

EVIDENCE IS KEY WHEN DEFENDING CLAIMS

The importance of taking and maintaining good factual evidence in the event of an incident is absolutely key when it comes to defending any claim, highlight John Southam and Effie Koureta in SeaSense column, our special column in association with the North P&I Club.



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Often this evidence is not reactive, but in fact proactive and easily gathered after an incident due to the fact crews have followed best practice and executed their roles fully. A good example of this is a vessel's planned maintenance system, as well as being a valuable tool for making sure maintenance is carried out in a proper manner at the right time, a properly executed planned maintenance system, with full and detailed entries on both maintenance tasks and unplanned repairs, provides vital evidence when defending or pursuing a claim. Other examples include well maintained logbooks or well completed forms such as a Master – Pilot exchange form. These are examples of good quality proactive, factual evidence.

What is factual evidence?

There are two main types of evidence:

1. **Factual evidence:** what a witness actually said, did or saw at the time of an incident
2. **Opinion evidence:** what a witness thought about what happened.

Why is factual evidence needed?

The most important reason for providing good factual evidence is to establish what really happened and how it happened.

Once these facts are known, they can be used for different purposes, typically:

- Learning: preventing it from happening again and identifying improvements that can be made.
- Demonstrating compliance: proving that the vessel acted in accordance with regulations and procedures.
- Determining liability: identifying which party was at fault for the purposes of pursuing or defending a claim.

Following an incident, evidence could be used by many different people, not all of whom will be familiar with shipboard life and operations. Evidence will often be looked at by doctors, insurers, statisticians, civil servants, lawyers and judges, and they may need to be informed about the background to the incident under investigation to understand it properly.

Does it really help defend claims though?

Effie Koureta, Senior Executive (Claims) based in North's Piraeus office knows the value of good evidence when defending a claim, she states: From a claims handling perspective the successful defence of a claim is heavily dependent on supporting evidence in order that a carrier can reject or at least minimise the exposure. When claims are made against a vessel the carrier needs to be in a position to demonstrate that the cause of

the alleged loss/damage was not the vessel's fault. In that regard it is important to note that the carrier is under a duty to take reasonable care of cargo, and crucially bears the burden of proving the absence of negligence in the event that cargo is discharged damaged. If the carrier fails to discharge that burden of proof because no supporting evidence is available, then there is a presumption that the carrier is at fault and is liable in consequence. Good contemporaneous record keeping in so far as a vessel's documentation is concerned is therefore critical in discharging the burden of proof, allowing the carrier to rely on any available defences and/or right to limit under international conventions, such as the Hague-Visby Rules. In order for a carrier to be able to defend a claimant's allegations for loss or damage to cargo whilst in the custody of the vessel, the carrier needs to be in a position to show that due care was exercised. It is therefore important to monitor and record appropriately, and as clearly as possible, anything that relates to the cargo condition pre-shipment, during loading, throughout the voyage and whilst being discharged, making sure to preserve such evidence in case a claim arises which usually must be made within a year from the date of discharge. Such contemporaneous evidence is critical in helping to defend a claim, hopefully allowing the carrier to prove the nature and cause of a loss or damage was not the fault or responsibility of the vessel, and thereby avoid liability. Even if the vessel was at fault in some respect, in failing properly to care for the cargo, such evidence often greatly assists in settling a claim at a lower amount than originally claimed.

Help is at hand!

North has recently launched version 2 of their guide – "The mariner's role in collecting evidence". The guide contains informative checklists of evidence to gather in the event of any incident you may find on board from cargo related claims to crew claims and collisions. It acts as an excellent memory aid for crews to help them gather together the correct evidence early. The guide is available free electronically for North members.

Hard copies can be found at <https://bit.ly/3qLyWsc>

This publication will be available in app form for members soon!



SeaSense

A safety column in association with the

North