

KISH P & I LOSS PREVENTION CIRCULAR KPI-LP-45-2012
(Dealing with Collision Cases from P & I Perspective)

➤ **1-Introduction & causes of collision accidents:**

According to studies by the insurance experts; collision with another vessel is in most cases caused by negligence of the Master, crew, pilot or others. The major causes of the collision accident are as follow s:

- Improper Look out
- Breach of the Steering and Sailing Rules
- Breach of Rules on Sound and Light Signals
- Improper command/supervision regarding service regulations at the bridge
- Doze
- Excessive vessel speed
- Non display of the navigational lights/shapes/flags
- Equipment failure & inadequate contingency measures.

Statistically, it has been revealed that the collision accident occurred overwhelmingly due to the Improper Look out (54%) and the Breach of Steering and Sailing Rules (19%). Over half of the Breach of Steering and Sailing Rules are composed by improper vessel's manoeuvring under crossing and navigating in restricted visibility situations, crew negligence and violation of regulations.

➤ **2-P & I Insurance:**

Various claims may arise from a collision accident. Loss and damage arising from a collision accident will be shouldered by the owners of two colliding vessels in accordance with apportionment of liability between them. Amongst the losses of your own vessel, damage to the hull and machinery will be covered by your Hull and Machinery Underwriters (hereinafter referred to as "H&M"), while personal injury, oil spill and wreck removal will be covered by your P&I Club. As for the opposing vessel's losses, damage to the hull and machinery and its onboard cargo/property, as well as loss of earnings, are usually covered by your H&M under their Running Down Clause (RDC), or by your P&I Club's RDC.

Furthermore, the opponent's personal injury, oil spill and wreck removal will be covered by P&I Club, but again, all of those compensations are settled in accordance with apportionment of liability. In general, H&M usually provide 4/4ths RDC, but H&M in Lloyds' market historically provide 3/4ths RDC coverage, based on the Institute Time Clauses-Hulls and the remaining 1/4th coverage is provided by P&I Club.

For quick reference, the scopes of the coverage by H&M, Cargo Underwriters and P&I Club are as below :

| Categories of Claims | Insurance |
|---|--------------------|
| Hull Damage (Own Vessel) | H&M Underwriters |
| Cargo Damage (Own Vessel) | Cargo Underwriters |
| Personal Injury/ Pollution/Wreck removal (Own Vessel) | P&I Club |
| Hull/Cargo Damage and Loss of Earning (Opponent) | H&M Underwriters |
| Personal Injury/Pollution/Wreck removal (Opponent) | P&I Club |

➤ **3- Collision Accident Notification:**

If a vessel is involved in a collision accident, it is important for the Master to report immediately the accurate information in brief, calm and orderly manner to the owners and other concerned parties. Even if no RDC risks are covered by the Club, a P&I claim can arise from the accident. Therefore, at

the occurrence of the collision accident, the Master is always requested to notify the P&I Club or its local correspondents.

Upon receipt of such notification, the Club or its correspondents will assist the Master in protecting the vessel's interest by means of conducting investigation, giving necessary advice and collecting relevant evidence.

If the vessel is entered with the a club under the policy including "Liabilities Arising Out of Collision with Other Ships or Liabilities Arising from Collisions", that is to say "the 1/4th RDC"; the club, in collaboration with the vessel's H&M, will arrange survey on the opponent's vessel to investigate the extent of damage on hull, cargo and other properties onboard. This survey is known as a "Without Prejudice Survey".

Note that in any event, survey on your own vessel's hull damage would not be conducted by P&I Club, but it would be conducted by the H&M insurer. This survey is generally known as "Straight Survey".

A sample form of "Notice of Claim" is quoted here for reference:

Notice of Claim

Dated:

To the Master of M/V "opponent vessel name"

Dear Sirs,

On behalf of the owners of the "own vessel name", I hereby hold you and the owners of the "opponent vessel name" fully responsible for any loss and damage of whatsoever nature and howsoever arising from the collision between the "own vessel name" and the "opponent vessel name" which occurred on (Date) at (Place).

Please acknowledge receipt of this notice with your signature at the end where indicated.

Yours Faithfully,

Master of the "own vessel name"

Acknowledge receipt of this notice of claim on this day of (Date)

Master of the "opponent vessel name"

➤ **4- Things to do in a collision accident:**

After securing the safety of the vessel, the Master needs to check the situation leading up to the collision and reports the fact to the owners. It is important to prepare a report before the concerned parties' memories fade away. In every collision case, precise and detailed reports are always helpful to ascertain the cause of the collision or for negotiations with the opponent to determine apportionment of liability.

A. Ensuring safety:

Immediately after a collision has occurred, the Master needs to secure the safety of human lives, the vessel, and the laden cargoes in a prompt and calm manner.

The following initial response should be taken by the Master.

