



▶ **LOSS PREVENTION**

Evidence Collection



SHIPOWNERS

SECURITY FOR SMALL & SPECIALIST VESSELS

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The information and recommendations in this booklet are given in good faith and are meant to highlight best practices, good seamanship and common sense to reduce incidents that result in related claims. However, Members must take into consideration the guidance and regulatory requirements given by flag states and other governing authorities when formulating policy in line with the contents of this publication.

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Chapter 1

Introduction

The Shipowners' Club insures its Members for their liabilities to third parties arising out of the operation of ships including, amongst others, liabilities related to personnel, collision, damage to or loss of property, cargo and pollution.

Whilst the ship's crew work in close conjunction with our Member's shore management towards a common goal of conducting shipboard operations in a safe manner and in compliance with the relevant statutory regulations, unfortunately incidents do occur. These events expose our Members and the Club to claims, some of which may be substantial in terms of the costs involved and/or the liabilities incurred.

The ability of the Club to defend a claim depends greatly on the evidence and records that are made available to the Club, its lawyers, Correspondents and surveyors. In this regard, the role of the ship's crew at the time of an incident is of great significance. Appropriate action with regards to collecting, preserving and presenting necessary evidence may help protect the Member and assist in mitigating potential claims.

The actions of the ship's crew in collecting and preserving evidence should be independent of the perceived seriousness of the incident, as a number of cases, especially pertaining to personnel injury, may be presented many months or years after the alleged incident. In such cases, contemporaneous evidence has greater importance as opposed to evidence collected long after the incident has happened.

Apart from assisting in defending a claim by trying to establish the events leading up to the incident, suitably collected and preserved evidence also plays its part in establishing procedures and methods to prevent similar incidents from happening in the future and can be a good source for training materials.

Chapter 2

► Types of Evidence

Reports/Statements/Letters

This could include:

- **Witness statements** – These are provided to attending authorities such as surveyors and lawyers. The ship's crew need to be careful in providing any such statements to third parties such as opponent lawyers and should always be guided by Club appointed Correspondents and/or lawyers.
- **Reports** – These should be prepared by the ship's crew following an incident detailing the sequence of events. Such reports need to be factual and not based on opinions, presumptions or hearsays.
- **Letter of protest** – This details and establishes the sequence of events or consequences of some wrongful act which were beyond the control of the ship's crew. Letter of protests are usually endorsed or acknowledged by the opposing party.
- **Note of protest** – as applicable.

All statements, reports, letter/notes of protests should be prepared at the earliest available opportunity to avoid the loss of recollection from setting in.

Records

Records are particularly important in cases involving failure of systems and equipment. Evidence in this regard could include:

- **Maintenance records** – These are to include all planned and unplanned maintenance carried out on various equipment and machineries.
- **Testing records** – Various scheduled tests carried out on equipment and machineries to confirm continuous operational status.
- **Operation records** – Operation logs of various equipment and machineries such as compliance with checklists, running hours, print records of course recorders, GPS, Navtex, telegraphs.
- **Repair/Serviceing** – These are to include service reports prepared by attending technicians or manufacturer's personnel.
- **List of critical spares on board.**

It is important to ensure that all maintenance, testing and operation records are in accordance with the manufacturer's guidelines, national and international regulations, local and Flag state requirements and in line with the company's management manuals.

Log Books

Entries made in log books such as deck log books, engine log books and official log books are invariably admissible in court and hence should be legible and preserved without delay. Other logs relating to navigation, radio, medical, standing orders, statutory activities (such as GPS log, Anchor log, GMDSS log, Medical log, Night Orders, Garbage Record Books, Oil Record books) need to be preserved as appropriate.

Visual Evidence

An old adage, 'a picture is worth a thousand words' holds particularly true today in the age of smart phones, tablets and digital cameras. With digital recording being so readily accessible to all, visual evidence in the form of photographs and videos are now being viewed as prime evidence.

Digital recording devices may be provided on board with the dedicated purpose of using them for collecting and preserving evidence. However, care must also be taken to ensure that such devices do not end up being a distraction to safe working practices.

Salient points to remember when collecting visual evidence include:

Pictures

- Need to be relevant to the incident.
- Taken at the earliest available safe opportunity.
- The date and time should be displayed.
- Items and damages to be tagged and identified correctly.

Videos

- Should be recorded during an incident, if possible. A good example would be visuals of the weather deck when sailing in extreme weather. In the past, evidence such as this has been particularly useful in establishing a sequence of events when heavy weather damage has occurred to cargo, a vessel's hull or equipment. Alternatively, a video should be compiled at the earliest available opportunity.
- The date and time should be displayed.
- Identification and establishing events could be carried out audibly.
- No videos should be made on the sly or using hidden devices unless a specific situation demands thus, and is reasonable and legally explainable.

The dos and dont's

In any incident that could give rise to a claim, you are recommended to consider the following:

Do

✓	Notify the relevant authorities including the flag state, port state, coastal state authorities, company designated person (DP) and P&I Correspondent, so that any necessary authorisation and assistance can be obtained without any undue delay.
✓	Co-operate with and assist the local authorities and/or official investigators and remain polite, calm and courteous when doing so.
✓	Save the VDR, S-VDR to prevent the overwriting of data.
✓	Record all events in the ship's logbooks.
✓	Collect and preserve all documentation, records and evidence including defective equipment, RADAR, ECDIS and other records relating to the incident.
✓	Take photos and/or videos of any damage, injury or condition relating to the incident, preferably with date and time displayed.
✓	Ask the witness to prepare statements of fact immediately after the incident. These should be signed by them and counter signed by the personnel taking the statement.
✓	Note a protest. If you are unsure whether or not it is needed, do it!

