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ABANDONMENT OF SEAFARERS
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**DISCUSSION OF OPTIONS FOR LONGER-TERM SOLUTIONS TO THE PROBLEMS
OF ABANDONMENT, PERSONAL INJURY AND DEATH OF SEAFARERS, TAKING
INTO ACCOUNT RELEVANT IMO AND ILO INSTRUMENTS, INCLUDING THOSE
UNDER REVIEW OR LIKELY TO BE ADOPTED IN THE NEAR FUTURE**

Submitted by the International Confederation of Free Trade Unions (ICFTU/ITF)

SUMMARY

Executive summary: This document contains a study on the implementation of resolutions A.930(22) and A.931(22) and related guidelines in two of the largest seafarers suppliers countries. The study has been prepared by the Seafarers International Research Centre (SIRC) of the University of Wales, Cardiff for the International Confederation of Free Trade Unions (ICFTU/ITF).

Action to be taken: For consideration under agenda item 3

Related documents: IMO/ILO/WGLSCCS 4/3, resolutions A.930(22) and A.931(22) and related guidelines

Seafarer Compensation Claims

Prepared for

the International Transport Workers' Federation

by

Seafarers International Research Centre

University of Wales, Cardiff

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Dr N. J. Bailey

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Executive Summary

- In January 2002, joint International Maritime Organisation and International Labour Organisation Guidelines relating to seafarer compensation claims in the event of injury or death came into effect. The central features of these guidelines were a call for shipowners to have insurance, for them to display insurance certificates in the crews accommodation blocks, for contractual compensation claims to be settled promptly and without prejudice to further claims in law, and for claims to be concluded with a simple receipt form.
- The study was commissioned to determine, from the first hand accounts of individuals with experience of the claims process, whether the guidelines [are being](#) adhered to.
- 42 interviews were conducted between June and October 2003, by local researchers, with individuals in the Ukraine and the Philippines with personal experience of a case for compensation arising from the injury or death of a seafarer.
- Informants were recruited through trade unions, crewing agencies, P&I club correspondents, lawyers and welfare organisations.
- Supporting documents were also obtained.
- Because of the diverse nature of the population and its indeterminate size, it was not possible to generate a probability sample. Informants were selected on the basis of relevance.
- The Philippines, the largest supplier of seafarers to the global labour market, has a well developed regulatory regime and includes a standard government seafarer contract to cover all seafarers deployed from the Philippines. This contract incorporates a clause stating that payments under the contract are in settlement of contract and tort claims and thereby provides for the use of ‘receipt and release’ forms; as such this clause is arguably inconsistent with the ILO/IMO guidelines.
- The Ukraine, the third largest supplier of seafarers, has weak institutional arrangements and negligible regulation of the supply of seafarer labour.
- There are some 200 crewing agencies in the Ukraine and 400 in the Philippines. In both countries there is a wide variation in standards. The best agencies in each country provide training and welfare facilities, and deal promptly with contractual payments for compensation.
- The regulatory system in the Philippines seeks to facilitate seafarers claiming under their own domestic law and to restrict them from claiming in other jurisdictions.

- There is a weak regulatory regime in the Ukraine with no specification of contractual terms and conditions. Claimants in Ukraine generally have to pursue their claims in foreign courts, with associated costs and problems of language and communication.
- There are high levels of unemployment and poverty in the Ukraine and the Philippines and large numbers of people seeking employment as seafarers. Thus seafarers desperate for work are subject to potential exploitation.

Quitclaims

- It was established that in the Ukraine and the Philippines ‘receipt and release’ (quitclaim) forms continue to be used.
- In the Philippines the standard government (POEA) seafarer contract provides for the use of quitclaim forms.
- Cases were identified of individuals who felt pressured into signing quitclaims.
- Cases were identified of claimants who were unsure of what they had signed.

Claims Procedures and Practices

- Cases were identified where claims for compensation were settled amicably within 6 months. Contested cases typically last 1 to 3 years, the longest recorded case was ongoing after 10 years.
- Medical disputes were the main cause of contention and centred around issues of disability grading and illness.
- Financial pressures may cause claimants to settle for less than their contractual entitlement or to sign a release form. Cases were identified of claimants settling for less than they believed was their entitlement, due to various forms of perceived pressure or duplicity. There were cases where individuals were afraid to claim.
- Cases were identified where claimants perceived that they were being offered an inducement not to pursue a claim.

Lack of Understanding

- Employers can be insensitive when informing families of an incident, even going so far as to speak in English to non-English speakers.
- Cases were identified where crewing agencies were supportive and guided the claimant through the claims process. However cases were also identified where crewing agencies abandoned the claimant.
- Some companies used pre-departure seminars to inform seafarers of contractual terms and conditions. However the majority of claimants were still not familiar with the contents of the seafarer’s contract.

