

## General Guidance for Disputes and Claims

Owner's and manager's success in settling legal disputes and claims is to a large extent dependent upon the availability of proper evidence from the vessel.

The wording of notices of claim, letters of protest, disclaimers and such documents should be simple and precise, without using unnecessary legal-sounding words. The parties should be clearly identifiable, e.g., the "Master, Vessel and Owner" or 'Disponent Owners : XXXX (give name)" or "Time-Charterers : XXXX (give name)", etc.

The party on whom the notice or protest or disclaimer is being served and directed must be specifically addressed as "To : XXXX", (if more than one party is being held jointly and severally responsible then as "To : XXXX and XXXX"), and any other parties copied for information only should be cleared named as "Cc: XXXX".

Judges and arbitrators place a lot of importance on documentation and other evidence from a vessel. If good, clear and methodical records are produced the judge and arbitrators will infer that the vessel was operated in a "seamanlike" manner and are more likely to come to a decision in favour of the ship owner or managers.

In general the evidence produced would include:

- a. Logbooks
- b. Master's or others statements or reports
- c. Photographs
- d. Reports of surveyors, consultants or lawyers
- e. Diary / Notebooks of individuals on board

## Logbooks

The Master should ensure that the officers and crew are aware of the importance of a logbook and take care in making entries.

In particular the logbooks must not contain any erasures as erasures appear suspicious when logbooks are examined by the opposing party to a dispute and in any event techniques are available whereby words which have been erased can be read. When necessary an incorrect or bad entry may be deleted by having a line ruled through it. This should be initialed by the person making the deletion at the time. The deleted entry should remain legible.

An untidy and incomplete logbook can also give an impression of a badly run ship.

## Master's (or Others) Reports or Statements

The Master's (or other officer's) reports or statements should be

- a. Concise
- b. Factual
- c. Objective.

No opinions or guesses should be made regarding the reasons or causes for an incident/accident.

The report may have to be disclosed to other parties or in court. It is therefore essential that only the facts are put forward in the reports and statements.

## Photographs

This is an important form of evidence. Documents when supported by photographs, diagrams or sketches, make it much easier for courts or arbitrators to appreciate the nature of an incident and often may be sufficient to exonerate the ship from blame.

Photographs are most useful in defending cargo claims for e.g. grabs spilling cargo onto the quay or cargo being blown off a conveyor belt in a strong wind or cargo being pilfered by stevedore labour, or photographs showing stevedores causing damage to bagged cargo, by using hooks etc.

Other areas where photographic evidence is very useful are:

- a. Condition of stow immediately before departure and at the time of arrival (on closing/opening hatch covers).
- b. Heavy weather encountered during passage.
- c. Stevedore negligence - overloading of slings, use of hooks, spillage from grabs, damage to cargo.
- d. Quality of tallying.
- e. Illustrating inherent weaknesses in packaging material.
- f. Oil pollution.
- g. Recording the condition of a vessel's holds at the time of acceptance by shippers.

The general rule is that wherever possible, supplement the documents with photographic evidence.

All Photographs Must Be Labelled On The Back With Following

- a. Name of Ship
- b. Date
- c. Details explaining the photograph.

## Surveyors And Consultants Reports

These must be forwarded to the office at the earliest opportunity.

If the master has any comments to make on the surveyor or consultant's findings, these should be forwarded at the same time.

## Diary Notebooks

It is usual for officers to maintain their rough notebooks or diaries of events.

These diaries can be presented as evidence. It is therefore beneficial that the diaries are maintained neatly. In case a rough book or diary is presented as evidence, the WHOLE book will be admitted as evidence. It is therefore essential that the entries in the diary are factual only and no opinions are expressed.

## **Preservation of Evidence**

It is of vital importance that the evidence is safely preserved.

This is particularly important in the case of personal injury claims and in failure of ships equipment for e.g. :

- a. If an accident occurred as a result of a broken wire or rope, samples should be kept for analysis.
- b. In case of failure of equipment the broken/damaged pieces need to be kept to help decide the causes of the damage.

## **Giving Evidence**

Some important guidelines regarding giving evidence are :

Before Giving your Statement about Incident or Accident find out who you are speaking to.  
Do not express opinions at all.

- Do not let people wander around your vessel without your permission and without being accompanied by a senior officer.
- Do not let people photograph anything without your permission and ensure photographs are taken only of the parts relevant to the incident.
- Instruct all your officers and crew not to pass any casual remarks or state their opinions to anybody.
- Prior allowing investigators to take down statements from the crew, the Master must take down the statements himself.

- Never admit liability. Notices of claim and such similar documents which may be served on the master and / or the vessel should be remarked as follows:  
**"Signed for receipt only without prejudice to the owners/vessel's rights and without admission or acceptance of any liability."**
- Never allow disclosure of documents, logs etc. To any unauthorized persons.

## Documents required for cargo claims

To defend cargo claims, the carrier must prove that DUE DILIGENCE was exercised to make the ship seaworthy and that the vessel had properly loaded, stowed, secured and cared for the cargo during the voyage. Evidence to prove this must be produced.

The documents required from the vessel will include:

1. Reports of the master or deck or engineer officers on regular inspection and maintenance of the vessel or her equipment. E.g. Dates of last hose test of hatch covers, last testing of bilges, last inspection of hatch cover packings etc.
2. Cargo documents viz: -
  - a. Mate's receipts
  - b. Bills of Lading
  - c. Cargo manifest
  - d. Time sheets
  - e. Tally sheets
  - f. Statement of facts
  - g. Stowage plan
  - h. Notice of readiness - for load and discharge ports

In addition to above on Tankers / Gas carriers the following may also be required.

