Standard Bulletin

The Standard

OFFSHORE SPECIAL EDITION

8 October 2009

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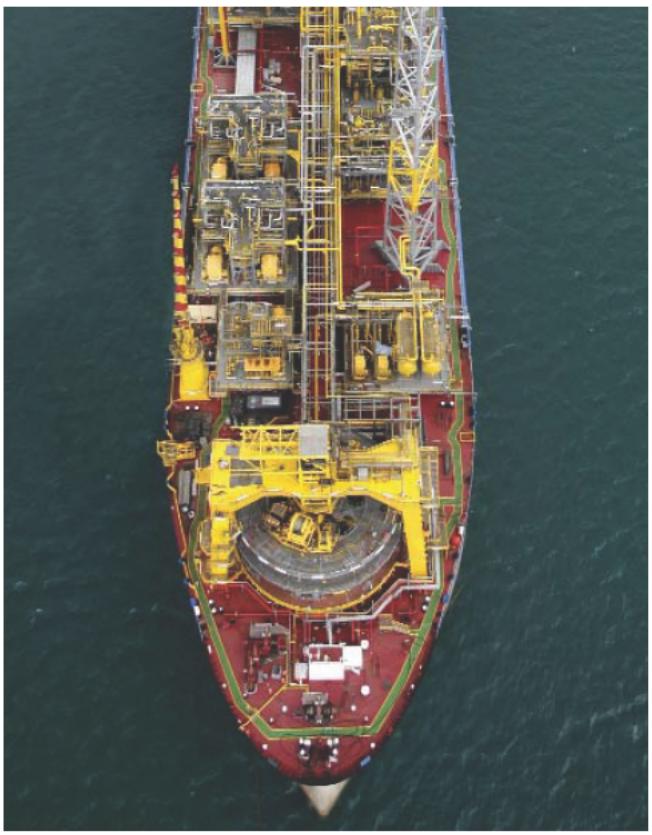
Introduction

This is our fourth special Offshore edition of the *Standard Bulletin*, and we're happy to report that Standard Offshore has had an excellent year. Our tonnage is up, like that of the club as a whole, and since the last edition we have seen a number of new developments in the way we provide our members with the insurance they need.

In March this year the special edition of the *Standard Bulletin* on Bunkers Certificates for Offshore Units examined the problem created for the owners of FPSOs, FSUs and drilling rigs by the introduction of the Bunkers Convention in November 2008. The Standard Club's solution of providing Bunkers Blue Cards for these units specifically incorporating reference to a financial limit has proved most successful, with the Standard's "limited" Blue Cards having been accepted by every state party to which they have been presented. So far we have issued seventy such certificates, saving our members around $1.4 million, the approximate cost of purchasing these certificates from an alternative provider.

Another exciting development is the proposed launch of new Standard Offshore P&I rules specifically designed for members operating in the offshore oil and gas exploration and production industry. The new rules will allow members to access the offshore coverage terms in a single clear, concise document. They are further evidence of the Standard Club's commitment to underwriting expertise in the offshore sector and to providing our members in that sector with the best possible cover.

As the offshore industry moves into ever more challenging environments, a great deal of our time is spent finding ways to respond to the insurance requirements of members who are working at the cutting edge of offshore technology. In addition, the changing economic and political environment resulting from last year's tumultuous events in the financial markets has meant that our members are faced with constantly evolving threats to their business. Our mission as their insurer is not only to provide them with the widest and most cost-effective cover for those risks which we can insure, but also to assist them in identifying and managing exposures which are properly dealt with outside the scope of a P&I insurance programme. This edition of the *Standard Bulletin* reflects this approach; we hope the articles in it will assist you dealing with the risks which inevitably face businesses involved in the endlessly challenging business of offshore energy production.



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In this issue:

Market update

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If a week in politics is a long time then a year in the oil industry seems like a lifetime! A year ago, we were struggling to accept oil at $140 plus a barrel and today, post economic woes across the globe, it is about half that. Energy companies in general are suddenly reporting profit falls, looking desperately at cutting costs and considering holding back on development and exploration. All of this will potentially adversely impact the suppliers/contractors that presently service the industry. Whilst there are some hopeful signs, such as Shell's announcement regarding the development of transferable floating LNG units, the industry generally is in the casualty ward.

Last year saw a very high percentage of drilling unit utilisation and, whilst many of these contracts will still be operative in 2009, next year looks distinctly difficult for drilling unit owners. Much the same can be said for other support ships, especially as they do not always benefit from longer contracts in the way that drill ships/jack-up owners do.

But what of the mainstream insurers that underwrite these energy risks? At this stage last year, the book of offshore/onshore energy, power and mining business was not looking good, and the remainder of 2008 did nothing to improve matters. Losses in the year were somewhere in excess of $15bn, with Gulf of Mexico hurricane losses continuing to show further deterioration.

If the loss statistics were not bad enough, the investment portfolios took a beating too, with equity returns falling by around 25% and interest rate investment returns being at an all time low. Couple this with the need for some insurers to make write-downs, and both energy companies and energy insurers could be said to be in the same (sinking) boat.

Despite a couple of new players in 2009, the available current capacity in the energy market is pretty much the same as in 2008. This capacity is being made available to most traditional risks, with perhaps the exception of Gulf of Mexico catastrophe, where insurers and reinsurers are being much more cautious.

Since last year, we have seen a steady hardening of rates generally, which seems to have been largely driven by the continuation of significant losses. Year end renewals often struggled to complete on "as expiring" terms and non-Gulf of Mexico business would typically see increases of 15% – more if the loss record was poor. At the same time, policy conditions and deductibles were under scrutiny with much depending on which assured was involved, their loss record and their particular relationship with insurers. This trend of hardening rates looks set to continue or at least to be maintained, with some major losses already occurring in 2009 to bolster the underwriters' attempts to secure better terms. Examples of these losses include a substantial subsea loss off West Africa of $100m and two FPSO losses in Australia, which together will account for some $150m. Then there is the unfortunate damage caused to *Ekofisk* when struck by the well stimulation ship *Big Orange VXII*. Although it is early days yet, this loss is reserved at $1bn.

So losses continue at high levels, with much of the market holding its breath as we approach the hurricane season. Absent a major Gulf of Mexico loss, most commentators expect a 'steady as she goes' approach to rates, but a catastrophic hurricane season will bring a strong reaction from insurers at a time when the energy industry itself is suffering.

Fingers crossed!

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Legal and cover update – expropriation

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Venezuelan Government's expropriation of assets in Lake Maracaibo – an overview of P&I and War Risk coverage and the contractual implications affecting shipowners

In this article, Sharmini Murugason discusses the Venezuelan Government's expropriation of oil industry assets in Lake Maracaibo earlier this year in the context of English law on expropriation and the cover issues that members in such a situation may face. Russell Harling of Holman Fenwick Willan then considers the contractual implications. It is not the intention of this article to comment on the legality of the Venezuelan Government's act of expropriation, which would be a matter of local law and, in so far as these ships may be dual flagged, a matter of public international law, to be taken up by the respective flag states.

