

Duties of the Ship's Master in the Event of a Maritime Accident as a Type of Insured Loss

M. Pijaca¹, B. Bulum² & Ž. Primorac³

¹ University of Zadar, Zadar, Croatia

² Croatian Academy of Sciences and Arts, Zagreb, Croatia

³ University of Split, Split, Croatia

ABSTRACT: The ship's master has a number of duties in relation to the ship, the cargo and the shipowner's liability. His duties in the event of a marine accident are particularly important since all marine accidents occur as a type of insured loss. In addition to a number of general duties, some of the master's special duties are informing the classification society about the accident, damage report, cooperation with the insurer's expert and informing the P&I club about the accident.

The content of the master's duties is the subject of analysis of this paper. Therefore, the goal of the paper is to analyse the content of the master's duties in the event of an accident that could result in damage, i.e. the occurrence of the insured event. The purpose of this analysis is to point out the important role of the master in the subject of maritime insurance.

1 INTRODUCTION

Navigation has always been accompanied by various risks at sea [1]. The creation of a quality and safety management system in maritime transport had a significant impact on the decrease in marine accidents. [2] However, when a marine accident occurs, it usually results in the loss or damage of the ship or the cargo transported by the ship, or in third party liability [3, 4]. However, in the field of protection of people and property from possible risks at sea, marine insurance plays an important role. Therefore, maritime navigation and ship management are inconceivable without maritime insurance. Also, the ships' crew members [8] are an important factor in the successful maritime navigation, wherein the ship's master, i.e. the person commanding the crew and all other persons on board [9, 10, 19] plays a crucial role.

The commercial success of the ship's navigation depends precisely on the master's ability, expertise

and resourcefulness. In this sense, the master's duties on board are many and varied. He (Gender-related terms used in this paper refer equally to the male and the female) is responsible for voyage planning, timely supply of the ship, discipline on board and compliance with prescribed standards, people's safety, ship and cargo safety, etc. [16]. In general, the master's duties can be classified into several groups. One can thus make a distinction between master's duties related to the ship's safety [7] and his duties as the shipowner's representative [11]. Also, when it comes to his duties in relation to the insurance contracts, the master's most important duties are those in the event of a marine accident, because marine accidents are a category of insured damages. In this sense, the ship's master's role in the event of a marine accident is significant [4, 5]. For this reason, it is important to clearly determine the content of all the master's duties when it comes to concluded insurance contracts and insured damage incurred. The subject of such contracts may include the ship's insurance, the

insurance of the transported cargo, and the insurance of the shipowner's liability.

Therefore, the task is to consider and analyse the master's duties in the event of a marine accident as a type of insured damage. The purpose of this analysis is to point out the importance of the master's role in the subject of maritime insurance and to instruct the master on the proper manner of responding in the event of insured damages occurring. In order to achieve such a goal and purpose, common scientific methods such as analysis and synthesis methods will be used in the paper.

2 BASIC INSURANCE CONTRACTS FOR SHIP NAVIGATION

Interests exposed to maritime risks or interests related to navigation are regularly insured. The insured risk has to have elements of a future, uncertain and independent event of the insured's will. Namely, both the ship and the cargo, as well as the liability of the shipowner are exposed to numerous risks. Some of them are specific to maritime navigation, while others are the result of the actions, i.e. omissions of the parties and third parties or are related to the properties of the insured item itself. Insured risks also include events that could not be predicted, prevented, or controlled by human efforts, such as events caused by *force majeure*. Most risks are encompassed within the term maritime perils, and classic maritime risks are perils of the seas. Events like this are important in the event to claim insurance [5].

