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INSURANCE AND CLAIMS

1. THE MASTER'S ROLE

Legal disputes involving the vessel are invariably lengthy and expensive. If good, clear and methodical records are maintained and produced after a significant incident on board, it is more likely that a favourable impression of the Owners/Managers will be created as arbitrators will infer that the vessel was operated in a professional manner.

In many instances, even minor incidents and disputes can eventually lead to major claims. Therefore, the information recorded by the Master and Officers on a regular and routine basis will prove invaluable in supporting and defending these claims.


It is of utmost importance that the Master and his Officers effectively utilise the period immediately after an incident occurs to:

- a. Take whatever action necessary for the safety of life, the vessel and environment, and record exact times of all events in the proper sequence.
- b. Gather all relevant information and documents.
- c. Interview witnesses and record details.
- d. Take photographs to supplement written reports.
- e. Contact the Company, agent, P&I and other relevant authorities as required.
- f. Be prepared to protect the Company's interests without complicating the situation by obstructing justice, hiding evidence or making false or misleading statements.
- g. If pollution has occurred to immediately advise the Company of the identity of the authorities calling onboard to investigate the spill.
- h. Take any other action with due regard to good seamanship.

The Master and crew should be aware that pollution of the marine environment may attract criminal liability and crew members should be aware of their rights during investigations by governmental authorities. (See appendix to this procedure 'Responding to Government Interviews')

The Company requires all Masters to be familiar with the contents of the publication "The Master's Role in Collecting Evidence". This publication is available on all Company managed vessels.

All ships are to maintain a copy of the latest list of correspondents' contacts for P&I insurance company that they are entered into.

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2. ROLE OF PARTIES INVOLVED

2.1. Surveyors (Acting on behalf of Underwriters)

When damage occurs to a vessel which may give rise to a claim, Owners have a duty to advise Underwriters promptly. The Underwriters will contact their appointed surveyors, who will in turn instruct a surveyor to attend the vessel. The surveyors' job is to establish the facts surrounding the damage.

2.2. P&I Surveyor (Acting on behalf of Owners)

When damage occurs to the property of a third party, for example, if a pipe fails during bunkering and oil is spilt into the harbour, the Owners P&I Club will protect Owners interests in the ensuing investigation and clean-up operation. When any situation arises that is likely to result in a third-party claim such as, damage to a shore facility or object, or pollution from an oil or chemical spill, or any situation that may involve Owners liability, the Master should inform the Company immediately. Where necessary the Master should also seek help from the local P&I representative, who will instruct a surveyor to attend and assist. The P&I representative will submit a report to the Club, and, if necessary, will arrange security through the Club.

2.3. Cargo Surveyor (Acting on behalf of the Cargo Owner)

When cargo loss or damage is discovered the cargo owner will inform his insurer. Underwriters will normally ask for a Survey Report. The Lloyds Agent usually arranges for a surveyor to attend. [This surveyor is acting against Owners interests. No copies of documentation, statements, photographs, or access should be allowed to the vessel without the Owners permission. Be very aware of miss representation or strong arm tactics that may be threatened to obtain the information they demand. If a surveyor representing Charterers or cargo interests tries to gain access to the vessel, contact the vessel operator and your Marine Superintendent.¹](#)

2.4. Classification Society Surveyor (Acting on behalf of Class)

When damage to any part of the ship occurs, which could affect the vessel's seaworthiness or invalidate the conditions for which class has been assigned, it is the Owner's duty to report it to the ships Classification Society. The Society will appoint a surveyor to attend the vessel.

All marine insurance policies impose an obligation on Owners to maintain the vessel in class. If class is suspended as a result of a failure to comply with survey requirements or as a result of un-repaired damage, insurance cover is terminated automatically from that time. However, if the damage is an insured risk, termination of cover will only occur if the vessel sails from her next port of call without prior approval of the Classification Society.

¹ W 09 / 2024

2.5. United States Coast Guard (USCG) – USA only

In the event of a marine casualty or when damage occurs to any part of the ship that may affect the vessels' seaworthiness, or when oil, noxious liquid substances, cargo or garbage has been spilt into the water while the vessel is in US waters, it is the Masters duty to report it to the USCG. The USCG will appoint inspectors who will investigate the incident.

If pollution has occurred various other US government authorities may become involved and criminal liability and possible criminal charges may be incurred.

2.6. Environmental Protection Agency (EPA) – USA only

When marine pollution occurs within US waters the EPA may appoint inspectors to conduct a criminal investigation into the cause of the pollution.