Don't

X	Allow any unauthorised personnel to board your vessel or interview the ship's crew until you have clearance from the vessel owner/manager or the Club Correspondent and/or lawyer.
X	Make statements or comments to any unauthorised external parties regarding the incident.
X	Provide documentation or evidence to any unauthorised external party.
X	Sign or acknowledge any statement by any unauthorised external party.
X	Take any incident lightly even though the perceived seriousness of the incident may seem negligible at that instant.

Chapter 3

▶ Generic Evidence

The following evidence should be collected and preserved irrespective of the type of incident. Due to the nature of this evidence, it may be called upon in an investigation:

- Statutory certificates.
- Certificates of Class/certifying authority and last survey reports/Executive Summary Report.
- Ship drawings/plans as relevant to the incident.
- Verification of manning and rest hours in the form of the Safe Manning Certificate, records of hours of rest/work and the prevailing crew list.
- Statement of facts.
- Witness statements.
- Log book entries.
- Accident investigation report.
- Photographs/CCTV.
- Company procedures/orders covering the situation.

Chapter 4

▶ Claims Specific Flow Charts and Evidence Collecting

The following are flowcharts which highlight the processes to follow in the case of an incident and the evidence that would need to be collected and preserved in addition to the Generic Evidence as listed in Chapter 3. The Specific Evidence is dependent upon the nature of the incident.

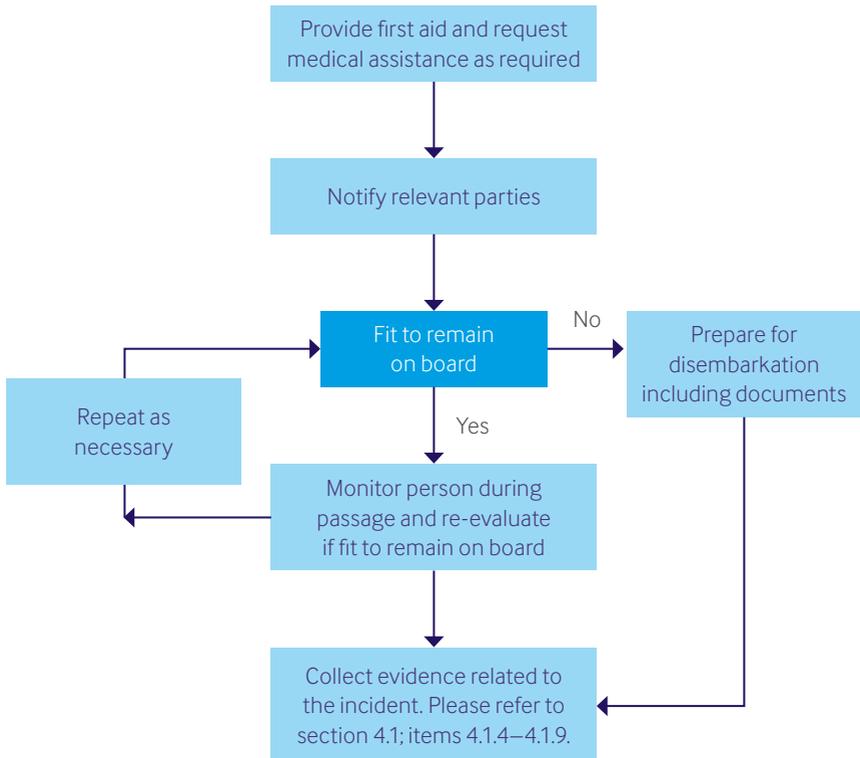
These lists and flowcharts are not definitive or comprehensive and advice should be sought from the Club if clarification is needed.

4.1 PERSONAL INJURY OR ILLNESS

In the event of a crew member, passenger or guest sustaining an injury or becoming ill, please ensure the following:

- 4.1.1 Provide first aid on board and request for medical assistance as required. Additionally, take specific actions that are necessary on an individual case basis such as isolating or confining the patient. Records of all medication provided, advices sought and actions taken should be documented.
- 4.1.2 Notify, as required, the vessel owner/manager, charterer, Flag State, local port authority and the local P&I Correspondent.
- 4.1.3 Disembark if the person is not fit enough to remain on board. Prepare the documents including passport, seaman book, pre-joining medical report, on board medical history for disembarkation.
- 4.1.4 Take photographs and/or videos relating to the incident. These could include photographs and/or videos of the scene of the incident including equipment if involved, to detail the safety measures that were in place.
- 4.1.5 Statement of facts, where possible, should be prepared by the witness and/or the injured. This should be signed by the person preparing the statement and counter signed by the personnel taking the statement.
- 4.1.6 An incident report should be prepared detailing the events leading up to the incident. This should include; the date; time of incident; details of the injured, including extent of the injury; work being undertaken; safety measures in place (by means of permits to work, PPE used), and weather conditions. A similar report should be produced to determine the root cause of the incident.
- 4.1.7 Record of hours of work/rest of the personnel involved in the incident.
- 4.1.8 Details of any alcohol/drug tests carried out.
- 4.1.9 In the event of a passenger injury, record in the log book and if possible, obtain a signed declaration from the passenger if the passenger refuses medical assistance.