- a. Ullage reports
- b. Cargo handling plans
- c. Temperature logs
- d. Cargo pump discharge records
- e. Copies of relevant protest letters
- f. Copies of all documentation handed to the Master from shore
- g. Copies of port logs
- h. Tank inspection reports (made by surveyors)

3. Draft surveys with all accompanying calculations (Surveyor and chief officers).
4. Letters of protest.
5. Photographs showing condition of the vessel, weather encountered, methods of lading and discharging of cargo, stowage and securing of cargo.
6. Deck logbook copies from commencement of loading to completion of discharge, and the period prior loading if hold cleaning was carried out.
7. Engine log copies for the same period.
8. Ventilation records if not included in the deck log.
9. Temperature records if not included in the deck log.
10. Correspondence with charterers, shippers, agents stevedores, 10. super-cargo or any person or organisation involved in cargo handling operations.
11. Trim and stability calculations for the voyage.
12. Copies of radio / fax weather reports demonstrating type of weather encountered.
13. Statements of master, chief officer and other personnel giving details of the

incident.

14. Surveyors reports.

## Master 's Report

A list of contents required in a master's report for cargo claims is shown below. Most of the details, especially section 1 and 2, will be required to be included in master's report for most incidents. The master should include the relevant information as required for other claims.

### Details of Master:

- a. Name
- b. Home address and telephone number
- c. Age and date of birth
- d. Details of master's certificate
- e. Date of first seagoing experience
- f. Date when first assumed command of a vessel
- g. Date of joining present vessel

### Details of the vessel:

It is recommended that the information is kept on a separate sheet, as it is useful for many other purposes.

In addition, copies of the general arrangement and capacity plans (or parts of them) will be required to be attached, to show details of bilge, sounding, air pipes, positions of tanks etc.

A list of the vessels navigation equipment may need to be attached.

## Details of Preliminary voyage to load port:

The following details should be included:

- a. Previous cargo carried
- b. Ballast distribution
- c. Condition of holds prior to loading - including brief details of work done by the crew, in preparation of the holds.
- d. Whether bilge pumping, arrangements checked
- e. Whether hose testing of hatch covers done

## Details of loading operation:

- a. Date of arrival
- b. Berthing timings
- c. Name of surveyors and details of hold inspections
- d. Method of loading - ships equipment, shore equipment, grabs, etc.
- e. Whether or not specific instructions were given as to the nature of cargo and method of loading and if so by whom e.g. instructions by shippers
- f. Quantities loaded
- g. Stoppages or delays if any
- h. Whether or not tally was taken of the cargo and if so by whom
- i. Any problems with loading agents
- j. Name and address of local agents
- k. Weather conditions during loading

## Details of lashing, stowage and trimming:

- a. Whether or not specific instructions were given and if so by whom
- b. Details of dunnaging
- c. Details of lashing operations - numbers, dimension of lashing wires used and points used (sketches if required)
- d. Details of the closing of hatches - when closed, checked by whom and whether or not any problems encountered.

## Details of loaded voyage:

An abstract of the deck logbook of the important points should be attached, especially relating to ventilation of cargo, temperatures, bilge soundings, air and sea water temperatures.

## Details of discharging operations:

Similar to details of loading operation.

## Details of loss, shortage or damage to cargo:

- a. When was it first observed and by whom
- b. Did a joint inspection take place and if so name parties involved, their representatives, etc.
- c. Where was the cargo discharged and stored
- d. Whether any attempt was made to segregate, damaged cargo from good cargo and if so, how it was done. Was the method used agreed by the ship and if not was a protest made, any delay to vessel etc.

## Damage or failure of ship's own equipment / structure

Any damage to or failure of the ship's equipment / structure which could affect the vessel's

seaworthiness or the efficient state of the vessel must be reported to the company as soon as it occurs. Due diligence must be exercised in detecting such defects.

In case of damage or failure of the ship's equipment the following documents will be among those required. The list will vary slightly depending upon the type of incident/accident.

### **Evidence related to cause of damage :**

- Damage report prepared by the master, chief engineer or chief officer.
- Photographs of the damaged equipment - as many details as possible.
- Details regarding condition of the equipment prior to damage e.g. survey or inspection reports, last overhaul report, running hours of the equipment.
- Copy of logbooks, deck and engine starting from the period prior to the damage of the equipment.
- Statements from personnel (if any) present at the time of a failure or damage.
- The damaged equipment must be preserved for inspection and analysis. Each part must be clearly labelled and details concerning place, time etc. must be noted.
- Notes of protest.
- Reports by underwriters, class, owner's surveyors or consultants. Name of individuals must be included.
- List of spares and stores used in repair, replacement or for preparation of repairs.
- Details of temporary repairs done by ship or shore labour or of work done in preparation of repairs e.g. tank cleaning. The statement must include the man-hours used, any overtime or special payments made.

### **If damage has caused a stoppage, delay or deviation**

In case of a stoppage or delay, in addition to the above the following will be required :

Details of the deviation including :

- a. Extra distance covered
- b. Extra fuel used
- c. Time lost. In case of slow steaming due to a defect or damage, the time lost will need to be estimated depending upon original ETA.

Copies of all messages and correspondence with all other parties, especially regarding offhire timings & deviation.

In case of a stay in port after completion of cargo operations