Firstly, the ship, the cargo transported by the ship and the shipowner's liability towards third parties are regularly insured. [12] In a typical situation, every ship voyage is followed by the management of three basic insurance contracts: insurance of the ship, the cargo and the shipowner's liability [1, 3, 4, 5, 9]. Each of these insurance contracts is specific on its own right. Also, each of these contracts is considered legally separate and independent from the others. The difference between these contracts is in the purpose and subject of the insurance. Thus, by concluding a contract on ship and liability insurance, the shipowner wants to protect his interest, while by concluding a contract on the insurance of the transported cargo, the cargo owner transfers the risk of cargo transport to the insurer [5]. In this regard, the ship's master's role is twofold. Given his duty as the shipowner's representative, the master is obliged to act in a way to protect the shipowner's interest. On the other hand, due to his specific position, he is obliged to act with the protection of cargo [4]. His duty as a carrier, based on the charter party contract, is to transport the cargo and deliver it at the specified destination in the same condition, type and quantity in which it was accepted for transport [24]. Regardless of which of these three insurance contracts is considered, the ship's master first of all must be aware of the content of the said contracts and be aware of the subjects of insurance and the risks against which they are insured. However, regardless of the existence of these insurances, he is obliged to undertake all measures so that no damage is incurred, and if it nevertheless comes to that, to be aware of his duties in the event of

the occurrence of the insured event in order to mitigate the occurrence of harmful consequences and to carry out all actions for the purpose of the payment of damages. Therefore, it is the master's duty to act consistently and with due diligence according to the regulations and rules of maritime practice.

2.1 Ship insurance

Ship insurance is understood to mean a ship insurance contract, which generally includes the insurance of the ship's hull, its machinery, devices and equipment, regular supplies of fuel, lubricants and other ship's materials, as well as supplies of food and drinks necessary for the ship's crew [3, 4, 10]. Considering the subject of insurance, this type of insurance is also called hull and machinery insurance [4, 5].

Ship insurance covers the risk of physical loss or damage to the ship as an insured object. The shipowner normally has a justified interest in insuring the ship and a number of other interests related to the ship. The insurance of these interests is carried out by concluding a ship insurance contract or other collateral insurance. The ownership of the ship is not necessarily the sole criterion for assessing the existence of an interest in ship insurance, since loss or damage to the ship may be incurred by the person other than the shipowner (for example, a bank as a mortgagee of a ship [5] or the bareboat charterer) [9, 21, 22, 23].

In ship insurance, contracts are usually concluded according to the insurer's insurance clauses. In business practice, for ships taking part in international navigation, standard insurance clauses apply for this purpose. The most well-known and widely applicable standard clauses for ship insurance are the English institute clauses published by the Institute of London Insurers (Nowadays exist as International Underwriting Association of London (IUA) which was formed on 31 December 1998, through the merger of the London International Insurance and Reinsurance Market Association (LIRMA) and the Institute of London Underwriters (ILU)) [3, 4]. The basic clauses for ship insurance established in the practice of ship insurance are the Institute Hull Clauses, namely: Institute Time – Clauses – Hulls [25] and Institute Voyage Clauses – Hulls [26]. The aforementioned institute clauses provide the widest coverage, and insurance based thereon is known as "full cover" insurance. In addition to institute clauses which provide full coverage, there are also those with narrower coverage (restricted perils) [25, 26]. Also, other standard ship insurance clauses exist worldwide, e.g. American Institute Hull Clauses [27], Institute Standard Dutch Hull Form [28].

2.2 Cargo insurance

Cargo insurance is understood to mean a contract for the insurance of cargo transported by ship. Therefore, the subject of insurance is cargo exposed to maritime transport risks. The cargo is transported pursuant to the charter party contract, and therefore the cargo is an essential element thereof. In the insurance contract,

it is necessary to indicate the type and quantity of cargo, but it is not necessary to indicate the quality and condition of the insured cargo. Any failure to mark the insured item is detrimental to the insured party, so it is important that the insured item is specified in the insurance contract so that it may be identified in the event of damage [4, 5, 20].

This type of insurance allows that (aside from cargo) the expected profit, insurance costs, freight and other costs also be reported as an insurance subject within the said contract. All these values may be calculated as a single insured sum [4, 5, 20].

As with the insurance of ships in international navigation and the insurance of international maritime cargo, institute clauses apply. Institute clauses for insuring cargo against maritime risks are known as Institute Cargo Clauses (A), (B) and (C). These institute clauses differ according to the scope of coverage, and their application depends on the parties' contract. According to Institute Cargo Clauses (A), all risks are insured, i.e. they provide the widest scope coverage, while according to Institute Cargo Clauses (B) and (C), named perils are insured [3, 4, 5, 6]. Damages excluded from insurance are dealt with in General Exclusion Clauses, which exclude certain damages. Simultaneously, additional risk insurance such as Malicious Damage Clause, Institute Theft, Pilferage and Non-Delivery Clause and Institute Replacement Clause can be contracted. The purpose of these clauses is to supplement the basic institute clauses with respect to special circumstances [20].

