

# LIABILITY AND INSURANCE COVER IN RESPECT OF TOWAGE

Towage operations are carried out by tugs in various circumstances. For example, a vessel in port may require tug assistance with entering or leaving the berth in a port. Tugs are also used for long-distance operations, including the transportation of ships to repair yards and towing large structures, for example floating docks and oil rigs, around the world. In addition, tugs are used for towing or pushing barges loaded with cargo up and down coastlines, along navigable rivers and even across oceans. They are also widely used in connection with salvage operations.



Despite the varying nature of towage operations, they always involve two or more vessels or objects operating in close connection to each other with limited freedom to manoeuvre. Consequently, towage operations involve serious risks. In particular, these operations run a greater risk of collision or similar accidents as compared to other shipping operations. The greater risks involved in towage operations affect the insurance cover for the objects involved in towage. In the following, we hope to provide some useful information regarding insurance cover in connection with towage.

## Towage

Towage is offered on commercial grounds, and the contractual agreement between the owner of the object to be towed and the towing company is usually based on a standard contract. A tug is engaged by another vessel or bar-

ge for carrying out a specific task at a time when the object to be towed is not facing any imminent threat. The compensation, usually based on a fixed fee, is negotiated, and agreed upon in advance. The payment of the compensation is not dependent on whether the operation is successful or not.

## Contractual agreement

Since there is no international convention regulating the liability of the parties to a towage agreement, the liability between the tug and the tow is established according to general liability rules under maritime law or other legal norms in the relevant country. In many countries there are no special legal regulations concerning towage contracts, which gives the parties to a towage contract contractual freedom to negotiate and agree upon the terms and conditions.

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## Standard forms of contracts

In the absence of special legal regulations concerning towage contracts, standard forms of contract of towage have been specifically designed for the towage industry to simplify the negotiations and contractual agreements between the tug and the tow.

### Scandinavian Tugowners' Standard Conditions 1959 as amended in 1974 and 1985

#### Under the Scandinavian Tugowners Standard Conditions:

- **The tug owner is only liable towards the tow if the damage is a consequence of fault or neglect on the part of the tug owner's management. The same apply for damage caused to a third party which the tug owner is held liable for; the tow owner shall indemnify the tug owner unless the damage to the third party is a consequence of fault or neglect on the part of the tug owner's management.**
- **The tow owner is considered liable towards the tug for all damages caused to the tug in connection to the towage service, unless the tow can show that neither the tow nor anyone for whose acts the tow is liable has caused the damage by fault or neglect.**

The Scandinavian Tugowners' Standard Conditions impose a considerable degree of liability on the owner of the tow and relieve the tug owner from liability, thus protecting the tug company from liability to a significant extent. The tow is assumed liable for damage caused to the tug, the tow as well as to any third party, even when the damage is caused by negligence on the part of the tug owner or his employees. The liability of the tug owner is limited. The tug owner will be liable to compensate the tow owner for losses only if the damage or loss is caused by error or negligence on the part of a member of management within the tug owning company who is not serving as master or as a crewmember on the tug.

### International Ocean Towage Agreement: TOWCON and TOWHIRE

Under a Towhire or Towcon agreement each party agree to bear the following risk and are responsible for the following:

- **Injury or death to its own servants or agents**
- **any loss or damage caused to its vessel**
- **any loss or damage done to third parties or to their property by reason of contact with its vessel or by reason of obstruction created by the presence of its vessel**
- **any loss or damage suffered by the party or by third party as a consequence upon a loss or damage set out in the above**
- **all liability in respect of wreck removal and allied measures and in respect of pollution prevention relating to its vessel.**

In respect of liability to a third party or a third party's claim each party has a right of indemnity against the other party if the other party according to the agreement are liable for the loss or damage.

The Towcon and Towhire contracts established by Bimco employ standard conditions widely used in the industry. In contrast to many standard tug-owners' conditions, which exempt the tugowner from almost all liability, the Bimco forms allocate responsibility between the tug and the tow in a more balanced way. Under these contracts, the operational risk of towing is shared between the contracting parties (the tug and tow) on a knock-for-knock basis, meaning that each party agrees to bear full responsibility for any damage or loss to its own property as well as any accident or injury to its own staff, and does not have any right to claim compensation from the other party, even if the loss, damage or liability has been caused by a breach of contract or negligence on the part of the other company.

The purpose of the liability regime is to clarify which one of the parties is to bear the risks of loss, damage and liability which may arise during the towage. The allocation of risk and responsibility enables each party to protect its interests by appropriate insurance.

