

THE CLAIM GAME

*Dry Cargo
Legal Responsibility & Loss Prevention*



PART 1.
**RIGHTS, DUTIES
AND THEIR
UNDERSTANDING**

PART 2.
**THE MASTER
UNDER
PRESSURE**

THE
CARGO

THE BILL
OF LADING

THE
SHIP

THE
VOYAGE

A VIDEOTEL PRODUCTION
IN ASSOCIATION WITH
SKULD - THE INTERNATIONAL P&I CLUB

THE CLAIM GAME

Dry Cargo **Legal Responsibility & Loss Prevention**

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INTRODUCTION

This booklet will explain the Rules which govern the carriage of cargo by sea. It will show what the Master of a Ship and the ship's senior officers must do to safeguard the cargo they carry. This is so that claims against ship-owners can be kept to a minimum.

It will also show how legal claims against a shipowner can be defended. These claims may be reduced or abandoned if a Master can provide strong evidence that the cargo has been properly looked after.

The two videos contained in the package demonstrate what the Hague and Hague-Visby Rules are and how they can be carried out. This booklet will explain them in a little more detail.

In Section A it will give checklists which *show what a ship's Master must do to fulfil the requirements of these Rules*. In Section B it will *show how a Master can prove that he has fulfilled the requirements*.

What this book can do is to give advice on good practice in handling cargo and recording evidence. What it cannot do is to cover every aspect of the subject in any great detail. The aim is to explain quite complex legal issues as simply as possible. Obviously in the case of an actual cargo claim shipowners and the local P & I Club correspondents should be consulted.

How to use this package

A Master or ship's training officer could begin by showing Video One to ship's senior officers. This demonstrates the general principles of the 'Claim Game'. The 'Claim Game' is a way of talking about the rules governing the carriage of cargo. If the rules of the game are followed then this will help to protect the ship against claims.

Before showing the second video there could be a discussion of some of the checks outlined in Section A of this book. Most of these will be routine tasks which most officers will take for granted. However, not everyone knows that in many cases a dated record of such checks needs to be kept each time cargo is loaded or unloaded.

Video Two could be shown at a later time. In this, there is a more detailed discussion of the treatment of a Bill of Lading and an example of a claim against a shipowner which was successfully defended. It demonstrates the importance of full, clear and accurate records.

After seeing this video, the ship's policy on record keeping could be discussed and possibly amended. Some of the suggestions made in the video and in Section B of this book could be useful in this context.

SECTION A

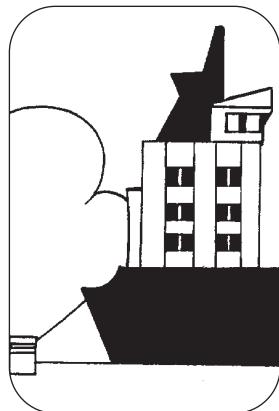
THE HAGUE AND HAGUE-VISBY RULES - FOUR KEY AREAS

1. The Ship

The Hague rules say that the carrier (in most cases this means the shipowner) must 'exercise due diligence' to make the ship seaworthy.

What does 'seaworthy' mean?

A seaworthy cargo ship is one that can take her cargo to sea safely. The ship herself will not fail in normal seagoing conditions. A seaworthy ship is a cargoworthy ship.



It means that the ship must be in proper condition. It must also be correctly equipped to carry its cargo on a specific journey. This includes documented proof that this is so. Each of the following areas must be shown to be sound and in good working order.

- hull and machinery
- manning and manning procedures
- cargo holds and cargo equipment

What does 'exercise due diligence' mean?

The Master on behalf of the shipowner is obliged to take good care to make the ship seaworthy before the ship is loaded for each voyage.

This includes regular maintenance, proper checking procedures and setting and maintaining standards of work and behaviour.

If cargo loss or damage occurs during the voyage then these questions will be asked:

1. Could any deficiency in the ship have been detected by careful checking before the voyage began?
2. Would a careful shipowner (one exercising 'due diligence') have repaired or remedied that deficiency before allowing the vessel to proceed to sea?

If the answer is yes to these questions, then the shipowner will probably be liable for the cargo claim.

In general the Master must:

- delegate to responsible officers the checking of all machinery, fittings and equipment on deck, in the engine room and in the cargo holds
- ensure that proper procedures are followed efficiently and as regularly as required
- keep records of all maintenance and repair work
- make his officers aware of the importance of carrying out proper checks
- make detailed reports in deck and engine room logs

In particular the Master must pay attention to inspecting items which relate to the cargo area. The areas which most often cause problems are

- hatch covers - entrance of sea water
- bilge lines - flow-back of water
- cargo-stowage - cargo breaks loose or shifts

Hatch Covers

Wear and tear

Packing material and channels can become ineffective after long usage. They can change shape through constant compression. Also rust can build up behind the packing.

Vertical compression bars can become distorted by contact with cargo.

Cross joint wedges must allow packing material to be fully compressed.

Action

- replace packing materials when necessary
- prevent scale build-up around and behind packing material
- keep mating surfaces clean
- keep drain holes drain pipes and drain valves free of cargo residues and scale
- keep all compression bars free of physical distortion, scale and damage
- apply cross joint wedges at the level of compression recommended by the manufacturer
- carry out a hose test before loading cargo
- keep a record of all hose tests, checks and maintenance

Bilge-lines

It is important to check hold compartments thoroughly so as to prevent damage to cargo. In particular, the flow-back of water along bilge lines must be prevented.