Flowchart for Personal Injury and Illness



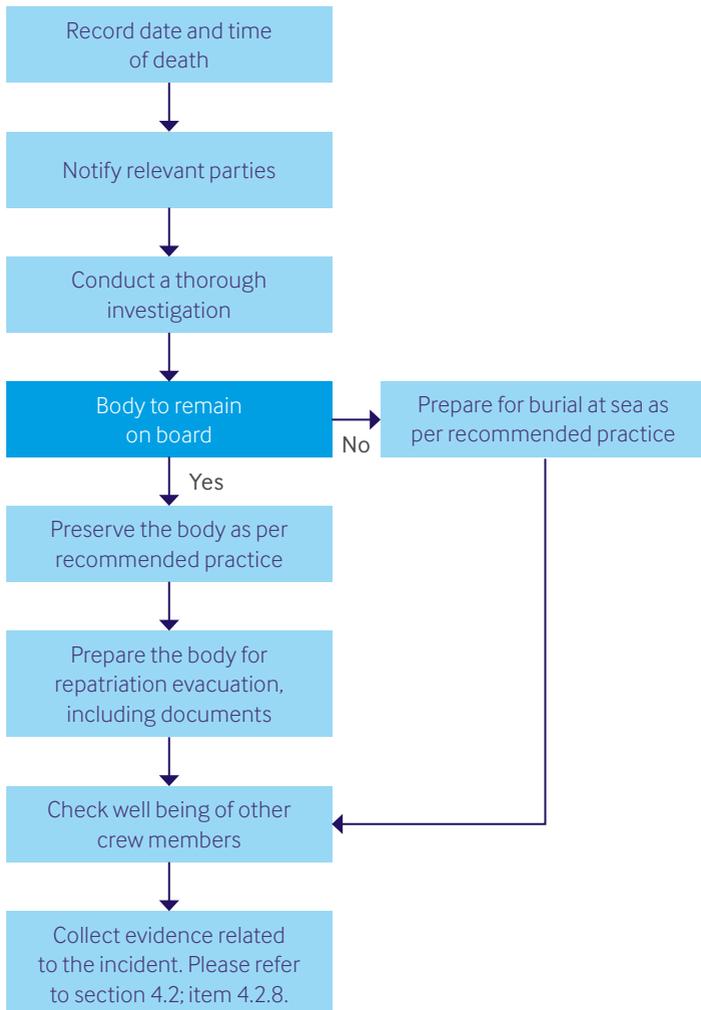
4.2 DEATH

Never presume anyone to be dead until positively confirmed by a medically trained person or by following the steps to evaluate this referring to relevant publications such as *The Ship Captain's Medical Guide*.

Once death has been confirmed, please ensure the following:

- 4.2.1 Record the precise date and time of death in the ship's logbooks.
- 4.2.2 Notify, as required, the vessel owner/manager, charterer, Flag State, local port authority and the local P&I Correspondent.
- 4.2.3 Conduct a thorough investigation to ascertain cause of death. Incident report to be prepared detailing the events leading up to the death of the person.
- 4.2.4 Preserve the body in accordance to the recommended practice.
- 4.2.5 Prepare the body for repatriation/evacuation. Prepare the documents including passport, seaman book, pre-joining medical report, on board medical history and others.
- 4.2.6 In the event that burial at sea is to be carried out, the same is to be done in accordance with the recommended practice and suitable photographs/videos should be prepared as evidence.
- 4.2.7 Check on the well being of the other crew members. Counselling and/or medication may need to be provided. Record of the same to be maintained.
- 4.2.8 The evidence to be collected in the event of a death on board would depend on whether death resulted from an illness or an injury and reference can be made to Section 4.1.

Flowchart for Death



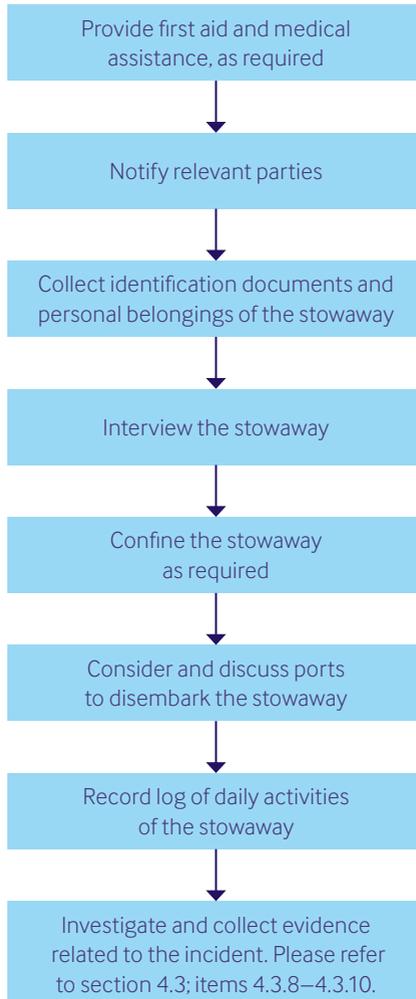
4.3 STOWAWAY

In the event that a stowaway is found on board, please ensure the following:

