

# Return of Calls after Lay up

A properly laid up ship reduces P&I risks



## INTRODUCTION

**A properly laid up ship reduces P&I risks and after lay up the Club will return a portion of Calls to reflect the reduced risk.**

Owners laying up a ship can apply for a partial return of P&I premium paid to the Club. This guidance note explains the Club's policies.

The Club has also published a loss prevention guide to assist Members. Forms to apply for returns are available from the Underwriting Department or via the Underwriting online page.

# CLUB POLICY ON LAY UP RETURNS

Certain aspects of lay up return are set by the Rule wording, set out below, such as no laid up returns for Overspill Calls. However, other aspects of the policy on lay up returns are matters of discretion and the Managers will broadly apply the following guidelines:

## **Evidence of safe lay up**

The Managers cannot approve technical aspects of lay ups for Members. In assessing call returns, the Club may rely on Class, BMT Marine & Offshore Surveys (Incorporating The Salvage Association) or other third party technical advisors instructed by Members.

Often Hull underwriters will arrange the certifications and survey arrangements which document and approve the technical aspects of lay up.

The Club's Managers may rely on those certificates, though will retain discretion to determine if satisfactory evidence of safe lay up has been provided.

Safe mooring and anchorage arrangements are essential to reduce the risk of contact damage, grounding or even a total loss of the ship. A grounded ship could lead to an expensive wreck removal claim.

### **Calls returned based upon:**

- Evidence of safe lay up
- Cargo not on board and if it's a tanker or gas ship, a gas-free certificate should be issued
- Returns on net premium after deduction of lay up return retention rate
- Differences between hot and cold lay up
- 90% return for cold lay up, with no seamen on board
- 50% return for lay ups with seamen on board

## **Minimum 30 consecutive days**

To qualify for Call returns, the ship must have been laid up for at least 30 consecutive days. A week's time idle awaiting orders will not qualify for a pro rata premium return.

The period will be counted as consecutive days after finally mooring (such period being computed from the day of arrival to the day of departure, one only being excluded).

## **No cargo**

Ships with cargo on board will not qualify for laid up returns. Cargo is defined in the Rules as goods under bills of lading.

## **Hot or cold variable rate return of calls – determined by the presence of seamen**

The presence of seamen or not is a proxy for determining if a ship is in hot or cold lay up. Seamen are defined in the Rules as those under contract to serve on the ship, whether or not on board.

Only ships with no seamen on board will be considered as in cold lay up. As cold lay up involves less P&I risk, the variable rate of premium return will be:

- 90% call return after deducting lay up return retention rate will be provided for cold lay ups with no seamen on board.
- 50% call return after deducting lay up return retention rate will be provided for hot lay ups with some seamen on board, generally less than half the manning level required under the flag state minimum safe manning certificate.

## BASIS FOR DISTINGUISHING HOT AND COLD LAY UP

### Seamen under permanent contracts

Seaman who leave the laid up ship and are ashore will be treated as if still on board for call return purposes, if the seamen are employed under permanent employment contracts (so called 24/7 contracts) previously approved by the Club.

This is because under such contracts an owner remains responsible to seamen off the ship, for example, in respect of medical costs, or death or disability benefits. As that risk has not ended for the Club, the cold lay up return rate of 90% would not reflect the continued crew claims risk.

### Pro rata

Returns will be pro rata for the portion of a policy year in lay up. A calculation may also be done about time in hot or cold lay up, if that varied during lay up.

Ships with seamen intermittently on board will usually be considered as in hot lay up for the whole period.

### What is the lay up return retention rate?

The Rule permits the Club to retain an "allowance for reinsurance, administrative expenses and other outgoings as the Managers may from time to time determine." Specifically, the Club will deduct reinsurance costs, at the International Group reinsurance lay up rate.

### Mechanism of calculation

The calculation of call return will then follow three steps:

1. Determine the period of lay up which qualifies for pro rata return
2. Deduct lay up return retention rate
3. Apply the 90% or 50% return rate as appropriate. Some deductions may be made for reinsurance, administrative expenses and other outgoings as the Managers may from time to time determine

### Seamen risks

The Club's policy differentiates between two types of lay up by the presence, or absence of seamen. The reason is that when a Member has employees on board the risk of injury, illness and death claims continues.

The terms of contractual compensation for seamen amounts are now potentially onerous, and whether a ship is in lay up or in active trading some medical and injury risks do not change significantly.

For many Members, crew claims frequently amount to a greater total claims cost than cargo claims. This was perhaps not the case a decade back or more when cargo claims usually accounted for a greater total cost to the Club than crew claims.

In light of the rising cost of crew claims, it would be illogical to base P&I call returns solely on the absence of cargo on board.

Additionally, seamen on a laid up ship may be performing repair and maintenance work. In some situations, the work may present greater risks than the seamen performing normal navigating duties. Scope of repair work will also be taken into account during this period to determine whether lay up return of premium is appropriate.

With some seamen on board, a ship in safe lay up and meeting the other criteria may also qualify for a P&I Call return. However, where more than half the flag state minimum manning level remain on board, the ship will not be eligible for laid up returns.

The Club retains discretion in assessing the manning levels which would qualify for 50% premium return, and may inquire about the duties and activities of the remaining seamen.



## CLUB 2016 POLICY YEAR RULE

### Rule 27 Laid-up returns

Subject to any terms and conditions which may have been agreed, if an entered ship shall be laid-up without cargo on board in any safe port or place for a period of thirty or more consecutive days after finally mooring there, (such period being computed from the day of arrival to the day of departure, one only being excluded) the Owner shall be allowed a return of Calls payable in respect of such ship for the period of lay-up, calculated at such rate and after deduction of such allowance for reinsurance, administrative expenses and other out-goings as the Managers may from time to time determine, save that there shall be no laid-up returns in respect of Overspill Calls.

