

CHARTERER'S LEGAL LIABILITY

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Ladies and Gentlemen, good morning:

Firstly, I would like to thank Mr. Murphy for inviting me here to speak to you about charterer's legal liability from a marine surveyor's point of view.

A little about myself. My name is David Tantrum, and I am a marine surveyor/consultant with the firm of Martin, Ottaway, van Hemmen & Dolan, Inc. (since 1875 and other offices). I have the illustrious, or should I say dubious, position of Principal Surveyor and Survey Manager. However, I think Survey Manager is one of these 90's titles, which is gleefully handed out in lieu of monetary compensation, but that, of course, is another issue.

Mr. Murphy has requested that I speak about the physical survey/inspection aspects of charterer's legal liability where it relates to marine casualties or claims and to walk you through the survey process.

The survey of the damage incident is the ground stone or first and sometimes most important step in the claim process. If everything is done correctly at the start, it makes everybody's life easier later.

As Survey Manager, I am normally the individual who has first contact with a client when it comes to appointing our firm; that is, a surveyor to act on their behalf, be it for charterer's legal liability or in fact for any other type of marine-related incident and/or casualty, P&I, H&M, personal injury to name but a few.

Like in any of the cases of damage and/or injury, first we have to have an incident.

At that moment when an assured who has coverage against charterer's legal liability senses that there may be an exposure to the underwriters who are covering this section of the marine insurance package, the assured has the obligation of making this known to the underwriters direct, or through his brokers, or by whatever channels of reporting have been set officially or unofficially.

To define what charterer's legal liability insurance is comprised of, what better route can one go than to quote our mentor and great researcher, Leslie J. Buglass:

Quote:

"Such insurances cover the legal and/or contractual liability of the assured (the charterer of a vessel or vessels) resulting from an accident involving the vessel or vessels named in the policy."

Unquote

Let us take it from there and focus in on what happens next in the appointment process and then onto the plain, down-to-earth, practical surveying aspects of an incident.

On the initial contact with the assured (or his brokers or underwriters) to appoint a surveyor, it is important for both the assured to understand what it is he requires and also what is ultimately required of the surveyor in the field.

Once a brief description of the casualty under review is presented to the surveyor, peripheral information is required.

The **most important** and often not thought about item is **who** does the surveyor represent.

In today's world of time charters, sub charterers, sub-sub charterers and slot placement, it is of utmost importance to let the surveyor know whom it represents. Not only **who**, but also the name of the assured and his respective underwriters/brokers/claims examiner.

Next, which is also equally important, is what type of charter is involved, voyage or time, and how long has this charter been in effect. Was there an **On Hire** Survey?

It is then necessary to delve into the midst of what other parties are going to be involved. This could include:

- (1) vessel owner
- (2) vessel manager/operator
- (3) charterer
- (4) sub charterer
- (5) slot charterer
- (6) stevedoring company
- (7) tug company
- (8) terminal/berth owner, etc., etc.

Although these items all seem a little excessive at the point of initial contact, everybody should understand that, firstly, these might be important people in the claim presentation (these names and details are not always available on board the ship); secondly, these are people that may have to be advised and finally invited to attend the vessel at the time of survey.

When the above information is digested, it is then necessary to arrange for a surveyor to attend on board the vessel.

In this respect the assured (or his representatives) should be in a position to provide the vessel's name and IMO No. to the surveyor.

You may laugh, but you would be surprised how many people call with all the details surrounding an incident but, in fact, don't know the name of the ship or its proper spelling.

Don't forget – charterers sometimes change the vessel's name during a charter.

The vessel's agent in the respective port is also a must, as he can provide the whereabouts and ETA's of the vessel. Don't forget again that the owner's agent **may not** be the charterer's agent, so it is important to ensure that the right agent is contacted to arrange boarding of the vessel. Costs involved in boarding a ship should be borne by the correct party.

Once equipped with the above information, the final question to be asked is to whom does the surveyor call or fax his initial findings to. As we all know, shipping is a twenty-four-hour, seven-day-a-week operation, so contact numbers for every eventuality is a must.

Before we get to the actual physical inspection, let us review for a moment what it is that the surveyor is appointed for and what his basic tasks and, more importantly, his **parameters** are when investigating a charterer's legal liability incident.

The golden rule in charterer's legal liability is the surveyor in the field should make no attempt to get involved in who is liable for what and how. This matter, particularly in instances of oil pollution and/or environmental damage, is far too complex to be dealt with by any other individual but the underwriter who wrote the risk and his legal counsel.

However, the surveyor has a very important role to fulfill in collecting essential technical details and do so in the very beginning of a casualty investigation; i.e., developing the instruments that the underwriters and legal profession need further down the line to pass fair, reasonable and logical opinions on the liability matters.

There is no book written, as far as I know, about the "do's" and "don'ts" where it concerns the consultant's/surveyor's conduct for each and every case or incident that falls under the charterer's legal liability coverage.

Furthermore, I do hope it never will be written, because there are so many different cases in nature and involvement that written rules may only lure the surveyor, first, into making the rules fit his particular incident, whereas an experienced man in the field will do a lot better by applying plain common horse sense.

Although the surveyor certainly should avoid the impression that he is trying to, or may be, innocently drifting into the underwriters' and/or legal matters, it is a ground rule of surveying that consultants should have at least a working knowledge of what charterer's legal liability encompasses.

