



STRATEGIES FOR MANAGING LITIGATION RISKS THAT ARISE DURING MARITIME ACCIDENTS IN NIGERIA: A STEP-BY-STEP GUIDE

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INTRODUCTION

Maritime accidents have been a recurring challenge throughout human history due to the inherent risks associated with sea travel and International trade. Maritime accidents encompass a wide range of incidents, including collisions, groundings, oil spills, fires, and

shipwrecks. These accidents can result from human error, adverse weather conditions, technical failures, and a combination of other factors. Due to the global nature of maritime trade, the potential consequences of these accidents can extend beyond national borders, making their management complex and multifaceted¹.

¹ Assist. Prof. Dr. Gokce Cicek Ceyhun, "The Impact of Shipping Accidents On Marine Environment: A Study Of Turkish Seas", (2014), Vol.10, No.23, European Scientific

Journal,
<https://core.ac.uk/download/pdf/328024442.pdf>
 accessed on 22nd August 2023.

In order to prevent and mitigate the occurrence of accidents that lead to casualties and litigation risks for ship owners, Charterers, P&I Clubs, and other interested parties in the maritime domain, global industry stakeholders led by the International Maritime Organization (IMO) have adopted several IMO Conventions to improve the safety of life and property at sea, as well as reduce the occurrence of accidents that lead to casualties and litigation risks in the maritime industry.²

However, despite these measures by IMO and other maritime stakeholders, maritime accidents have remained unavoidable and will continue to be the subject of casualty incidents and protracted litigations. One maritime accident that led to a protracted

"... the damage suffered by ALEXANDRA 1 amounted to over **US\$9.3 million** and the damage suffered by EVER SMART amounted to over **US\$2.5 million**...."

litigation is **the Evergreen Marine (UK) Limited v. Nautical Challenge Ltd**³.

This case arose as a result of a collision at sea between the appellant's vessel ("EVER SMART") and the respondent's vessel ("ALEXANDRA 1")

on 11 February 2015, just outside the dredged channel by which vessels enter and exit the port of Jebel Ali in the United Arab Emirates. ALEXANDRA 1 was inbound; EVER SMART was outward bound. The damage suffered by ALEXANDRA 1 amounted

to over US\$9.3 million and the damage suffered by EVER SMART amounted to over US\$2.5 million. In deciding the case, the Admiralty court decided the appellant (Ever Smart) should bear 80% of the liability while Alexandra 1 bears 20%. The judgment is, however, currently being

² Some of these IMO Conventions that have been ratified by Nigeria include: The International Convention for the Prevention of Pollution from Ships (MARPOL) (1978) with a Protocol adopted to amend the Convention and a new Annex VI was added, all entering into force on 19 May 2005; The International Convention for the Safety of Life at Sea, 1974 (SOLAS) as amended; International Convention on Standards of Training Certification and Watch Keeping of Seafarers, 1978 (STCW) as amended; The International Convention on Maritime Search and Rescue, 1979 (SAR);

International Labour Organisation Convention (No. 32 of 1932) on Protection against Accident of Workers Employed in Loading or Unloading Ships (Dockers Convention Revised 1932); The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and its Protocol of 1990 and The International Regulations for Preventing Collisions at Sea, 1972.

³ (2021) UKSC 6.

appealed at the English Supreme Court.

Also, in **Chief Otonyeseigha Ololo v. Nigerian Agip Oil Ltd & Anor**⁴, the plaintiff sued the defendant in the High Court for the sum of N500, 000.00 for special and general damages arising out of the defendants' negligence in causing the collision and total wreckage of the plaintiffs' passenger goods boat. After the hearing of the matter and conclusion of the evidence, the learned trial judge entered judgment in favour of the plaintiff in the sum of N67, 484.16. The defendant dissatisfied with the judgment of the trial court lodged an appeal in the Court of Appeal, which granted the appeal against the plaintiff in parts. The appellate court held that the plaintiff had contributed to the negligence up to the tune of 75% in causing the accident. The damages awarded at the trial court to the plaintiff were therefore reduced to N55, 297.50 and the defendant was adjudged to be liable

to the plaintiff in the sum of N13, 824.38. Aggrieved by this, the plaintiff appealed to the Supreme Court in respect of the part of the judgment that found him contributory negligent and thereby reducing the amount of damages payable. The Supreme Court upheld the decision of the Court of Appeal and dismissed the appeal on the grounds that both the plaintiff and defendant were found to have contributed to the marine collision. Furthermore, it is just a matter of time before we witness another protracted litigation from the recent collapse of Seplat Energy Plc's Majestic Rig. This incident, which occurred near Ovhor Oilfield in the Sapele Local Government Area of Delta State, resulted in the loss of one life and left three individuals missing⁵. From the above, it is necessary for ship owners, charterers, and vessel managers to develop legal strategies to manage litigation risks that arise as a result of maritime accidents during the operation of their vessels.

