

June 2009



**TO MEMBERS OF CLASS 3
PROVIDING TOWAGE SERVICES**

The Britannia Steam Ship
Insurance Association Limited

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Dear Sirs

Liabilities arising from towage operations – towage by an entered ship

As you are aware, the Association covers a Member's liabilities arising from an entered ship providing towage services. However, under the Rules of the Association certain requirements, in particular the allocation of risk under towage contracts, must be fulfilled for cover to apply.

The purpose of this circular is to highlight the most important requirements in order for cover to apply; these are set out as follows:

- Cover for a Member's liabilities, costs and expenses arising out of towage by an entered ship is provided under Rule 19(14) (B).
- The Rule requires that an entered ship (tug), specifically designed or converted for the purpose of towage, is declared as such to the Managers.
- The Rule also requires that the towage contract has been approved by the Managers in writing prior to the commencement of the tow. For example, contracts such as the UK, Netherlands and Scandinavian standard towage conditions would generally be accepted by the Managers, as are contracts containing similar exclusions of liability in favour of the tug.
- Unless the Managers have agreed the towage contract in writing, there is no recovery for liabilities arising out of towage. However, if such written approval has not been obtained, the Committee may, in its discretion, approve the contract, provided that in all the circumstances the terms are reasonable, and liability falls within the agreed scope of cover. It is stressed however that such approval is strictly discretionary.
- Finally, the Rule provides that for there to be any recovery from the Association in respect of liability for loss or damage to or wreck removal of, a towed ship or object or any cargo or other property carried thereon, whether the liability arises under a contract or otherwise, then the Managers must have agreed in writing to cover such liability.

Approval of Contracts

The underlying requirement for a contract to be approved by the Association is that the contract should contain "knock-for-knock" terms, or better. This means that the contract should provide that each party, which in this case will be either the tug or the towed vessel, shall only be responsible for any loss or damage to his own ship, its cargo or property and/or loss of life or personal injury to its crew. In addition it should provide that the towed vessel has no recourse against the tug. As mentioned above, contracts such as TOWCON, TOWHIRE and UK Standard Towage Conditions, fulfil these requirements. The contract should also maintain or endeavour to establish, the tug's right to limit liability as appropriate under national law or convention.

Certain jurisdictions do not allow "knock-for-knock" agreements in whole or in part. In circumstances where the "knock-for-knock" concept is unlawful or unenforceable, towage contracts may still be covered by the Association provided that they do not impose on a Member any liability arising out of any act, neglect or default, of the owner of the tow, or any other person, and that the liability of the Member is limited to the maximum extent possible under the law.

Insofar as is possible, the contract should also include a suitably worded Himalaya Clause, providing that the defences in the towage contract are also for the benefit of the tug's own employees, servants and sub-contractors.

Additional Contractual Cover

In the event that a Member's towage contract is not approved by the Association, or the contract does not comply with the above principles, the Association nevertheless can provide additional cover up to specified limits. Such cover must be arranged prior to towage operations, and will involve additional premium. It may be arranged either prior to a particular towage operation or on an annual basis.

The additional cover that the Association is able to offer focuses on tugs providing towage services where the contract for the services is unilaterally imposed on the parties and is not subject to a "knock-for-knock" agreement. Cover can also be provided where it is the custom of the port that no formal contract applies between tug and tow for harbour towage.

The terms and cost of the additional cover are available from the Managers. For further information, including questions on cover for towage arrangements not detailed in this circular, please contact the Managers.

Yours faithfully
Tindall Riley (Britannia) Limited
Managers

This Circular should be placed in the Binder in Section 1. General.