Action

There should be routine inspections to ensure that the following equipment is in proper working order:

- scupper and bilge pump systems
- tank tops and double bottom manhole covers
- air pipes, sounding pipes and ventilation systems
- hold lighting and access ladders

- tank top and ship side ceilings

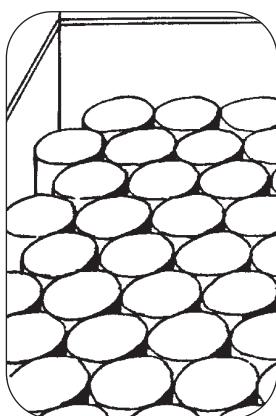
- fire protection system

Cargoes can become damaged by absorbing water vapour or by condensation. Condensation can result from water vapour formed from bilge water.

Bilges must be able to be pumped dry. Water must be unable to flow back past non-return valves.

Checks to the bilge-pump system should ensure:

- all waste material is removed from the bilge and that the suction box is cleared. (Debris being sucked up the pipe can jam open non-return valves)
- pipes are sound and not rusty or blocked
- pump system is checked once bilges are clean



Cargo Stowage

Cargo must be secured adequately to prevent it shifting or breaking loose. If it is not, the ship will be considered to be unseaworthy. In these circumstances the carrier will be liable for any damage to the cargo.

However, the ship may not have sufficient material to secure the cargo to the Master's satisfaction. If this is so the Master should consult the shipowners and local P & I Club correspondents keeping a dated record of phone-calls messages etc.

This applies **even when cargo is loaded by charterers to their stowage plan and requirements. The Master may still be responsible for ensuring that the vessel is seaworthy.**

The next section will discuss the stowage of cargo in more detail.

Failure to exercise due diligence to make the vessel seaworthy is the main cause of cargo claims. Well organised ships with good procedures have on the whole got excellent claims records.



2. The Cargo

The carrier must take good care to look after the cargo in his care from port to port. He must do everything possible to make sure that the cargo is delivered to the receiver in the same condition as it was when delivered to him.

The exact point at which the responsibility begins and ends is determined by the Bills of lading, the Charter-Party or by local custom and law. However, the Master must make sure that while the cargo is in his care it is properly looked after. This involves attention to:

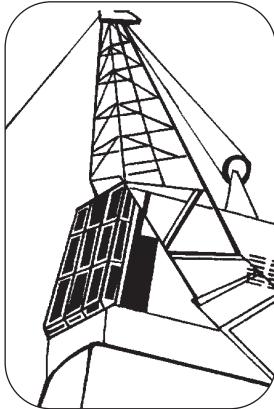
loading and discharge
stowage
carriage

Loading and stowage obviously have to be considered together. They are separated here to make the checklists easier to follow.

Loading and discharge

The following points need to be checked (where relevant, the same sort of checks need to be made during discharge of cargo as are made during loading)

- the holds are properly prepared (i.e. clean and in a fit state) for the cargo. Holds should be inspected by ship's officers as a matter of routine and an entry recorded in the log book.



In some cases the Master should consider obtaining a surveyor's Hold Condition Report before loading certain types of cargoes

- any machinery or special equipment is in full working order (for example, refrigeration equipment). A certificate following a survey would give evidence that the equipment and holds are in a fit condition
- the correct cargo is being loaded according to the booking list
- the cargo is tallied on board
- there is adequate stability at all stages of loading
- loading is stopped and the hatches covered during rain or bad weather conditions
- damaged cargo is either rejected before loading or is carefully noted and identified on the Mate's Receipts.

Photographs of damage should be taken and filed as evidence where this is appropriate

- stevedores are loading cargo carefully and not causing damage.

Damage caused by stevedores during loading

This is an area which can cause difficulty for a Master. This is because responsibility for the proper loading and stowing of cargo is sometimes taken by a ship's charterers.

In many cases problems can be prevented by taking a sensible approach from the beginning. The Master, Chief Officer, charterers and stevedores should meet before cargo operations begin. They can then reach a working agreement on how loading or discharging can be achieved successfully.

In case problems do arise, the Master should note the following points:

1. If cargo has been handed over to the carrier, any damage done by stevedores will often be the responsibility of that carrier. If damage does occur, the Master should:
 - write to the stevedores, holding them responsible
 - send copies of that letter to the shipowner and charterers
 - keep a copy in the file relating to that cargo
 - dated photographs of damage should also be included in the file

2. Sometimes there is an agreement that charterers are to load, stow and trim the cargo. However, the agreement will say that this must be done under the supervision of the Master.

In this case, **the Master's main responsibility is to ensure that the ship is in a seaworthy condition at all times.** (This means that he must advise the Charterers if he considers that the cargo has not been properly stowed and secured.)

Charterers will be responsible for any damage to the cargo and ship caused by their actions in loading, stowing and trimming. The Master may notice that damage is likely to be done to cargo (but not to the ship) because of the way it is being loaded. If so, he may point out potential problems to the charterers, while advising the shipowners at the same time.