- 4.3.1 Provide first aid on board and request for medical assistance, as required. Records of all medication provided and advice sought should be maintained. Treat the stowaway humanely and in line with international standards, as applicable.
- 4.3.2 Notify, as required, the vessel owner/manager, charterer, Flag State, local port authority of last/next ports of call and the local P&I Correspondent.
- 4.3.3 Collect and preserve any identification documents and personal belongings carried by the stowaways.
- 4.3.4 Interview the stowaway to gather personal information such as name, age, nationality and other information such as time and location of boarding or any additional accomplices. The interview should be recorded, preferably visually or audibly. A written record of the same to be prepared and signed by the stowaway and counter signed by the Master.
- 4.3.5 Confine the stowaway as required and record accordingly in the log books, including details of any additional security arrangements made.
- 4.3.6 Consider and discuss with relevant parties possible ports to disembark the stowaway at. All communication in this regard should be recorded.
- 4.3.7 Record and maintain a log of daily activities of the stowaway whilst on board including food, drinks and clothing provided.
- 4.3.8 An investigation should be carried out on board to determine the events leading up to the stowaway boarding and an incident report should be prepared. Any evidence demonstrating the efforts taken by the ship to prevent stowaways (such as watch arrangements, stowaway search procedures, checklists) from boarding to be preserved.
- 4.3.9 Statement of facts should be prepared. This should be signed by the person preparing the statement and counter signed by the personnel taking the statement.
- 4.3.10 Relevant entries to be made in the deck log book/official log book.

Members are guided to refer to the latest version of the IMO Resolution FAL. 11(37) (Revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases).

Flowchart for Stowaway

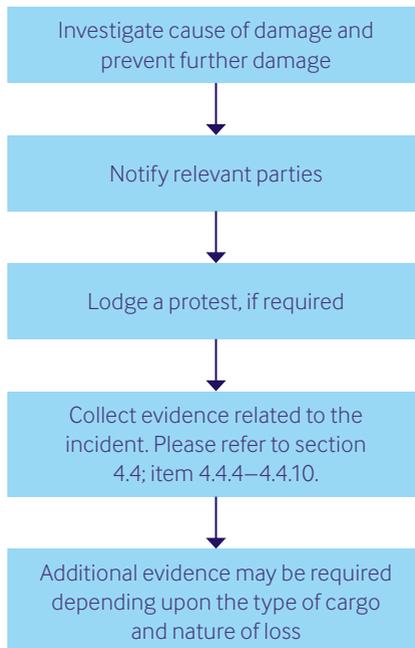


4.4 DAMAGE TO CARGO

In the event of cargo being damaged as a result of an incident or reported as lost during a voyage, please ensure the following:

- 4.4.1 Investigate the cause of the damage and take appropriate action to prevent further damage. All corrective and preventive measures adopted should be recorded and evidence preserved.
- 4.4.2 Notify, as required, the vessel owner/manager, charterer, local P&I Correspondent, terminal/any other vessel involved (in the event of a collision or a STS operation), Flag State and local port authority.
- 4.4.3 Lodge a note of protest, if required.
- 4.4.4 Record and preserve all events leading up to the cargo damage/loss. This evidence could include information on weather, relevant logbook entries, checklists adopted, stability information, pictures of cargo loading, lashing, stowage and securing, maintenance, checks and tests of equipment and machineries involved including lashing (if applicable), care of cargo en-route including cargo monitoring records, cargo related checklists prior to loading, during loading and after loading. Any report prepared by an attending surveyor at the time of the loading/discharging of the cargo to be preserved.
- 4.4.5 Take photographs/videos relating to the actual incident of cargo damage and vessel condition at the time of the incident. These could include photographs/videos of the conditions as they happened that could have been contributory to the incident, equipment if involved and the safety measures that were in place.
- 4.4.6 All cargo related documents such as shipper's cargo declarations, bills of lading, MSDS sheets, test certificates, charterer's instructions to be preserved.
- 4.4.7 Incident report with details of the cargo damaged or lost, any contributory factors, description of how the damage or loss occurred should be prepared.
- 4.4.8 Statement of facts to be prepared by the witness. This should be signed by the person preparing the statement and counter signed by the personnel taking the statement.
- 4.4.9 A stevedore damage report should be prepared in the event the damage caused may be attributed to the stevedores. Endeavour to get a signature or an acknowledgement from the stevedoring company.
- 4.4.10 Relevant entries to be made in the deck log book/official log book.

Flowchart for Cargo Damage



Additional records and evidence may be required depending upon the type of cargo and the nature of cargo loss/damage. Some of these have been highlighted below:

Contamination/loss of liquid cargoes

- Cleanliness certificate/fitness to load.
- Cargo plan and pipeline plan.
- Cargo loading sequence plan, as finalised with the terminal prior to loading.
- Vessels cargo fitness certificate detailing the amount and list of grades that can be loaded, to ascertain vessel/cargo compatibility.
- Confirmation samples taken including details of the stage of sampling such as first foot samples. Please refer to relevant bulletins issued by the Club¹
- Past cargoes and details of the tank washing carried out in-between parcels. Evidence that the tank cleaning plan was followed and which tank cleaning guide was consulted, such as *Dr Verweys*.
- Heating instructions, if any, and daily heating/temperature log for the voyage.
- Copies of the bills of lading.