For the purposes of this Rule,

(a) the Managers shall have sole discretion in deciding whether the port or place involved is a safe port or place within the meaning of this Rule, and

(b) no claim for laid-up returns relating to any policy year shall be recoverable from the Association unless written notice thereof has been given to the Association within three months of the end of the policy year concerned.

### Collision, FFO and wreck removal risks

Collision risks also remain during lay up, from incidents such as the ship breaking mooring or being improperly lighted. This could also lead to a ship requiring wreck removal, which in today's environment could lead to a very large claim.

For these reasons, the Managers require evidence of safe lay up as part of the call return application. That evidence may be obtained from BMT Marine & Offshore Surveys (Incorporating The Salvage Association) or Class, and it is almost certain that Hull underwriters will seek the same documentation.

### Return of paid premium – not lay up rate

Regardless of the length of lay up, the procedure is that Members will be required to pay the full trading rate P&I premium, defined as Calls, then apply for premium returns unless otherwise agreed by the Managers.

This applies even where an entered ship commences a new policy year in lay up. In other words, the Club cannot agree a laid up rate of premium.

### Time charterer and other fixed premium entries

There will be no return for charterer's entries however, fixed premium entries may be eligible for a return in premium unless the terms of entry state 'cancelling returns only'. It should be noted that some time charterers will elect to terminate the contract of insurance for a ship in lay up. Where the owner is fully responsible for the safe laying up of a ship, a charterer may decide that it faces little residual risk.

### Special survey following six months lay up: notice to Club of re-commissioning

Whilst not part of the Laid Up Return Rule 27, Members will be reminded that upon return to trading the ship may require a survey under Rule 5(R).

Rule 5(R) applies to any ship in lay up for six months or more, whether entered in the Club or not, and requires Members to provide the Club with seven days' notice before the ship leaves the place of lay up. However, as the ship may have to undergo a special survey at the Club's discretion, it is advisable to provide at least 2 weeks notice of ship reactivation.

Failure to provide notice before re-commissioning could prejudice cover.

## FREQUENTLY ASKED QUESTIONS

### How to apply?

An application form for laid up call returns is available from the Underwriting Department or via the Club's website [www.ukpandi.com](http://www.ukpandi.com).

### When should an owner apply for laid up returns?

The return is made as a single transaction either:

- a) at the end of a policy year for ships still in lay up at 20th February or
- b) the end of lay up within a policy year. Members may otherwise apply for laid up returns at any time during a policy year when an entered ship returns to trading or the entry is otherwise terminated, such as at sale.

The Club will not process mid-policy year call returns whilst a ship is still in lay up. Members may not, for example, seek partial call returns at the expiry of each 30 day period of lay up.

At the latest, the application for return of Calls must be made three months after the end of a policy year, eg latest 20th May 2018 for the 2017 policy year, which runs from 20th February 2017 – 20th February 2018.

Where a return is due for ships concluding a policy year in lay up at a 20th February policy year end, the Club will do an accounting which reflects the debited but not yet due fourth instalment due the following December.

### **How is the outstanding fourth premium instalment handled?**

Mutual premium is debited in four equal instalments: three payable during the policy year and one paid in December of the next calendar year. By definition, ships laid up during a 20th February to 20th February policy year will have the fourth instalment outstanding.

The Club's policy is to account for laid-up premium returns and the fourth instalment which will have been debited but not yet due.

If a balance is still due to the Club, a reduced fourth instalment debit note will be issued and due at the normal December date. If no balance is due to the Club, the outstanding fourth instalment debit note will be cancelled.

### **What if a claim arises during the lay up period?**

Normal P&I cover continues during lay up, subject to the terms of entry and the Rules, so claims will be covered by the Club.

However, the Club may determine that the ship was not in safe lay up and therefore the ship is not eligible for laid up returns. The circumstances of a claim may be relevant. For example, if the Club agreed to cover a crew claim the ship cannot qualify for the cold lay up return rate of 90% based on absence of seamen.

As another example, if a ship breaks loose from its moorings during lay up, and the Club faces an expensive wreck removal claim, the safety of the lay up will obviously have to be assessed in light of events, including whether recommendations from class or a mooring surveyor had been followed.

### **Can payment of calls be deferred during lay up?**

No. Calls must be paid timely as debited when a ship is in lay up, even if a Member anticipates that he will later receive a laid up return.

### **Is a ship still eligible for lay up return if the 30 consecutive days cross policy years?**

Yes, as long as all other lay up criteria has been adhered to.

### **Can a ship in dry dock apply for lay up returns?**

No, a ship that is in dry dock and having repair work is not eligible for a lay up return of premium.

### **What happens if the ship is moved within port limits?**

Once the ship is moved this is regarded as break in the lay up period regardless of the duration or distance of the move, unless otherwise agreed by the Managers.

### **Are Blue Cards maintained during the lay up period?**

Yes, however, should the Class of the ship be suspended the Club has the right to withdraw these.

### **Does a watchmen on board the ship constitute as crew on board?**

Usually not, unless the person is employed as part of a ship's complement under the terms of a crew agreement or other contract of service or employment to serve on board an entered ship. If the Member could be legally liable for injury, illness or death of the watchmen, they could also be regarded as crew for rating purposes.

### **Does the Club cover liabilities under a BIMCO LAYUPMAN contract?**

Generally yes, however, the Member is encouraged to contact the Club with regards to this matter.

## GLOBAL NETWORK