However, he should be careful when interfering with the charterer's loading plans. This could make the shipowner liable for later cargo and ship damage claims because the original terms of the contract were not adhered to.
Therefore unless he is very sure of his ground the Master should not interfere without first consulting with the shipowner and if appropriate, the local P & I correspondents.

Stowage

The Master needs to ensure that:

- special stowage requirements for particular cargoes are followed. Relevant information will be found for most types of cargo in the manual kept on board.

If this information is not available, it is the Master's responsibility to find out from the ship owner, the shipper or charterer what special requirements the cargo may have. He must get this advice in writing, follow it, and keep the proof of that advice in case it is needed in the event of a claim.

- cargoes likely to be damaged by cross contamination (e.g. tea, pepper, dried timber) are identified. These should be loaded in different compartments or hatches

Carriage - Care of cargo during the voyage

Some cargoes require little attention during a voyage. Others may need a great deal of attention. If this attention is not given, damage may result and claims made against the carrier.

Ventilation

Condensation can cause damage to certain cargoes. Not allowing sufficient ventilation is one reason for condensation damage. Another reason is ventilating cargoes at the wrong times.

There are two types of 'sweating' which can damage cargo.

- cargo sweat - water vapour condensing onto the cargo
- ship's sweat - water vapour condensing onto the ship's steelwork and dripping onto the cargo

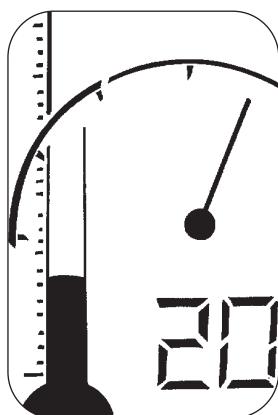
What affects the type of sweating that will take place?

- sea temperature air and dew point temperatures inside and outside the hold
- cargo loaded in a cold climate and being carried to a warm climate (or from a warm climate to a cold climate)
- nature of the cargo

What should a Master do to show that he has cared for the cargo properly?

- keep a record of temperatures and times that ventilation was carried out
- keep temperature records if ventilation has to be restricted during bad weather. Also, record full details of the weather and sea state in the log. Photographs or video recordings of bad weather can also provide useful evidence.

These will support the Master if there are claims for damage caused by poor ventilation.

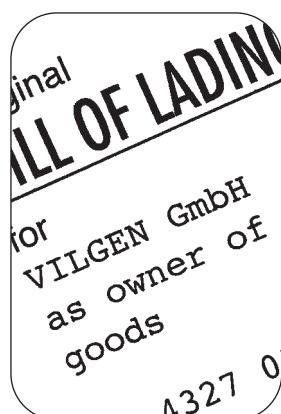


Overheating/Cooling

Many dry cargoes generate heat themselves which can cause damage through fire. Refrigerated cargoes need to be carried within a particular temperature range. If the temperature goes outside the permitted limits then the cargo may be badly damaged and lose its value.

To avoid this kind of damage, the following checks need to be made:

- know all the properties of the cargo being carried
- monitor cargo and hold temperature regularly. If dangerous temperature rises or falls are observed, act appropriately to remedy the situation
- keep a detailed record of hold or cargo temperatures and of any action taken
- seek expert advice if required



3. The Contract

There are various kinds of contract involved in the carriage of goods by sea. Probably the most significant is the **Bill of Lading**.

The Hague and Hague Visby Rules describe the Bill of Lading as a record of the quantity of cargo. It is also a record of the apparent **order and condition of the cargo** at the time it is entrusted to the carrier's care and responsibility.

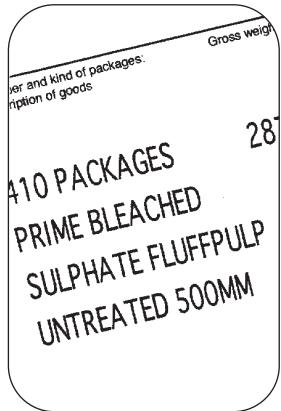
Prospective buyers often decide to purchase goods on the basis of the description in the Bill of Lading. They may never have seen the cargo itself. If Bills of Lading are issued which do not describe the cargo accurately, then the carrier may find that he has to pay for the difference.

What to consider before signing Bills of Lading

The main points a Master should consider before signing a Bill of Lading are as follows:

- **Quantity of Cargo**
- **Description and condition of cargo**
- **Date**
- **Description of voyage**
- **Terms and conditions**
- **Payment of freight**

Quantity of Cargo



Some cargoes are easily checked for quantity. Bagged cargoes can be tallied as they come on board.

Other cargoes, shipped in bulk, are less easily checked. In these cases, the figures given by the shippers are based on using a variety of different measuring devices.

The Master should be careful about signing a Bill of Lading if he has grounds for believing that the shippers' figures are wrong. This is because signing such a Bill could leave the shipowner exposed to shortage claims, even if the Bill of Lading contains statements such as 'Quantity Unknown' or 'Shipper's figures said to weigh ...'

How can these figures be checked?

A detailed draught survey and displacement calculation at the loading port is the only effective way of checking the shipper's figures for dry bulk cargoes.