Dry cargoes

General/Bulk

Damage

- Weather reports at load port and on passage.
- Copies of pre load and stowage surveys including details of the pre-loading steel surveys (as applicable), cargo loading, stowage, dunnaging and securing.
- Condition of the hatch covers and associated equipment.
- Details of compliance with relevant statutory requirements (e.g. IMSBC Code).
- Details and condition of the lashing equipment and confirmation if the same in accordance with cargo securing manual.

¹ Reissue of sampling procedures for clean product tankers (<http://www.shipownersclub.com/reissue-of-sampling-procedures-for-clean-product-tankers>) and Sampling procedures for clean product tankers: guidelines to assist and advise Members on the general procedures required for taking samples (<http://www.shipownersclub.com/media/2014/05/21.02.2008-sampling-procedures-for-clean-product-tankers.pdf>).

- Details of checks carried out by crew during the passage such as ballast tank statements, bilges sounding logs, lashing checks, temperature (hold, cargo, seawater, air) and humidity/ventilation records.
- Nature of wet damage on the cargo including ascertaining fresh water or salt water damage.
- Ballast tank statement, bilges sounding record.
- Samples of contaminated cargo including any test results (such as the Can test).
- Copies of the bills of lading.

Shortage

- Tally (shore side/on board).
- Draft/Stability calculations.
- Condition of sideboards and/or hatches and associated equipment.
- Details and condition of the lashing equipment and confirmation if same in accordance with cargo securing manual.
- Ballast tank statement, bilges sounding record.
- Copies of the bills of lading.
- Weighbridge receipts.

Container/Reefer

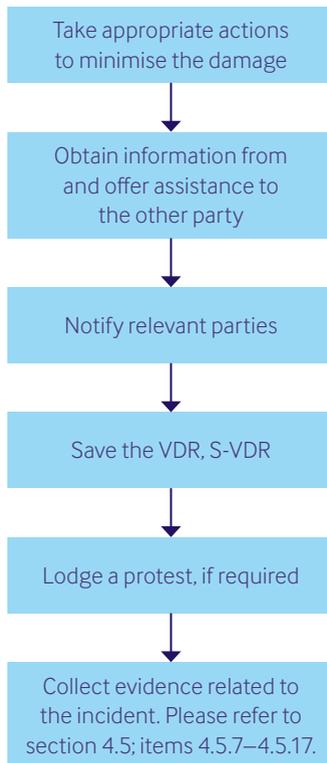
- Condition of container and details of damage.
- Details of compliance with relevant statutory requirements (e.g. IMDG Code).
- Details and condition including maintenance records of the lashing equipment and confirmation if same in accordance with cargo securing manual.
- Copies of the cargo manifest.
- Copy of the stow plan showing location of the affected container.
- Stability report for the voyage.
- Copy of the reefer log and any maintenance carried out.
- Details of spare parts on board.
- Ballast tank statement, bilges sounding record.

4.5 COLLISION, GROUNDING OR CONTACT

In the event of a collision, grounding or contact with a fixed or floating object, please ensure the following:

- 4.5.1 Take appropriate action to minimise the damage.
- 4.5.2 Obtain information such as identity, nature and extent of damage, name of Master, about the other party. Record and preserve all such information including details of tugs, if involved.
- 4.5.3 Offer assistance to the other party, if required, provided such an action does not endanger your own vessel or crew. All such actions and offers to be recorded.
- 4.5.4 Notify, as required, the vessel owner/manager, charterer, local P&I Correspondent, terminal/opponent vessel (in the event of a collision or a STS operation), Flag State and local port authority.
- 4.5.5 Save the VDR, S-VDR to prevent the overwriting of data.
- 4.5.6 Lodge a note of protest, if required.
- 4.5.7 Take photographs/videos relating to the incident. These could include photographs/videos of the scene of the incident possibly even just prior the incident (when the incident is inevitable), during and after the incident.
- 4.5.8 Statement of facts to be prepared by the witness. This should be signed by the person preparing the statement and counter signed by the personnel taking the statement.
- 4.5.9 An incident report should be prepared detailing the events leading up to the incident. This should include; the date; time of incident; details of the injured, including extent of the injury; work being undertaken; safety measures in place (by means of permits to work, PPE used), and weather conditions. A similar report should be produced to determine the root cause of the incident.
- 4.5.10 Logs of checks, tests and maintenance of equipment and machineries (such as main engine, auxiliary engines, steering gear, mooring ropes, navigational equipment, anchor equipment).

Flowchart for Collision, Grounding or Contact



- 4.5.11 Navigational records such as details of the manning of the bridge at the time of the incident, passage planning, charts, navigational logs, movement logs, watch-keeping arrangements, standing orders, navigational procedures, night orders should be preserved. With regards to ECDIS, confirmation that the ECDIS is type approved and certified to be carried on board.
- 4.5.12 Logs and records from various navigational equipment such as telegraph recorder, course recorder, echo sounder should be preserved.
- 4.5.13 Various relevant checklists including pre-arrival/departure checks, daily checks, Master-Pilot information exchange, checks prior entering 500m zone (for offshore vessels) have taken place.
- 4.5.14 With regards to an incident related to towing – a copy of the towing plan, fitness to tow certificate (if any) and test certificates of the towline.
- 4.5.15 Company procedures and any operational limits that are specific to the current contract/scope of work.
- 4.5.16 Record of hours of work/rest of the personnel involved in the incident.
- 4.5.17 Details of any alcohol/drug tests carried out.