⁴ (2001) 6 S. C 13.

⁵ Sahara Reporters: BREAKING: At Least One Oil Worker Killed, 3 Missing In Seplat Rig Accident In Delta;

<https://saharareporters.com/2023/08/15/breaking-least-one-oil-worker-killed-3-missing-seplat-rig-accident-delta> accessed on 22nd August 2023.



WHAT ARE THE STRATEGIES FOR MANAGING LITIGATION RISK IN MARITIME ACCIDENTS?

There are no exhaustive strategies for managing litigation risks, but the following recommended steps are instrumental and instructive.

1. SET UP AN EMERGENCY RESPONSE, CASUALTY, AND LITIGATION RISK MANAGEMENT TEAM

Establishing an Emergency Response, Casualty, and Litigation Risk Management Team (ERCLRM) is an important preliminary step that

should be taken either before or immediately after a maritime accident occurs. While many ship owners/charterers postpone the formation of an ERCLRM Team until after the incident, proactive establishment is imperative.

The Team's primary objectives include ensuring personnel safety, environmental protection, property preservation, and effective litigation risk management. The decisions made by this Team in the critical hours or days following a casualty can profoundly influence future litigation results, irrespective of claim

progression or defense stance.⁶ This highlights the necessity of involving experienced legal practitioners and other maritime safety professionals to navigate the aftermath of the incident adeptly.

2. MANAGING EXTERNAL COMMUNICATIONS

Proper and effective management of external communication after maritime incidents is crucial for mitigating potential legal disputes.

Counterparties could potentially leverage even confidential communications for future claims. Having an experienced legal practitioner as an external communication gatekeeper to

approve outbound messages is vital to uphold legal integrity and minimize the ship owner, charterer, or vessel manager's risks from potential litigation. Organization-wide awareness is essential, as even phone calls require careful handling. Team

members must understand the constraints on information disclosure following significant casualties, a task facilitated by the external communication gatekeeper.

" ... it is important for ship owners or vessel managers to take concrete steps to protect and preserve evidence by appointing an evidence gatekeeper ... "

3. PROTECTION AND PRESERVATION OF

EVIDENCE

The protection and preservation of evidence are crucial because litigations that arise as a result of

⁶ "The legal threats that arise during casualty management: Do you/your Emergency Response Team know how to recognize and mitigate against those threats?" (2023) [online] Last modified 5th May 2023,

<https://www.linkedin.com/pulse/litigation-risks-arise-shipping-casualty-do-you-know-ian/> accessed on 23rd August 2023.

maritime accidents are fought and won based on the evidence available to the parties. When approaching trial four or five years later, it may be discovered that documents are lost or misplaced possibly because the ship has been scrapped or sold. To avoid any challenges that may arise as a result of loss of evidence, it is important for ship owners or vessel managers to take concrete steps to protect and preserve evidence by appointing an evidence gatekeeper from the outset, who takes advice from the ship owner's P&I club/legal advisers on what to preserve and ensures that this is done, and handed over to the legal advisers should he or she move jobs or retire.

4. MANAGING THE AUTHORIZATION FOR VESSEL ENTRY

When a maritime accident occurs, numerous individuals seek access to the vessel, posing a challenge for the ship master. Local authorities and flag state representatives possess boarding rights. Others, like surveyors for class, hull, machinery, and general average purposes, are vital for vessel recovery and evidence collection. Charterers and cargo interests might send their own surveyors. Permission for counterpart surveyors relies on jurisdictional laws, contracts, and terms. Typically, they jointly assess damage with owner's surveyors, but causal investigations are uncommon unless mandated.



Legal guidance is vital, and agreements should detail survey parameters. A legal practitioner can provide a list of authorized individuals to the ship master for managing vessel entry.⁷

5. AVOIDING DOCUMENT LEAKAGE

Document leakage poses a risk, and measures should be established to prevent sensitive documents from being released from the owner/manager's control, except to club/legal advisors, until court-ordered disclosure is required.

