

P&I cover offshore: what you need to know

Sarah Wallace* takes a look at the protection and indemnity (P&I) cover available to protect operators in the offshore wind industry and focuses on some of the P&I and contractual issues arising out of installation projects

P&I clubs provide mutual indemnity cover to shipowner and charterer members against third-party liabilities arising out of the management and operation of their entered ship. P&I cover responds to a wide range of liabilities including personal injury to crew, cargo loss and damage, oil pollution, wreck removal and dock damage. It also responds to 'at law' P&I liabilities and P&I liabilities assumed under contracts that are on a knock-for-knock basis.

Thirteen P&I clubs have grouped together to form the International Group of P&I Clubs (IG) and have agreed to share, or pool, claims amongst themselves between US\$9 million and US\$80 million in agreed proportions. By providing the same cover and through the purchase of a group reinsurance programme excess of US\$80 million, each P&I club can provide members with high limits of cover, currently approximately US\$8 billion (US\$1 billion for pollution).

It is an important feature of the mutual system that no single member unfairly subsidises or is subsidised by the other members. Consequently, certain activities and exposures that have been identified as too different from those undertaken by mainstream shipping operators do not have the benefit of poolable P&I cover. The installation of windfarms is viewed as an activity that is too specialised and incurs too high a risk to be poolable. This means that 'at law' liabilities whilst performing specialist operations together with any liabilities assumed under contract that the member would not otherwise have had 'at law' are excluded from poolable cover.

To assist members, The Standard Club provides extensions to allow some of the excluded risks to be bought

back. It would typically seek to cover windfarm installation vessels under poolable P&I terms with extensions, namely the specialist operations extension, the contractual extension and the remotely operated vehicles (ROVs)/divers extension (if required). This allows members to have the benefit of poolable cover and limits whilst a vessel is navigating as well as P&I cover whilst the vessel is performing non-poolable operations or assuming certain liabilities under contract.

As set out above, poolable cover excludes third-party liabilities arising out of the specialist nature of the operations. The specialist operations extension reinstates cover for P&I liabilities arising from the specialist operation up to a fixed limit agreed with the member. The extension allows P&I cover to respond to claims brought by a party for whose benefit the work is being done or by third parties, provided that the claim arises

out of a P&I risk and falls within the scope of the member's cover.

However, cover is subject to exclusions for loss/damage to the contract work and liability for failure to perform and fitness for purpose. Contract work essentially encompasses any property that is destined to become part of the windfarm or that is used up or consumed in the completion of the project. The description of contract work is deliberately non-exhaustive to take account of the fact that each project will involve slightly different project property. The definition is designed to dovetail with the construction all risks (CAR) policy (or WINDCAR) wording, since this will be the insurance that will cover loss/damage to the items listed in the CAR policy as project property. Liabilities in respect of crew, pollution from the entered ship and wreck removal of the entered ship remain covered under poolable cover, even when performing specialist operations, as these are viewed as common risks shared by all members of IG clubs.

More often than not, members will be forced to assume some liabilities under their contracts that they would not otherwise have had 'at law'. These contractual liabilities are consequently excluded from poolable cover. The contractual extension responds to contractually assumed liabilities that arise out of a P&I risk and fall within the scope of cover of the members' terms of entry (subject to contract approval). The specialist operations extension also has a built-in contractual extension that can respond to certain contractual exposures while a vessel is performing specialist operations.

Poolable cover excludes liabilities arising out of the operation by the member of ROVs and other underwater



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vehicles. If the member is carrying out ROV operations using its own personnel/equipment, the ROV extension would be required to cover third-party liabilities arising out of the operation of the underwater vehicle. Liabilities arising out of the activities of professional and commercial divers, where the member is responsible for such activities, are also excluded from poolable cover. The divers extension covers third-party liabilities arising out of the operation of professional and commercial divers.

