

# Club review of crew contracts



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The majority of crew personal injury and illness claims arise pursuant to the applicable crew contract of employment. This sets out the terms and conditions of a crew member's service on board a ship and their relationship with their employer, which will often be a crew management company.

The crew member's individual contract of employment usually incorporates the terms and conditions of a named collective bargaining agreement (CBA).<sup>1</sup>

## Why the need for a club review?

The club's rules require that the managers of the club review and approve the applicable contract of employment and CBA to ensure that the member's legal liabilities fall within the scope of club cover.<sup>2</sup> Further, the International Group of P&I Associations' Pooling Agreement 2015 obliges the club to review and approve these contracts.<sup>3</sup>

The club's review assists the member to identify any unreasonable obligations which may be open-ended in nature or fail to comply with the industry norms or applicable local law. For example, where a particular employment contract provides for unusually generous compensation in the event of death, injury or illness, the review provides an opportunity for the member to have these compensation levels approved in advance by the managers of the club so that its additional exposure pursuant to the contract can be taken into account in the assessment of P&I premium.

## Scope of cover

Pursuant to rule 3.1 of the club's rules, the club reimburses the member in respect of its liabilities arising from crew illness, injury, disability or death, subject to the terms of the crew employment contract and the rules of the club.

Accordingly, in reviewing a crew contract, particular attention should be given to the type and scope of compensation/benefits payable under standard P&I cover. This typically includes:

- medical treatment;
- sick wages;
- disability compensation;
- death compensation;
- repatriation;
- compensation for damage to or loss of personal effects; and
- compensation for termination of employment.

Members should always ensure that their obligations pursuant to a crew contract are appropriate and in line with the accepted standards and practice of the industry and the wider applicable law. To that end, the International Transport Workers' Federation (ITF) publishes a 'model' crew contract, which specifies entitlements such as pay, working hours and compensation. As this is an 'industry-standard' document, the club will always review any crew contract with this model in mind.

Outlined on pages 19 and 20 are just a few common issues that members should consider when negotiating/agreeing crew contracts.

- 1 A CBA is a labour contract typically agreed between the employer and one or more trade unions for a group of workers.
- 2 Club rule 2.3 provides: '*Where such liabilities would not have arisen but for the terms of any contract or indemnity, the contract or indemnity must either correspond to any specific requirements set out in rule 3 [Risks Covered] or rule 5 [Excluded Losses], or have been approved by the managers...*'
- 3 Clause 3.5(a)(ii) of the Pooling Agreement materially states: '*...The terms of that contract of employment or services have been approved by an Association...*'

### Levels of compensation

In addition to a review as to the scope of compensation/benefits payable pursuant to the contract of employment or CBA, the club's contract review will give attention to the levels of agreed compensation payable.

The levels of compensation often differ depending on the contract utilised, and it will be for the member to decide upon the applicable level of compensation when negotiating the contract. Members should be aware of compensation levels that appear excessively high or low – the latter being particularly open to challenge in local courts.

The club recommends that members remain mindful of the compensation figures set out in the current ITF 'model' agreement and ensure that annual increments in compensation are reasonable. For information, the 2016 ITF figures set out in the IBF ITF-IMEC International CBA 2015-2017<sup>4</sup> are illustrated in the table below.<sup>5</sup>

### Duration of compensation

The period during which contractual benefits/compensation are and remain payable should be carefully specified in the contract of employment. In cases of extended illness or disability following an injury, the benefits payable, which may be by way of sick pay and

medical treatment, should have a definable cut-off point, for example, upon a determination as to the degree of permanent disability or after a prescribed number of days has elapsed.

Incidentally, most standard ITF contracts entitle seafarers to compensation as a consequence of illness or injury during the period set out in their contract of employment. Further, references to benefits being payable where there is no connection with the entered ship should be appropriately amended. For example, compensation payable during periods of holiday should be noted.

Additionally, careful consideration should be given to any provision that allows for compensation to be payable when an incident or illness occurs whilst the crew member is between contracts. The club's cover is confined to liabilities incurred in relation to and in connection with the operation and management of an entered ship.<sup>6</sup> Accordingly, an injury or illness sustained outside a crew member's course of employment may not be 'in connection with' the entered ship, as required by the club rules, and will then fall to the member/ employer's account. There is of course an exception in respect of travel to and from the ship, and this is also reflected in the ITF model agreement.

### 2016

Degree of Disability Percentage (%)	Rate of Compensation, \$		
	Ratings	Junior Officers	Senior Officers
100	98,848	131,797	164,745
75	74,136	98,848	123,559
60	59,308	79,708	98,848
50	49,424	65,899	82,373
40	39,539	52,719	65,899
30	29,655	39,539	49,424
20	19,770	26,359	32,950
10	9,885	13,180	16,475

4 International Bargaining Forum – International Transport Workers' Federation – International Maritime Employer's Council Collective Bargaining Agreement 2015-2017

5 IBF ITF-IMEC International CBA 2015-2017 <http://www.itfseafarers.org/files/seealsodocs/44443/IBF%20ITF-IMEC%20International%20CBA%202015-2017%20.pdf> accessed on 16 March 2016

6 As per Club rule 2.1

# Club review of crew contracts continued

## Other illness and injuries

The club recommends that the contract of employment plainly delineates the circumstances when compensation is payable. In particular, there should be no ambiguity in the contract of employment as to whether compensation is payable in the event of a non-work related condition or self-inflicted injuries. If, in fact, the contract of employment intends to exclude compensation arising from such conditions, this should be clearly stated to avoid potential unnecessary expensive and protracted litigation.

## 'Most favourable' medical report clause

Some crew contracts provide for compensation to be payable on the basis of the 'most favourable' medical report. In essence, this allows a seafarer to 'pick and choose' a medical report that puts their condition at the highest level and that would provide for higher levels of compensation. If this was not the intention behind the clause, then this should be substituted

for one that states that if there is any disagreement between medical practitioners instructed by the parties (for example, by the crew member and the employer), the matter should be referred to an independent third doctor for determination, and their view is to be binding on both parties. An example of such a clause is as follows:

*'If a doctor appointed by or on behalf of the seafarer disagrees with the assessment [of the company doctor], a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.'*

## Conclusion

Claims arising from crew contracts of employment may not always be straightforward and can result in substantial liabilities to our members. The club remains on hand to assist members with any enquiry they may have in respect of their contractual obligations to their crew.