6. GENERATING SELF-COMPOSED STATEMENTS OR PROTESTS

In the event of an accident that results in casualties, it is essential to involve experienced legal professionals. Their involvement is necessary to effectively manage the creation of factual statements and

the drafting of witness accounts. This approach prevents situations where crew members attempt to explain a casualty by crafting their own statements, which could potentially prejudice the vessel's owner when revealed.⁸

7. EXTERNAL INCIDENT REPORTS

After an accident, owners/operators are expected to furnish a comprehensive report detailing the incident's cause, contributing factors, and preventive measures to the regulatory authorities and charterers. Failure to provide a satisfactory report can lead to severe consequences, like regulatory fines, and charter approval withdrawal for the involved vessel and others under the same management. Expert guidance from a legal practitioner is advised to create a report satisfying regulatory and charterers' requirements without

⁷ Ships Business, "Damage survey and countermeasures after a collision accident by ships- How to prevent further damage?" <http://shipsbusiness.com/attention-to->

[collision-incident.html](#) accessed on 22nd August, 2023.

⁸ibid n 7.

granting adversaries a tactical advantage.⁹

8. MANAGING PRESS RELEASE

Maritime accidents, particularly those with casualties, often capture the focus of the Press. If the information given to the media and public lacks proper coordination and wording, it can heighten litigation risks for the parties concerned. Thus, it is important for legal advisors to have substantial involvement in overseeing any news or documents intended for press releases.

9. PRESERVATION OF KEY WITNESSES

Following an accident, lawyers often discover that essential witnesses are repatriated due to scheduled relief or the perception that they won't contribute significantly to investigations. These independent decisions by ship owners can impact the casualty case. Owners/managers should collaborate with legal advisors to guarantee witness availability for

initial interviews before regulatory authorities and potential arbitration or court appearances.

WHAT ARE THE LAWS REGULATING MARITIME ACCIDENTS IN NIGERIA?

The legal framework governing maritime accidents in Nigeria is notably comprehensive, reflecting the nation's adherence to various international conventions pertinent to maritime incidents. Noteworthy legal instruments encompassing maritime accidents within Nigeria's maritime domain include:

1. **Merchant Shipping Act 2007 (MSA 2007):** The MSA 2007 is the principal legislation governing merchant shipping and related matters in Nigeria. It contains provisions on the registration of ships, the licensing of masters and officers, the safety of navigation and seafarers, and the prevention of collisions.

⁹Ibid n 7.

II. **Nigerian Maritime Administration and Safety Agency Act 2007 (NIMASA):** This

act establishes the Nigerian Maritime Administration and Safety Agency (NIMASA), which is responsible for the regulation and promotion of the maritime industry in Nigeria. NIMASA has the power to investigate maritime accidents and take enforcement action against those found culpable.

"...NIMASA has the power to investigate maritime accidents and take enforcement action against those found culpable..."

In addition to these laws, there are a number of other statutes and regulations that may apply to maritime accidents in Nigeria depending on the circumstances of the case and the applicable sector in the maritime industry.¹⁰

IS THERE ANY OTHER LEGAL REMEDY AVAILABLE TO SHIP OWNERS, CHARTERERS, AND VESSEL MANAGERS TO MITIGATE THEIR EXPOSURE TO LITIGATION UNDER NIGERIAN LAW?

III. **Admiralty Jurisdiction Act 1991:** This act confers exclusive jurisdiction on the Federal High Court to adjudicate admiralty matters, including civil and criminal cases arising from maritime accidents.

Yes, ship owners, charterers, and vessel managers can file for limitation of liability for maritime accident claims. Particularly, **section 352** of the MSA 2007 outlines a number of claims relating to maritime accidents that ship owners can limit their liability. This class of claims includes claims for loss

¹⁰ Territorial Waters Act LFN 2004; Oil in Navigable Waters Act 2004; Nigeria Ports Authority Act 1999; Petroleum Industry Act 2021; Petroleum (Drilling and Production)

(Amendment) Regulation, 2020; Inland Fisheries Act 1992; Sea Fisheries Act 2004.

of life or personal injury or damage to property (including damage to harbour works, basins, waterways, and aids to navigation) occurring on board or in direct connection with the operation of a ship or with salvage operations, and consequential losses resulting therefrom.¹¹

CONCLUSION

In navigating the intricate terrain of maritime accidents, particularly those involving casualties, a judicious and comprehensive strategy stands paramount. This strategic blueprint should be tailored to preempt and adroitly manage potential litigation stemming from such incidents. Central to this strategy is the engagement of adept legal practitioners to manage litigation risks that the ship owners, charterers, and vessel managers may face. Managing crew communication with the press and externals, preserving key witnesses for potential interviews

or future litigation, handling internal and external documents and reports, and taking the initial step of forming an Emergency Response, Casualty, and Litigation Risk Management Team are all pivotal. These steps collectively form a successful strategy for managing litigation risk for Ship Owners, P & I Clubs, Rig Owners, and Regulatory Agencies.

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¹¹ Section 353 MSA 2007.



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