



**KISH P & I LOSS PREVENTION CIRCULAR KPI-LP-39-2012**  
**(Guidelines concerning Claims Arising from Property Loss or Damage)**

**► I. Categories of the claims in this concept:**

Various claims concerning Loss of or damage to property may fall into following categories:

**A. Loss of or damage to property of a third party:**

During berthing/unberthing operation of a vessel, it sometimes causes damage to jetty or quay itself or to facilities such as fenders, stoppers, bollards/bitts, cranes, unloaders, loading arms on quays, etc. due to mishandling, excessive speed, insufficient look out, and so on.

In other cases, the vessel may cause damage to port facilities such as break waters, navigational facilities (buoys or beacons), structures (underwater cables, underwater pipelines, aerial cables or drilling rigs), or fishing facilities (fixed nets, fish preservers or fishing beds), etc. due to dragging anchors or inappropriate manoeuvring.

These are risks which are usually covered by P & I insurance.

**B. Loss of or damage to the other vessel without contact:**

Liabilities arising from collisions in respect of the damages to the other vessel as well as its cargo are covered by Running Down Clause ("RDC", the collision liability clause mainly provided by Hull & Machinery Underwriters). Sometimes, however, even without physical contacts between vessels, the vessel causes loss of or damage to the other vessel, etc. For example, at the moment of near-miss, the other vessel takes evasive actions to avoid a collision and consequently it may run aground and suffer damage. In other cases, during navigation in a narrow passages, the vessel's surge can cause damage to adjacent vessels, jetties to which they are moored and facilities on the jetties.

These situations that there are no direct contacts between vessels are not categorized as collisions. Therefore, such liabilities which the vessel should assume to the other vessel are not covered by RDC, but covered by P & I insurance.

**► II. P&I Insurance:**

Members' liabilities for loss of or damage to properties due to contact or without contact of vessels shall be covered by P & I insurance. On the contrary, damage to the other vessel arising from direct contact shall be handled under RDC as mentioned in the above point B.

**► III. Notification of the accident:**

When a vessel causes damage to properties such as port facilities due to contact etc, Masters are requested to promptly notify the vessel owners, managers and the nearest P & I correspondents of the correct information of the accident.

**► IV. Actions after accidents:**

**A. Initial actions:**

Immediately after the accident occurs, quick but deliberate actions are required in order to secure safety of life, vessel and cargoes. The initial actions which the Master should take are as follows:

1. Emergency measures
  - i) Investigate the damaged areas of the vessel
  - ii) Check/confirm any ingress of water, fire, oil spills, and injury to crew
  - iii) Prevention of water ingress, fire and oil spills
2. Investigation of scope and extent of loss of or damage to property
3. Notice to the vessel owners
4. Notice to the parties concerned
5. Notice to P & I correspondents including arrangement of survey

**B. Grasping and notifying situation:**

When you serve a notice to the owners/P & I correspondent please act promptly and try to include the following information:

1. When and where?
2. Vessel's data
  - Who was on the bridge?
  - Vessel's course, speed, engine movement, angle of the rudder, draughts
  - Whether tugs assisted or not
  - Whether or not a pilot was on board
  - Vessel's handling
3. Sea and weather conditions (weather, direction of wind, wind force, sea conditions, tide, visibility, daytime or night-time)
4. Address/name/contact of witnesses (including crewmembers)
5. Conditions of property which suffered loss or damage
  - Scope and extent of loss or damage
  - Date of installation
  - Indirect or old damages if any
  - Photos and sketches

**V. Points to be noted when the vessel has caused damage to property:**

**A. Scope of compensation for damage:**

In almost all cases, it is difficult to find/prove faults of the opponent, since the damaged objects are fixed and stand still. It should be, however, noted that a fault of a third party sometimes contributed to accidents especially when the damage has occurred without physical contact of the vessel. If the fault of the opponent or a third party is found, the compensation for damage shall be based on the apportionment of liability.

The followings should also be noted:

1. New for old:

When an old property (e.g. a fender) is damaged and it is replaced by a new one due to difficulty of substitution by repair or a used one, in many cases the new one will bring an additional value comparing with the previous one. It should be insisted that such added value should be undoubtedly deducted from the amount of the compensation.

2. Limitation of Liability:

In many countries, owners are entitled to limit their liability for maritime claims lodged by third parties under laws. There are different of limitation regimes.

For instance, under 1976 LLMC (Convention on Limitation of Liability for Maritime Claims, 1976) or its amendment 1996 LLMC, limitation amount is calculated by a sliding scale depending on the vessel's tonnage. Accordingly, Masters should not sign any letters which accept liability and approve a full compensation.

**B. Letter of Acknowledgement:**

The owner of the damaged property sometimes demands Master's signature on a letter of acknowledgement. In such cases, please restrict your statement only to acknowledgement of the accident and avoid statement regarding liability. You should be deliberate in dealing with letters of acknowledgement, since in many cases the opponent demands what states the vessel's side admits liability for the accident and compensation for any of and all damages.

Notes:

1. The purpose of making out a letter of acknowledgement is to confirm the fact each other between the vessel and the parties concerned with the accident such as the owner of the jetty in order to avoid misunderstandings in the future regarding the damage. In other words, it is a letter confirming the fact. Therefore, it should be written plainly upon confirming the conditions of the property precisely, that is, what items got damaged into what conditions.
2. A letter of acknowledgement shall be submitted to the opponent, who suffered damage, *only in case the opponent strongly demands its submission*. It is not a document which the Master shall submit voluntarily.