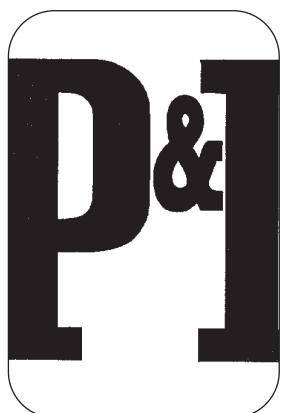
This cannot be an absolutely accurate check, and that will be understood in the case of a dispute. However, if there is more than a very small difference between the figures the Master should consider:

- crossing out the figure given on the Bill of Lading and replacing it with the ship's figure
- endorsing the Bill of Lading with the remark 'X tons in dispute' or 'ship's figures "X tonnes"'
- refusing to sign the Bill of Lading unless ships' figures are stated rather than shore figures and passing it to the agents with those instructions

However, the Master should not take any decision without consulting the shipowner and if appropriate, the local P & I Club representative.

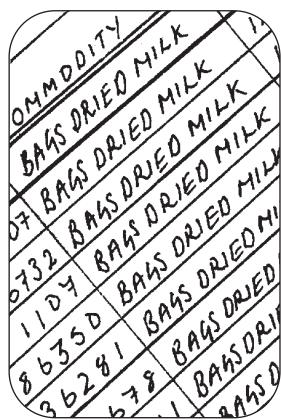
When discharging cargo, there are sometimes claims that the weight of cargo discharged is different from the weight loaded. This can be the result of water settling out of cargoes such as concentrates, ore and coal. Ways of defending against such claims are:

- an outturn draught survey
- a signed statement by an independent witness that there is no cargo remaining on board
- accurate bilge sounding records and times when bilges were pumped



Description and condition of cargo

The description of the cargo contained in the Bill of Lading is treated as evidence of the condition of the goods at the time they were received, loaded or shipped by the carrier. It is very important that this description is correct.



Mate's Receipts are used in preparing Bills of Lading. In some cases the Bills of Lading may not even be seen or signed by the Master of a ship. The shore office may have the authority to sign them on the Master's behalf, based on the information in the Mate's Receipt.

It is therefore vital that the information given on these receipts is truthful and accurate. A Mate's Receipt must give a description of the cargo received, including:

- quantity (number of items or weight - independently checked, see above)
- distinguishing marks
- grade
- other relevant information

If damage is detected, the Mate should clause the Mate's Receipt. This means that he should add appropriate qualifying remarks about the cargo. The number and identifying marks of all the damaged goods should be noted, along with the nature of the damage.

If clean Bills of Lading have to be signed, then ship's officers must check that all the cargo loaded is in prime condition. It should not be damaged or contaminated in any way.

What should officers look for?

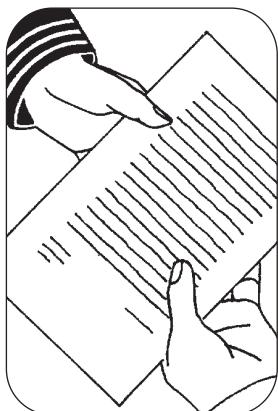
- stained or contaminated goods
- wet bales or bags
- broken or damaged goods
- discoloured or mouldy grain
- frozen cargo which has partially thawed
- foreign material in a bulk cargo
- rust on shipments of steel

In some cases, (for example, rust damage), an independent surveyor is employed to help identify damage before loading. This provides evidence to help defend against claims made against a carrier by shipowners.

Letters of Indemnity

While loading a particular cargo, a Master may find that it is damaged or in bad condition. In such a case he may then be asked by shippers or charterers to accept a letter of indemnity in exchange for issuing a clean Bill of Lading.

He should not accept such a letter without consulting the shipowner. They are in most jurisdictions unenforceable because they are a fraud on a third party ie the cargo receivers. In the case of a claim the owners will be held responsible for any damage found upon discharge. Most insurers will withdraw cover if a clean Bill of Lading is issued against such a letter.



In spite of pressure from shippers or charterers, **if a Master finds that cargo is damaged, he should not accept a letter of indemnity** in exchange for issuing a valuable clean Bill of Lading. If in difficulty he should contact his local P & I Club correspondent.

Date

The Bill of Lading must be dated on the day when the loading of the cargo covered by that Bill of Lading is completed. Commercial decisions are made based on the correctness of this date. If a loss occurs as a result, the owners will be liable. If a Bill of Lading is antedated or post-dated, insurers may not cover claims arising out of that Bill. A Master signing such a Bill may become an accessory to fraud.

Description of Voyage

The voyage or destination stated in the Bill of Lading must be the same as that given in any relevant Charter-Party or with any other voyage instructions. If a Master knows that the destination given is a false one, then there is a risk that the Bill of Lading contract remains valid, but the carrier is liable for deviation. This means that he will have to pay the transport cost of getting the cargo to the port named in the Bill of Lading.

Terms and Conditions

The Bill of Lading may say that the shipment of cargo is being carried under the terms of a Charter-Party. It should clearly identify the relevant Charter-Party.

Payment of Freight

A Bill of Lading marked 'freight paid' or 'freight prepaid' could represent a receipt for both cargo and freight money. Therefore the Master must have good evidence that freight has been paid (or be instructed by owners or time-charterers) before signing the Bill.