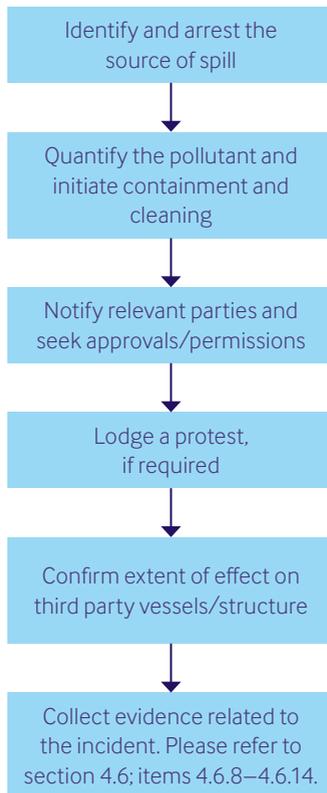
4.6 POLLUTION

In the event of a pollutant (such as oil, sewage, garbage, ballast water) escaping or accidentally being discharged from your vessel or when a third party/authority has alleged an accidental pollution from your vessel, please ensure the following:

- 4.6.1 Identify the source of spill. Take action to arrest the source of spill. All actions taken to arrest the source of spill to be suitably recorded in the log books.
- 4.6.2 Quantify the pollutant spilled on deck and/or overboard.
- 4.6.3 Initiate containment and cleaning of the spill in line with relevant rules and regulations (such as SOPEP/SMPEP, if applicable) and company procedures.
- 4.6.4 Inform the port/coastal facility. Obtain approval from the port/coastal facility on the use of items (such as oil spill dispersants, OSDs) as required for containment/clean up of the pollutant. All relevant communication to be recorded and preserved including details of the materials being put into use.
- 4.6.5 Notify, as required, the vessel owner/manager, charterer, local P&I Correspondent, and Flag State.
- 4.6.6 Lodge a note of protest, if required.
- 4.6.7 Confirmation along with suitable evidence such as pictures, videos on whether other vessels, port/terminal structures have been affected.
- 4.6.8 Confirmation that samples of the pollutant were taken.
- 4.6.9 Statement of facts to be prepared by the witness. This should be signed by the person preparing the statement and counter signed by the personnel taking the statement.
- 4.6.10 An incident report detailing the events leading up to the incident including the date, time, location of the incident, source of pollution, quantity and nature of pollutant, work being undertaken, safety and preventive measures in place and weather condition to be prepared. Such a report, if possible, to also determine the root cause of the incident.

- 4.6.11 Record of hours of work/rest of the personnel involved in the incident.
- 4.6.12 Details of any alcohol/drug tests carried out.
- 4.6.13 If faulty equipment (such as oily water separator) led to the pollution, then details of the equipment including all maintenance, repairs, checks and tests as carried out.
- 4.6.14 Record all events in the log books.

Flowchart for Pollution



Specific documents, records, evidence may need to be preserved depending upon the source of the pollutant.

These may include:

Oil

- Copy of the IOPP Certificate.
- Copy of entries made in the oil record book.
- Tank and pipeline diagrams including sounding pipe and air pipe diagrams.
- Checklists pertaining to cargo work/bunker operations if pollution occurred during these routine operations including operational details of the cargo work/bunker operations such as pump start/stop times, agreed pumping rates, tank statements, topping off procedures.
- Details and records of tank high level alarms.
- Details of all oil spill cleanup equipment put into use.

Noxious and harmful substance

- Copies of the International Pollution Prevention Certificate for the Carriage of noxious liquid substances in bulk, Certificate of Fitness, Document of Compliance to carry the said cargo.
- Tank and pipeline diagrams including sounding pipe and air pipe diagrams.
- Checklists pertaining to cargo work if pollution occurred during cargo operations including operational details of the cargo work such as pump start/stop times, agreed pumping rates, tank statements, topping off procedures.
- Details and records of tank high level alarms.
- Details of all spill cleanup equipment put into use to be maintained.
- Cargo related documents such as MSDS, shipper's declarations, all IMDG related documents.
- Stow plan.

Sewage

- Copy of the International Sewage Pollution Prevention Certificate.
- Records for maintenance, tests and checks as carried out on the sewage treatment plant.
- Details of disinfectant used.

Garbage

- Copy of entries made in the garbage record book.
- Receipts as obtained upon landing garbage ashore.
- Ship specific garbage management plan.
- Details of training carried out to familiarise the crew with the requirements of the garbage management plan.
- Details of all garbage related posters and placards displayed on board.

Air

- Copy of the International Air Pollution Prevention Certificate.
- Copy of entries made in the oil record book.
- Bunker delivery note/bunker analysis records detailing the composition of the fuel on board and in use. Records of any letters of protest as issued to the bunker supplier.
- Bunker samples.
- Details of fuel change over including ROBs of the fuel oil, tanks in use, location and timings of change over.

Ballast water

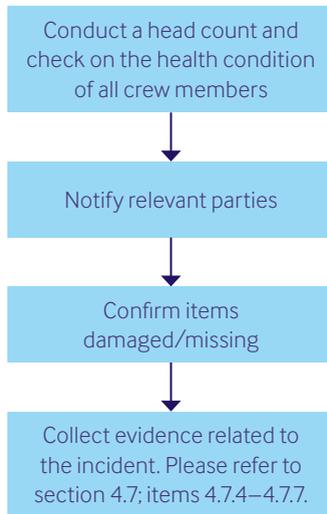
- Copy of entries made in the ballast record book including details of all ballast transfers, ballast water exchanges with timings, locations, quantities, pumps used and ballasting methods employed and ballast treatment methods employed.
- Ballast samples.
- Ship specific ballast water management plan.
- Details of training carried out to familiarise the crew with the requirements of the ballast Water management plan.
- Drawings of the ballast water pipelines, pumps and valves including maintenance, repairs, checks and tests as carried out.

