

## **GUIDANCE FOR OWNER'S REPRESENTATIVES CONDUCTING DAMAGE SURVEYS WITH A VIEW TO EVENTUAL CLAIMS ON UNDERWRITERS**

*This guidance is offered to assist marine and engineer Superintendents in their negotiations with Surveyors when they are presenting damage cases which will eventually be the basis of the Owner's claim on underwriters. The guidance should not be considered hard and fast procedures but, if the case is built upon such a foundation, most of the contentious points which can arise later in the processing of the claim should be eliminated and lead to quicker settlement of the claim.*

***The Superintendent is usually considered to be the key man in the assembly of all documentation and personnel required at the survey and attention to detail will save time and trouble as the case develops. Depending upon Owner's instructions he would be well advised to consult his insurance department and ascertain their requirements. If Owners do not give their Superintendent the authority to handle certain aspects of a claim he should make the attending Surveyor aware that this is the case.***

### **DOCUMENTATION**

Under most insurance policies the onus of proof of a claim lies with the Owner, and the Superintendent should make available for the Surveyor's inspection:

- (a) The vessel's logbook or books which record the casualty or the condition which is considered to have caused or contributed to the casualty, and also the log books covering the period since the last drydocking prior to the casualty, or for any other period which may be considered relevant by Owners or the Surveyor.
- (b) A signed statement or statements from the ship's personnel involved if not entry covering the casualty has been made in the log books.
- (c) A statement from the Superintendent or other Owner's representative outlining, in his opinion, the cause of damage and the reasons for this opinion.
- (d) Any other documents which will support the Owner's contention as to the cause and/or extend of the damage.

- (e) A specification of damage found and repairs recommended by the Owner's representative. This will not of course apply if the Owner's representative has not yet sighted the damage.

There will sometimes be cases when the cause of damage is not readily apparent and the Owner's representative cannot give a clear allegation as to cause. In these circumstances, the Superintendent should be prepared to give the Surveyor every assistance by supplying any further documentation which he requires such as a report from a metallurgist, lubricating oil analyses, records of the vessel's performance, classification reports, crew lists or any other relevant documentation which will help in assessing the merits of the Owner's claim when it is eventually submitted.

If the hull of the vessel is damaged, drawings should be on hand so that plates, frames, etc., can be correctly designated.

Copies of these drawings should always be kept on board the vessel so that at every survey the same identification can be given to the plates or frames. Disputes can otherwise arise on the allocation of damages carried over from one survey to another because of differing methods of designating plates and frames.

#### **CAUSE OF DAMAGE**

The Owner's representative is normally expected to express an opinion as to cause of damage and may reasonably expect the Surveyor to indicate that:

- a) he agrees
- b) he disagrees or
- c) he has reservations

The Surveyor's expression of opinion as to cause should not be expected before the Superintendent indicates his allegation because, as has already been mentioned, the onus is on the Owner to assert his claim.

If settlement of a claim is required without undue delay every effort should be made to come to an agreement as to the date and cause of damage at the time of survey or during discussions with the Surveyor immediately after survey.

IT MUST BE APPRECIATED THAT UNDERWRITERS RESERVE THE RIGHT TO INVESTIGATE ALL ASPECTS OF THE CLAIM AND EVEN AFTER SURVEY AGREEMENTS THEY, LIKE THE OWNERS, CAN CALL IN FURTHER TECHNICAL OR OTHER ADVICE AND OPINIONS. IT IS THEREFORE IMPORTANT TO SEE THAT ANY VITAL EVIDENCE IS RETAINED OR RECORDED.

The Underwriter's Surveyor expects that the Superintendent who is conducting the case will have the Owner's full authority to agree the extent and cause of damage with the Surveyor. These are technical matters which should not be left to Owner's claims manager or to average adjusters. Other aspects of claims are quite rightly the province of other parties and we would not wish these matters to be discussed with The Underwriter's Surveyor, but technical matters should be finalized whenever possible at the time of survey.

