

RE: POST COLLISION LOSS MITIGATING MEASURES

After several approaches from the Assureds on different issues regarding collision cases, INGOSSTRAKH wishes to draw Owner's attention to the latest update of the practical recommendations, which can allow Shipowners to minimize loss resulting from collisions as well as to avoid situation when P&I coverage may be prejudiced.

The risk of collisions for the vessels at sea always exists, however, it can be said that in recent years, due to several reasons, collision matters have increased. One of the possible reasons which give rise to the collision is shortage of experienced Masters, officers and crew as well as technical condition of the vessels. Collision, in some cases may result with minor contact damage (i.e. during maneuvering) or result with more serious damages. Beyond any question that risk of human life is the scariest scenario of the collision. Moreover, loss of vessel and cargo, pollution, third party losses and damages also can be considered as possible results of the collision. Based on long term experience, it is important to say that collision may be prevented by taking precautionary steps following the International Regulations for Preventing Collisions at Sea rules. Especially Rule 5 - Look-out, Rule 6 - Safe speed, Rule 7 - Risk of collision, Rule 8 - Action to avoid collision.

Once collision occurred it may seem that nothing can be performed to avoid loss except to take accident into consideration and to try to prevent the similar situation in future. In practice, however, there is quite a lot which can be done after the incident to mitigate the impact of the casualty on the Shipowner, especially by the crew and by the owners/operators of the vessel(s) involved. Basically, unless there is quite clear evidence that one vessel is responsible for the collision, there exists «both to blame» situation where only competent court may judge and/or share liability between the parties. In such event, the critical point is to collect as much supporting evidences as possible in order to have more chances to succeed at the court.

The most valuable sources of such evidences are listed below and need to be taken into account.

Surveyor findings

As soon as Owners have been advised of the collision, Ingosstrakh should be immediately notified accordingly. Immediate informing Ingosstrakh of the collision is a matter of extreme importance enabling Ingosstrakh to involve a surveyor together with legal representative in time for ascertaining actual cause and extent of the casualty, collect all evidences, check vessels documents, assist the Master to prepare Master Report and to prepare crew members for their statements which may be given before the official authorities. On the basis of such investigation and preparation, line of defense can be defined to protect Owner's interests in the best possible way.

Eye witness + Photographic evidence

Much of the evidence with regard to the casualty usually comes from the crew, especially the eye-witnesses. The value of eye-witness evidence can not be overstated. This is especially the case for senior officers, who have made the critical decisions. It also should be taken into account that judge or arbitrator could only be satisfied in case witness is being as honest and accurate as possible. If such eye-witness evidence can be supported by either photographs or video record performed, this will surely provide more support for the crew members' statement. Special attention should also be paid that any crew witness

statements should be strictly private and confidential and not to be disclosed to any concerned parties unless otherwise agreed with Ingosstrakh.

Evidence from the vessel's equipment and records

Additional information should also be available from the vessel's equipment, such as course recorder, engine movement book, the Voyage Data Recorder (VDR) and from the log books. With this in mind, it goes without saying that Shipowners must ensure such equipment to be switched on and in working order. It also should be taken into consideration that such kind of information could be available for the other parties' representatives allowed to attend on board, thus it is a matter of great importance that no representatives of other commercial parties to be permitted on board unless otherwise agreed with Ingosstrakh, in case for example equivalent representative from Owner's side is allowed to attend and to make relevant investigations accordingly. It is also strictly recommended that no interviews as well as no vessel's documents to be given to any requesting party (port authorities, journalists, agents etc) before prior agreement with Ingosstrakh, failing which may put Shipowners in a difficult position before the insurer and in some cases may even prejudice P&I coverage.

It must be said that in collision cases the availability of electronic track data have great importance to avoid/limit the liability on the collision. Therefore, VDR records are officially required-in many areas- by the official authorities to finalize the collision matters. Taking importance of the VDR records into consideration, such records must be saved immediately as soon as collision occurred. However, such data can not be handed over to any third party, except appointed surveyor and legal representative, without confirmation of Ingosstrakh.

Preservation of evidence

In order to have written evidence/statement with description of the circumstances of the incident, indicating arguments in support of Owner's position, it is usually of use that Master's statement to be put through the Notary Public for issuing letter of Sea Protest. It is also recommended that assistance in preparing of such protest to be provided by Ingosstrakh's local P&I correspondent who is more familiar with local requirements, legislation and standards. With this issue we recommend Shipowners to approach Ingosstrakh directly in order necessary instructions to correspondent be given. Meanwhile, it is strictly not recommended for Master to sign any other commercial parties' statements, assessments and whatever other docs presented for signing without prior Ingosstrakh's consent. Needless to say, that Master's and/or another crew member's signature on such kind of document, may be considered as Owners accepting of liability/extent of damage and may seriously diminish Owner's chances to succeed further in mitigating loss in legal way. It also should be noted, that according to the Shipowners liability rules, such acceptance of liability in direct or indirect way may result in P&I coverage to be prejudiced. Therefore, for the sake of avoiding any issues in this regard, if any such document(s) were presented before the Master for signing, we recommend Shipowners to immediately contact Ingosstrakh for obtaining instructions/recommendations of how to deal with the same.

Best regards,
P&I Department
Ingosstrakh Insurance Company