2.3 Shipowner's liability insurance

Liability insurance is understood to mean an insurance contract dealing with the insured party's (the shipowner's) liability for damage caused to third parties. By concluding a liability insurance contract, the shipowner protects his own interest in such situations where he is obliged to indemnify a third party for the damages incurred for which the shipowner is potentially liable [1, 3, 4, 5, 6, 20].

There are several possible sources of liability in the performance of the navigation activities at sea. These include the contractual liability, third party liability and the liability towards one's own crew. Contractual liability arises from the violation of contractual obligations (for example arising from charter party contracts or passenger transport contracts). Third party liability is based on tort against a person not referred to in the contract (for example, damage caused by a ship collision, damage to the docking area and port facilities, wreck removal, pollution of the marine environment), whereas liability towards the crew implies the duty of the shipowner to bear certain costs of the crew. For each of the listed types of liability, the shipowner holds a justified interest in insurance. Such interests are insured by means of membership in the P&I club.

The P&I club comprises special organizations for the mutual insurance of shipowners, whose full name is Protection and Indemnity Association. These organizations operate according to their own rules (club rules) and have a number of correspondents in all major world ports for the purpose of providing

assistance to their members [29]. Due to the provision of insurance by means of membership in the P&I Club, shipowner's liability insurance is also called P&I insurance [4].

Although one of the basic principles of insurance is the principle of voluntariness, when general interest calls for it, in certain cases the conclusion of liability insurance contracts is compulsory. Liability insurance is compulsory when the public interest dictates the protection of third parties to whom the institute of direct action against the insurer guarantees a secure payment of damages [17]. Several international conventions stipulate the cases in which the liability insurance of shipowners is compulsory, namely: International Convention on Civil Liability for Oil Pollution Damage [30], International Convention on Civil Liability for Bunker Oil Pollution Damage [31], International Convention Relating to the Liability of the Operator of a Nuclear Ship [32], Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea [33], International Convention on the Removal of Wrecks [34]. Compulsory insurance is provided for by the Hazardous and Noxious Substances by Sea Convention, which, however, has not entered into force [35]. Also, the Maritime Labour Convention [36] stipulates mandatory insurance for repatriation costs in the event that the shipowner abandons the ship and crew, as well as mandatory liability insurance against the crew for contractual liability due to bodily injury and death, as well as costs in the event of crew abandonment [3, 5].

3 TYPES OF MASTER'S DUTIES IN RELATION TO BASIC INSURANCE CONTRACTS

Ship's master's duties in case of an insured event, which was contracted by concluding one of the basic insurance contracts, may be classified into general and special [4, 5].

Analysing the content of the master's duties in case of an insured event, we notice that within the general duties of the master, the most prominent duties are those related to the knowledge of the contents of the ship insurance contract and P&I insurance, the maintenance of obligatory certificates, the obligations according to the International Safety Management Code (ISM)) [48] and the International Ship and Port Facility Security Code (ISPS)) [49], and the processes of conducting extraordinary rescue measures, reporting the accident to the shipowner, describing the event in the ship's logbook, preparing and keeping documentation and taking extraordinary rescue measures [4, 5].

Among the special duties of the master in relation to the insurance of the ship, the most prominent ones are those related to reporting the accident to the classification society, compiling a damage report, cooperating with the insurer's expert, obtaining offers for ship repair and temporary ship repair. In relation to cargo insurance, the special duties of the ship's master are conscientious care of the cargo, and the supervision and control of the shipper's data on the cargo. Finally, the master's special duties in relation to P&I insurance are reporting the accident to the P&I

club, asking the insurer to accept liability and sending letters of protest [5].

3.1 *Master's general duties in case of an insured event*

The ship's master's general duties in case of an insured event, as their name suggests, apply generally, i.e. regardless of the type of insurance. Therefore, they apply equally to the insurance of the ship, cargo insurance and the insurance of the shipowner's liability.