Venezuela is the fifth-largest global oil exporter, an activity that generates approximately 80% of the country's revenues. On 7 May 2009, the Venezuelan Government introduced the 'Organic Law Reserving to the Nation Goods and Services related to the Primary Oil Activities' legislation, with immediate effect. The rationale behind this expropriation is the nationalisation of oil industry assets and activities located in the oil-and-gas-rich Lake Maracaibo in order to mitigate the costs of production following the drop in the oil price, for the public and social interests of the nation.

The new law essentially vests in the state-run oil company PDVSA the expropriated assets and interests in relation to 'primary' oil activities in Lake Maracaibo. These include companies, terminals, wharves, shipyards and, of particular significance, support boats, tugs, barges and specialist craft engaged in exploration, production and maintenance activities. In return, owners of these assets will be compensated, but compensation payments will be based on the book value of the assets (a written-down value of the assets) as opposed to fair market value. Compensation for loss of earnings, profits and 'consequential damages' are expressly excluded, and it is therefore questionable whether charterers would even have a look into the compensation pot. Compensation to owners of the assets will be made either in cash or bonds issued by the government. However, at the time of writing, we are unaware of the timeline for such payments. Ships operating in Lake Maracaibo are required to be flagged and registered in Venezuela, and this has significant insurance coverage implications.

Law on expropriation

The concept of taking private property for certain public purposes (for instance, a general programme for social and economic reform, or public development) is not unfamiliar in both democratic and socialist economies. However, its legality is conditional upon (at least as a starting point) prompt, adequate and effective compensation being provided to the party whose rights are being interfered with or disregarded. This right is recognised in the Universal Declaration of Human Rights 1948, the forerunner to the UK's Human Rights Act. The UK has since adopted the European Convention on Human Rights in its Human Rights Act 1998. Article I of the First Protocol of the Convention enshrines the right of every natural or legal person's right to peaceful enjoyment of his possessions except in circumstances of public interest, this being subject to the conditions provided for by local law and by general principles of international law, i.e. compensation. It embraces and protects a wide range of economic interests, including movable or immovable property and tangible or intangible interests, including loss of profit and other contractual rights and economic interest – thus encompassing both shipowners' and charterers' respective interests. There is extensive case law on the delicate balance between, on the one hand, a party's entitlement to prompt, adequate and effective compensation with, on the other hand, the state's right to control the use of property in accordance with the general public interest. However, successful action under the Human Rights Act against the actions of the Venezuelan government would depend upon the claimant's ability to enforce any judgement, which, in the context of the Lake Maracaibo expropriations, must be doubtful.

International Centre for Settlement of Investment Disputes (ICSID) arbitration under the Washington Convention and any relevant Bilateral Investment Treaties can sometimes be a remedy for foreign investors subject to expropriation of assets. ICSID is an international institution established under the ICSID Convention (Convention on the Settlement of Investment Disputes between States and Nationals of Other States). The Convention currently has more than 140 signatories, and both Venezuela and the UK are contracting states. It is outside the scope of this article to consider the circumstances in which this could be applicable to seizure of ships and related equipment in Venezuela. However, depending on the contractual matrix and the domicile of the claiming company, an ICSID action against the Venezuelan state may be an option for those who have assets expropriated in Venezuela.

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Insurance cover

In terms of loss of the ship itself, the usual forms of hull policy exclude capture, seizure, restraint or detainment, which are risks covered under the war risks policy. The Institute War and Strikes Clauses (1/11/95) provide cover for loss of or damage to a ship caused by confiscation or expropriation (clause 1.6). Payment for the loss of the expropriated ship would however be made only after a continuous period of 12 months has elapsed, after which the ship will effectively be deemed a constructive total loss (clause 3). Turning to the exclusions, clause 5.1.4 excludes expropriation by reason of infringement of any customs or trading regulations and, more importantly, clause 5.1.3 excludes expropriation made pursuant to an order of government of the country in which the ship is owned or registered. The rationale for this exclusion is that by flagging and registering their ships in a particular country, the assured is assumed to have taken the risk of doing business there. The situation in Lake Maracaibo would invoke this exclusion, as ships in Lake Maracaibo are required to be flagged and registered in Venezuela.

As of 11 June 2009, the Joint War Committee added Venezuela to its Listed Areas and war risks underwriters are presently considering imposing additional premiums on an individual basis on ships trading to Venezuela.

The Institute Time Clauses Hulls (1/11/95) provide for the hull policy to terminate automatically when there is a change of ownership or management of the ship unless underwriters agree to the contrary (clause 5.2). In a situation such as that in Lake Maracaibo, where the owning company of the ship remains the same but control effectively passes to another party, it is advisable for owners to discuss the situation with their underwriters if they do not want the hull cover to terminate.

P&I and defence cover

In respect of termination of cover in case of a change of ownership, there is a similar provision in the Standard Club's rules (rule 13.19), although it reserves the member's obligations in respect of all contributions, including overspill calls up to the time of termination. It may be extremely important for the member's P&I cover not to terminate even in an expropriation situation, because he may well have continuing liabilities to crew, cargo and other interests under contract and, prospectively, in tort. If such a situation arises, the member should contact the managers immediately to discuss the situation, as the club may be able to waive termination of the cover in respect of liabilities incurred by the member. Cover would not, of course, extend to any liabilities incurred by the new 'owner' – in this case, the Venezuelan government.

There is a further point to note, which is that cover for liabilities arising directly out of the expropriation may be excluded from cover since expropriation is not a P&I covered risk. Capture, seizure, arrest restraint and detainment (except for piracy) are risks expressly excluded from the normal P&I cover (rule 4.3), as they are covered by the war risks P&I cover.

There is some debate as to whether the omnibus rule (rule 3.21) could respond to liabilities arising out of the loss of a ship in a Lake Maracaibo-type situation. The omnibus rule allows a member to submit to the board of directors of the club a claim for liabilities that do not fall within the risks covered by the club but are incidental to owning, operating and managing a ship and that are, in the board's view, within the scope of the club cover. Cover is at the absolute discretion of the board, and in determining the scope of cover, the directors may look to see if the claim is excluded or limited elsewhere in the rules. It is generally thought that you cannot bring within the cover risks that are expressly excluded in the club rules such as capture, seizure etc., and it is therefore difficult to see that a claim under the omnibus rule would succeed.

Rule 3.18 is also a discretionary cover for costs and expenses incurred with the authority of the board to protect a member's interest in cases of interference by any lawful authority of any country. This rule could be used to cover costs incurred in challenging the legality of the expropriation, but in exercising its discretion, the board will decide if the interference was unwarranted or requires investigation.

Defence cover (which is essentially a legal costs insurance) is similarly discretionary. The member could, under rule 3.13 of the defence rules, request the club managers' support in pursuing a claim against the Venezuelan Government challenging the legality of the expropriation. When considering support, the managers will consider, amongst other things, the merits of the case, the interests of the club's other members, the total level of costs both actual and anticipated, and the effect of any claim on the financial position of the defence club.

Effect on charterparties

Many of the ships caught by the Venezuelan expropriation will be on charter, and it will be important for both the owners and the charterers to consider the effect this will have on their contracts.