#### **PERSONNEL**

Where the Owners feel there is no conflict of interest, besides having the Owner's representative and the Underwriter's Surveyor present, it can facilitate matters to have in attendance at the initial survey:

- (a) A Surveyor of the appropriate Classification Society (if damage affects Class).
- (b) A manager of the repair contractor if repairs are to be done immediately.
- (c) Deck or engine-room officers who can assist with their knowledge of the ship and/or the casualty.

THE OWNER'S REPRESENTATIVE SHOULD GIVE ALL PARTIES AS MUCH NOTICE AS POSSIBLE OF THE SURVEY SO THAT THEIR ATTENDANCE CAN BE COORDINATED.

## **NOTIFICATION OF SURVEY**

No Surveyor can survey any vessel without the authority of its Owner. A survey can be requested in a number of ways:

- (a) Through the Owner's claims office to the insurance broker and then to the office of the Underwriter's Surveyor who will then arrange his attendance.
- (b) The Superintendent may, upon finding damage to the vessel during inspection, call in a Surveyor locally to attend. In this case, the Superintendent should immediately inform his claims department so that the Insurance Broker can be advised and the instructions to survey confirmed by Underwriters.
- (c) If the Master considers immediate survey of a damage or casualty is required he may call in a Surveyor directly. Usually the Master will have been briefed on these matters when taking command. In such cases the Master should be instructed to inform his Owners without delay, giving an idea of the extent of damage so that if necessary a Superintendent can be sent to the vessel to conduct the survey.

## **CONDUCTING A SURVEY**

For the purpose of the survey the Owner's Superintendent is, in effect, the Ship Owner. He is presenting the claim from the technical point of view and he is the only one who can authorize repair work to be carried out. Underwriter's Surveyors may agree to the proposed repair or even recommend a certain course of action but they have no authority to instruct a repairer to carry out repairs.

**WHEN THE SURVEY PARTY HAS ASSEMBLED SURVEY DOCUMENTS THEY SHOULD BE DISTRIBUTED TO THOSE WHO ARE ENTITLED TO RECEIVE THEM.**

If the Superintendent has himself seen the damage and formed an opinion as to cause and the repair he proposes he should at this stage inform the Surveyor so that, on inspection, the latter can form an opinion upon the cause of damage, the necessity for the proposed repairs, and the cost.

The survey party should now proceed to the location of the damages and each individual should write up in his own notebook the nature of the damage and the description of the

part being inspected but one individual (preferably the Superintendent) should recite what the damage is and at this stage each member of the party should state his agreement, doubt or disagreement with the findings and recommendations.

In some areas, it is the practice to issue a field survey report and this document is usually signed by those concerned in the survey.

One of the main purposes of the survey, so far as the Underwriter's Surveyor is concerned, is to come to a fair and reasonable agreement with the Owner's representative as to the cause, nature and extent of the damage or damages. It will be found that very few cases exist where every aspect of the claim is completely covered by factual evidence and an attempt should be made to distinguish clearly between facts and opinions on the cause or the extent of damage.

It is very important that every endeavour is made to reach a conclusion while the evidence is still available. At times, it will probably be found that some further records require to be produced or research instigated before a conclusion can be reached. The Owner's representative should take note of which is required and to produce it at the earliest possible date.

Wherever repairs will remove evidence and no agreement as to cause or extent can be arrived at, photographs of the damage should be taken and copies kept by both the Owner's representative and the Surveyor in order to assist in clarifying matters at a later date. An estimate of the probable cost of repairs should be made at an early date and discussed and, if repairs are to be immediately put in hand, the repairers may be requested to submit a bid or discuss terms upon which the repairs will be carried out unless it has been decided that this is a repair which should be put out to general tender.

A specification of the repairs, agreed as necessary, should then be written out for submission to the repairers. Here the question of submitting the specification to a number of contractors with the purpose of inviting competitive bids should be considered. The Surveyor can assist in editing and compiling the specification and with tender conditions and a list of contractors, if the Owner decides on this course.

The specification should be divided into suitable subsections to cover agreed damage items, items under discussion, general expense items and it should give a clear separation between damages caused by various casualties and/or items of a General Average nature. The tenderer should be requested to make a price separation between such subsections.