Delivery of Cargo without a Bill of lading

The arrival of cargo at the discharging port before a Bill of Lading arrives is often a real problem. This is particularly likely to happen if the cargo has been bought and sold during the voyage.

Ship-owners are increasingly coming under pressure from charterers and cargo interests to deliver cargo without the original Bills of Lading being surrendered. Some charterers are demanding that special clauses be included in the Charter-Party (see section below).

However, if cargo is delivered without production of a Bill of Lading or other legitimate document of title, then the carrier may not be covered by his insurance.

A ship-owner may want to make such a delivery for commercial reasons, but should make sure that the Master concerned **has a letter of indemnity, countersigned by a first class bank** before he delivers the cargo.

Charter-parties

There are both **Voyage Charter-Party** agreements and **Time Charter-Party** agreements.

In a Voyage Charter-Party, space in the ship-owner's vessel is hired to the charterer for one voyage to carry specified cargo between two or more ports.

The commonly used form covering the carriage of general cargo is:

- **Gencon**

A Time Charter Party is an agreement between a ship-owner and a charterer. The ship-owner hires a fully manned ship to the charterer for a stated period of time. The charterer can then use the ship according to the agreement outlined in the Time Charter-Party.

The time-charterers usually pay for bunkers, port expenses and the ship's part of loading and discharging expenses.

The owners usually pay for the machinery and equipment, upkeep of the hull, engine and deck room stores, provisions, insurance and the crew's wages.

[N.B. See the section on damage caused by stevedores during loading for further important information on responsibilities under Charter Parties]

The Master should be familiar with the terms and conditions of the relevant Charter-Party. There are two forms commonly used in the dry cargo time charter trade. These are:

- **Balttime 1939**
- and
- **New York Produce Exchange or N.Y.P.E.**

In some cases, there will be amendments to the standard Charter-Party form. There may also be additional clauses. In either case, the Master should be aware of what they are and how they affect his responsibilities.

Amendments or additions to the usual printed Charter-Party form should always be followed. In claims these are generally considered to take precedence over any printed clause.

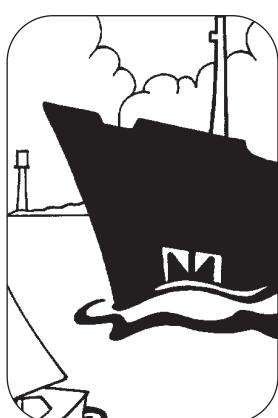
It is important that the Master observes any changes to the usual contract. They may alter all the usual responsibilities for cargo claims.

4. The Voyage

Under the Hague and Hague-Visby Rules, the carrier must carry the cargo directly, on the usual route, to the port of discharge named in the Bill of Lading.

The carrier is protected under the Hague and Hague-Visby Rules unless he deviates from the instructions given in the Bill of Lading. He will not be protected under the following circumstances:

- if the port of destination is changed from that named in the Bill of Lading or
- if the Master allows cargo to be discharged at a port or place not provided in the contract of carriage





- if the Master allows the ship to proceed into an area or follow a course away from the named route
- if the ship deviates from the agreed, direct, or customary route.

There are, however, occasions when a ship is allowed to deviate from the usual route.

When can a carrier deviate from the usual route?

The Rules state that a deviation can be made:

- for the purpose of saving life and / or property

The carrier may deviate for the purpose of saving human life. However, he may not unnecessarily delay the ship at the scene of a casualty.

The carrier may deviate for the purpose of protecting and preserving the cargo.

- for any other reasonable purpose

It is extremely difficult to define what is meant by 'reasonable'.

'Reasonable' is considered not only from the point of view of the carrier. It is also considered from the point of view of the cargo owners and the other interested parties. Thus what may have been a reasonable deviation from the carriers point of view may in fact be unreasonable and thus make the carriers liable.

The Master is entitled to deviate if the ship breaks down. However, he has a duty to continue to take care of the cargo. If there is time, he should always consult the shipowners before making a deviation.

The duration of a voyage is very important to cargo owners. The condition of cargo should not have deteriorated during the time it spends on board ship. Any unnecessary delay may therefore be treated as a deviation from the contracted voyage. And there may be claims against the carrier if this happens.

SECTION B

DEFENDING CLAIMS - KEEPING RECORDS

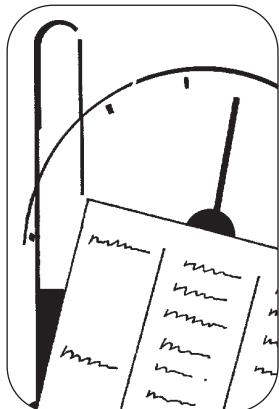
Section A outlined a number of practical loss prevention methods which can be followed on board ship. In these ways, it should be possible to reduce the number of claims being made. However, even on the most well organised ships there will be incidents which may lead to claims being made against the ship-owner.

In most cases, the incidents that lead to claims will either involve the ship itself - collision, pollution - or take place on board ship (personal injury, damage to cargo). Therefore it will be the Master and ship's officers who have to provide the evidence to defend against the claim.

In order to gather this evidence, the Master will need to develop a methodical record-keeping system on board. He will also need to discuss with ship's officers the need to be claims conscious. They will need to be aware of ways to gather evidence to prevent or defend against a possible future claim. The same is true of those involved ashore with the management and operation of the ship.

