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# Standard Bulletin

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The Standard
for service and security

The Standard

## Renewal

The club has recently concluded its 2017 renewal. Here we provide an overview.

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In the last 18 months, claims across the P&I market have reduced. This is partly due to a continued reduction in global economic activity and, in the case of The Standard Club, a result of the cancellation of poorly performing business over recent years.

The club has recognised its current surplus by returning 5% of estimated total premium for the 2016/17 policy year. This has been returned as of right to all mutual members entered in the year and irrespective of other considerations such as renewal into 2017 or record; not all clubs have been able to make a return. The club has remained at the forefront of those considered economically secure and has one of the lowest published release calls of any International Group club.

In addition to the above, the club did not set a general increase for the 2017 renewal. As with all recent renewals, the club has renewed the majority of its members and takes the view that quality of operation should remain a key condition for entry. The club has welcomed some new members and, as at 20 February 2017, insures approximately 150mgt, with a Standard Group income of approximately $310m. The club anticipates that existing members will continue to add new tonnage as it is acquired and, in renewing, a number of members have agreed to add additional ships to their entries as these arise during the year.

The club's small craft class, Standard London, had a very successful year adding additional tonnage. Likewise, the Defence and War classes had successful renewals.

The Standard Club remains very active in the area of offshore and specialist craft with a flexible reinsurance programme offering limits up to $1bn. In addition to specialist business, this allows the club to be flexible towards its traditional blue-water members who sign contracts beyond normal poolable cover.

The club is focused on underwriting discipline but recognises that the generation of underwriting surpluses is inefficient. The club's goal is to break even, with investment return an added bonus.

The club's investment return at 20 February 2017 was 3.1% (unaudited). The Standard Club is 'A' rated by S&P.

### In this edition

# From the Editor

As we mark the conclusion of the renewal for the 2017/18 policy year, it is opportune to reflect upon the scope of and some key concepts underpinning club cover.

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When the protection clubs, predecessors of the modern protection and indemnity (P&I) clubs, were formed in the latter part of the 19th century, the risks covered were broadly confined to liabilities in respect of loss of life and personal injury, and the risk of running down other vessels which did not fall within the cover of the marine policies then available. Over the course of decades, the scope of club poolable cover has evolved. A perusal of the club's 2017/18 policy year rulebooks reveals how much the list of covered risks has expanded since the formative years of the club.

As the scope of club cover evolved, at least four developments followed, which are addressed in this edition.

First, the emergence and refinement of key concepts underpinning club cover, two of which are the pay-to-be-paid rule and the doctrine of discretionary claims. In this edition, Leanne O'Loughlin revisits the pay-to-be-paid rule, a fundamental feature of club cover, and the inroads that have been made into the rule in recent years. In a separate article, James Bean demystifies the mechanics behind the handling of discretionary claims within the club.

Second, the rules of cover underwent refinement. Whilst in most cases, it is relatively straightforward whether a member's P&I cover will respond to a particular incident, there are occasions when the situation may be less than plain and the precise wordings of the rules need to be re-examined before cover may be confirmed. Sam Kendall-Marsden sheds light on the scope of club cover for wreck removal using several thought-provoking illustrations.

Third, heightened vigilance and pro-activity by the club. The expanding list of covered risks by the club may be attributable in part to the fact that the club monitors and responds in the interest of the membership to changes in world affairs, the manner in which trade is conducted and ongoing developments in legislation. In line with the club's ethos of proactivity and vigilance, Rupert Banks addresses the scope of club cover concerning the growing threat of cyber risks facing our members whilst James Bean and Conor Bays examine recent political developments concerning Brexit and address the related concerns of our membership in respect of cover.

Fourth, heightened levels of service by the club. One manner in which service standards are raised is the increased offerings to our membership both by way of additional non-poolable cover and the offerings of The Standard Syndicate. As to new offerings, Joshila Tailor provides her insight as an underwriter into the syndicate's latest offering of Fine Art and Specie cover. Another manner by which the club raises the bar is in its service delivery which effectively translates club cover into concrete assistance to our members.

The club's high level of service delivery is made possible by its extensive network of service providers who may be called upon to assist at any time and in virtually any part of the world. One such service provider is the CEGA Group which handles more than 40,000 medical assistance emergencies each year worldwide. Jody Baker of CEGA Group shares with our readers how CEGA can and do assist our members as a provider of technical medical assistance.

I wish you happy reading and a happy new 2017/18 policy year!

# Cyber risks and P&I insurance implications

As navigation and propulsion systems on board ships and offshore units become increasingly dependent upon computer technology, the threat of cyber attack has emerged as a potentially significant exposure for the maritime sector. In this article, we outline how standard P&I cover generally operates in respect of shipboard cyber risks.

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> In an age where cyber threats are becoming increasingly prevalent, shipowners are urged to be alert to the vulnerability of ships to cyber attacks.

### Vulnerability to cyber attacks

Modern vessel navigation has become increasingly dependent upon computers and computer software. Bridge systems such as ECDIS, AIS and GPS[1] are all now important and integral features of a ship's ability to navigate safely. In addition, DP[2] systems on board ships employed in the offshore sector are critical in ensuring that they can manoeuvre with precision even in harsh sea conditions.