4.7 PIRACY AND THEFT

In the event of a piracy or robbery incident, please ensure the following:

- 4.7.1 Conduct a head count and check on the health condition of all personnel on board. If required, first aid to be provided and medical assistance requested for. Records of all medication provided, advice sought and actions taken to be recorded.
- 4.7.2 Notify, as required, the vessel owner/manager, charterer, local P&I Correspondent, Flag State, relevant authorities such as The International Maritime Bureau (IMB) Piracy Reporting Centre, Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), Maritime Security Centre Horn Of Africa (MSCHOA). Also notify the port/coastal authority if in port/coastal waters. All communication with regards to such notifications to be recorded and preserved.
- 4.7.3 Check the ship's equipment, cargoes and personal belongings of crew and passengers. A detailed list of all missing items to be prepared.
- 4.7.4 Statement of facts to be prepared by the witness. This should be signed by the person preparing the statement and counter signed by the personnel taking the statement.
- 4.7.5 An incident report should be prepared detailing the events leading up to the incident including the date, location, time of the incident, details of the injured (if any) including extent of the injury, modus operandi adopted by the pirates, number and description of the pirates, description of the craft used, safety and security measures in place, weather condition and actions taken upon sighting of pirates.
- 4.7.6 Copies of relevant sections of the Ship Security Plan (SSP) to be preserved; however care should be maintained that the confidential sections of the SSP are not exposed to parties or personnel who are not supposed to be privy to that information.
- 4.7.7 All precautions adopted by the vessel with regards to anti-piracy, including appropriate entries in the log books, to be collated and preserved. This would demonstrate that all necessary precautions as required and recommended by the IMB, MSCHOA, ReCAAP and company procedures were adopted.

Flowchart for Piracy/Robbery/Security



Chapter 5

▶ Case Studies

CASE 1

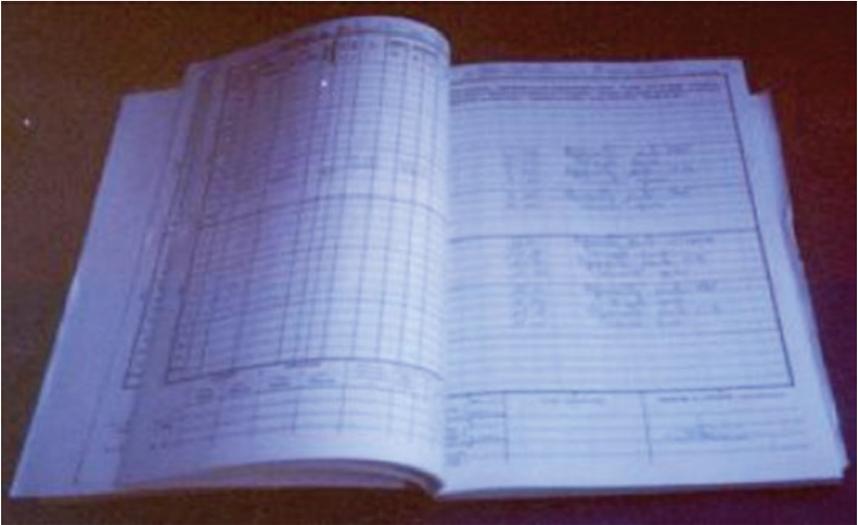
The Incident

The owners of this vessel received a letter from lawyers representing an elderly lady who alleged that she had been injured when boarding the Member's vessel 18 months previously. No incident had been recorded in the accident book on the day in question. The Master was interviewed and was quite emphatic that, if an accident had occurred and the crew been aware of it, it would have been recorded. The other crew no longer worked for the company and two were known to have gone aboard. The remainder were traced but had no recollection of any accidents around the date in question.



To board the vessel passengers simply stepped on to the deck. The gap between the vessel and the dock varied between **two and ten centimetres**. The claimant alleged that as she stepped across, the boat moved away from the dock and her leg slipped between the vessel and the dock. The boat then moved back towards the dock, crushing her leg.

An investigation of her medical history revealed that the lady had suffered from osteoarthritis for some time and had been treated for the problem by her general practitioner prior to the alleged incident. There was no mention of an accident in her medical records. Some seven months after the incident was alleged to have occurred, she had arthroscopic surgery on her knee joint and later underwent further surgery for a total knee replacement. Surgery however was not successful and she was left with a permanent disability. It was only then that a claim was made against the vessel owner.



Observations

This case is typical of many incidents where claimants suffering from degenerative conditions try to link that condition to some accident aboard a Member's vessel in the hope of extorting large sums of money in compensation. These cases are often difficult to defend as first notice of the problem often comes many months after the alleged incident. It is then difficult to identify the crew on board at the time and the event is less easy to recall. It emphasises the need to keep detailed records of crew and the need to document every accident, however minor, to provide a body of evidence to demonstrate to a court that utmost care was taken and even the most minor incidents were recorded. It is then easier to convince a court that an unrecorded incident is unlikely to have taken place.