In many cases, a contract governed by English law is likely to be regarded as frustrated in these circumstances. At common law, a contract will be frustrated if, without fault of either party, the subject matter of the contract becomes unavailable either permanently or for such period as will deprive one or both of the parties of substantially the whole benefit that they were intending to receive from the contract. The effect of frustration is that the parties are automatically discharged from their further obligations under the contract without liability to each other. An example of frustration by expropriation is found in *BP v Hunt* [1983] 2 AC 352, in which a contract for the exploitation of a Libyan oil concession was frustrated when the parties' respective interests in the concession were expropriated by the Libyan government. Similarly, in *Bank Line v Capel* [1919] AC 435, a charterparty for 12 months was frustrated when the named ship was requisitioned before delivery, even though the ship was in fact returned by the government to her owners after a period of about five months. A delay of five months in relation to a 12-month charter was held to change the character of the venture so radically so as to frustrate it.

Under the Law Reform (Frustrated Contracts) Act 1943, sums paid in advance may be recovered in the event of a contract being frustrated. This would apply to hire paid in advance under a time charter. The Act, however, does not apply to voyage charters or to contracts for the carriage of goods by sea other than time charters. Cases involving payment of advance freight

are therefore left to the common law, under which the general rule is that freight is not earned until completion of the voyage and that advance freight, if paid, is returnable if the voyage is not completed. However, this rule is often modified by contractual terms.

The inclusion of a provision in a charterparty allowing the owners to substitute a different ship for the named ship would not generally prevent the charterparty being frustrated if the named ship were expropriated, either before or after delivery. Such clauses are generally construed as conferring on the owners a liberty to substitute but not imposing on them a duty to do so in the event that the original ship is lost, or becomes unavailable: *The Badagry* [1985] 1 LLR 395. This proposition has been doubted, however, and it is sensible to place the matter beyond doubt by express words, as does clause 20 of the HEAVYCON 2007 form: *"Nothing herein shall be construed as imposing on the owners an obligation to make such substitution."* Further, if the original named ship is expropriated, then the charterparty will be frustrated automatically, and it will then be too late for the owners to nominate and substitute a different ship. The right to substitute terminates with the termination of the charter.

We now consider the position under two of the industry standard form contracts under which ships working in the oil and gas industry may be operating.

Supplytime 2005

If a charterparty makes specific provision for supervening events, then the specific provision will displace the common law within the scope of its ambit. Supplytime 2005 makes specific provision in clause 31 (b) for early termination '*for cause*'. The circumstances that may give rise to early termination include the following:

"Confiscation – If any government, individual or group, whether or not purporting to act as a government or on behalf of any government, confiscates requisitions expropriates seizes or otherwise takes possession of the ship during the charter period (other than by way of arrest for the purpose of obtaining security)."

The clause provides that if either party becomes informed of the occurrence of such event, it shall notify the other party *"promptly in writing and in any case within three days after such information is received"*. If the occurrence has not ceased within a further three days after the notification, the charterparty may be terminated by either party *"without prejudice to any other rights which either party may have"*. It is likely that the notification requirement would be regarded as a condition precedent to the operation of the clause. In general, if a notification requirement stipulates an exact time at which notice is to be given, it is likely to be construed as a condition precedent: See *Bremer Handesgesellshaft v Vandan* [1978] 2 Lloyd's Rep. 109. Notification must therefore be given in accordance with the requirements of the clause. It is a difficult question whether, if the notification is omitted and clause 31 does not apply, it might be possible to fall back on the common law of frustration.

Termination under clause 31 may be wider in its scope than frustration at common law because there is no requirement that the act of confiscation should be either permanent or likely to last for such a period as will deprive one or both parties of substantially the whole benefit of the contract. On the contrary, in an extreme case, an event lasting for only six days may lead to the termination of a charterparty that might have had some years left to run.

It is unclear whether *'expropriates'* would include a situation in which the ownership of the ship remains the same, but the owning company is taken over by compulsory acquisition of shares either by the state or by a state company, which is one of the methods envisaged by the Venezuelan action. The ownership of the ship will remain the same, and physical possession will remain in the employees of the owning company, the only change being that the owning company will now be controlled directly or indirectly by the expropriating government, and subject to that government's directions. If, however, the transfer of shares were also backed up by further regulations enabling the government or state company to control the use of the named ship, then even if there was no transfer of title it is likely that, in substance, this would be regarded as expropriation.

In relation to the discharge of liabilities clause 31 is narrower than the common law, as termination under clause 31 is expressly stated to be *"without prejudice to any other rights which either party may have"*. Therefore under clause 31, even if one of the named causes is brought about by breach on the part of one or other of the parties, the charterparty may yet be terminated, but the innocent party will be entitled to claim damages, subject to the other terms of the charterparty.

In many instances, the right to claim damages will be constrained by clause 32 of Supplytime, force majeure. This protects the parties *"if performance of the charterparty is prevented or hindered, provided they have made all reasonable efforts to avoid, minimise or prevent the effect of such events and/or conditions"*. The named events include *"any Government requisition, control, intervention, requirement or interference"*. Clause 32 is subject to a requirement that a party seeking to invoke it *"shall notify the other party in writing within two working days of the occurrence of any such event/condition"*. As with clause 31, it is likely that compliance with the notification requirement would be construed as a condition precedent to the operation of the clause.

Bargehire 2008

Bargehire 2008, the Standard BIMCO Barge Charterparty form, does not contain a clause similar to clause 31 of the Supplytime 2005 providing for early termination. Therefore, the circumstances in which Bargehire 2008 will be terminated by a supervening event will be determined by the common law. However, the Form does contain a *force majeure* provision, clause 20, in similar terms to clause 32 of Supplytime 2005, which would protect the parties from claims for damages in the event that performance is prevented or hindered by certain named events, including *"any Government requisition, control, intervention, requirement or interference"*. Clause 20 also contains a similar requirement of notice in writing within two working days of the occurrence of such event/condition, which would also be likely to be construed as a condition precedent to the operation of the clause.

Safety and loss prevention – safe anchoring

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In October 2008, the club published a *Standard Safety* bulletin dedicated to safe anchoring. This Standard Bulletin highlights the fact that the club has seen a number of recent anchoring incidents that are specifically related to offshore support ships anchoring in or near undersea pipelines or cables near to oil and gas installations, offshore rigs and/or terminals and production facilities. All ship's masters should be aware of the dangers presented by undersea cables and pipelines, but the issue is particularly relevant to offshore ships.

The International Cable Protection Committee, which was formed in 1958 by the submarine cable industry, has recently determined that, since 2007, nearly 50% of submarine cable damage has been caused by ship anchors. (Previously, cable damage was predominantly thought to be caused by the fishing industry).

Shipowners should also be aware that, since the introduction of AIS, successful identification of the ship causing the damage has increased.

These incidents often concern offshore ships servicing installations and offshore terminals, FSOs and FPSOs or a mixture of these. They also may be engaged in other duties, such as moving personnel or small amounts of cargo and maintenance equipment from one offshore unit to another, or may be being called upon to act as a tug or a guard ship for offshore tankers berthing and unberthing. The routine of the ship may be irregular, being there and 'on call' to carry out the various duties whenever called upon. As a result, the charterer, or the terminal or field operator, will often need the ship to be available at short notice.