1. Immediate investigation of the damage (extent of the damage to vessel, occurrence of any water ingress/fire/oil pollution/personal injury, etc., and if any, preventive measures to water ingress/fire /oil pollution)
2. Collection of the contact details of the opponent's vessel (name, owners, registry, course, cargo, insurer, extent of damage)
3. Notice to the owners (name of the vessel, time/date and position of collision, personal injury, extent of hull damage, oil pollution, etc.)
4. Urgent message to the local authorities (name of the vessel, time, date and position of collision, personal injury, extent of hull damage, oil pollution and, possibility of sinking, etc.)
5. Notice to P&I Club or its local correspondents

B. Arraying & collection of information leading up to the collision:

1. Vessel's headings
2. Vessel's speed
3. How the vessel was manoeuvred
4. Engine movements
5. Watch/Look out/Wheelman condition
6. Usage of any signals/shapes
7. Condition of the opponent's vessel
8. How the opponent vessel's headings were checked and with what intervals

C. Arraying & collection of information at the time of the collision:

1. Time of the collision (ensuring consistency of time at the collision among bridge, engine room, telegraph logger and course recorder)
2. Position of the collision (Lat/Long, headings/distances from the notable object)
3. Situation of the vessel (speed, engine RPM, headings, hull damage part, usage information on navigational equipments, information on look out and angle of the collision)
4. Situation of the opponent's vessel (time first observed, headings and speed)
5. Weather and sea condition (visibility, weather, and wind direction/force)

D. Arraying & collection of information on damage to the owner's vessel:

1. Colliding part of the vessel and the extent of damage
2. Voyage (Ports of departure and destination)
3. Kind of cargo onboard, its quantity and loading and discharging ports
4. Whether there is any damage to cargo
5. Name of the cargo owners and their cargo insurers

E. Collection of information on damage to the opponent's vessel:

1. Colliding part on the vessel and the extent of damage
2. Voyage (Ports of departure and destination)
3. Kind of cargo onboard, its quantity and loading and discharging ports
4. Whether there is any damage to cargo
5. Name of the cargo owners and their cargo insurers
6. Name of the vessel owners, their P&I Club, and H&M
7. Contact details of the above interests

F. Collection/preservation of records:

In order to ascertain the causation leading up to the collision, periodical daily records could be considered as important evidence. The following records are of particular importance.

1. Navigational Chart: periodic marking of the vessel's position to the chart, not only when the vessel is under the command of the Master, but also when she is under the pilot's guidance.
2. Course recorder: marking the collision time
3. Telegraph logger
4. Log book
5. Bell book
6. Engine log book
7. Statement of fact: by a pilot if on board

G. Consistent fact-findings shared by all personnel onboard:

Crew members' memories are vivid right after the collision accident, but they will fade away as time goes by. The Master, along with collecting the aforementioned information, should convene a meeting to collect all types of information from all crew members to grasp the fact on the collision which should be consistent with the evidential records/documents onboard.

H. Obtaining a signature of the opponent's Master on the Notice of Claim:

In preparation for claims from the opponent's vessel in the future, it is necessary for the Master to obtain a signature of the opponent's Master on the Notice of Claim. The opponent vessel's Master likewise would tender the same Notice and request the Master's signature thereon. The Master should only sign the Notice with the remark "without prejudice, receipt only."

There will be occasions that a party refuses to sign a document & any insistence will be useless; then a note should be inserted that the person "Refused to sign" & record the fact.

➤ **5- Various investigations:**

After the collision accident, many parties concerned will come onboard for investigations of their own. In such occasion, the Master should check who they are and what their purposes are, and upon clarifying those, should determine whether they ought to be permitted to be onboard or should their questions be answered by the Master.

- It is important to render admissible cooperation in the investigations by lawyers, surveyors, P&I correspondents who are appointed for own vessel.

- And reject interviews or inquiries made by lawyers appointed by the opponent party unless permitted to do so by the owners.

- The Master should also reject investigation by the opponent surveyor unless permitted by owners. Normally, surveys on the hull and the cargo are permitted, but even such surveys are limited to check the extent of damages itself, any access to the vessel's other parts or records should be rejected.

- The Master is required to cooperate with interviews of the Maritime Authority by giving them honest and accurate answers, and if he needs to sign on his interview statement, he must make sure before he signs that the contents are accurate. Subsequently, the Master needs to report to the owners as to the Maritime Authority's interview.

In some countries, a fine could be imposed upon the vessel or the Master because of the collision itself or oil spill resulting from it. In such occasion, Maritime Authority can demand a cash deposit or a security. Should it occur, the Master immediately needs to notify such situation to the owners or the local P&I correspondents.

➤ **6- Important points on a collision accident:**

- Prioritize safety of life

- Obtain the opponent Master's signature on the Notice of Claim

- If the Master's signature is requested for the opponent vessel's Notice of Claim, the Master should sign with the remark "Without prejudice and Receipt only"

- Do not admit any liability at the collision site

- Do not allow the opponent vessel's interest (their lawyers, surveyors and etc.) to interview the crews or take records of the vessel

➤ **7- Conclusion:**

- Evaluate the extent of damage to the own vessel and take necessary preventive measures to secure safeties of human life, vessel, cargo onboard and environment

- As the need arises, cooperate with the opponent's vessel in their securing the safety of life, their vessel and cargo onboard

- Determine the information leading up to the collision

- Report collision accident to the owners, P&I/H&M and to the relevant Maritime Authority.

- Collect relevant records/information

- Endeavour best to preserve evidence