.

Charterers often request that an owner’s insurance includes a ‘cross-liability clause’. Once again, this concept is widely misunderstood and the simple answer is that the Club can only cover charterers on the above ‘misdirected’ arrow basis, and cannot provide such ‘cross-liability’ clauses.
We hope that this guide will assist Members and their brokers to identify the risks inherent in offshore operations and contracts. It is our firm belief that early consultation with the Club will enable us to provide the guidance and tools necessary to come up with workable solutions to such risks.
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