

SHIP

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MANAGEMENT

I N T E R N A T I O N A L



Mushrooming of
small start-ups:
threat or opportunity?

To be joint assured or not to be – that is the question

By Robert Hodge, Senior Account Executive, International Transport Intermediaries Club (ITIC)



It is a condition of ITIC's insurance for ship managers that they are named as a joint assured on all insurances taken out in respect of any ship under their management. Why is this?

Not naming a third-party ship manager as a joint assured on the vessel's insurances is, according to BIMCO, "A highly dangerous practice that may leave ship managers exposed to large claims ... for which they may be uninsured." It is therefore surprising that some insurers (particularly in the Japanese insurance and superyacht markets) continue to refuse to name the manager as a joint assured. A manager should never agree to this.

When you are the manager, you effectively become the operator of the vessel under the ISM Code and so you are exposed to the same risks as if you were the owner. It is vital, therefore, to have the same protection as the owner. Third-party managers could feasibly take out their own insurance covering the operational exposure of the vessel, but the cost would be disproportionate compared to the management fees earned.

The BIMCO Shipman 2009 form obliges the owner to "name the managers ... as a joint assured, with full cover." Being a joint assured means that the manager is party to the contract of

insurance and so enjoys the full benefit of the insurance afforded to the owner.

ITIC is often told by its ship manager members that an insurer will not name them as a joint assured, but will offer cover as an additional insured or for misdirected arrows. This is not acceptable. Ship managers need cover as a full joint assured even if, for P&I cover, they may be exposed to non-payment of premium. The credit risk is much lower than the liability risk.

It is equally important for the ship manager to be a co-assured on the hull & machinery (H&M) policy. By naming the third party manager as a joint assured, insurers are not offering any more cover than when the management of the ship was taken in-house. They are insuring exactly the same risks.

Some H&M insurers may request a right of subrogation against the party who caused the loss. Such subrogated claims effectively try to make the ship manager the contingent H&M insurer of the ship. If underwriters do insist on subrogation against the third-party manager, managers should either suggest a different insurer - of which there are many in the H&M market - or decline to manage the ship. It is that serious!

The management agreement also provides an indemnity to the manager, unless the manager has been negligent. Owners could find themselves in a bizarre situation whereby the insurers pay a hull claim to the owner and then subrogate against the managers. The managers would then enforce the indemnity against the owner to recover any amount they were not liable for under the management agreement.

A costly series of indemnity actions is therefore avoided by being named as a joint assured. Naming the manager as a joint assured on both H&M and P&I covers is in the interests of all parties concerned.

ITIC covers claims of negligence against managers arising from the management of the ship that are not claims which would be recoverable under a P&I or hull policy. Examples include claims for fraud by staff, post-fixtured errors, and technical and operational errors.

ITIC makes it a condition of its insurance for managers to be joint assureds. This is done in order to protect managers from claims that are the responsibility of the owner, rather than to avoid claims for negligence against the manager – that, after all, is what ITIC insures. ●