The master

Every master before anchoring must be absolutely certain that there are no underwater obstructions in or near to the anchoring position. When operating in a field or close to installations where there are underwater oil/gas/communication/power lines, the master should:

- know with certainty the location of the underwater lines. It is not sufficient when operating in a busy and changing field to rely just on the 'admiralty charts'
- get written or emailed confirmation from the charterer or field operator of where the safe anchorage areas are using up-to-date local field charts. These should be controlled documents issued by the field, not just random photo copies
- demand (if necessary, via the owners) that this information is supplied
- demand that underwater charts are regularly issued and provided, even if there is no change from the previous chart
- not anchor in a location where there is even the slightest uncertainty about the seabed pipeline distribution
- not accept a verbal 'OK' from the field operator or unit
- not accept the fact that the previous master or previous ship always anchored here and it was 'OK'. Check the facts for himself
- not accept that the charterer or field operator or his owner has considered the problems that he may encounter. Often the problems of the master are low on the scale of priorities of a major field development. The master should not be afraid to voice his concerns over operational safety issues or the lack of information he is receiving. He should put it clearly in writing (email) to the charterer and owner if he is unclear of the location of a safe anchorage in the field or of any operational issue
- keep a vigilant anchor watch at all times to ensure the ship does not drag onto a pipeline or cable. There is a tendency in areas of good weather to become complacent in maintaining proper anchor watches.
- have referred to the Pilot Books (Sailing Directions), which will give guidance and information about local conditions. Masters and navigational officers should be aware that anchoring in or around the mouth of a river for example – particularly a large river whose source is a long way from the sea – can expose the ship to unexpected and severe currents. When it rains due to local seasonal conditions, or for example when the ice melts in higher latitudes in the summer months, there is likely to be an increased flow down the river. This can cause a considerable increase in the current flow and any ships anchored in or near these locations can encounter dragging of the anchors. These current flows are often unexpected and the change in current direction can result in the ship dragging. Sufficient anchor cable therefore should always be used as a precaution if anchoring at the mouth of a large river. If the current flow is augmented with a prevailing wind or poor weather, the impact can be more significant; indeed, the usual current direction may in fact suddenly completely change. Anchoring in or near the mouth of a river is not always the best location to chose.

When in severe current conditions, the ship should:

- pay out more cable
- put out two anchors
- weigh anchor to steam or change to a better anchorage, and/or
- use the engines to stem the current force.

The condition of the anchor cable should be included in the planned maintenance system and regularly checked for any defects. Ensure that the anchors are safely and correctly stowed when steaming. There are many recorded incidents where the anchors have paid out inadvertently when steaming because they were not properly stowed. This is a potential major hazard when navigating in an oilfield location. The potential damage is considerable.

Rig moves

If the ship is engaged in anchor-handling or towing outside the North Sea operating area, the good practices that are used in the North Sea, upgraded since the Bourbon Dolphin incident, should be followed. The company should always ensure that the highest operating standards are being used and integrated into the safety management system.

Any unusual operation that differs from the routine should be assessed using a risk assessment. Do not allow standards to fall below the normally accepted just because the ship is operating in an area where there is less apparent regulation.

What do you do if you have snagged a cable or line?

Often the ship is unaware what it has lifted on the anchor flukes. In this situation, assistance should always be requested so that further damage is prevented. Dropping the anchor to remove a cable (which may be a high-powered electric cable) should not be attempted as this may damage the cable. Power lines and cables are well protected, but also very expensive to repair and replace, and can present a serious hazard.

If the ship is anchored in an area where pipelines are located and there is a possibility when heaving on the anchor that an obstruction has been snagged, assistance from the shipowners and from ashore should be sought. This may involve using a diver to ascertain whether the anchor has caught a pipeline or not. In an area of subsea pipelines, continuing to pull up on the anchor may cause considerable damage and all the consequences that follow, such as pollution, claims for loss of pipeline usage and field shutdowns.

Shipowners and managers

Owners and operators of these ships have a duty to ensure that the masters are fully supported, and it is evident that the root cause of these incidents can often be traced back directly to the shipowners and managers.

Shipowners and managers fail in a number of ways:

- charterparties do not give due regard to the operational difficulties likely to be encountered by the master. (Operational managers are often not consulted in the charter negotiations.)
- the charterparty does not provide for the charterer to supply controlled charts of the operating areas, particularly in a changing offshore field environment
- the charterparty does not provide that a field operational manual for the ship is provided by the charterer
- no risk assessments are carried out by the owner/manager as to the difficulties and expected risks. Are there sufficient people onboard to carry out the tasks required of the ship? Is the ship able to comply with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) working hours regulations for example?
- once the charter is fixed, the master is left on his own to sort out the 'local' operational difficulties. The master is often not given or introduced to a local focal point with which he can discuss local operational problems. The master should ask the charterer to provide all the information he requires if the owner has not already done so.
- masters are not often given specific guidelines and procedures. These are often written (on purpose) to be open so that the onus is on the master on location. This is not how an effective safety management system should be implemented. Support your masters with clear guidance.

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New BIMCO standard contract launched for heavy lift trade

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BIMCO has recently adopted and published a new heavy lift contract designed for 'lift-on/lift-off' and 'roll-on/roll-off' heavy lift ships. Code named HEAVYLIFTVOY, the new charterparty joins the recently updated HEAVYCON in BIMCO's comprehensive suite of offshore-related standard contracts. It has been developed in response to demand from heavy lift operators working in the mid-sized sector for a dedicated contract for their trade that deals with the carriage of on-deck and under-deck specialist cargo. At present, the trade relies on amended liner booking notes such as the CONLINEBOOKING Note for its contractual needs, which is not an ideal contractual platform given the specialised nature of the trade.

BIMCO's HEAVYLIFTVOY has been drafted by experts from the heavy lift trade who have brought together their commercial and practical expertise to produce a comprehensive purpose-made form that incorporates many of the usual amendments and rider clauses that are currently applied to booking notes. The form provides for the various loading and discharging options used in the trade – free-in, liner-in hook, free-out and liner-out hook.

BIMCO is grateful to the following subcommittee members for their extensive and valuable work on this project:

- Mr. Arie Peterse, BigLift Shipping, Amsterdam (Owner) (Subcommittee Chairman)
- Mrs. Tina Poulsen, SAL Shipping, Steinkirchen (Owner)
- Mr. Arnold F van der Heul, Jumbo Shipping, Rotterdam (Owner)
- Mr. Ralf Schumacher, Liebherr-Werk, Nenzing (Charterer)
- Mrs. Barbara Jennings, Standard Club, London (Club)
- Mr. Per Larsen, Larsen and Partners, Odense (Broker)

Although the new HEAVYLIFTVOY and the established HEAVYCON 2007 are classed as special voyage charterparties for the heavy lift trade, there is an important distinction between their uses and application. HEAVYCON is a 'knock for knock' contract designed primarily for the semi-submersible super heavy lift market, where cargoes are almost exclusively carried on deck and are mostly sole cargoes. HEAVYLIFTVOY, on the other hand, embraces the conventional cargo liability regimes of the Hague/Hague-Visby Rules and is designed for the carriage of multiple shipments, both above and below deck.

The original intention of the drafting subcommittee was to create a new contract that retained the 'look and feel' of the BIMCO CONLINEBOOKING Note commonly used in the trade. However, as drafting progressed, it became apparent that the incorporation of a number of 'voyage charterparty'-type terms and provisions not normally found in a booking note effectively changed the nature of the contract. For example, to provide for free-in/out loading and discharging terms, there are references to laydays/cancelling and laytime, which are more familiar in a voyage charterparty rather than a booking note.