All of these systems have been identified as being vulnerable to cyber attack. In the event that one or more of them were to be compromised, this could lead to a member incurring P&I liabilities such as collision, personal injury, property damage, pollution or wreck removal.

How would standard P&I cover operate in such a scenario?

### Poolable P&I cover

Other than the exclusion relating to paperless trading, there is no express cyber exclusion in the club's rules. As such, a member's normal P&I cover will continue to respond to P&I liabilities arising out of a cyber attack so long as the attack in question does not constitute 'terrorism', 'a hostile act by or against a belligerent power' or another war risk excluded under rule 4.3 of the club's rules.

Whether or not a cyber attack constitutes an act of terrorism for the purposes of the rules will generally depend upon the motivation behind it. In the context of war risks, terrorism is broadly understood to denote acts aimed to kill, maim or destroy indiscriminately for a public cause. Accordingly, if, for example, a cyber attack were to be perpetrated by an individual or group for the purposes of causing general disruption and for no public cause, then this would be very unlikely (without more) to constitute terrorism for the purposes of the rules and a member's cover will respond in the normal manner. However, in the event of any dispute as to whether or not an act constitutes terrorism, the club's board is given the power under rule 4.3 to decide and such decision shall be final.

If a cyber attack were to be executed against a ship by a government or organised rebels in a period of war or civil war, the war risks exclusion in the rules would be engaged.

A 'hostile act by or against a belligerent power', however, is not defined in the rules and, unlike terrorism, the club's board does not have the same discretion to ultimately decide what this means. However, such acts have generally been deemed by courts to arise in circumstances of war or civil war and to be perpetrated by governments or organised rebels.

Accordingly, if a cyber attack were to be executed against a ship by a government or organised rebels in a period of war or civil war, the war risks exclusion in the rules would be engaged. Otherwise, and subject to the remainder of the rules, a member's standard P&I cover could respond.

### Relevant extensions

In the event that a particular cyber attack does constitute 'terrorism', 'a hostile act by or against a belligerent power' or another excluded war risk, then the club's excess P&I War Risks clause (and, for special risks, the War Risks clause for additional covers) may respond but not to the extent that the cyber attack involves the use or operation of a computer virus as a means for inflicting harm. The intent to cause harm will be implicit as the cyber attack will already have been deemed to be terrorism or another war risk in order for the war risks exclusion in the P&I rules to have been triggered. Accordingly, these extensions will not respond in those particular circumstances.

Where a cyber attack does constitute an excluded war risk under the P&I rules and is excluded under the excess P&I War Risks clause (and under a member's primary war cover), the club's Bio-chemical Risks Inclusion clause provides a limited buy-back (for owned entries only) of up to $30m in respect of liabilities to crew as well as sue and labour expenses where the liability is directly or indirectly caused or contributed to by or arises from the use of any computer, computer system, computer software program, malicious code, computer virus or computer process as a means of inflicting harm.

However, cover under this extension is subject to certain exclusions, notably liabilities arising out of the use of the ship or its cargo as a means of inflicting harm. As such, in extreme cases where, for example, a malicious third party were to hack into the navigation controls of a ship and then deliberately steer the ship into collision with another ship or object, those crew liabilities and sue and labour expenses that would otherwise be covered under the clause would be excluded given that the ship would have been used as a means of causing harm.


### Conclusion

In an age where cyber threats are becoming increasingly prevalent, shipowners are urged to be alert to the vulnerability of ships to cyber attacks. The above is a summary of how standard P&I cover generally operates in respect of shipboard cyber risks. Naturally, each case will be considered individually based on the facts. Should members have any queries, please do not hesitate to approach your usual club contact.

1 Electronic Chart Display and Information System, Automatic Identification System and Global Positioning System, respectively.
2 Dynamic Positioning.

# What will Brexit mean?

The referendum in June 2016 saw the UK vote to leave the European Union (EU). On 17 January 2017, the Prime Minister, Theresa May, outlined the UK government's strategy for Brexit negotiations with the EU and reaffirmed her intention that Article 50, the legal mechanism by which a country formally exits the EU, will be triggered by the end of March 2017. From this date, the UK will have two years to negotiate its terms of exit with the remaining 27 EU member states.

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Matters have been complicated by the fact that on 24 January, the Supreme Court ruled that the UK government must first obtain Parliament's approval before sending the Article 50 notice, which could push back the proposed timings.

This article explores the potential Brexit scenarios.

### Article 50 of the Treaty of Lisbon

Although there still remains some uncertainty with regard to timing, if following Parliamentary approval Article 50 is triggered by the end of March 2017, the UK will then, unless all 27 states unanimously agree to an extension, have two years to negotiate its terms of exit. Whether the complex negotiations required to exit the EU can be completed within two years is questionable as there is no precedent.

Until actual departure, the UK is still an EU member subject to the same rights and obligations. This means, for example, that the rights of UK citizens and companies to exercise their freedom of movement and establishment will remain in full for the period of exit. Likewise, during the exit period, EU law will remain in force and will be applied by British courts whenever appropriate.

### Brexit: hard or soft?

There are several ways in which the UK can leave the EU. A hard exit will likely see the UK lose access to the single market, including freedom of movement and associated passporting rights for insurance companies across the EU. A soft exit would see the UK in a very similar position to the one it currently holds, ie maintaining its access to the single market and passporting rights.

