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Securing a fair deal for operators

The balance of power in offshore supply contracts remains firmly with the hirer – at times unfairly so, argues Simon Tatham.

► *Simon Tatham.*

It was sad to see pictures recently of the tug built under the name *Smit Rotterdam*, in her day the most powerful tug in the world, under tow to the breakers. A working life of almost 40 years is a tribute to her designers, but she is a far cry from the latest generation of very large tugs leaving the shipyards today.

These may boast a deadweight of perhaps 3,600 tonnes and a bollard pull of an extraordinary 270 tonnes, along with a host of other capabilities geared not so much towards ocean towage and salvage, but rather the delivery of a flexible array of services intended to support offshore production.

The financial outlay associated with offshore units demands, in turn, the highest level of safety and sophistication in these craft that move, survey and maintain the assets in the field while often being required to operate for sustained periods in remote and not always friendly locations.

It is quite understandable therefore that one question challenging operators and their financiers is how best to protect their expensive asset from the very substantial liabilities that can potentially arise when things go wrong.

Of course, the obvious answers are: good design, good crew and operating standards, comprehensive insurance wordings and a favourable contract. Most of these factors are within the operator's power to control, with the exception – unfortunately – of the last.

If you take a broad look at the pro-forma contracts drawn up by the industry as a starting point you will at first be encouraged. Why look further? Starting with, for example, the venerable UK Standard Conditions for Towage & Other Services, the Towcon and Towhire forms and, most relevant to offshore, Supplytime, they all have in common one feature: a favourable liability regime, including the 'knock-for-knock' clauses where irrespective of fault the loss is supposed to lie where it falls, reinforced by mutual indemnities in case a rogue claim is brought by a third party.

This simplifies insurance and liability issues and creates a balance. In addition to that (if all else fails and irrespective of contract) is the owner's ability to limit liability for damage done by a vessel. The 1976 Convention and 1996 Protocol applies to tugs, although it assumes they are at least 2,000grt and tugs up to that size would have a limitation fund of about US$1.5m, or twice that where human claims are concerned.

A 4,000grt unit would have a fund against property damage claims of around US$4m. That is a good bit less than the value of today's units. These limits apply to cap contract claims where the chosen jurisdiction has adopted the convention and tort claims brought before the courts of a country where the regime applies.

IMO's limitation of liability regime has been widely, although not universally-adopted (not applying, for example, in Brazil).

Despite these favourable contracts forms and, where they apply, well intentioned protective regimes under international convention, an increasing problem for the offshore support industry stems from the fact that contract bargaining power is either the exclusive preserve of governmental petroleum departments or in the hands of the oil majors operating the concessions.

That has of course always been the case, but more than ever hirers look to pass all liabilities for accidents and claims on to the contractor, not only requiring waivers, but also stipulating that hirers and their associated companies be named assureds under tugowners' insurances which accordingly have to be extended much further than the scope of traditional P&I-type cover.

Sometimes the best the contractor can hope for is a waiver in respect of loss of use or production losses. With no sign of a slowdown in the number of OSVs coming off the production line, market conditions are unlikely to alter the balance of negotiating power when it comes to the small print of a contract.

But surely that is no reason not to at least attempt a renegotiation of demonstrably unfair terms. If the hirer really wants that gorgeous looking, ultra-modern, all singing and dancing environmentally friendly unit, they might just be prepared to think again.

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'Yes' may spell chaos

A survey of leading members of the international shipping community by shipping, offshore maritime and insurance adviser Moore Stephens LLP, has predicted that a vote for Scotland's independence from the UK on 18th September would have a negative effect on the Scottish shipping and offshore maritime sector.

One respondent said: "Scotland does not have the maritime voice or manpower to cope as a certificated authority or at IMO," while another predicted: "Ships would move away from the Scottish flag, and offshore business would become increasingly incorporated with European administrations."