The subcommittee, in consultation with charterparty experts from BIMCO's Documentary Committee, analysed the nature and purpose of a booking note and how it might be applied in the heavy lift trade. Under a conventional booking note, which is essentially a reservation note for cargo to be carried at a future date, the booking note ceases to have any function once a bill of lading is issued. The booking note is evidence of the carriage contract issued in the form of a bill of lading once the goods have been shipped. Although the booking note is a legally binding document on the parties, once the goods are shipped and the bill of lading is issued, the booking note has no further function and the bill of lading takes over as the binding contract between the carrier and the lawful holder of the bill of lading.

However, the intention for HEAVYLIFTVOY was that the 'booking note' should survive the issuing of a bill of lading and remain binding on the merchant and carrier until the successful delivery of the cargo. Booking notes normally incorporate all the terms and conditions of the carrier's bill of lading (in much the same way that CONLINEBOOKING Note incorporates all the terms and conditions of the CONLINEBILL Bill of Lading). Because the new contract is so extensive and because the provisions are not limited to liner terms, a standard bill of lading has been drafted to accompany HEAVYLIFTVOY, with the normal protective clauses and words of incorporation that draw in the terms and conditions from the booking note. The end result is a contract that is substantively different from a conventional booking note but much more tailor-made for this sector of the heavy lift trade.

For the above reasons, the Documentary Committee decided to classify HEAVYLIFTVOY as a specialist voyage charterparty rather than a conventional booking note.

HEAVYLIFTVOY and HEAVYLIFTVOYBILL were formally adopted by BIMCO's Documentary Committee at its meeting in Athens in June 2009 and both forms will be available shortly in electronic format on BIMCO's online charterparty editing system, idea. Sample copies of the charterparty along with comprehensive explanatory notes can be downloaded free of charge from BIMCO's website at: www.bimco.org.

PHOTO COURTESY OF BIGLIFT SHIPPING

CONTINUED FROM PAGE 7

Charterers

Charterers also have a responsibility. Charterers will always place the onus of deciding where the ship anchors on the master. However, they should have procedures in place, particularly in poorly charted or changing areas, to inform the ship in a formal way. The charterer may require the ship to be available at a moment's notice.

Charterers should provide a forum where masters can communicate safety issues; if not, shipowners should suggest a forum.

However, if the master is not given the correct or sufficient information from the charterer, field operator or his shipowners, then the master should either:

- not anchor and drift (explaining his actions clearly)
- anchor in a location he knows is safe. This may be a distance from where the charterer may ideally want the ship. The master should clearly explain in writing why he has had to anchor in this location.

Anchoring in an area where there are undersea pipelines is a potentially hazardous operation. A master must use good judgement and be forceful with the charterers and shipowners to ensure that he is always given correct and up-to-date information. Do not assume that charterers and shipowners have done the thinking for you.

Although many incidents relate to offshore ships, all ship's masters should be aware of the dangers of subsea cables and pipelines when anchoring.

Anchoring special edition of Standard Safety

The club published a special edition of *Standard Safety* in October 2008 that focused on anchoring. Please contact the club if you would like additional copies of this edition, or go to the website: www.standard-club.com

New BIMCO standard contract launched for heavy lift trade

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The HEAVYCON/HEAVYLIFTVOY subcommittee was chaired by Arie Peterse of BigLift Shipping, a member of the Standard Club, who did an excellent job of steering the committee over the finish line to produce the two documents required (despite some very lively debate at times!). We asked Arie to write a brief note about his experiences as a BIMCO subcommittee chairman.

During the process of the update of HEAVYCON (now: HEAVYCON 2007) it was suggested from various sides that a new contract format (nicknamed: "HEAVYCON light") for the trade of medium sized heavy lifts should be developed. The initiative was supported by BIMCO and early 2008 a sub-committee started working on the project. It was my pleasure to chair the sub-committee.

It is a good practice of BIMCO to invite onto a subcommittee a small group of experts from various sides of the trade:

- owner, charterer and broker concentrate on creating a clear, fair and balanced commercial and operational framework
- input from P& I is essential on many points; expert opinion can be requested from the club, as we did for instance on the deck clauses applying to US and non-US trades
- BIMCO's organisational and secretarial services are invaluable, as is its encyclopaedic knowledge of existing shipping documents, which is needed to make the end product consistent with BIMCO standards
- while English is the lingua franca of shipping, the presence of native English speakers on the subcommittee is essential to phrase clauses in clear, unambiguous wording.

It is good to work under the umbrella of the BIMCO Documentary Committee (DC). The subcommittee can be assured that the drafts are scrutinised by experts (many good questions, comments and suggestions were made at various phases) and can ask the DC for advice. For example, during the work, we became concerned about possible consequences when we started diverting from the original idea to develop a Booking Note based on CONLINE towards a contract format more like a specialised charterparty. We were quickly reassured by the DC in a very pragmatic way: why not make it a charterparty, if it fits better? "If it looks like a duck and quacks like a duck, it probably is a duck."

Of prime importance are the people in the subcommittee and, in this respect, we were extremely lucky with the BIMCO selection. All are personally invited, having a wealth of knowledge and expertise in the trade, but must be prepared to share this knowledge, be open-minded and willing to work towards practical results in consensus, not confrontation.

Apart from that, there is of course quite a burden on their agenda; even in today's world of unlimited electronic communication, effective brainstorming can only be done with all participants physically around one table.

Lastly, a pragmatic approach is required. It is not feasible to draft a standard charterparty that covers all the eventualities that may happen during the execution of a contract; efforts to include all possible scenarios will lead to a document that is so elaborate as to be unusable. One has to keep the famous adage in mind: 'A camel is a horse designed by a committee'.

We hope that the resulting HEAVYLIFTVOY is a practical document and will find good use in the heavy lift trade. BIMCO's 'idea' allows it to count the number of downloads of each document; we are looking forward to seeing the level of actual use in the near future.

PHOTO COURTESY OF BIGLIFT SHIPPING

Insurance – WELCAR

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In the run-up to the reissue of the WELCAR form, Patric McGonigal of Barlow Lyde & Gilbert examines some of the more common issues that have arisen in respect of cover under the current form.

WELCAR 2001 was developed by the Wellington Syndicate at Lloyd's, now part of Catlin, and issued in 2001. It was produced in response to a period of significant claims during which the sums involved exceeded premium about five-fold. Although often amended, it is generally accepted by assureds and remains the predominant form of offshore construction cover used by the market today. Nevertheless, while serving a purpose, it is not without its problems and having been under review for the last four years is expected to be reissued in a revised format sometime in 2010. This is to address a range of issues, but in particular, those relating to the exclusion of faulty parts and/or welds, insufficient limits or sublimit buybacks, punitive deductibles, the quality assurance/quality control provisions for other assureds (contractors) as well as the rates charged by contractors for remedial work for which they are responsible.

Chief amongst these is the test for damage and, in particular, the meaning of the term 'defective parts'. The leading authority in this area, the *Nukila*, was determined by the court of appeal over 10 years ago but remains the benchmark for how, in theory, these issues should be approached. In this article, I shall review the *Nukila* judgment as well as look at a number of related points concerning the basis for all risks cover, the test for damage, and the wear and tear exclusion.