Some potential exit outcomes are as follows:

**European Economic Area (EEA)/ Norway model**
A very soft exit could be achieved by adopting the model that is currently used by Norway. Norway is a member of the EEA but not the EU, meaning it has access to the single market and freedom to work within the EU. However, it does not hold a seat on the European Council.

**EFTA/Swiss model**
Switzerland is a member of the European Free Trade Area and has also negotiated a series of bilateral treaties with individual EU states. The EU has recognised the Swiss insurance regulatory regime as fully equivalent with Solvency II. However, if this model were adopted by the UK, the club may need to establish an EU-based branch or subsidiary in order to obtain the necessary licences to trade.

**Specific UK/EU trade agreement/ Turkey model**
Turkey is a party to the EU Customs Union. Turkey operates under a common trade policy and external tariff but, in exchange, is required to comply with the single market regulations. Such a deal would be negotiated after the UK has triggered Article 50. Given the significance of financial services to the UK economy, access to EU markets would be a high priority for the UK in such a negotiation. However, freedom of movement and freedom to work would not be guaranteed under such an outcome.

**World Trade Organisation (WTO) rules**
This option by which the UK relies solely on existing WTO rules to trade with the EU is the hardest exit of them all. WTO rules allow for international trade, but only to a limited extent. The rules provide no freedom of movement and limited freedom to trade in insurance.

The strong indication from Theresa May's speech on 17 January is that the UK is heading for a hard Brexit. Whilst she stressed the importance of the UK maintaining a close and cooperative relationship with the EU, the government's stated strategic priorities in Brexit negotiations, which include complete control over immigration and full freedom for the UK to negotiate trade agreements with other states, makes a soft Brexit unlikely.

## Next steps

The only certainty at this stage is that uncertainty will remain until the terms and conditions of the exit become clearer. The Standard Club is closely monitoring the situation and will consider all possible options in order to ensure that the high standard of security and service already offered will continue post-Brexit with little or no interruption to operations.

# The pay-to-be-paid rule

Traditionally, P&I cover is regarded as 'indemnity' rather than 'liability' insurance. A key difference between indemnity and liability insurance is that it is a prerequisite with the former that the assured first effects payment in respect of his liability before seeking reimbursement from the insurer, whereas this is not required with the latter. This article reviews some of the erosions to the pay-to-be-paid rule over the years.

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## Introduction

Reflecting the indemnity nature of P&I cover, the club's pay-to-be-paid rule makes it a condition precedent that the member first effects payment or discharges his liability to the third party before seeking recovery from the club in the following terms:

The Standard Club P&I Rules, rule 6.15:
*Unless the managers otherwise determine, it is a condition precedent of a member's right to recover in respect of any liabilities that he must have first discharged or paid the same out of funds belonging to him unconditionally and not by way of loan or otherwise.*

## Statutory inroads

The UK Third Parties (Rights Against Insurers) Act 2010 (the 2010 Act), which came into force on 1 August 2016, retains the approach of the Third Parties (Rights Against Insurers) Act 1930 (the 1930 Act) in allowing a third party to claim directly against an insurer by 'stepping into the shoes' of the assured, usually when that assured has become insolvent. The insurer is entitled to rely on the same defences in a claim from a third party as they would have had in the event of a claim from the assured. The most effective defence available to a P&I club in such a situation is the pay-to-be-paid rule, which requires the member to have incurred and discharged a liability before claiming reimbursement from the club.

The 1930 Act applied to all contracts of insurance providing cover for third-party liabilities. This statutory subrogation is subject to the following conditions:

- The assured must be legally liable to the third party.
- Insurers are under the same liability to the third parties as the insured. It follows that all the terms of the insurance policy apply and that the insurer is able to rely on any defences that would have been available against the insured.
- Any condition purporting to avoid the policy or alter the rights of the parties in the event of insolvency of the assured is void.
- If the assured has become bankrupt, or where there has been a winding-up order of the assured company, the third party's rights cannot be defeated by any settlement between the insurers and their assured.

### The 2010 Act

The 2010 Act retains many features of the 1930 Act, including the provisions set out above. However, the intention of the 2010 Act was to remove some of the impediments previously faced by third parties when attempting to bring an action against the insurer of an insolvent insured.

Section 9(5) of the 2010 Act provides that an insurer can no longer rely on a pay-first clause as a defence to a third-party action. However, section 9(6) creates an exception to the applicability of 9(5) such that the prohibition against pay-first clauses does not extend to marine contracts (which include P&I), except in cases involving death or personal injury.[1] The personal injury exception reflects the practices amongst P&I clubs who do not seek to enforce the pay-to-be-paid rule in cases involving personal injury or death. In all other cases under a marine contract, the pay-first condition will apply.

### Other jurisdictions

A number of jurisdictions have domestic legislation which confers upon victims direct rights of action against insurers. The impact on liability insurers, and P&I clubs in particular, where such legislation exists, is not only that a claim can be brought and prosecuted in a forum other than that provided for within the contract of insurance, but also that contractual defences, most notably the pay-to-be-paid rule, can be circumvented or declared unenforceable in the local courts.