## Insurance cover for vessels involved in towage

### The P&I Insurance cover

Towage liability is covered in accordance with the Alandia P&I Terms and Conditions Clause 7.7. The cover provided under this Clause is divided into two parts;

#### 1) Insurance cover for the towed vessel or object (Tow)

When the insured vessel is being towed the insurance will cover liability arising from

- customary towage for the purpose of entering or leaving port or of manoeuvring within the port,
- towage of vessels habitually towed from place to place and
- other towage, provided that the contract for such towage has been approved by the insurer.

#### 2) Insurance cover for the towing vessel (Tug)

When the insured vessel is towing another vessel or object the insurance will cover liability arising from

- towage during a voyage with the purpose of saving life or
- other towage, but only when the insurer has agreed to afford cover for such towage in advance.

The P&I (protection and indemnity) insurance provide cover for liabilities, costs and expenses arising from towage operations both to the towing ship and to the ship being towed. However, as the P&I insurance only covers

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liabilities which are not and cannot be covered under another insurance, it will only cover the collision liability arising as a result of towage operations not covered by the hull insurance.

### Hull and machinery cover

The hull insurance is first and foremost a property insurance covering damages to the insured vessel but can also cover the liability of the assured arising from collision or striking. In this case, the hull insurance will cover the towed vessel's liability towards the tug when the tow collides with the tug and the liability imposed on the towed vessel when the tug used by the tow causes damages by collision or striking. The hull insurer will cover all liability for collision damage which the tow may incur under a towage contract on ordinary terms.

The hull insurer is aware of the increased risk during towage operations and restricts the cover for the towing vessel; the hull insurance does not cover collision liability arising while the insured vessel is engaged in towing or caused by the towage. In addition, the hull insurance excludes damages to third parties caused by the insured vessel when towing another vessel or object. Furthermore, the insurance cover is suspended when there is no causal connection between the towage and the collision.

### Extended cover for vessels undertaking towage or salvage

In accordance with the above, the cover for the collision liability for the towing vessel is usually excluded under the hull insurance. Furthermore, the P&I Insurance, which usually covers the collision liability excluded by the hull insurance, is conditioned; the liability of the towing ship will be covered by the insurance only if the towage contract has been approved by the insurer in advance. To avoid the need to have every contract approved by the insurer, Alandia offers an extended insurance cover for vessels performing towage operations.

#### **Alandia Marine TUGS P&I CLAUSE – Extended cover for vessels undertaking towage or salvage (TUGS)**

Notwithstanding the provisions in Clause 7.7, sub-clause 2 (b) and Clause 12.3 (a) of the above referred Alandia P&I Insurance Terms and Conditions, the insurance is extended to cover liability arising from the insured vessel undertaking towage or salvage. However, it is a condition precedent for the extended cover that the parties to the relevant towage or salvage operation have made their contract on standard BIMCO Towcon or Towhire conditions, Scandinavian Tugowners Standard Conditions, Lloyd's Standard Form of Salvage Agreement or similar conditions approved by the Insurer and that the contract contains stipulations to the effect that each of the parties shall bear their own damages and losses without the right of recourse against the other party ("knock for knock").

The TUGS P&I clause extends the cover provided under the P&I Insurance to cover the ship owner's liability to any third party when towing another ship or object.

In addition, Alandia offers an extended insurance cover for vessels performing towage operations also for hull insurance with conditions similar to those of the TUGS P&I clause. In some cases, both hull and P&I insurance cover need to be extended. This will always be discussed with the client in order to find the best possible cover for the needs of the tug operator.

The customary standard contracts, Scandinavian Towage Conditions, Bimco Towcon, and Towhire Conditions, are approved by Alandia as long as these standard forms of contracts are used and no amendments or changes that affect the liability system are made, such as partial or complete deletion of original clauses or insertion of new clauses. Under these contracts the insurance will cover the liability arising in connection with towage operations.



### Summary

The P&I and/or hull insurance will cover for the towing vessel's collision liability only when:

- **the insurance cover is extended, and the insurance policy includes the specific TUGS clause**
- **the towage is agreed upon employing Scandinavian Towage Conditions, Bimco Towhire or Towcon conditions or similar conditions approved by the insurer**
- **no amendments or changes are made in the standard contracts affecting the liability concept and**
- **the standard conditions used are incorporated into the contractual agreement with the tow.**

If you have any questions you would like to discuss related to this Circular, please contact Alandia Loss Prevention (+358 18 29000) for more information and assistance.