Section B will first show the kinds of routine evidence which should be kept on any voyage. It will also outline the details required from the Master in the event of a particular incident. It will show what should be included in the Master's Report and give checklists of the items of evidence which should be attached.

I. Routine Evidence



It is vital that all evidence - reports, deck and engine room log book entries - is:

- **concise**
- **factual**
- **objective**
- **dated and timed**

It is important that the Master's account is kept brief and to the point. It should be factual. **It should not include opinions or speculation about events.**

If there is a claim, full and accurate records kept by a Master may stop the claim from going ahead. These records can show exactly what happened and demonstrate that the ship is not to blame.

For example, a bulk cargo may originally contain large quantities of water. During a voyage, that water may settle out and enter the bilges. On arrival, the bulk cargo will be found to weigh less than when it was loaded.

Detailed records of bilge soundings and pumping times can then show clearly what happened to the 'lost' cargo.

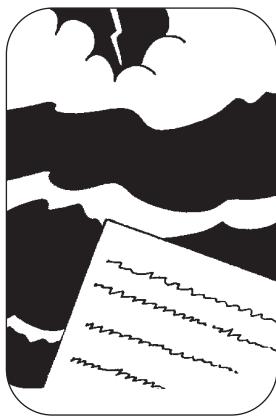
Log Books

The deck log contains details of the navigation and all important incidents and events affecting the daily operation of the ship.

What kind of information should be recorded in the deck log book?

The following list is not by any means complete. It is simply an illustration of the kind of entries which should be made in log books.

- navigational particulars, e.g. time of port departure and arrival: regular positions of the ship; sea and weather conditions
- the effect of bad weather on cargo ventilation; inspections of holds and hatches; testing of scuppers, bilges and fire extinguishing systems; times of starting and finishing loading; details of delays and stoppages; quantities of cargo loaded each day
- the time of serving notice of readiness to load and the signing of Bills of Lading
- bunkering operations with pollution prevention measures loss or damage to the ship or cargo from any cause whatsoever strandings and groundings



All entries should be made in ink, both in the main log and, if there is one, any rough log. On some ships, these details are first recorded in a rough log and then copied into the deck log. **Entries should never be erased. If alterations have to be made, the original entry should be crossed through in such a way that it can still be read.**

A rough log must be kept as carefully as the main log. It will be required as evidence if there is a claim.

Engine room logs need to be kept with the same thoroughness.

Other Documentary Evidence

The following routine records should also be kept:

- movement books or engine manoeuvre tapes
- tank and bilge sounding books
- bell books
- echo sounder rolls
- course recorder tapes

In each case, if these records are to be useful in a court of law, they must be well-kept, correctly dated and timed, organised, and contain a **continuous record of information** with no unaccounted-for gaps.

Erasures, alterations, missing pages of documents or parts of recorder tapes will make this kind of record much less effective as evidence.

In a general cargo vessel evidence is often needed to show that:

due diligence was used to make the ship seaworthy and cargoworthy
good care was taken of the cargo.

This evidence can be found in the following documents:

- cargo gear maintenance record books

- hatch cover maintenance records
- cargo stowage/lashing checking records
- detailed ventilation records including sea temperatures and air and dew point temperatures inside and outside the holds
- cargo documents such as mate's receipts, tally sheets, Bills of Lading, draft surveys, cargo plans, letters of protest

Letters of Protest

A Master may find it necessary to send a letter of protest to stevedores, shippers or charterers. This will be a statement of the facts of a particular incident or series of incidents. It will:

- make clear the causes of any damage caused to cargo during loading
- show who, in the Master's opinion, was responsible
- detail the reasons for potential shortages (quantities of cargo being left behind or spilt during loading, strong winds blowing dry bulk cargo off a conveyor belt etc.)

Letters of Reservation

A Master would be likely to send a letter of reservation if he is not happy about the accuracy of information supplied by another party.

For example, if the amount of cargo according to the ship's own calculations (or from an outturn draught survey) is less than that claimed on the Bill of Lading.

If there are arguments between the shipper and the Master over the quality of cargo being loaded then a letter of reservation could be sent by the Master to the shipper, outlining both sides of the argument.

In all instances where a letter of protest and reservation is sent, a copy should also be passed to the shipowner and charterer.

Correspondence, Records of Meetings and Telephone Conversations

Copies of all messages connected with ship's business should be kept on file. They may be required by courts to verify statements made by the shipowner or the Master. They may also be needed to establish who said what in a dispute.

The Chief Officer should keep written records as well as the Master since the Chief Officer will generally be heavily involved in cargo matters.

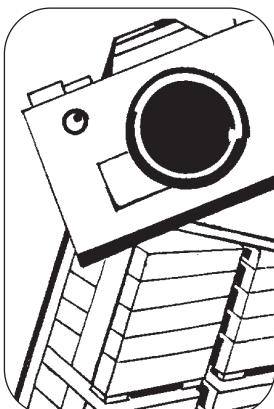
Information likely to be particularly useful will be that relating to:

- the preparation of the ship for loading
- care and safe carriage of cargo
- general instructions under the Charter Party
- bunkering instructions

Copies should include records of each of the following. In the case of verbal instructions, these should be recorded at the time in the Master's notebook.