Such direct rights of action exist in Scandinavia, many American States and Tunisia. More recently, Turkey and Spain have enacted new maritime codes which include direct rights of action against insurers. Legislation in most of these jurisdictions negates the pay-to-be-paid clause as being contrary to public policy.

In the July 2015 edition of the Standard Bulletin, we reported on the favourable English High Court decision in *Shipowners' Mutual v Containerships Denizcilik*.[2]

The key issue before the High Court was whether the charterer's claim under Article 1478 of the Turkish Commercial Code should be characterised as a claim to enforce the contract of insurance (the club rules), in which case, the terms of that contract should apply, or whether claimants were entitled to an independent right of recovery against the club.

(This characterisation test was confirmed in the 2015 English Court of Appeals decision in the *Prestige*.[3]) The court concluded that the essential content of the right of direct action contained in the Turkish statute was the right to enforce the insurance contract, and the terms, conditions and defences therein, between the owners and the club.

This decision was appealed to the English Court of Appeal[4], which upheld the High Court result, though on slightly different grounds. The High Court judgment had granted the continuance of the anti-suit injunction on the grounds that the proceedings were 'vexatious and oppressive'[5]. The Court of Appeal also maintained the anti-suit injunction on the *Jay Bola*[6] reasoning, holding that the charterer's claim is characterised as contractual, and so the terms and conditions of the club rules, being the relevant contract, shall be enforced notwithstanding that the charterer was not a party to that contract.

Multi-jurisdictional proceedings continue to unfold following the 2002 *Prestige* marine casualty, which resulted in pollution damage to the coasts of Spain and France, and the loss of the ship. While the London P&I Club acknowledged direct rights of action applied pursuant to the CLC in relation to the pollution costs, the pay-to-be-paid principle contained in the club rules was relied upon in arguing that direct action was not applicable to non-CLC claims. The London Club commenced arbitration in London seeking negative declaratory relief for non-CLC claims pursued by Spain or France. The matter eventually came before the English Court of Appeal[7], which found in favour of the club, thereby upholding the arbitration and pay-to-be-paid provisions of club rules.

Notwithstanding the 2015 English Court of Appeal decision, the Spanish Supreme Court (Criminal Chamber) handed down a controversial decision on 14 January 2016 upholding the direct action provisions under Spanish law. The court effectively held that the master's criminally reckless act created a right of direct action against the London P&I club, with no available defences. As a result, the right to limit under CLC was broken and the London Club became liable for the full policy limit of US$1bn.

The Spanish court's decision has been heavily criticised among maritime commentators and challenges are likely.

> "The Standard Club P&I Rules, rule 6.15: Unless the managers otherwise determine, it is a condition precedent of a member's right to recover in respect of any liabilities that he must have first discharged or paid the same out of funds belonging to him unconditionally and not by way of loan or otherwise.

## International conventions

There are a number of instances in which a claim may be made directly against a club pursuant to international liability conventions. These conventions create a direct right of action such that the third party has an individual claim against the club, which is not contingent upon the assured member's status. The common feature of these international instruments is that they:

- impose strict liability on the owner
- require ships to carry compulsory insurance to meet liabilities under the convention
- provide for a direct right of action against the insurer who provides the certificate of insurance or proof of financial security.

The list of international conventions requiring evidence of financial security, as well as the limits of the financial security required, continues to grow. The international group of P&I clubs makes every effort to support members in providing acceptable certificates of insurance to satisfy the requirements of the international conventions.

| International convention | Application | Type of security |
|---|---|---|
| International Convention on Civil Liability for Oil Pollution Damage, and the 2003 Protocol (CLC) and International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) | Pollution arising from the carriage of persistent oil as cargo | Blue Card issued by P&I club |
| International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention) | Pollution caused by fuel oil carried as bunkers | Blue Card issued by P&I club |
| Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL), and its 2002 Protocol (Athens Convention) | Liability for death and injury to passengers | Blue Card issued by P&I club |
| Nairobi International Convention on the Removal of Wrecks (Wreck Removal Convention) | Wreck removal liabilities | Blue Card issued by P&I club |
| Maritime Labour Convention 2006 (MLC) | Liability and compensation in respect of claims for death, personal injury and abandonment of seafarers | P&I Certificate of Insurance |

1 Sections 9 (5), 9(6) and 9(7) of the 2010 Act:
'...(5) The transferred rights are not subject to a condition requiring the prior discharge by the insured of the insured's liability to the third party.
(6) In the case of a contract of marine insurance, subsection (5) applies only to the extent that the liability of the insured is a liability in respect of death or personal injury....
(7) In this section, 'contract of marine insurance' has the meaning given by section 1 of the Marine Insurance Act 1906; and 'personal injury' includes any disease and any impairment of a person's physical or mental condition....'
2 [2015] EWHC 258 (Comm)
3 [2015] 2 Lloyd's Rep 33 (CA)
4 [2016] EWCA Civ 386
5 Following the Court of Appeal's decision in the Hari Bhum (No1) [2005] 1 All ER (Comm) 715
6 [1997] 2 Lloyd's Rep 279 (CA)
7 [2015] 2 Lloyd's Rep 33

# Discretionary claims

This article looks at the types of discretionary claims and the process for members applying for their claim to be approved by the board.

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## What are discretionary claims?

**Introduction**

A discretionary claim or claim for consideration is one that the managers have no power to agree to pay and only the board may approve.