In general, the master should primarily be aware the content of the ship, cargo and shipowner's liability insurance contracts. He should also be well acquainted with the structure and conditions of the P&I club, to be aware of the rules of the club and to possess information about the list of club correspondents who provide assistance in the ports [4]. The rules of the club, along with the list of correspondents, may be found in special booklets printed by the clubs which are available onboard or online. According to one of the club's rules, the master is responsible to ensure that the prescribed seaworthiness certificates are issued for the ship under his command [29]. A prescribed number of certificates attesting the compliance with the regulations must be issued for any ship of a certain type and must be available to be shown at the request of the competent authorities [13]. Among the series of certificates which must be issued for various types of ships, the master holds a particular duty regarding safe management (ISM code) and security (ISPS code) [48, 49]. The term seaworthiness is expanded by the requirements of these codes, and pursuant to them, if the ship meets the conditions, a corresponding certificate is issued as proof of compliance with the regulations. The purpose of the ISM code is to improve procedures on board in order to ensure the safety of all operations related to the use of ships, and to protect the environment from pollution [47], while the purpose of the ISPS code is to govern the security organization on the ship, the preparation of the ship's security protection plan and the process of appointment of persons responsible for security protection [9]. In the system for safe management, the master is responsible for making decisions regarding safety and pollution prevention, and is obliged to report any deficiency or accident suffered to the appointed person [7, 18].

In general, it is the master's duty to undertake all reasonable measures to guarantee the safety of the ship, and in case of occurrence of events which put the ship or the people on board in peril, he is obliged to undertake rescue measures, and, if necessary, sacrificing the cargo, ship devices, equipment, etc. He is obliged to report to the shipowner in writing any losses or damages to the ship and cargo, or the existence of any liability towards third parties. Only in exceptional cases is the shipowner allowed to authorize the master to directly report the accident to the insurer. If the accident was reported to the shipowner verbally, the master must subsequently draw up a written notification. In any case, such notification should be concise, objective and fact-based. Sketches, photographs or similar materials should be attached to the written notification.

However, in some ports photographing or video recording is prohibited, so masters may have issues in fulfilling this duty therefore. Furthermore, it is the master's duty to record the information on the incident in the ship's log book as soon as possible [13]. When it comes to damage to the ship's machinery, it is also important to enter data in the engine log, which must be entered by the chief engineer. The entries in the ship's logbook and engine log must not be contradictory, in other words, their contents must match. In addition to the ship's logbook and engine log, there are other data and records on the ship which shall be used as proof of damage incurrence. These may include documents accompanying cargo transportation, notes on maintenance of ship's storerooms, notes on ventilation, etc. In this regard, it is the master's duty to keep and store copies of letters and various other written documents and materials related to maritime enterprise and ship management.

3.2 *Special duties of the master in case of an insured event*

The master's special duties in case of an insured event can be classified into his duties in relation to the insurance of the ship, cargo insurance and the insurance of the shipowner's liability. According to this classification, it is necessary to determine and analyse the content of his duties with regard to a particular type of insurance.

3.2.1 *Duties of the master in case of an insured event in connection with the ship insurance contract*

In case of an insured event in connection with the ship's insurance contract, based on the master's report on the accident, an important duty is to report the accident to the classification society of the ship and the maritime safety authority of flag state [4, 5]. The classification society of the ship's flag state acts according to standard maritime regulations [2], most of which were adopted within the framework given by the International Maritime Organization (IMO). As a specialized agency of the United Nations, the IMO is responsible for the activities necessary for the development and adoption of regulations and standards related to the construction and equipping of ships, their inspections and management, and the certification of seafarers [6, 8]. Examples of IMO standards include: The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) [37], The International Convention for the Safety of Life at Sea (SOLAS 74) [38], The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 95) [39]. Each of the listed conventions contains requirements for obtaining certain certificates for a certain type of ship [13]. Finally, if there is damage to the ship due to a marine accident, the same affects the seaworthiness of the ship, which is relevant for the classification society. Without repairing the damage and re-inspecting the ship, the ship is not allowed to navigate, so maintaining the ship's class is an important segment of navigation safety [41].

In relation to the ship's insurance contract, the master is obliged to draw up a written report on the damage based on his own observation immediately after the marine accident. The same report is used as

evidence in the case of the payment of damages from insurance. The master's statements in the written report should be precise, true and based on the factual situation, and any omission in the way of compiling the report may result in the failure in the exercise of rights from the insurance contract [4, 5].