The Surveyor will not instruct the Owner or his Superintendent to call for tenders but may recommend that this would be prudent as the Owner will eventually have to satisfy Underwriters that the repair was carried out in the most economical manner.

The extent of the work necessary will, of course, guide those at the survey on whether calling for tenders is worthwhile.

At this stage, it is also desirable to agree whether drydocking is necessary for the execution of the repairs. Drydocking may be required for Owner's repairs but here may be a difference of opinion on whether this also applies to the damage repairs, and it is better to remove all doubts at this time. During the progress of repairs, new factors relating to the cause or extent of damage or the cost of repair may come to light. These factors should be brought to the Surveyor's attention as soon as they arise and while the evidence is available.

If the Owners elect to defer the repairs the Owner's representative should be prepared to tell the Surveyor the reason for the deferment as this point may be raised at the adjustment stage and the Surveyor will be required to comment. Where this is the case, the agreed specification must be sufficiently detailed to make it possible to separate any further damage caused during subsequent operations.

Before putting the repairs in hand, the prudent Owner's representative will endeavour to obtain the Surveyor's approval of the course and methods he intends to adopt.

### **PROGRESS OF REPAIRS**

As the work progresses, more surveys may be necessary and, while the Surveyor will from time to time revisit the vessel or the scene of the repairs to satisfy himself on various points, it is the Superintendent's duty specifically to advise the Surveyor when new evidence comes to light, or when the scope of the work or the claim expands from the original agreement. Unnecessary contention can be avoided if the Superintendent notifies the Surveyor in sufficient time to arrange any additional survey without undue delay to the repairs. The Superintendent should not wait until the Surveyor makes an occasional visit.

The object is to ensure that there is full disclosure, as far as possible, at every stage of the case, by the Superintendent. This can only be achieved by keeping the Surveyor as

fully informed as possible directly any new development in the case occurs or any point arises which the Superintendent sees as corroboration of his submission as to cause. It is advisable for the Superintendent to make daily work lists and to provide the Surveyor with copies of any which may be relevant to the damage claim.

### **FINALIZING REPAIRS**

As the repairs draw to their conclusion, a meeting should be arranged between the Superintendent and the Surveyor. As well as checking the notes already made, agreement can be reached on the length of time which was necessary for the damage repairs and, if there was more than one damage case, the times that each repair would have required if undertaken separately. Any drydocking necessary should be treated similarly. This is desirable in every case but becomes of the utmost importance when loss of hire or loss of earnings policies are also involved. During the repair period, or at least before the conclusion of repairs, the Superintendent should go through the vessel's repair sheets with the Surveyor indicating which items he considers form part of the claim. Where matters are unresolved, the repairer should be requested by the Superintendent to prepare a separate price for those items.

### **PAYMENTS ON ACCOUNT**

If, during the course of repairs, payments are required in advance of the final account being submitted, Owners should discuss them with his brokers at or before the commencement of repairs, and should ensure the repairers provide prompt interim invoices. It is also advisable for the Superintendent to give the Surveyor ample notice that such a request is imminent so that the Surveyor can assess the cost of repairs already satisfactorily completed and be in a position to advise underwriters when asked to do so.

The Surveyor cannot initiate a request for any payment by underwriters. The Owner must make the request via his broker who in turn will make a request to the underwriter. Where it appears that the damage is clearly caused by a casualty covered by the vessel's insurance policy, and there are no encumbrances, the underwriter may agree to assist by making the proposed progress payments. The underwriter will then usually ask the Surveyor if the amount requested is fully covered by work already completed aboard the vessel and he will need the full cooperation of the Owner's representative and repairer if delays are to be avoided.

## **APPROVAL OF ACCOUNTS**

An essential part of an Underwriter's Surveyor report is a detailed explanation of the costs involved in the repairs with clear subdivision of the sums involved against the various casualties being dealt with in the report and also an itemized General Expenses account.

The time taken on each individual case and any drydocking time for each repair must also feature in the survey report. To enable the Surveyor to supply this information, close liaison is necessary between him and the Superintendent on this important matter.