There are three types of discretionary claims:

(a) Those triggered by provisos to cover under specific rules. For example, exclusions 1-13 to rule 3.13 relating to cargo liabilities.
(b) Those arising under specific rules. For example, discretionary fines arising under rule 3.16.4 and omnibus claims under rule 3.21.
(c) Those arising where there has been a breach of the rules. For example, breaches of rule 7 relating to notification and submission for reimbursement in respect of claims.

The rules of The Standard Club are available on our website. Members requiring hard copies should request these from their usual club contact.

The three most common types of discretionary claims arise in respect of fines, sue and labour, and claims presented under the omnibus rule. This article looks at each in more detail.

## Discretionary fines

Typically, discretionary fines arise from the following incidents: failure to follow local navigation rules, MARPOL violations or a failed port state control inspection.

In most circumstances, the incidents giving rise to a fine are due to the failure of on-board procedures, inadequate training of crew, lack of due diligence ashore and, in some occasions, a deliberate act either due to commercial pressure or a crew member embarking on a folly of their own. In such situations, for example, MARPOL violations in the US, there can be criminal consequences for the crew.

Rule 3.16.4 provides for a two-stage test. The first stage is whether there is to be any recovery at all. The burden is upon the member to satisfy the board that they took all such steps as appear to the board to be reasonable to avoid the event giving rise to the fine. The board is made up of individuals with considerable experience in the shipping field and it is their opinion which is material. In reaching a conclusion on this first issue, the directors of the board act fairly and reasonably.

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A discretionary claim or claim for consideration is one that the managers have no power to agree to pay and only the board may approve. The three most common types of discretionary claims arise in respect of fines, sue and labour, and claims presented under the omnibus rule.

If the directors are satisfied that the member took all steps to avoid the event giving rise to a claim, the second stage concerns the amount of the recovery from the club. In this respect, the directors have a wide discretion to determine the extent of the recovery.

**Sue and labour**

The scope of a member's entitlement to seek recovery of sue and labour expenses is circumscribed by rule 3.20. Members are entitled to sue and labour expenses as of right if such expenses have been incurred with the managers' approval. Alternatively, they are recoverable at the discretion of the board.

The costs and expenses that can be characterised and recovered as sue and labour will depend on the circumstances of the individual case, and they can be tested against the following criteria:

1. The costs and expenses incurred are extraordinary and not, therefore, the ordinary operational costs incurred during a normal voyage to earn freight. Included will be the costs and expenses incurred by the members directly.
2. The costs and expenses must be incurred voluntarily to avert or minimise a liability against which the members are insured by the club. It is often a matter of controversy how likely either the peril will occur or, once there is a peril, that there will be a loss. In every case, it is a matter of degree. However, there is a distinction between expenses incurred, for example, to protect cargo from imminent risk of damage on the one hand and the incurring of additional expenses in order to perform a voyage and earn freight on the other.
3. The costs and expenses must be directed to avoiding or minimising a risk which is covered.
4. The costs and expenses recoverable are those incurred solely to avoid or minimise the risk of a peril or loss.
5. The costs and expenses must be reasonably incurred and not disproportionate, compared with the risk of the peril or the loss.

### Omnibus

P&I cover is intended to dovetail with hull insurance so that there is no gap. However, the liabilities and risks for which a member requires insurance cover are dynamic and the club's rules may not specifically identify all the risks that need to be covered. The cover offered by clubs therefore has to be flexible enough to grow and develop, and so be in a position to respond to the changing needs of the members. The ultimate expression of this flexibility is the omnibus rule.

As the club's board is largely composed of shipowners, a member putting forward a claim under the omnibus rule is likely to receive a generally sympathetic hearing, albeit there will usually be more sympathy for claims arising from bad luck than those arising from bad management.

The deciding factor is usually whether the new 'risk' or liability is of a P&I nature. The test is sometimes put this way: 'had the claim/risk been known to the club at the time its rules were drafted, would the club have included it within the cover? And was it a claim the member could have avoided had he exercised the standard of care accepted as the norm within the industry?'

### Role of the board and the exercise of its discretion

The Pooling Agreement sets out in Appendix XI the minimum procedural requirements for the treatment of the discretionary claims. These requirements, with some enhancements, have been included in the club's directors' manual, which deals with the procedures and treatment of discretionary claims, namely:

- The board should act fairly, reasonably and without misdirecting itself in law.
- The member concerned shall, prior to the meeting of the board, have been given the opportunity to review the agenda note and other materials which may be placed before the board in order for that member to comment. Any such comments shall be brought to the attention of the board.
- If the member concerned is represented on the board, that representative shall absent himself from the meeting whilst the board considers the exercise of its discretion.
- In considering the exercise of its discretion, the board shall act in good faith and in the best interests of the members of the club as a whole and in accordance with the wording of the relevant rules. It should also take into account any legal advice obtained on its behalf by the managers on issues of cover.
- The board should not normally be asked to exercise its discretion until the litigation between the member and the claimant is over, save in exceptional cases where there is a compelling reason to make the decision earlier.
- The board, having exercised its discretion, may or may not give reasons. Generally, reasons should not be given for the exercise of its discretion other than where the board believes that the evidence put before it reveals facts which the member should be given the opportunity to refute.