Upon being notified about the marine accident, the insurer with whom the ship's insurance contract was concluded must appoint an insurance surveyor whose role is to determine the amount of damage by inspecting the ship [4, 5]. Surveyors are third parties, in relation to the parties to the insurance contract, who use their professional knowledge or special experience to establish certain facts [42, 43]. In this sense, it is the master's duty to cooperate with the surveyor and make it possible for them to inspect the ship's damage and to provide them with the ship's records and other documentation [4, 5].

After the surveyor's inspection of the damage, the next duty of the master is to participate in obtaining bids for repairing the ship and procuring parts and equipment, as well as contact with a potential ship repairer. Obtained bids for the repair of the ship are submitted to the insurer, who does not have to accept the received offers, but can himself request new offers if for some reason the received ones do not suit them. However, in order to maintain the ship's class, it is the duty of the master to take actions to make the ship seaworthy without delay. If the conclusive repair of the ship is not possible, a temporary repair must be undertaken, its purpose being to make the ship seaworthy until the conclusive repair is carried out.

3.2.2 *Duties of the master in case of an insured in connection with the cargo insurance contract*

For the entire duration and implementation of the charter party contract, the shipowner's duty is to transport the cargo without delay and in the condition in which it was received for transportation. The shipowner fulfills this duty primarily with the assistance of the master, who is the responsible person on board. The master is obliged to act with due care both before and during the loading of the cargo in order to determine whether the ship is ready for cargo loading and navigation. For this reason, the ship and its equipment should be inspected regularly, and any defects should be promptly eliminated. In order to fulfill the obligations from the charter party contract, preparatory work for cargo loading should be done before the loading of the cargo. It is the master's duty to prepare the ship's storeroom and clear it of all previous cargo in order to avoid the contamination of the new cargo [44]. Particular attention should be paid to the waterproofing of the storehouse hatch cover, the ventilation of the cargo during the journey and the monitoring of the temperature of the cargo. In the case of ships with a refrigeration device or other specialized equipment, the air pressure in the tanks should be taken into account, whereas in the case of stowed cargo, the manner of stowage should be chosen in such a way that the cargo does not collapse or move [4, 5]. The varying particulars of each type of cargo should be taken into account, because any action contrary to its particulars will affect the fulfillment of the charter party contract [45].

After loading the cargo, the shipowner is obliged to issue a bill of lading confirming that he has received the cargo from the shipper for transportation [46]. Considering the probative value of the bill of lading, its content in relation to the cargo elements has a special meaning for insurance relationship. In order to protect the interests of the shipowner, the master is obliged to check the veracity of the shipper's data regarding the type, quantity and other characteristics of the cargo when issuing the bill of lading. Determining the quantity for some cargo is relatively simple, while for other cargo it may be complex. This may result in the receiver making a claim for damages due to the lack of cargo. For this reason, it is recommended that the master tests the shipper's data on the amount of cargo before the loading is completed by reading the ship's draft. If there is a difference between the shipper's statement and the draft reading, the reasons for this should be determined with the shipper's assistance [4].

When unloading and handing over the cargo to the receiver, the master is obliged to ensure that the cargo is handed over after the identity of the receiver has been established by examination of the bill of lading. Cargo may not be handed over without a bill of lading. If for business reasons shipowner has interest in doing so, it is recommended that before the handover of the cargo he requests a letter of indemnity certified by the bank [46]. An example of such a letter is regularly found with the rules of the P&I club [29]. The shipowner is responsible to hand over the cargo at the destination in the quantity and condition in which he received it for transport [14, 15]. Otherwise, assuming that no specific justifiable reason exists, the shipowner may face a claim for damages. Documents and other evidence which can potentially serve to defend the shipowner against unfounded claims may be of great significance in that sense. In doing so, the master has a crucial role in obtaining documents.

3.2.3 *The master's duties in case of the insured event in connection with the shipowner's liability insurance contract*

In addition to the shipowner, the master is obliged to report the accident which may result in a liability claim to the P&I club. For this purpose, he shall contact a correspondent from the list of correspondents provided by the P&I club. The representative of the club should be informed without delay, especially if the event is of such a nature that it requires urgent taking of the necessary legal and procedural actions. The best example for that is arrest of the ship. Arrest is the security measure regulated by the international convention on Arrest of Ships [40].