To better illustrate how the various P&I covers would respond, the following are some potential scenarios that could arise at different stages of installation operations and could result in a P&I claim:

- during loading operations using the ship's cranes, turbine blades are damaged as a result of the member's negligence. Poolable cover would respond
- during transportation, wind turbine generators are damaged as a result of the member's negligence. Poolable cover would respond to the extent that the member's liability does not exceed that which would have been incurred had the contract been on Hague/Hague-Visby terms. The contractual extension would be required to respond to liability in excess of that prescribed by Hague/Hague-Visby rules
- a jack-up crane barge navigating within a windfarm to commence installation of turbines causes contact damage to pre-installed foundations. The damage would be excluded under the contract works exclusion as the pre-installed foundations would form part of the completed project
- a crane barge is jacked down/pre-loaded and about to commence installation operations when a leg punches through the seabed causing damage to an existing third-party cable. As the vessel will be deemed to have commenced specialist operations, liability for damage to the cable would be covered under the specialist operations extension
- during the above scenario, a crew member on the crane barge suffers an injury. Poolable cover would respond
- a monopile is installed at the wrong location. Liability arising as a result of this would be excluded from cover as it arises from a failure to perform.

Ultimately, the contract defines the risk. In order to help us and our members understand the risk and liabilities assumed under a contract,

The Standard Club provides a contract review service to members. This allows us to pinpoint common contracting issues that may lead to unexpected claims, provide an assessment of where potential claims may fall under P&I cover and offer tailored insurance solutions to respond to gaps in cover created by contractual exposures.

The following are some of the most common exposures that we see in windfarm installation contracts and the ways in which P&I cover can respond to protect the member.

Damage to a company's property limited to CAR deductible. Frequently, the shipowner bears responsibility for loss/damage to company property whilst in the shipowner's care up to the CAR deductible. Whilst any wind turbines and wind turbine generators (WTGs) are carried onboard the entered vessel to the field prior to installation, poolable cover will respond to loss/damage to such cargo but only to the extent that the member's liability does not exceed that which would have been incurred had the contract been on Hague/Hague-Visby terms. Liability in excess of that prescribed by the Hague/Hague-Visby Rules will be covered under the contractual extension. During installation operations, this exposure will be excluded as the wind turbines and WTGs would be classed as contract work.

Carve-out for gross negligence/wilful misconduct under knock-for-knock indemnities. Liability in respect of personnel and property is usually allocated on a knock-for-knock basis. However, the company will often insert a carve-out to the effect that the knock-for-knock will not apply where injury/death/loss/damage is caused by the shipowner's gross negligence or wilful misconduct. From a P&I perspective, this takes away the certainty that the knock-for-knock allocation provides. If the gross negligence carve-out is triggered, then cover will respond to the member's exposure for cargo onboard the entered ship during carriage to the field in the same way as set out above. Poolable cover will also respond to the member's gross negligence exposure for company personnel and damage to existing company property outside the ship whilst the vessel is navigating to the field. During installation, the member's exposure under the carve-out for loss/damage to wind turbines, generators or any other property that will form part of the completed windfarm will be excluded as contract



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work. Cover will respond in the same way in respect of wilful misconduct. However, wilful misconduct on the part of those that are sufficiently senior to be deemed the 'controlling mind' of the member will be excluded pursuant to the Marine Insurance Act.

Wreck removal at company's request. Poolable cover responds to wreck removal of the entered vessel and debris forming part of the entered vessel where the wreckage constitutes a hazard to navigation or where its removal has been ordered by a competent authority or under compulsory law. More often than not, the contract will also require the shipowner to remove any wreckage of the vessel at the company's request or where it interferes with the company's operations. In that case, wreck removal will not be poolable and can only be covered under the contractual extension. Wreck removal of contract work is excluded from P&I cover.

Waiver of the right to limit. Often, either an express waiver of the right to limit or a high liability cap may be contained in the contract, such as a cap at contract price, which essentially amounts to a waiver of the right to limit. For poolable liabilities, poolable cover will respond to P&I risks up to the vessel's limitation amount at law, and the contractual extension can respond beyond this. During installation operations, the specialist operations extension can respond in full (subject to the limits of cover) as the in-built contractual extension can respond to liability in excess of the vessel's limitation amount. **OWJ**

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