All risks

WELCAR is written on an 'all risks' basis, i.e. *"…all risks of physical loss of and/or damage to the property covered…"* A slightly misleading title, it is an insurance that provides the broadest of cover but that is subject to a number of exclusions, such as damage caused by inherent vice, wear and tear, and depreciation – matters that are essentially inevitable in nature.

In order for a loss to be recoverable under all risks insurance, it must be fortuitous. That is, the cause of loss must be accidental as opposed to a loss that is bound to happen given the nature of the cargo insured or the voyage in question. At its simplest, this means that there must be some element of chance or inability on the part of the assured to foresee an event. As such, intentionally caused losses and naturally occurring losses, which lack fortuity in the sense that they were always going to happen sooner or later during the period of the cover, are excluded.

In order to establish that a loss is fortuitous, one must show that there was a casualty which could not reasonably have been foreseen as one of the necessary ingredients of the marine adventure. However, all material things decay or deteriorate at some point in time. Therefore, the question to be asked is not whether something will eventually happen, but whether loss or damage will occur during the period of the policy: if at inception, it was not anticipated that a loss would occur during the policy period, then that loss will come within the scope of all risks cover.

Test for damage

WELCAR provides cover for "physical loss…and /or physical damage". However, there is little precedent in property insurance coverage cases as to what is meant by physical loss or damage. The *Oxford English Dictionary* defines it as something suffered that *"reduces the value or usefulness of the thing affected"*. Elsewhere, damage is said to refer *"…to the physical state of a thing that has changed for the worse, and does not include injury or damage which will happen in the future...[f]or example, scallops, which are perfectly fit for immediate consumption but have been raised to a temperature which has shortened their shelf life, may be damaged scallops for the insured who does not want them for immediate consumption but for sale in a foreign market. The goods have become less valuable than they were before, however, for there to be damage in the sense of an insurance contract, it will be necessary to produce the report of a food laboratory that a physical change has occurred in the scallops."* [1]

As an example, a claim was made in respect of submolecular damage to a Degas pastel, which had been placed too close to a fire[2]. The policy provided cover for *"direct physical loss or direct physical damage of whatsoever nature to property"*. Underwriters maintained that there was no direct damage to the painting in respect of a stigma attaching to it, but the assured argued that the submolecular damage shortened the life of the painting and increased the risk of deterioration.

The court held that depreciation in value because of the suspicion of possible physical damage was not covered. However, it also found that submolecular damage had been caused to the painting and that constituted recoverable physical damage. This was despite the fact that the damage was not visible and its extent could not be determined without testing (which could not be carried out because of the harmful effects on the painting).

In short, the obligation on the part of the insurer to indemnify is dependent upon proof that the risk insured against, i.e. damage to property, has in fact occurred. The cases suggest that there will need to be a finding of some sort of *"physical change"* to the insured property before a finding of physical loss or damage will be made.

CONTINUED ON PAGE 12

1 Arnould's Law of Marine Insurance 16th ed, para 16-2C
2 Quorum v. Schramm [2002] 1 Lloyd's Rep 249

Wear and tear

WELCAR excludes the cost of repairing, correcting or rectifying wear and tear. Damage that is attributable to ordinary wear and tear or the ravages of time is not a fortuitous loss and is therefore excluded. Such loss is defined as being *"…merely the result of ordinary service conditions operating upon the hull or machinery, as for example when the relevant part wears out having reached the end of its expected working life, or when initially sound materials have undergone some process of deterioration, such as corrosion which was introduced in the ordinary course of trading and remains uncorrected."* [3]

The approach of the courts is illustrated by a claim that arose out of the Hatfield rail disaster of 2000 in the UK.[4] The derailment was caused by a broken rail that, in turn, was caused by gauge corner cracking, a type of rolling contact fatigue. Immediately after the derailment, Railtrack imposed emergency speed restrictions on parts of the network where corner cracks were known to exist. This caused severe disruption to train timetables.

The operating companies had a 'denial of access' extension in their insurances under which cover was granted in the event of the assured being prevented or hindered in the use of the rail network. However, the policies also contained a wear and tear exclusion.

The existence of rolling contact fatigue was influenced by a number of different factors, including the type of railway vehicles running over the track, the speed at which they did so and other environmental conditions. The first instance court therefore concluded that rolling contact fatigue was a paradigm example of wear and tear: while the operational conditions could have been varied to limit the damage, that did not mean the damage when it occurred was not attributable to ordinary wear and tear or gradual deterioration. However, the court also held that the proximate cause of the loss was the imposition of the emergency speed restrictions and that the wear and tear was no more than the underlying state of affairs that provided the occasion for the imposition of those restrictions. Accordingly, the exclusion did not preclude a claim. On appeal, while it was agreed that wear and tear was a proximate cause, the court considered that it was wrong to seek to identify just one – in this case, the speed restrictions were also a proximate cause of the loss. Nevertheless, as a matter of law, when there are two proximate causes, one of which is a covered loss and one of which is excluded, the exclusion bites and there is no coverage.

Defective parts

3 Arnould 16th ed, para 780
4 Midland Mainline v Eagle Star [2004] 1 Lloyd's Rep 739
5 WELCAR cl.7
6 *Promet Engineering (Singapore) Pte Ltd v. Sturge* [1997] CLC 966

WELCAR *"…covers physical loss and/or physical damage to the property insured herein occurring during the Policy Period and resulting from a Defective Part, faulty materials, faulty or defective workmanship or latent defect even though the fault in design may have occurred prior to the attachment date of the Policy…however… [there is no]…coverage for loss or damage to (including the cost of modifying, replacing or repairing) any Defective Part itself, unless...*

such Defective Part has suffered physical loss or damage during the Policy Period;

such…damage was caused by an insured peril external to that part; and

the defect did not cause or contribute to the…damage."

On face value, this is relatively straightforward and tends generally to be a question of fact on each occasion, the main issue being how to identify the defective part.

WELCAR defines a 'defective part' as any part that is or becomes defective and/or unfit or unsuitable for its actual or intended purpose. This includes any ancillary components that are not themselves faulty but that would normally be removed and replaced by new components when the component that is faulty is repaired.[5]

In practice, this gives rise to several problems in interpretation, the most common being the extent to which a 'part' may be identified as something having its own separate function, if any, as opposed to its role as just one in a greater sum of parts having a joint or combined function.

The *Nukila* [6]

The dispute concerned fatigue cracks found in the legs of an accommodation platform caused by fatigue stress as a result of fluctuating loads set up by the normal action of the waves. While the cracks were discovered before any incident occurred, the experts were agreed that at the time the cracking was discovered, the platform was in danger of collapse.

There were three steel cylindrical legs (208ft long & 8ft in diameter) around which were constructed 28ft square spud cans to stop the legs from sinking into the seabed. However, the welds attaching the spud cans to the legs were not properly profiled. This created an excessive concentration of stress, which led to fatigue cracking in the welds. It was discovered that the cracks in the welds had in turn led to other large cracks branching out in different directions through the spud cans and legs.

The hull and machinery policy contained an Inchmaree clause covering damage to the subject matter insured caused by any latent defect in the machinery or hull. An additional perils clause extended coverage in the case of the repair or replacement of any defective part that had caused damage to the ship.

