Towage operations, such as pushing, pulling, holding, moving, tendering and escorting are offered by tugs in various circumstances. For example, a vessel in a harbour may require tug assistance for entering or leaving the berth or port or for docking or undocking in the port area. Tugs are also engaged in long distance movement of ships to repair yards or for towing a large structure, such as floating dock and oil rig, for longer distances around the world. Thereto tugs are used to tow or to push barges loaded with cargo along coastlines, navigable rivers and across short ocean passages and to provide salvage services.

Liability and insurance cover in respect of towage

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The various towage operations involve two or more vessels and objects operating in close connection to each other with limited freedom to manoeuvre. The operations involve serious risks; especially the risk of collision and other related accidents are, compared to normal shipping operations, considered to be greater. The risks involved in towage operations do also influence the insurance cover and the purpose of this circular is to provide useful information regarding the insurance cover for objects involved in towage.

Towing
Towage arising from a contractual agreement concluded between an owner of the object to be towed and a towing company. Towage offered on commercial grounds is usually based on a standard contract. A tug is engaged by another ship or barge to perform a particular service or for a particular purpose at a time when the object to be towed is not facing any imminent peril. The compensation is negotiated and agreed in advance, mostly on a fixed fee basis and the payment is not dependent on the success of the operation.

Contractual agreement
As 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 in general liability rules under maritime law or other rules of law in the relevant country. In many countries, such as Finland and Sweden, there are no special law regulations applying to towage contracts and hereof the parties to a towage contract have a contractual freedom to negotiate and agree on the terms and conditions of the relevant contract.

Standard forms of contracts
In the absence of special law regulation to the contract of towage standard forms of contract of towage, specially designed for the towage industry have been developed to simplify the negotiations and contractual agreements between the tug and the tow.


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 and protects the tug company from liability to a significant extent. The tow is assumed liable for damage caused both to the tug, the tow and to any third party, even when the damage is caused by the negligence of the tug owner or his servants. The liability of the tug owner is limited. Only if the damage or loss is a consequence of fault or neglect by a member of the management of the tug owning company, not acting in the capacity as master of the tug or as a member of the crew, the tug owner will be liable to compensate the tow owner for their losses. The liability of the tug owner is also limited to SEK 100,000.

International Ocean Towage Agreement:
TOWCON and TOWHIRE

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

The purpose of the liability regime is to clarify which one of the parties is to bear the risk of the loss, damage and liability which may arise during the towing. 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 ship or object (Tow)

When the insured ship 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 such ships which are habitually towed from place to place and
- Other towage provided that the contract for such towage has been approved by theinsurer.

2) Insurance cover for the towing ship (Tug)

When the insured ship is towing another ship 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 in advance has agreed to afford cover for such towage.

The P&I insurance provides cover for liabilities, costs and expenses arising from towage operations both to the towing ship and to the ship that is being towed. However, as the P&I insurance only covers 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 such 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 liability imposed on the owner of the tug in the standard towage contracts is covered by the hull insurance. 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. The hull insurance excludes damages to third parties caused by the insured ship when towing another ship or object and the insurance cover is suspended even when there is no casual connection between the towage and the collision.

Extended cover for vessels undertaking towage or salvage (TUGS)

According to the above the cover for the collision liability for the towing ship is excluded under the hull insurance. Thereto the P&I Insurance, which usually covers the collision liability excluded by the hull insurance, is conditioned; the liability of the towing ship will only be covered by the insurance if the towage contract has been approved by the insurer in advance. In order to avoid that every contract needs to be approved by the insurer, Alandia Marine offers an extended insurance cover for vessels performing towage operations.
Alandia Marine TUGS 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 ship 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 clause will extend 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. The customary standard contracts Scandinavian Towage Conditions and Bimco Towcon and Towhire Conditions are approved by Alandia Marine and as long as these standard forms of contracts are used and no amendments or changes, such as partial or complete deletion of original clauses or insertion of new clauses, are made affecting the liability system under these contracts the insurance will cover the liability arising in connection with towage operations.

Summary
The P&I Insurance will cover the towing vessel’s collision liability only when:

- the insurance cover is extended, and the insurance policy includes the Alandia Marine TUGS Clause
- the towage is agreed on Scandinavian Towage condition, Bimco Towhire or Towcon conditions or a similar condition 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 Marine (+358 18 29000) for more information and assistance.