- radio, telex and fax messages from owners, charterers, port agents, stevedores, shippers etc. telephone instructions or advice
- meetings concerning ship's business relevant to cargo

Records of phone conversations should include the date, time and who initiated the call.



Photographic and Video Evidence

Visual evidence is a very convincing way of proving a point during a dispute. As is the case with all evidence, visual records should be dated and timed.

Here are some examples:

- when entering remarks on a Bill of Lading, comments on inadequate packing or poor quality cargo can be substantiated by photographs
- letters of protest can be supported by photographs showing dry cargo spilled or blown about
- letters of protest to stevedores about damage caused during loading can be backed by photographs of what happened (but there should also be evidence that the Master tried to prevent the damage being caused)
- in the case of damage occurring to cargo, the Master can defend against claims by having filmed or photographic evidence of routine ship's operations such as the proper securing of cargo
- if there is a claim resulting from damage to cargo during heavy weather, photographs and video film of the weather conditions will support log entries
- if there is a claim resulting from ingress of sea water during heavy weather, photographic evidence of a well maintained ship will add support to records of hose tests and hatch cover maintenance.
- claims resulting from collisions, damage to property (for example during berthing operations) or personal injury can be defended by visual evidence of actual damage suitably witnessed, dated and signed
- claims resulting from injury to ship's personnel or stevedores caused by a failure of ship's equipment can in some cases be defended if there is visual evidence of the faulty equipment

Physical Evidence

In the case of accidents caused by a failure of ship's equipment, the broken or faulty equipment itself will be a vital piece of evidence. If it is not produced there will be an assumption that it was in fact faulty.

Broken ropes or wires which cause injury will also be required as evidence.

Samples of bulk cargo showing the condition at the time of loading and discharging can also be important in resolving disputes concerning the condition of cargo.

In all these cases, the samples for evidence should be placed in sealed containers, and be signed for, dated and witnessed.

The Need for Evidence

Courts or arbitrators are likely to be impressed by well-kept ship's documents, backed up by visual evidence and copies or records of all communications relating to ship's business. Owners will be able to defend against claims much more effectively if this evidence is present. If it is not, then in many cases, a successful defence will not be possible.

II. Evidence required in defence of a particular claim

In a claim for cargo loss or damage, the documents listed below should be assembled and numbered in consecutive order. Obviously only those relevant to the claim need be collected. They should then be referred to in the Master's Report. These documents may be more easily available from the shore office, but if they can be found on the ship and attached to the report they will reduce the amount of commentary which has to be included in the report.

GENERAL INFORMATION

1. A convenient plan of the vessel which includes a description of the distribution of hatches and holds, the position of the vessel's equipment, the distribution of double bottom tanks, wing tanks and peak tanks and capacities;
2. Vessel's tonnage certificate;
3. Class certificates including recommendations, reservations, and conditions of class at the time of the loss or incident;
4. Crew list;
5. Reports of the Master or deck or engineer officers on regular inspection and maintenance of the vessel and her equipment;
6. Standing orders for regular inspection and maintenance of vessel prior to sailing;
7. Inspection, repair, and maintenance schedules;
8. Inspection, repair, and maintenance logs;
9. Repair and maintenance accounts;
10. Mate's receipts;
11. Bills of lading;
12. Charter-party(-ies);
13. Draft surveys with all accompanying calculations;
14. Letters of protest;
15. Deck log abstracts for the period of loaded voyage including loading and discharging operations and the period or voyage before loading if, during this time, heavy weather was encountered or hold cleaning was carried out;

CARGO

16. Ventilation records if not included in the deck log;
17. Temperature records if not included in the deck log;
18. Bilge sounding records if not included in the deck log;
19. Engine logs for the same period;
20. Statement of facts at load and discharge port;
21. Time sheets at load and discharge port;
22. Notice of readiness at load and discharge port;
23. Tally sheets at load and discharge port;
24. Cargo manifest;

25. Stowage plan (for each port if cargo loaded at several load ports);
26. Course recorder printout;
27. Working chart (with the original markings) if the course or incidents of the voyage were unusual;
28. Correspondence with charterers, shippers, agents, stevedores, supercargo, or any person or organisation involved in cargo handling operations;
29. Copies of all cables or radio messages received by the vessel, in particular, demonstrating the weather encountered, contact with other vessels, 2nd Ocean Routeing (or similar) messages;
30. Photographs demonstrating the condition of the vessel, weather encountered, methods of loading and discharging of the cargo, and stowage of cargo

These will greatly enhance owners' case in the event of disputes. In addition, a note should accompany the photographs identifying when they were taken, by whom, and what they purport to depict. The negatives should be carefully preserved;

31. Videos: There is an increasing possibility that vessels will carry video equipment, and these can and should be used to identify obvious deficiencies in loading or discharging techniques, methods of stowage, or heavy weather encountered;
32. Computer printouts

If the vessel has on board a computer capable of doing stability, draft, and trim calculations, the printouts or recorded disks should be preserved.

III. The Master's Report - CARGO



Only information relevant to the claim has to be set out in the Master's Report. However, if the Master is not sure if a particular piece of information is relevant, he should include it.