The defendant insurers contended that as there had been no damage caused to the *Nukila*, there was no cover. They argued that if there was a

latent defect or a defective part, this had not caused any consequential damage to the *Nukila* of the type covered by the policy – all that had occurred was that the latent defect had manifested itself.

High Court

The High Court agreed that if all that had happened was that a latent defect had become apparent, there was no cover under the Inchmaree clause – there had to be damage caused to the *Nukila* in order for there to be cover. Similarly, the cost of replacing the defective part would not be covered. Consequential damage did not depend on the extent of damage to the defective part but on whether actual damage had been caused – a mere risk of such damage (i.e. the platform collapsing) was not sufficient.

The court held it was artificial to describe the welds as 'parts' of the *Nukila* – *"just because something has a name it does not become a separate part for this purpose…a part…was one which was physically separable and/or performed a separate function from other parts…neither the [leg] columns nor the spud cans have separate functions. They…form one structure…there were flaws in the weld which developed into cracks which spread into the immediately adjoining structures which the weld was meant to hold together. As a matter of common sense it is impossible to see that at this stage anything consequential has happened which can be characterized as damage to the vessel."*

The claim therefore failed; no damage had been caused to the ship.

Appeal

The question for the Appeal Court was whether the damage was caused by a latent defect or was simply the defect itself.

Ultimately, while the Appeal Court agreed with the general principles discussed at first instance, it disagreed entirely on the relevance ascribed to identification of the welds as a defective part to the question of whether damage had been caused to the Nukila. The court concluded that with any claim under an Inchmaree or similar clause, one must simply show some change in the physical state of the ship. However, the court did acknowledge the factual difficulty peculiar to metal fatigue and the formation of fatigue cracks: *"a crack can be both the consequence and the cause of metal fatigue"* (i.e. a latent defect not discoverable by due diligence). Thus, the approach to understanding the cracks in the welds as being defective parts became key to the outcome.

The High Court had taken the view that just as the hull of a ship (no matter how extensive the cracking) should be treated as a single part, so too must the spud cans, the legs and the welds that held them together.

However, the Appeal Court felt the matter was far more straightforward: was damage to the subject matter insured caused by the latent defect? Focusing on what was or was not a part did not help answer the fundamental question of whether damage had been caused to the *Nukila*.

It concluded that: *"It would be an abuse of language to describe the legs and spud cans as merely defective"* (or part of the defective part) – on any ordinary use of language, they were damaged (by being subject to stresses that they were unable to resist due to the latent defects in the welds). The word part is capable of being used in a whole variety of ways depending on the context: *"The use of the word 'part' in the additional perils clause is normally simply to avoid the need to exclude from the indemnity…the cost of repairing or replacing the originally defective part...and for this purpose there is no need to define what is meant by the word 'part'."*

In essence, therefore, the answer to the question 'what is a part?' is that it is often the wrong question to ask and the issue one should consider is whether any damage was caused to the subject matter insured. The court in the *Nukila* concluded that damage obviously had been caused, but in practice, the matter remains a source of debate in each case. This is particularly so when ships and accommodation platforms are such complex structures, made up of hundreds of individual component parts that together comprise a single integrated unit. We look forward to seeing whether and how this issue has been addressed in the new WELCAR wording.

Underwater vehicles

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P&I cover

As the search for new oil reserves has developed and new technology has allowed previously unworkable fields to become viable, the exploration of oil and gas has moved into increasingly harsh environments.

The activities of the club's offshore members have been moving to deeper and colder waters, meaning that much new offshore development has exceeded the reach of human divers. Installation, maintenance and decommissioning of offshore structures and seabed infrastructure have as a result become more reliant on the use of Remotely Operated Vehicles (ROV) or Autonomous Underwater Vehicles (AUV).

As this technology has become increasingly sophisticated and more frequently used, it is important that the club keeps pace with these developments and ensures that we can provide the cover necessary to respond to the associated liabilities that our members may incur.

Poolable P&I cover excludes liabilities arising out of the operation by the member of submarines, mini-submarines and diving bells, which includes ROVs, AUVs and other underwater vehicles (see rule 5.14 (1)). When a member is carrying out ROV operations using its own personnel/equipment, this would fall within the exclusion, and should the member wish the club to cover liabilities that may arise as a result, it will need to purchase an extension to its P&I cover, which the club provides through the Offshore Extension Clauses 2009. This extension will cover third-party liabilities arising out of the operation of the underwater vehicle, but will not cover damage to or loss of the vehicle itself, which is a first-party property risk and therefore not of the nature of P&I, which is designed to respond to third-party liabilities.

In the past, it has been argued that where a member is chartering its ship out as a platform for ROV operations, the exclusion in rule 5.14(1) will apply unless the member has a full hold-harmless and indemnity from the party that is responsible for the diving or ROV operations. We have reviewed this position and concluded that the test should be whether the member is actually carrying out the operations itself, so that if the ship is merely being used as a platform, the exclusion will not bite and the member will have the benefit of full poolable cover.

Increasingly, the party responsible for operating the ROV or other underwater vehicle will also be responsible for wreck removal or recovery of the vehicle itself. Poolable P&I cover only responds to wreck removal of the entered ship or cargo carried therein, and since the ROV is a separate piece of equipment, the club cannot cover wreck removal of an ROV under the entry for the ship being used as the ROV launching platform. The club can, however, provide a member with cover for wreck removal by entering the ROV or AUV in the club for cover to a fixed limit. In this case, the underwater vehicle itself becomes the entered ship for the purposes of wreck removal under rule 3.11(1).

We have asked one of the club's leading offshore members, Subsea 7, which has been heavily involved in the use and development of underwater vehicles, to describe its experience of this technology and to give its thoughts on what progress we may expect in the future.

We are confident that, in close co-operation and dialogue with our offshore members, we can ensure that our cover continues to map and respond to these developments in their operations.

Technological developments

The advances in ROV technology since its introduction some 30 years ago to the oil and gas sector have been meteoric. They have evolved from devices able to carry out a variety of simple inspection and maintenance tasks in relatively shallow water to being the enabling technology for deepwater subsea oil and gas production worldwide. Subsea 7 has played a leading role in developing this ROV and intervention capability, and is now on a similar path with AUV development, which we believe to be the next technological step to meet the industry challenges.

For Subsea 7, this journey started in the late 1970s when the potential of ROVs could be seen but their implementation was floundering due to a lack of reliability. However, the step change arrived when oil companies declared their desire to commit to the use of ROVs for drill rig support as opposed to divers, thereby providing the incentive for the likes of Subsea 7 to respond.

By the mid-1980s, Subsea 7 had developed its purpose-built drill rig support ROV 'Pioneer', whose success led to a further 30 similar type units being deployed.

The success of these original systems encouraged the development of a range of vehicles that were improved and fashioned to meet the increasingly complex requirements and environmental conditions, not only for drill rig support but also survey and construction.

In parallel with ROV development, add-on tools and sensors were developed to be integrated with the vehicles, making it now possible to maintain and operate subsea wells in much deeper water and automating many difficult tasks previously performed manually by the pilot.

As many of these tasks and associated tooling interfaces became routine, Subsea 7 played a key role for the industry with the formation of the ISO interface standards for ROV tooling and intervention.

Subsea oil and gas production, however, continues to become increasingly complex in deeper waters and more remote parts of the world, placing a greater emphasis not only on equipment installation but its integrity and reliability.