3. INSURANCE COVER

All Company managed vessels have the following insurance cover:

- a. Hull and Machinery
- b. P&I
- c. War Risks

The extent of cover provided by marine insurance policies varies. Briefly listed below are some of the types of risk covered by various policies, the Master must verify the details of the cover applicable to his vessel.

3.1. Hull and Machinery

This cover provides compensation for loss of or damage to a ship arising out of an accident (marine peril) such as sinking, grounding, collision, fire or mechanical damage, for example:

- a. Perils of the sea, rivers, lakes, or other navigable waters.
- b. Fire and explosion.
- c. Jettison of equipment and gear.
- d. Piracy
- e. Contact with land conveyances, docks or harbour equipment.
- f. Accidents in loading, discharging, or shifting cargo or fuel.
- g. Bursting of boilers, breakage of shafts, or any latent defect in the machinery or hull.
- h. Negligence of the Master, Officers, or Crew.

- i. Pollution (damage to the ship caused by preventive measures)
- j. Negligence of repairers or Charterers.
- k. Collision liability.

3.1.1. Institute Warranties Limit (IWL)

Institute Warranties are designed to fix the standard trading limits of vessels not engaged on regular services. When a vessel is expected to trade to restricted areas stated in the Institute Warranties, Masters are required to inform the Company well in advance. This is also the case when the vessel is required to enter restricted areas due to stress of weather or any similar reasons.

3.1.2. Institute Time Clauses

One of the clauses to which Masters must pay particular attention is the clause regarding ship to ship cargo transfer. Prior approval is required from the Underwriters to provide insurance cover. Masters should inform the Company well in advance of such operations except where blanket cover has been provided and confirmed on ships involved in regular ship to ship cargo transfers. Transfer of cargo to/from a barge either alongside or at a mooring buoy does not come under the above category. The Master must also check the provisions of the Charter Party in this regard. The Company is to be contacted if in any doubt.

3.1.3. Helicopter Clause

Use of helicopters to transfer Pilots, stores, and personnel etc. is not usually permitted without specific approval by the Underwriters. Where the possibility exists of pilot operations by helicopter, the Company is to be informed to check for liability/indemnity and insurance.

3.1.4. Accidents/Incidents

In the event of accident/incident, as far as possible the Master is to contact the Company before contacting the local H&M Insurance Agent or The Salvage Association. Similarly, the Master is not to put forward any allegation of the cause of a damage/incident without guidance from the Company, and to confine his comments to a simple statement of facts leading up to the incident.

3.2. P&I Cover (Protection and Indemnity)

P&I mutual insurance extends cover to a wide range of third party risks, generally relating to damage to or failure of ship's equipment leading to injury or death of personnel, damage to cargo or third-party damage. The principal risks usually covered are summarised below. This list is not exhaustive and reference is to be made to the P&I cover.

- a. Illness, injury or death of crewmembers, including costs associated with replacing them and deviation to obtain medical assistance.
- b. Collision liability – the cover will differ between various insurance terms.
- c. Liabilities incurred in respect of damage done to fixed and floating objects such as buoys, jetties, pipelines etc.
- d. Oil pollution.
- e. Liabilities in respect of cargo loss, shortage or damage provided such cargo is carried under a Bill of Lading containing approved conditions.
- f. Damage to third party's equipment and property.
- g. General Average contributions unrecoverable from cargo and other interests.
- h. Fines and other penalties imposed by authorities against the ship.
- i. Injury or death of stevedores or shore personnel.
- j. Repatriation of stowaways.

The local P&I representative must be called for any reason the Master may consider necessary as listed above. When in doubt, the Master is to contact the Company for advice.

4. DELIVERING CARGO IN TERMS OF THE BILL OF LADING


Delivery of cargo in breach of the terms of the Bill of Lading, for example, without production of the Bill of Lading, or at the wrong port, will be a breach of the terms of the shipowner's P&I insurance and there will be no insurance if in consequence a claim is subsequently brought by the "true" cargo owner.

If cargo cannot be delivered in terms of the Bill of Lading, then a 'Letter of Indemnity' must be obtained from the cargo interests and permission to deliver the cargo first obtained from the shipowner. [No breaking of cargo must be permitted without agreement of the vessel operator.²](#)

5. WAR RISK TRADING WARRANTIES

Institute war clauses provide for loss or damage to the insured interests caused by hostilities, warlike operations, civil war, revolution, rebellion, insurrection etc. The vessel's insurance cover in this respect is to be carefully studied to identify any special reporting formalities in certain areas and other exclusions. The Company is to be advised immediately if the vessel has been ordered to enter war zones or areas of war-like activities.