### Rights of redress

If a member considers that his discretionary claim has either been improperly declined or that he has been unfairly penalised, he has the right to take the claim to arbitration.

### Conclusion

Discretionary claims may still be reimbursed, but members should be aware that this is at the discretion of the board, subject to the type of claims, and the adherence to the due process for application and consideration.

The Standard Club prides itself on having a pragmatic approach to paying claims. In this respect, the cover offered to member is broad and inclusive, and the board takes a sympathetic view to discretionary claims, always aiming to be fair and consistent.

### How are discretionary claims dealt with?

1

**Notification**

When the club is notified of a discretionary claim, the discretionary nature of cover is explained in full to the member.

2

**Security**

If security is required in respect of a discretionary claim, security may only be issued once appropriate counter-security has been received from the member either by way of cash deposit or a first-class bank guarantee. In any event, provision of security by the club on behalf of the member remains wholly discretionary at all times: see rule 9.1.

3

**Reimbursement**

Once a member's liability in respect of a discretionary claim has crystallised and all fees and expenses have been paid, a request for reimbursement should be submitted to the club. On receipt of a member's request, a report will be prepared for submission to the board at its next meeting. The member will have the opportunity to review the report prior to submission.

# Fine Art and Specie Consortium

The new Specie Consortium 9654, set up by The Standard Syndicate, was launched on 1 January 2017.

It is led by The Standard Syndicate's Fine Art and Specie Class Underwriter, Joshila Tailor. As a recognised market leader, she has attracted joint capacity of $65m to support the personal and corporate fine art and specie underwriting needs of members of The Standard Club.

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### What is a consortium?

A consortium is a contractual arrangement pursuant to which a number of managing agents delegate their underwriting authority to the consortium leader to bind risks on their behalf. A consortium underwrites and binds specified classes of business produced from various Lloyd's brokers (as well as our service companies). Authority is granted to a consortium leader by the following markets to bind their joint capacity under a single stamp. It offers brokers an efficient single point of contact for underwriting, premium payment and claims agreement, alleviating the need to deal with multiple insurers.

### How do members benefit?

The Specie Consortium 9654 is unique in that it is fundamentally designed to assist our members' business. By pooling capacity with other supporting markets, we have achieved an aggregate of $65m to deploy on any risk. This means we can streamline the underwriting process by deploying one single consortium stamp and provide a one-stop-shop solution for fine art and specie insurance needs.

### Cover

The Fine Art and Specie class covers personal assets (such as fine art collections, art on board yachts, classic cars, jewellery and watches, musical instruments, stamps, coins, books and manuscripts, furs or wines), corporate collections (fine art, models, equipment of historical significance, sculptures or rare books and archives) and specie interests (such as mining risks, including precious metals and stones, precious metal refiners, bullion, monies on board vessels or the contents of safe deposit boxes).

### Capacity details

The consortium is supported by XLCatlin, Antares, AWH, Amtrust and Newline. In addition to the $65m capacity for members of The Standard Club, we also have the ability to deploy $25m for non-members. That makes us a sizable entity in the market, as average line sizes for this line of business in Lloyd's range from $30m to $40m. XLCatlin is a claims agreement party with whom we cooperate on all claims. Its long-standing expertise and dedicated specie claims resources ideally complement our claims service proposition.

### What makes us different

Historically, the size of individual Lloyd's syndicates has limited their ability to offer credible lead capacity for the largest risks. The Specie Consortium 9654 resolves this issue. Through our consortium, we are empowering our brokers to offer insurance that is more competitive than what our assureds may be able to obtain in their local markets, backed by Lloyd's unrivalled intellectual capital and underwriting expertise. That way our assureds retain the benefit of highly competitive rates but unlike being placed under some broker super-

> A consortium offers brokers an efficient single point of contact for underwriting, premium payment and claims agreement, alleviating the need to deal with multiple insurers.

facilities, they get a highly individual profile, and a proactive and flexible claims service. For us, getting to know our clients and their interests or collections is fundamental to developing a policy that is tailored to their needs. We have an interest to maintain a close relationship with our assureds and provide hands-on risk management and security advice on how to best protect our clients' collections and valuable items, from conception until after expiry.

**The Fine Art and Specie Class Underwriter**
I have been an underwriter at Lloyd's of London and in the company market for over 17 years, and am a recognised leader in this class of business. My expertise is in Fine Art, various general specie risks such as metals and mining, bank note insurance and cash in transit. I have a reputation for my thorough underwriting style and flexibility for even the most difficult of requests. I have long-standing experience as a consortium leader, having previously led a $150m consortium at Ironshore. That experience stands me in good stead and our following markets have therefore entrusted me and the Standard Consortium 9654 to lead business on their behalf.

**What we offer**

- **Bespoke wordings for our members and their projects**
- **Lloyd's financial security (A.M. Best: 'A: Excellent', S&P: 'A+: Strong', Fitch: 'AA- Very strong')**
- **Rapid service to meet brokers' deadlines**
- **Combined claims capabilities to ensure extra fast, helpful and knowledgeable response**
- **Efficient one-stop shop to provide excellent service experience**
- **Relationships are key to us: the Specie Consortium 9654 will ensure that members of The Standard Club experience continuity of their established and trusted relationships.**

The Standard Syndicate

# Club cover for wreck removal

This article provides a summary of club cover for wreck removal, explains the difference between wreck removal and salvage liabilities, and addresses specific issues concerning lost anchors.