Root cause

Inadequate access arrangements.

Financial cost

This claim was settled at nuisance value however the cost of lawyers, medical experts and investigation brought the total bill to US\$ 26,632.56.

CASE 2

The Incident

The incident occurred during bunking operations in sheltered waters. The bunker tanker was delivering gas oil to an ocean going vessel when the gaskets on the strainer box on board the deep sea vessel burst. The result was that gas oil spilt over the deck and into the sea. The deep sea vessel was fined by the Port Authority and sought indemnity for this and the cost of cleaning their vessel. The deep sea vessel alleged that the bunker barge had greatly exceeded the agreed loading rate.

Fortunately, the personnel on board the bunker barge had kept proper records of the transfer operation and were able to show quite conclusively that the agreed loading rate had never been exceeded. It is likely that the increase in pressure which caused the packing to burst was the result of valves being closed on the deep sea vessel.

Observations

This case highlights the need to keep proper records during oil transfer operations. Had the barge's crew not been diligent in recording events, taking regular tank soundings and noting pump speeds, we would have found it much more difficult to avoid liability.

Root cause

Inadequate maintenance programme.

Financial cost

Nil.

CASE 3

The Incident

On 16 April 2013, a passenger fell into an open hatch on board a Member's 40GT passenger excursion vessel. At the time of the incident, the vessel was in port and the majority of passengers had been asked to wait on the quay whilst repairs to the engine were being carried out. A few passengers, who were the organisers for that trip, were already on board from the previous port and had been warned of the hatch being left open to the engine room in order to progress the repairs. One of these passengers was on the quay side and was called on board by his fellow organisers. Despite prior warning from the Master, the passenger rushed on board, brushed past the deckhand, who was guarding the open hatch, and subsequently fell into the space below. Post incident, the ship's crew offered medical assistance; however the passenger refused and was observed to enjoy the rest of the cruise.

During subsequent court proceedings, the passenger alleged that the owner and his crew on board were negligent in their duty and had exposed him to a risk of injury.

In their initial statements at the time of the incident, the owner, Master and deckhand had stated that the passenger had forcefully boarded the vessel having jumped a small one foot gap between the dock and the vessel since the gangway had not been arranged. However, during the court proceedings, the Master offered a different recollection stating that the passenger had boarded the vessel from the gangway having been granted permission to board. Though the Master's statement tallied with the owner and the deckhand in all other aspects, the difference in the statements with regards to granting of permission to board and the positioning of the gangway substantially weakened the case for our Member and finally a settlement was reached.

Observations

Had evidence been preserved at the time of the incident, the claim may not have substantiated to the level it eventually did. Evidence that could have been beneficial include:

- Statements from the owner, Master and deckhand duly recorded, signed and even notarised to ensure that if the claim was raised after a considerable amount of time, the statements as recorded at the time of the incident, hold value instead of fresh statements based on recollections and memory.
- Statements from the owner, Master and deckhand should have been recorded in the deck log book/official log book along with a detailed description of the incident.
- Statements from the passenger affected should have been recorded and signed including his refusal to avail the medical assistance.
- Statements of other passengers waiting on the quay should have been taken to establish whether the claimant had jumped on board and made his way in forcefully.
- Photographs of the notices and warning signs that were in place to warn against the open hatch.
- Log book records of all warning announcements made and any pre-work checks undertaken including lockout/tag out procedures along with copies of relevant checklists complied with.

There were also allegations that the claimant was under the influence of alcohol at the time of the incident; however same could not be established due to lack of evidence.

This case highlights the importance of preserving evidence for every incident, especially where passengers are involved, irrespective of the severity of the incident as evident at that time.

Financial cost:

The cost of this claim currently stands at USD 393,137.82.

Chapter 6

▶ Contact Details

If you are involved in an incident which could give rise to a claim, please notify the relevant local P&I Correspondent or the Club at one of our offices.

Correspondents

The Club works with a network of global Correspondents located in major ports who are able to provide practical, local advice and support. The latest contact details of our Correspondents can be found online at: www.shipownersclub.com/correspondents.

Club

London

Ben Harris

Head of Claims

D +44 207 423 7146
E ben.harris@shipownersclub.com
M +44 7825 333367
S ben.shipowners
T +44 207 488 0911

Singapore

Paul Smit

Head of Claims

D +65 6593 0440
E paul.smit@shipownersclub.com
M +65 8500 9532
S paul.smit09
T +65 6593 0420

Claims Emergency

The claims response service is available 24 hours a day, 7 days a week and provides immediate global assistance to all of our Members.

Calling the emergency contact number provides a quick and effective way to speak directly to a duty Shipowners' claims handler in the event of an incident or casualty involving an entered vessel.

During office hours the emergency number will redirect to the relevant corresponding office switchboard.

London Branch

+44 203 829 5858

Singapore Branch

+65 8683 3190



London

St. Clare House
30–33 Minories
London EC3N 1BP

T +44 207 488 0911

F +44 207 480 5806

E info@shipownersclub.com

The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) | 16, Rue Notre-Dame | L-2240 Luxembourg | Incorporated in Luxembourg | RC Luxembourg B14288

Singapore

6 Temasek Boulevard
#36–05 Suntec Tower 4
Singapore 038986

T +65 6593 0420

F +65 6593 0449

E info@shipownersclub.com.sg

The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) | Singapore Branch | Company No. T08FC7268A