² W 09 / 2024

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6. CREW RESPONDING TO GOVERNMENT INTERVIEWS

6.1. Rights of Ship's Officers and Crewmembers

During your employment with the Company or afterward, a government agent may telephone you or approach you without warning aboard ship, while ashore, at home, or at some other location, in an attempt to interview you in connection with a pending investigation into an oil spill or other pollution incident. Regardless of how persuasive and intimidating the agent may be, remember that you have the following rights:

- a. You have the right to request the agent's identification and to record this information (which you should do).
- b. You have the right to decline the interview, or to tell the agent to contact you at work the next day, or to tell the agent to submit all questions to you in writing.
- c. If you consent to an interview, you have the right to:
 - i. Confer with an attorney before and/or during the interview.
 - ii. Choose the time and place of the interview.
 - iii. Answer only selected questions or stop the interview at any time, and
- d. Take notes during (or immediately after) the interview to help you remember its substance.


If you choose to answer questions, consider the following:

- a. You should always be polite and professional.
- b. You must answer truthfully.
- c. You should not guess or speculate about matters that you do not personally know to be fact.
- d. You should only provide as much information as necessary to answer any question.

In the United States if a pollution incident was the result of a marine casualty, such as a collision, grounding, equipment failure and so on, the USCG may conduct a marine casualty investigation to determine the cause of the incident. If this occurs, you are considered a "party in interest" if your personal conduct is under investigation. In addition to the above stated rights, you are entitled by law as a "party in interest" to be represented by counsel, to cross examine witnesses, and call witnesses.

For legal advice contact the Company via the Master, or if signed off, via the Crewing Manager.

Also, please contact the Company immediately if a government agent has approached you with questions about your job or the company, or if become aware that the government has

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approached a former employee, agent, or contractor of the Company regarding similar concerns.

7. LIABILITY

Neither the Master nor any member of the crew is authorised to admit liability on the part of the Company for any accident, injury, damage or loss, and must carefully guard against admitting liability.

8. DAMAGE DONE BY ACTION OF THIRD PARTY

Whenever this occurs, the Master must put the third party on notice, in writing, holding them liable for any expenses and delays. The full third-party details and address must be obtained. Copy of the notice must be given to the vessels Agent and the Company.

The Company will initiate any claim proceedings should it be necessary, upon receipt of the notification.


9. NOTING PROTEST

Noting Protest may help resist cargo loss or damage claims on the owners. A protest is a solemn declaration made on oath by a shipmaster that circumstances beyond his control (e.g. heavy weather) have, or may have, given rise to loss and/or damage to his ship or its cargo, or have caused him to take action (such as leaving an unsafe port) that may render his owners liable to legal action by another party. A protest (without an extension) is a simple statement of fact, without added details.

9.1. When to Note Protest

Amongst the situations when protest should be noted will be the following:

- a. After every case of General Average;
- b. After wind and/or sea conditions have been encountered which may have damaged cargo;
- c. After wind and/or sea conditions have been encountered which caused failure to make a cancelling date;
- d. After cargo is shipped in a condition likely to deteriorate during the forthcoming voyage (B/L should be endorsed appropriately after consultation with the shipper, P&I Club correspondent and the Company);
- e. After the ship has been damaged from any cause;
- f. After serious breach of the Charter Party by the charterer or his agent (e.g. undue delay, refusal to load)

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- g. Allowed by the Charter Party, refusal to pay demurrage, refusal to accept B/L after signing because of clausing by Master; and
- h. After consignee fails to discharge or take delivery of the cargo or fails to pay freight.

9.2. Procedure for Noting Protest.

The general procedure for noting protest is:

- a. Protest should be noted as soon as possible after arrival and always within 24 hours of arrival.
- b. The ships agent should be instructed to make arrangements to Note Protest.
- c. Protest is to be Noted before a “Notary Public” (who is generally a practising lawyer and sometime the Consul).
- d. The Master, accompanied by one or more witnesses from the crew who have knowledge of the facts, should take with him to the Notary Public’s office the Official Logbook, deck logbook and all other relevant information surrounding the case. Log entries will be attached to the protest.
- e. At least three certified copies of the protest should be obtained, two for the owners and one for the ships file.

9.3. Extending Protest

Since it is often impossible to ascertain the full extent of a loss or of damage at the time of noting protest, an “Extended Protest” should be made when the relevant facts have come to light (e.g. after receipt of surveyor’s findings). It is therefore necessary at the time of making the original protest to ‘reserve the right to extend the protest at a time and place convenient’. It is a good practice to always extend protest.

Extension need not be made in the same place as the original protest was made, but must be in strict conformity with local law regarding time limits and content. The extension expands the bare facts of the original protest, and again, any relevant documents should be taken to the Notary’s office. The extension is entered, witnessed, signed and sealed in the same manner as the initial protest.