Equipment such as subsea processing for example is now being installed with the intent to retrieve on a planned basis and have in place continuous condition monitoring throughout its intended life.

The vision of Subsea 7 and its AUV partner SeeByte is that the introduction of hover-capable AUVs will follow a similar evolutionary path to that of the ROV, culminating in our ability to provide an enhanced service where, for example, the AUV will perform inspection/intervention tasks direct from a host facility such as an FPSO. The ability to operate directly from the host facility as opposed to an in-field support ship provides significant advantages as routine or unplanned work can be easily and frequently carried out without a dedicated support ship.

Recent trials by Subsea 7 that form part of our overall development programme with torpedo shaped AUVs and our prototype hovering AUV have demonstrated that this ambitious forward-thinking strategy is achievable.

Unlike the early ROV systems where the vehicle was under direct control of the pilot, the latest generation of ROVs are controlled by computer, with the position adjustments provided by the pilot, commonly referred to as DP (dynamic positioning). This brings some significant advantages in the safe operation of the equipment by designing into the control software the behavioural characteristics that will not allow potentially unrealistic or dangerous demands to be carried out. For instance, when working close to a seabed asset and sudden bad visibility is encountered, the pilot can fix the vehicle position mid-water until visibility improves. In older systems, the potential for the vehicle to drift into the asset was always present, resulting in entanglement or, in the worst case, potential loss of vehicle.

Our AUV development will develop this intelligence a quantum step further. The vehicle will have intelligent goal-based mission control systems that use information from the onboard sensors to adjust the intended mission plan to accommodate unforeseen interference.

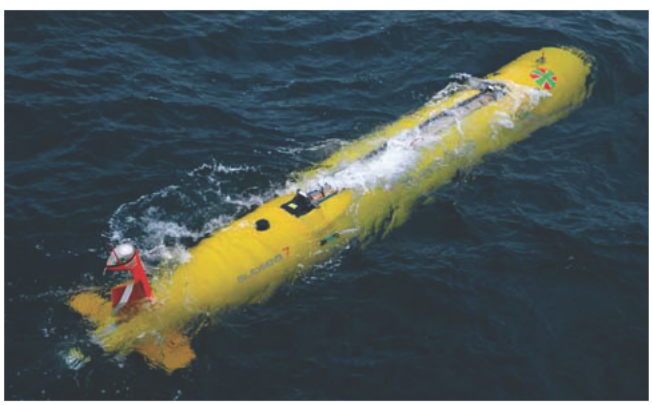
Subsea 7 has already demonstrated some aspects of this whilst performing the world's first pipeline survey with an AUV, where the vehicle would correct its survey route if it sensed the pipeline was not exactly where it was expected to be (ideal tool for post hurricane surveys).

From an operational perspective, the behavioural characteristics of the vehicle can now be relied upon to react to a hazardous situation in a consistent manner, a feature that perhaps no operator-based system may be able to provide.

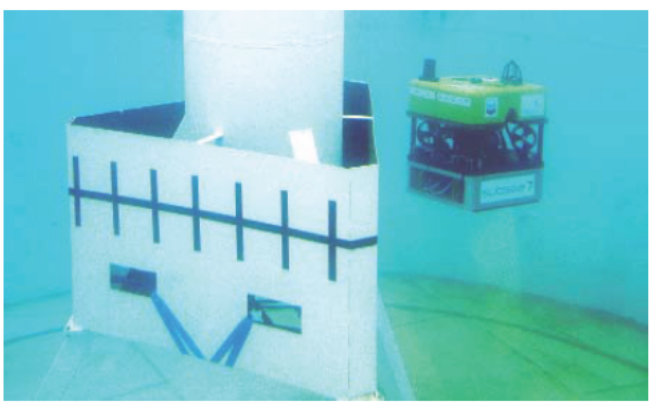
AUVs automatically raise the question of what happens when things go wrong and how often do you expect to lose them.

Subsea 7 and Seebyte suggest that the behavioural programmes under development will allow an onboard intelligence that is far more consistent and possibly superior to the current combination of ROV and pilot – time will tell.

As with all new technology, implementation, commercial and contractual issues have to be addressed. One such challenge is being addressed by the Society of Underwater Technology (SUT) which, supported by a wide range of organisations involved in AUV operations, including Subsea 7, has been addressing how we as an industry tackle AUV insurance and liabilities. The initial approach has been to develop a definition that covers these systems and a guideline for their use. The definition has now been produced and the work group has approached the maritime regulatory authorities to see if it can be written into law. A legal definition would lead to a standard method of determining liability and therefore pave the way for future contracting terms.



SUBSEA 7'S GEOSUB AUV PERFORMING THE WORLD'S FIRST PIPELINE INSPECTION



SUBSEA 7'S TEST BED PROTOTYPE AUV DEMONSTRATING INSPECTION / INTERVENTION

Arbitration

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The Singapore Chamber of Maritime Arbitration (SCMA)

In the October 2008 offshore special edition of the *Standard Bulletin*, we considered how Singapore was developing as a maritime and energy hub. Ship and rig owners, insurers, lawyers and experts are all opening up offices to take advantage of the oil and energy markets in the region. One thing that any maritime centre needs is a local framework for settling disputes, which Singapore has in the Singapore Chamber of Maritime Arbitration. On 3 April 2007, Standard Asia signed a Memorandum of Understanding with the SCMA, for closer co-operation and joint efforts in the promotion of maritime arbitration in Singapore, to the benefit of Asian players in the industry.

The SCMA was established in November 2004 within the umbrella of the Singapore International Arbitration Chambers (SIAC). As from May 2009, the SCMA has been reconstituted as an entity separate from the SIAC and now follows a party autonomy rather than institutional model of arbitration.

The SCMA has a new set of Arbitration Rules rather similar in substance to that of the London Maritime Arbitrators Association (LMAA). The rules and information about the SCMA can be found on its website (www.scma.org.sg), but the following are some main features:

- arbitration is commenced by giving notice in the prescribed form to the other party – there is no need to appoint an arbitrator to commence the process
- the tribunal comprises three arbitrators unless the parties agree another number such as a sole arbitrator
- the SCMA is not involved in managing the arbitration and therefore does not charge a management fee, but is available to facilitate the process when called upon to do so
- the SCMA has a panel of arbitrators meeting minimum criteria, with comprehensive CVs available to users. The panel comprises arbitrators based in Singapore and elsewhere, for example, London and Hong Kong. The parties are not required to choose an arbitrator from the panel
- if the parties cannot agree on a sole arbitrator or two party-appointed arbitrators cannot agree a third arbitrator, the chairman of the SCMA can be requested to appoint the arbitrator. The appointment by a party of an arbitrator can be challenged on grounds of lack of impartiality
- there is no scale of arbitrator fees, which is left to negotiation. However, an arbitrator must make clear the hourly rate, number of hours worked and for what purpose
- the law of the dispute is that chosen by the parties – often English law in the case of maritime disputes. The physical place of the arbitration and the juridical seat of the arbitration (the latter determines the law applying to the arbitration process rather than the subject matter of the dispute) is Singapore unless the parties otherwise agree
- there is a small claims procedure for disputes not exceeding $75,000.

The Standard Club

Standard Bulletin is published by the managers' London agents:

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