The Owner may present accounts to the Surveyor which have already been agreed between the Owner and the repairer, but the Surveyor is not obliged to approve them until he is satisfied as to the reasonableness of every aspect of the items and costs in the account. Many Owners adopt the system of supplying the Surveyor with a draft account of all the work done, marking the items considered, to relate to the various damage cases clearly. Once the Surveyor has had sufficient time to study the figures and allocations, a meeting can be convened with the Ship Repairers, Owner's Superintendent and Surveyor to finalize the accounts. The Surveyor's input can frequently assist Owners considerably in coming to an appropriate agreement with the repairers.

It is an advantage if the Superintendent who was in attendance during repairs is present at this meeting as he is the only person representing Owners who can, from intimate knowledge of the case, discuss the various points which arise. It may be the Owner's policy that only their senior Superintendent should agree costs with the repairer but, even so, the man who saw the work done and made arrangements with the Surveyor should also be on hand to discuss the methods adopted and other matters relating to costs.

Discussion of accounts is not the proper time to introduce new claims or to enlarge existing claims. It is possible that one or two small items were missed during the repairs and these would be acceptable but, if the survey has been conducted along the lines suggested in these notes, it should not be necessary to make further claims merely because the items appear on the Ship Repairer's account.

If Owner's claim items that have not been the subject of survey by the Surveyor, it is not possible for him to give unqualified approval of accounts relating to the items. The

Surveyor may however be able to give a “Cost Only” approval and this may assist in claim presentation.

Costs incurred by working overtime additional to the cost which would have been incurred if the repairs had been carried out in normal working time should be agreed, as should the time saved, both afloat and in drydock, due to such overtime working on each case.

Although the total costs in respect of each separate casualty can be quoted as a lump sum for that claim, certain cost details within this figure will be required by the average adjuster and so should be extracted and agreed at this time. These are:

- (a) Cost of temporary repairs
- (b) Cost of removing temporary repairs
- (c) Cost of items in dispute
- (d) Cost of repairs due to efforts to refloat or to salvage operations as distinct from repairs to damage from the grounding
- (e) Cost of repairs to damage caused by extinguishing a fire as distinct from repairs to the fire damage
- (f) Cost of any underwater coating if included in the account
- (g) Cost of any part which it is considered failed due to a latent defect

These are required by the average adjuster to enable him to separate costs in respect of:

- (a) Particular Average
- (b) General Average
- (c) Owner's Account

Particular Average and General Average are two very important aspects of marine insurance and should be generally understood by the Superintendent as he will be

required to supply detail in respect of the compilation of the claims under these headings. The Superintendent should not however attempt to apportion items to General Average or Particular Average; this is the function of the average adjuster.

To avoid delays in reporting, Surveyors are instructed to issue their formal reports shortly after repairs are completed and, if accounts are not to hand, to issue an addendum at the time of accounts approval. Where possible, Superintendents should, if they have the authority, proceed to account approval before departure from the repair port.

### **ADDITIONAL COSTS**

As well as the repairer's account there may be other accounts which should be brought to the Surveyor's attention for approval and inclusion in his report. These costs include:

- (a) Subcontractors' accounts not included in the repairers' account, e.g., tank cleaning, boiler cleaning, painting, etc.
- (b) Supply of replacement parts from Owner's stock or suppliers.
- (c) Work done by the crew in respect of the repairs. This can be a very contentious point and should be well documented and, where relevant, crew overtime wages sheets with signatures should be provided to the Surveyor.

If such accounts are not to hand at the time that the repair account is agreed the Owner's Superintendent should make it quite clear to the Surveyor that they remain to be agreed so that a note to that effect can be made in the formal Survey Report.

### **SPECIAL CASES**

1. Surveys without prejudice on behalf of an interest other than the Owner's or the Underwriter's.

The representative of the Owners of the property under survey is expected to indicate the damage being claimed and make the repair recommendations. The Surveyor will note the damage and, if he agrees with the repair recommendations, he should be requested to approve them as being relevant to the casualty. If the Surveyor acting for the other party (the without prejudice Surveyor) disagrees, the Owner's representative will be informed and

discussions should take place on any omissions, substitutions or modifications the Surveyor considers necessary. The Superintendent should try to achieve mutual agreement. If no agreement can be reached the Owners must be kept informed of the actual areas or items of disagreement and the Superintendent should see that he has the separate cost of these items in case of later litigation.

