



## **Measures taken by Underwriters after a Collision**

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### **First Measures**

When the first pieces of information reach the VHT about a collision, then it is the first priority to render all possible assistance to the casualties to save lives and then to save the valuables. The next steps will depend on the damage of the vessels involved and what risks have to be considered. The VHT will contact the ship of the insured to determine the situation on board. As already mentioned before, the crews have little experience with such situations and may also be in a state of shock. Therefore, it is important to support them as far as possible and to assist in what ever way possible.

Depending on the extent of the damage suffered by the ships, the VHT can assist in the acquiring of salvors or tugs if these are required. Also, advice regarding the stress and stability situation of the vessel can be provided. This will obviously be given in close cooperation with the owner and Classification societies.

Because of the importance of the topic, the measures taken to secure all possible evidence will be discussed with the vessel's command. Meanwhile, the owner of the opponent vessel and its underwriters are then to be traced and contacted.

### **Joint Survey**

As soon as the ships reach the next port, the damage both on one's own ship and on that of the opponent must be determined in regard to the extent and value. The VHT assigns a surveyor locally, and/or an expert will be sent to carry out the inspection. After this inspection the VHT will inform the underwriter about what costs will have to be expected, and the underwriter will make provisions for this amount.

Since all ships involved in a collision will normally be liable to some extent, the opponent must be given the opportunity to survey the damage on his own ship. This will give him the chance to assess the damage and later avoid having the claim questioned. The joint survey will take place under the condition that no decision regarding the liability will be established (WP - without prejudice).

Only the damage suffered by one's own ship should be presented to the opponent's surveyor, and he must not be allowed to question any crew members on the circumstances of the

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collision or have insight into any documents that might give him an unjustified advantage for his side.

The opponent must also be given the opportunity to inspect any repair work carried out provisionally or finally.

The opponents will accordingly invite our side to inspect the damage and repair work on their vessel under the same condition. The VHT will arrange for these inspections, and then assess whether the costs for the repairs of the opponent vessel are fair and reasonable.

### **Exchange of Guarantees**

As soon as the damages to one's own ship have been surveyed and the cost of the repairs has been assessed, the opponent will be held liable for the damage. Our side then has a legitimate claim against the collision opponent. As collision disputes can take a long time to settle, there is a risk that the opponent may no longer be in a situation to satisfy the claim at the end of the dispute. For example, this could be the case if he no longer exists, he has become bankrupt or his ship has been sold or is resting at the bottom of the ocean. The claim for the damage as a result of a collision entitles us to a lien on his ship and gives us the right to arrest it (§ 754 HGB).

So as not to arrest each other's vessels, Letters of guarantee are exchanged between the owners, instead. For one's own side, the Letter of guarantee will be issued by the H&M Underwriter according to § 24 DTV H&M clauses.

As at this time the exact circumstances of the collision are not known, a letter of guarantee that covers not only the estimated costs for the repair for the damages but also an amount for loss of use and interest for a time of three years will be demanded from the opponent.

The amounts of the guarantees should not be exaggerated especially for the guarantee issued to the opponent, as this would have a negative psychological effect. It will be more difficult to fend off an excessive claim if it is in line with the guarantee. If the opponent insists on an undue guarantee, this should only be issued under protest with a remark about this noted in the guarantee.

A Guarantee from the opponent's side is accepted only if the guarantor is rated with "A" by a reputable rating agency. The Wording of the guarantee is chosen so that he will waive the right to arrest the vessel or any other property of the owner.

Also, the places of jurisdiction for the guarantee and for the collision dispute are usually specified in the guarantee.

### **Letter of Indemnity, Letter of Undertaking**

If the collision opponents and their underwriters are well known to each other, they may agree to exchange letters of undertaking directly. The guarantors – usually the underwriter – commit themselves to pay the specified amount after a settlement agreement has been reached, or the dispute is settled irrevocably by a court or by an arbitration tribunal as specified by the guarantee up to the indicated amount.

### **Bank Guarantee / Letter of Guarantee**

However, collisions do not always occur between ships where the owners or their underwriters are well known to each other. Especially if the collision occurs with a ship, where the owner resides in a far away country, he may prefer to accept a guarantee only by a reputable financial institute. In this case, the bank of the underwriter will issue the Letter of Guarantee or, even if this bank not trusted sufficiently, the bank will instruct its affiliate bank in the country of the opponent to issue the letter of guarantee.

### **Cash Deposit**

If the opponent is not even satisfied with the Letter of Guarantee by the bank in his own country, it may be necessary to deposit the amount as cash at a trustworthy institution. The debtor deposits the amount at a bank with the instruction that the amount may only be withdrawn if the dispute has been settled as mentioned above.

### **Annulment of the Guarantee**

When finally the dispute about a collision has been settled, either by agreement or by the irrevocable ruling of a court or an arbitration tribunal, the guarantees must be returned to the guarantors. This is usually done by presenting a “release upon receipt” note to the opposing side. This states that an amount will be paid to settle the named claim fully and finally and that no more claims will be made or submitted in relation to the incident whatsoever.

### **Assignment of Lawyers**

In more serious collisions, it will be inevitable to engage lawyers to protect one’s own side against the allegations of the opposite side and to enforce the demands of one’s own side to the opponent. Firstly, they will be needed to question the witnesses so that their testimonies can be accepted in a court case. Apart from representing one’s own side in a court case, they will be needed to gather evidence and to advise one’s own side on the legal aspects of the case. In foreign countries, they will be needed as they are acquainted with the laws of their own country. As can be imagined, the lawyers engaged should be very familiar with the nautical attributes or preferably even be master mariners themselves.

If the circumstances of a collision are unclear or if objective evidence available to one’s own side is not sufficient to clarify the circumstances of the collision, a court survey can be initiated. A local court will then take the evidence from the case. This will give both sides access to all the evidence that is gathered by the court surveyor.

**External Experts**

Specific questions regarding the circumstances of a collision may require more detailed knowledge. External experts will then be engaged for these tasks. For example, these could be the classification societies, metrological institutes, engine or equipment manufacturers, fire experts or experts who will calculate the angle and speed of blow from the deformations sustained by the vessels involved in the collision.

Finally, when all the facts about the circumstances that led to a collision are sufficiently known and all the costs associated with the incident have been brought together, it will be possible to work out the apportionment of the liability and the claims can be distributed accordingly. Hopefully, everything can be settled amicably as a court case or an arbitration tribunal will be incomparably more expensive and time consuming.

So, the best way to avoid such disputes is to avoid collisions. But then, what would we be doing here?

Thank you for your attention!