Before I invite you to walk with me through the fascinating wonderland of marine surveying, I would like to start with some basic unwritten rules of behavior when it comes to surveying.

After having received the initial instructions from whoever the principal or initiator of the survey and arranging to attend the vessel, it may be any of the surveyors who has the task to establish contact with other surveyor(s) that may be involved representing the other party or parties, and it must be found out if the other party placing the liability on the charterer has arranged for a joint survey.

If not, the charterer's legal liability underwriter's surveyor should encourage a joint survey, without taking the initiative away from the claimant. Separate surveys by surveyors of parties that represent different interests are totally worthless and will only lead to a conflicting situation later on down the line.

Once on the site, be it a vessel, pier, structure, cargo discharge berth, pollution scene, the surveyor shall first, without delay, have to contact the highest ranking individual in charge in the claimant's camp, making himself clearly known and emphasizing who he is representing (charterer's legal liability underwriters). Snooping around before making that introduction is unethical.

If a joint survey is agreed upon, the surveyors begin their investigation. At this point all the various surveyors/representatives should be on hand.

If a joint survey is denied, the surveyors on the site should not dress to perform as a prize fighter but simply report such resistance to his client regarding a joint survey, making detailed notes as to who refused what and said what.

Functioning for charterer's legal liability underwriters as a surveyor is a bit more complex in survey scope and nature than serving hull and machinery underwriters. However, one thing never changes; namely, the initiative is always with the **claimant**.

It is the claiming party that has to explain the cause, nature, extent and recommended repair of the damage to the man he "***cordially***" invited to look at his problem; namely, the charterer's legal liability surveyor.

The charterer's legal liability underwriters' surveyor basically is the obedient, careful, attentive listener, taking notes and asking questions where something is not entirely clear to him, **never, never** making recommendations and **never, never** vesting the impression that he is leading the presentation.

We will now discuss survey aspects of some of the more common incidents involved in charterer's legal liability disputes, which my learned associates on the panel have already discussed at great length.

1) **Unsafe Berth**

Damages in this respect are normally grounding or ranging damage. These result in physical damage to the vessel.

The surveyor should in all instances determine some basic information. This includes, but of course is not limited to, vessel drafts, wind current, tides, allowable drafts, restriction of draft, fendering system, mooring method and lines used, method of discharge or loading, sequence of trim and keel effects, previous ships at berth, conditions at time, last dredging, last survey of berth, who maintains it, to name but a few.

It is also necessary to determine the extent of physical damage to the vessel, if any. This could be bottom damage or side shell damage or any other physical damages. This physical damage should be suitably described in a Field Survey.

Another damage commonly found could be overstressing of main engine due to grounding with perhaps consequential damage to the propellers.

As we can all see, each case has its own circumstances so it is necessary for the surveyor to assess each case on its own individual merits.

2) **Cargo Damages**

These fall into two categories:

- (a) Physical damage to ship due to stevedoring; i.e., loading/unloading and stowage; and
- (b) Damage to the vessel's holds/cargo tanks and their coatings as a result of loading a particular cargo.

Examples: Coaming, tank tops, deck railing, etc. during voyage and during loading / unloading

Coating damage – tankers, coatings in holds and/or steel diminution, lime wash, etc.

Extent of damages, details involved

3) **Personal Injury – Cargo Operations**

4) **Ship Liability Arising Out of the Carriage of Cargo Belonging to Third Parties**

5) **Demurrage as a Result of Charterer's Breach of Contract – any of the above**

6) **Oil Pollution**

In every case it is the surveyor's job to gather as much information surrounding the damage incident as possible. It should be reiterated that where possible a joint survey with the other parties involved is considered to be of utmost importance.

With a joint survey the extent of physical damage to the vessel and/or the conditions surrounding the incident can, at a minimum, be agreed upon in the field by the surveyors, which leaves for less scope for dispute later on in the claims process.

Conditions do not only mean ambient conditions such as weather, tides, times, etc., but also the physical condition of equipment and the vessel structure, as well as the general operation of the ship and the vessel's procedures on board.

Photographs are beneficial in actually identifying conditions later. Videos also sometimes assist.

On completion of the survey, the surveyor should immediately inform his principal of the preliminary findings by telephone and/or a written preliminary advice. It is this preliminary advice that is the beginning of the claim process for the underwriter and/or its claims manager.

The surveyor's role is to advise of the situation as found, and it is ultimately up to the assured and his underwriters to determine what course of action will be taken based on this information.

A formal report should be issued to the principal within a reasonable time period on completion of the survey. Sometimes additional information after the fact becomes available, and this can always be issued as supplementary reports.

In other instances it may be that legal counsel for the charterer's legal liability will advise when they require the final written report to be issued.

To finish, and I hope I have not bored you all, the surveyor is in the field to gather as much information as possible surrounding any given casualty/incident and to present this in a logical, understandable and legible manner to his principals so they can determine the liability and legal aspects of the case.

I would finally like to reiterate the importance of a few points that apply particularly to charterer's legal liability, but also to other types of covered incidents.

1. Underwriters and legal counsel resolve liability issues
2. On Hire Surveys
3. Joint Survey of Damages – Field Survey