In liability insurance relations, the insured party is obliged to request the consent of the insurer and follow his instructions prior to recognizing his liability for the payment of damages. Otherwise, the insurer may refuse to settle the claim, in full or a part of it, if he is able to prove that the insured party was not liable for the resulting damage or that his liability was less than what he admits. This means that without the consent of the shipowner and the club, the master is not authorized to enter into a settlement

or admit responsibility for the damage [3, 4, 5]. Failure to do so would be contrary to his duties as the shipowner's representative.

The master's letters of protest addressed to a third parties informing them that they are considered liable for the damage, are also treated as significant evidence in liability relations. This duty of the master derives from the general duty of the master to act to prevent the occurrence of damage or to reduce damage which has already occurred.

4 ESPECIALLY ON THE DUTIES OF THE MASTER IN CERTAIN TYPES OF MARINE ACCIDENTS

We will refer to the duties of the master in case of ship collisions and of marine environment pollution.

In the event of a ship collision, the master is obliged to immediately report this to the shipowner. Based on the notification received from the master, the shipowner must notify the ship's insurer and the P&I club about the accident suffered. In agreement with the shipowner, the master may also directly contact the P&I club, but such cases are effectively rare.

In the event of a collision with a ship commanded by the master, the damage to the ship and cargo incurred in the collision must be professionally and competently inspected (if it is a cargo ship), and a written report must be drawn up. In the first safe port, the master must report to the correspondent of the P&I club whose membership the ship holds, who will provide them with the necessary legal or other assistance. The ship's insurer will appoint a surveyor to inspect the ship's physical damage. The master is obliged to assist the insurer's surveyor when determining the damage so that their reports are complete and accurate.

As in the case of a collision, as well as in the case of pollution of the marine environment, the shipowner, based on the notification he receives from the master, must report the accident to the P&I club whose membership the ship holds. This can also be done by the master directly in agreement with the shipowner. In the event of an oil spill from the ship, the master must immediately notify the nearest representative of the P&I Club, who will advise him on how to report the accident to the local authorities and obtain the necessary legal assistance. He will assist the master in organizing damage inspections, in the selection of surveyors and regarding relations with local authorities. Since the oil spill risk is covered by P&I insurance, the ship's master should fully follow the instructions of the P&I club or its representative in order to avoid possible later claims by the insurer.

5 CONCLUSIONS

The importance of marine insurance is so great that the performance of navigation activities is inconceivable without it. Ships, as well as the cargo they transport, are exposed to numerous risks during navigation. Thus, in maritime practice, it is common

for every voyage of the ship to be accompanied by three basic insurance contracts: ship, cargo and shipowner's liability. We emphasized that these are basic insurance contracts for ship navigation. Regardless of the interests of the shipowner and the owner of the cargo to conclude an insurance agreement, the ship's master has the most important role in the event of an accident which could result in loss or damage to the ship or cargo, as well as liability to third parties. Namely, we determined and analysed the content of the entire range of duties of masters in connection with basic insurance agreements. We classified their duties into general and special duties. The general duties of the master refer to all types of insurance, and as the name suggests, they apply generally. Some of these duties of a master are almost self-evident. This includes the duties to notify the shipowner immediately after the accident, to undertake all reasonable measures on the spot to guarantee the safety of the ship, and to enter information in the ship's books. On the other hand, special duties are related to the particulars of each type of insurance. In case of an insured event in the sense of the ship insurance agreement, it is important to cooperate with the classification society, as well as the surveyor in charge of damage assessment. The master's duties are especially important when insuring the cargo and possible cargo damage, because the master's negligent behaviour in relation to the cargo can lead to non-payment of insured damages. In the case of liability insurance, the master's letters of protest addressed to the persons he considers responsible for the damage is of great significance. His duties in case of collision and environmental pollution are similar to other general and special duties.

All of the master's actions following an accident should aim to guarantee safety because safety is the prime concern onboard. Finally, all the master's duties should have the insurance payment as a goal, which is why insurance is contracted in the first place. All of the above emphasizes the importance of the master's role in the subject of maritime insurance.

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