Although the Master's report should set out the information in the same order that it is listed below, the Master should ensure that he assembles the contemporaneous evidence first. The Master's Report should include the following information:

- 1. Details of the Master -**
Master's name,
Home address,
Home telephone number,
Age and date of birth,
Qualifications,
Date of Master's certificate and where obtained,
Date of first seagoing experience,
Date when first assumed command of a vessel,
Date when first sailed on present vessel;

- 2. Details of the vessel -**
Vessel's name,
Port of Registry,
Flag,

Type of vessel, for example, 'tween decker, bulk carrier, roro, or other,
LOA,
Beam,
Summer draught,
Gross registered tonnage,
Net registered tonnage,
Summer DWT,
Classification society status,
Number of holds, number of hatches, and type of hatch covers, layout of
double bottom, ballast, and peak tanks (prepare diagram if necessary),
Engine model and type,
Position of bilge sounding pipes (prepare diagram if necessary),
Position of DBT sounding and overflow pipes (prepare diagram if necessary),
Note whether the vessel has any of the following navigational equipment:
-gyro / magnetic compass
-repeaters on wings
-radar (note the range and type of radar)
-decca / loran
-RDF
-satellite navigation equipment
-echo sounder -course recorder -radio equipment including VHF
-anemometer
-other equipment,
Vessel's complement;

3. Details of preliminary voyage to load port

Previous cargo carried,
Weather encountered,
Ballast distribution, condition of holds prior to loading (if relevant, include
the work done by crew to clean holds),
Whether or not the bilge pump suction ability was checked on passage or
before loading,
Whether or not ballast tanks were pressed up on passage before loading;

4. Details of loading operation

Name of load port,
Date(s) of arrival,
Name of loading berth(s),
Time(s) of berthing, name of owners' representative, if attending,
Name(s) of surveyor(s) if attending and the parties which they represent,
Cargo type or types,
Whether or not specific instructions were given as to the nature of cargo and
method of loading and if so by whom,
Method of loading (ship's equipment, shore equipment, grabs, elevator, or
other);

5. Loading sequence

Dates and times when cargo loaded,
Quantity loaded, Stoppages,
Whether or not a tally was taken of the cargo and if so by whom (ship's
agents, charterers' agents, shippers' agents, or deck officer),
Problems involved in loading operations;

6. Details of lashing, stowage and trimming

Whether or not specific instructions were given, and if so by whom,
Whether or not shore labour or equipment was used and if so which
companies were involved,
Whether or not dunnage was used and if so by whom was it provided and
what was its nature,

Who carried out trimming operations,
Who carried out lashing operations,
Describe the number and dimension of lashing wires used and points (if necessary prepare a diagram),
Details of draft survey (if any) before commencement and on completion of loading,
Whether or not the mate's receipt was claused,
Who issued the bills of lading and whether or not they were claused and consistent with the mate's receipt (if not, why not),
Details of the closing of hatches, when were they closed, checked (and by whom) and whether or not any problems were encountered;

7. **Details of load voyage** (the following information should be included if it is not apparent from the deck log abstracts or deck log)
Date of sailing, destination speed, and course intended,
Periods of heavy weather encountered including method of assessment of wind speed, for example, wave observation or anemometer,
Changes in course or speed and reasons for the alterations,
Wave and sea state on Beaufort scale,
Damage suffered by deck fittings and equipment (if any),
Loss of deck fittings and equipment (if any),
Frequency of weather reports received and their accuracy,
Whether or not Ocean Routeing or similar service was used,
Whether or not the ship was in radio contact with other vessels and if so their names,
Ballast distribution on sailing and any changes made or occurring during voyage,
Whether or not hatches were opened and if so why and when,
Periods during which cargo was ventilated and in which holds,
Whether or not readings listed below were taken and if so with what frequency:
 - cargo temperatures
 - bilge soundings
 - seawater temperatures
 - air temperatures;

8. **Details of discharging operation**
Name of and time of arrival at discharge port,
Draft survey on arrival,
Name and time of berthing at discharge berth,
Name of attending surveyor, name of attending supercargo,
Name of ship's agent,
Whether or not specific instructions were given regarding method of discharge and if so by whom,
Type of equipment used and whether it was ship's equipment or shore equipment,
Dates and times when cargo discharged,
Quantity discharged,
Whether or not a tally of the cargo was taken and if so by whom (ship's agents, charterers' agents, shippers' agents, or deck officer)
Whether or not particular problems were encountered during the discharging operation,
Whether or not shore labour was involved and if so what company;

9. **Details of loss, shortage, or damage**
When was the first report of loss, shortage, or damage made and by whom,
Did a joint inspection take place and if so name parties involved, their representatives and note the date of the inspection,
Where was cargo discharged and stored,

Whether or not any attempt was made to segregate damaged cargo from good cargo and if so

-how was this done,

-was the method used agreed by the ship and if not was a protest made,

-what is an estimate of the period of delay to the vessel whilst the cargo was being segregated,

-was cargo abandoned on deck and if so how much approximately,

Weather conditions encountered during discharge,

If damage arose as a result of insufficiency of packing, how was the packing deficient and did the equipment used by the stevedores, type of dunnage used, method of stowing or lashing, or general handling of the cargo contribute to the damage.