If Owners invite the without prejudice Surveyor to attend account negotiation his attendance does not indicate acceptance of liability by the interests he represents. In such cases, the repair costs will be shown in the Surveyor's report or addendum or letter to his principals with an indication that the Surveyor considers that the costs are fair and reasonable but that the accounts are noted without prejudice to liability.

It is unusual for accounts or joint survey reports to be signed by the without prejudice Surveyor.

## 2. Collision

It is in the Owner's interest to see that surveys are held upon both vessels by Surveyors representing both his and the other vessel's interests. On no account should the Owner's representative allow one Surveyor to represent both interests. This applies equally to underwriters' Surveyors.

In this particular type of casualty, it is general practice for a separate Surveyor to be appointed on behalf of each vessel's underwriters and there will of course be at least one Owner's representative per ship.

Apart from the necessary "Cross Collision Aspects" i.e., vessel "A" interest carry out surveys led by the vessel "A" Owner's representative and attended, amongst others, by vessel "A" underwriters' Surveyor and vessel "B" Owner's representative and underwriters' Surveyor (the latter two gentlemen carrying out their survey strictly without prejudice), the surveys are carried out in a normal fashion.

The procedure is reversed when surveys are carried out on ship "B".

WITHOUT PREJUDICE SURVEYORS AND SUPERINTENDENTS DO NOT SIGN ACCOUNTS ON THE OTHER VESSEL'S REPAIRS WHICH MUST BE EXAMINED FOR COST ONLY.

### Owners Repairs

The Surveyor is not greatly interested in repairs to Owner's account except in their volume and in the time both afloat and in drydock for their execution. It will greatly facilitate eventual settlement if he is given all the detail he requests in this respect.

Should the Surveyor be reporting for a "Loss of Earnings" case, he will also require to know the extent of any repairs which were immediately necessary for restoring the vessel to a condition making her fit for the intended voyage and the time required for the execution of these both afloat and in drydock.

Where "Loss of Earnings" insurance is involved the Superintendent should keep notes of numbers of men and hours worked in overtime to assist in assessing times saved on the various repairs.

### Deferred Repairs

Should the Owner elect to defer repairs to a damage, a comprehensive specification should be drawn up and agreed. The damage should be clearly described so that it may readily be evaluated if a further damage is superimposed on the original. The specification should allow the repair to be quantified at any time, as this is often necessary when a vessel changes Ownership and settlement for unrepaired damage is required.

### General

If the Superintendent takes the Surveyor into his confidence and explains his case in a straightforward manner there should be little if any trouble in coming to fair and amicable agreements. The Surveyors are dealing daily with damages and Owner's claims and have a wealth of experience for the Superintendent to draw upon. The SA Surveyor will not make the Owner's claim for him, but neither will he frustrate the Owner in making his claim. The Surveyor will endeavour to make a straight factual report which will assist both the Owner and the underwriter in reaching a proper and fair settlement of the Owner's claim under the condition of the relevant policy.

Where there are differences of opinion every effort should be made to resolve them but, if it is not possible, the fullest possible description of the damages should be agreed as well as the pertinent facts which each considers were instrumental in forming his

opinion. With this information available it may be possible for a referee to resolve the dispute at a later date.

PRACTICES MAY VARY TO SOME EXTENT IN DEFFERENT AREAS OF THE WORLD FROM THE PROCEUDRES OUTLINED ABOVE BUT THIS DOES NOT ALTER THE BASIC PRINCIPLES OF THESE GUIDELINES FOR CARRYING OUT SURVEYS FOR DAMAGE CLAIMS.

WITH THESE AND WITH COMMON SENSE AND TOLERANCE THERE SHOULD BE NO CAUSE FOR ANYTHING WORSE THAN AN OCCASIONAL MILD DIFFERENCE OF OPINION.

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