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## Introduction

A major portion of the club's total claims cost relates to a minority of the total claims. Many of these larger claims involve wreck removal. The most notable recent example concerns the cruise ship *Costa Concordia*, which ran aground in January 2012 after striking a submerged rock off Giglio Island, Italy. The operation to parbuckle the wreck and tow it to a local facility for recycling was the largest and most complex wreck removal to date. It was also the most expensive, with wreck removal costs exceeding $1bn.

## Club cover for wreck removal

Club cover principally responds to 'liabilities for or incidental to the raising, removal, destruction, lighting or marking of the wreck of an entered ship'. It is important to note that if the wreck and any stores and materials are saved, their residual value is credited to the club.

The club will also cover:

- liabilities flowing from actual or attempted wreck removal operations, including those involving cargo and other property on board
- liabilities resulting from the presence or involuntary shifting of a wreck, again including cargo or property on board (note, however, that recovery for these liabilities is subject to a two-year time bar)
- liabilities for or incidental to the raising, removal, destruction or disposal of cargo or any other property which is or which had been carried on the ship. Again, the residual value of cargo or any other property saved is credited to the club.

The most important provisos to this aspect of club cover are that the wreck must have arisen out of a casualty (and not mere neglect), there must be a legal obligation on the member to remove the wreck (voluntary wreck removal is not covered) and the member cannot recover costs if it has transferred its interest in the wreck to a third party without the club's consent (other than by abandonment).

## Wreck removal versus salvage

Most wreck removals are the result of failed salvage operations, but when does liability for salvage become liability for wreck removal? If a ship, say, runs aground, then the shipowner's first instinct is to salvage its asset so that it can be put back into service. However, the ship may instead be determined to be a constructive total loss by its hull and machinery underwriters. With reference to section 60 of the Marine Insurance Act, 1906, a constructive total loss arises where a total loss appears unavoidable, or the costs of recovery and repair exceed the ship's value. 'Value' in this context usually refers to the ship's insured value rather than its repaired value.

If this occurs, the shipowner will then tender a notice of abandonment to the hull and machinery underwriters to secure payment under the policy. The underwriters will commonly reject the notice, avoiding assuming liability for the stricken ship, but they will retain the obligation to pay out for the loss.

If the relevant authorities have issued a legally binding wreck removal order on the member, the operation to recover the ship will become a wreck removal rather than a salvage. The underlying insurance liability in respect of the costs of the operation will shift from the hull and machinery underwriters to the protection and indemnity cover.

## Lost anchors

One particular aspect of wreck removal concerns the situation in which a ship loses an anchor overboard. Lost anchors can present a hazard to navigation and, therefore, are commonly required to be removed. But under what circumstances does club cover respond to the costs of this removal?

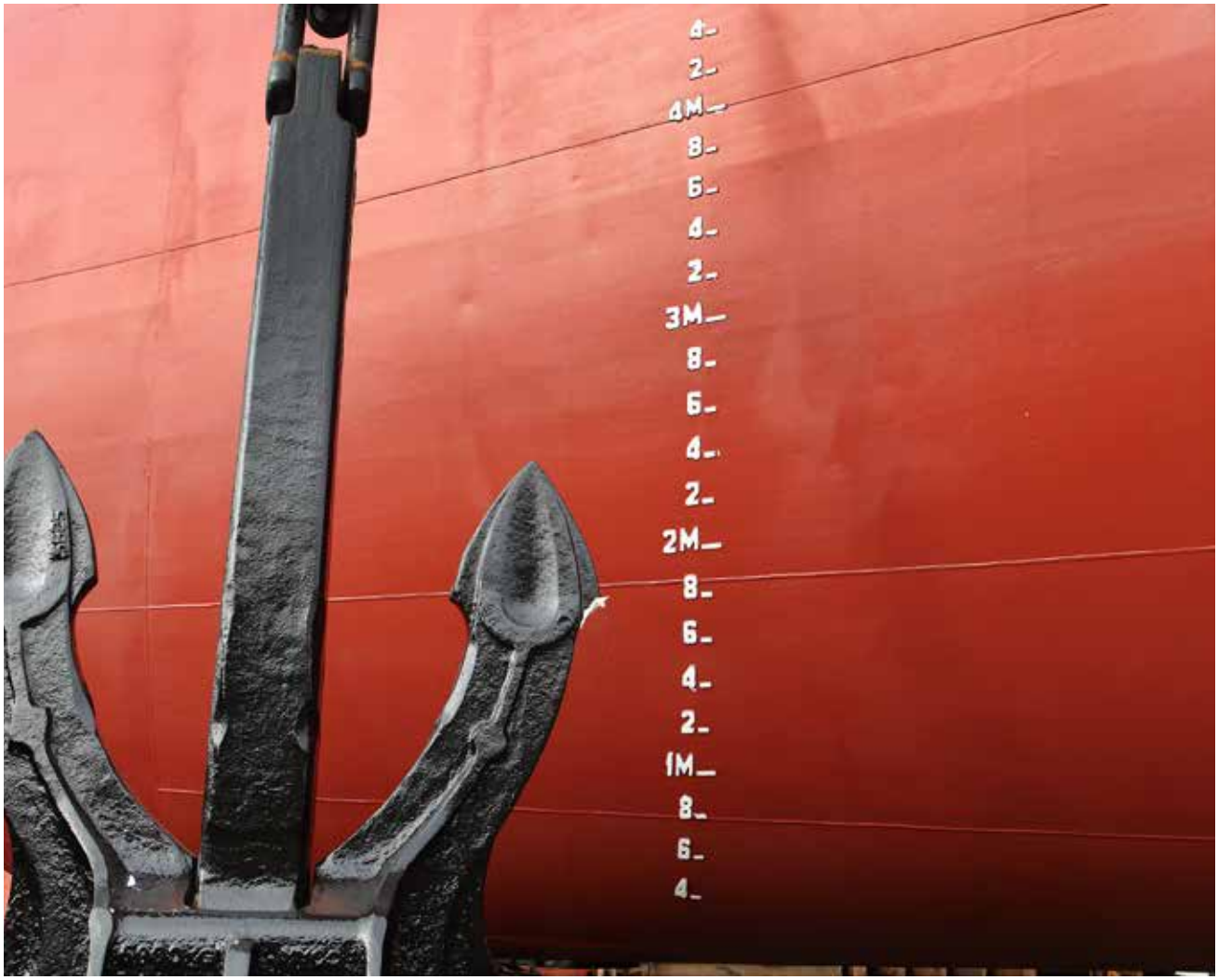
The club's rules define a 'ship' to include 'any part of such ship', which encompasses its anchors. Furthermore, club cover responds to wreck removal liabilities for property (in this case, an anchor) that has been carried on the ship. The cost of retrieving an anchor lost overboard as a result of a fortuity, where the relevant authorities require removal, is therefore covered by the club.

However, contrast the above situation with one in which, say, a windlass fails and an anchor remains connected to the ship by its chain but cannot be recovered, or the anchor chain is deliberately severed and the anchor left on the seabed. The costs of recovery under these circumstances are operational in nature and would not be covered by the club under its wreck removal rule, or otherwise.

## Conclusion

Wreck removal operations can range from the straightforward to the very complex and expensive. In broad terms, club cover responds to a member's legal liability for wreck removal. However, it is important to always notify the club in the event of an incident that may lead to a claim. This is not just to ensure that cover is not prejudiced, but also because the club has considerable experience and expertise in this area, and will be able to provide support and assistance at what can be a challenging time.

A version of this article will be published in International Tug & OSV in their May/June 2017 edition.



# Peace of mind – complex logistical medical and security assistance

CEGA Group is a specialist global provider of technical medical and security assistance and travel claims management services to organisations and insurers. Here, the company's commercial director, Jody Baker, answers a few questions about the services that it provides.

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**What does CEGA offer its clients?**
We provide seamless solutions for insurers to support policyholders and organisations before, during and after deployments overseas. Our end-to-end, integrated services combine pre-travel consultancy, contingency planning and medical screening with proactive risk management, global medical and security assistance, and claims handling.

Our capabilities cover the world, and we offer our clients – many of whom operate in the marine and energy sectors –extensive experience of operating effectively in remote and hostile regions.

Recent cases include overcoming significant obstacles in transferring a critical patient to hospital from hundreds of miles offshore in the Gulf of Aden and providing cutting-edge remote medical assistance to an isolated crew member with severe breathing difficulties. Behind operations like these lie more than 400 in-house multilingual medical, security, travel and case management teams, including doctors and nurses, supported by a global network of more than 70,000 hospitals, agents and partner organisations.

**How can this help members of The Standard Club?**
As regular users of medical assistance and associated claims services, The Standard Club's members can benefit from direct access to CEGA's bespoke service, seamlessly delivered to meet the exacting standards they expect, 24-hours a day, 7 days a week.

**What is CEGA's history?**
For over four decades, CEGA has been the trusted emergency medical assistance service behind some of the UK's biggest insurers, corporate bodies and public sector organisations.

The company started as a family business in 1973, operating first as an air taxi service, then as a dedicated air ambulance provider. It soon evolved to become a

CEGA Group supports more than 5 million customers and receives more than 1,500 calls every day from individuals in need, the world over.


leading international travel claims management and global assistance group, and the UK's largest independent assistance provider.

Today, with a state-of-the-art operations centre in Chichester and bases in Bournemouth and London, we combine the personal service of a once family-owned business with the global reach and know-how of an international organisation.

We now support more than 5 million customers and receive more than 1,500 calls every day from individuals in need, the world over.

**How has the industry changed and how has CEGA evolved to meet the needs?**
In the far-flung and remote global destinations in which employees and individuals increasingly find themselves, a minor health problem can quickly turn into a major emergency. This means ensuring that we can anticipate our customers' needs and have the breadth of expertise, the global networks and the very latest technology to facilitate the best medical care and claims provision, irrespective of a patient's location or condition.

**What is the most important differentiator for CEGA?**
Our model is unique in the claims and assistance sector. We provide all our services in one place and on a single platform, drawing on the expertise of our in-house specialist teams. This, combined with our global network of partners, has helped us to earn a reputation as experts in complex case and logistical medical management.

Further information can be found at www.cegagroup.com.

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