Introduction

In January 2002, after negotiations between employers, trade unions and insurers, the International Maritime Organisation (IMO) and the International Labour Organisation, two UN agencies jointly introduced a set of guidelines¹ dealing with the issue of seafarer compensation claims in the event of death or injury to ensure that seafarers, of whatever nationality, receive prompt payment of contractual compensation without prejudice to other claims in law. The following pages contain the account of a study, commissioned by the International Transport Workers' Federation (ITF), to assess the extent to which the IMO/ILO Guidelines are being complied with. The study commenced in June 2003 and was completed in October 2003.

The ITF required the Seafarers International Research Centre (SIRC), Cardiff University, to identify some twenty cases of seafarer compensation claims in both the Ukraine and in the Philippines. These countries were selected on the basis of their significant contributions to the global seafaring labour force. The requirement was that in all cases as much detail as possible should be collected through interviews, and available documentation, from those with direct and immediate experience of making claims.

¹ Document IMO-ILO-WGLCCS\4\2. I shall refer to these Guidelines as the 'IMO / ILO Guidelines' henceforth. See Appendix 1.

Background

The Guidelines

Following ITF submissions to the International Maritime Organisation (IMO) Legal Committee during 1998 and 1999 a Working Group was established to consider problems of crew abandonment by debt defaulting shipowners, and compensation in the event of personal injury and death of seafarers. Given the nature of the issues and the clear overlap with the International Labour Organisation's (ILO) remit, a joint IMO / ILO working group was set-up. The main arguments for a set of international guidelines were made to the Working Group in submissions from a seafarers' delegation and the International Confederation of Free Trade Unions (ICFTU).

After intensive debate the IMO /ILO introduced a set of Guidelines for shipowners/insurance companies to establish certain minimum standards of conduct. Following adoption by the IMO council, the IMO Assembly and the ILO Governing Body in November 2001, the Guidelines became effective in January 2002 (IMO-ILO-WGLCCS\4\2). The central features of the Guidelines were a call for shipowners to have insurance and to display their insurance certificates in crew accommodation blocks, for contractual compensation claims to be settled promptly and without prejudice to other claims in law, and for claims to be concluded with the use of 'model receipt' forms rather than the commonly utilised 'receipt and release' forms whereby claimants waive future rights.

Ukraine and the Philippines

- **Labour Market.** Ukraine is a relatively recent entrant into the global labour market following the collapse of the State operated and supported Black Sea Shipping fleet in 1997. Today, 80% of Ukrainian seafarers work on foreign flagged vessels², on a contract basis. By contrast, the Philippines has an established reputation as a supplier of seafarers, dating back to the 1970s³ with 96% currently working on foreign flagged vessels.
- **Regulation.** Institutional arrangements in the new Ukraine are still very weak and susceptible to external forces (Paliashvill, 1998). The maritime administration (the Department of Marine and River Transport) has little regulatory input into the governance of the maritime industry. In contrast, the Philippines has a well developed regulatory regime governing the supply of seafarers to the global marketplace; directed from the Philippine Overseas Employment Administration (POEA) and legislated in terms of Republic Act (RA) 8042 (known as the Migrant Workers Act 1995).
- **Crewing Agencies** in the Philippines and Ukraine must be licensed. In the Philippines the agencies must make a financial commitment in the form of depositing a bond, and they share 'Joint Solidary Liability'⁴ with the shipowner for meeting the contractual obligations entered into with the seafarer. In Ukraine for a crewing agency to register with the Labour Ministry it is only necessary to show a contract with a principal to supply labour. No financial or legal commitment is required of the agency.

² SIRC Global Seafarers Database.

³ SIRC (2004) *The Global Seafarer*. Geneva: ILO.

⁴ Sec. 1(f)[3], Rule II, POEA Rules.

- **Contract.** The standard Philippine POEA employment contract covers all Filipino seafarers (deployed from the Philippines)⁵ wherever they work in the world on a foreign flagged ship. This contract contains minimum conditions, including those relating to accident and death benefit and stipulates that Philippine jurisdiction will take precedence. In Ukraine there are no stipulations as to the content of the contract or jurisdiction.
- **Arbitration.** In the Philippines jurisdiction for dealing with seafarer compensation claims resides in the National Labour Relations Commission (NLRC).⁶ The commission consists of labour Arbiters who hear and decide cases. From here cases can progress to the Court of Appeals and then to the Supreme Court. In Ukraine seafarers must take their case through the civil courts comprised of three tiers: the District Court, the Obliste Court, and the Supreme Court. Claims in both countries can take upward of 3 years to reach settlement.
- **Welfare.** In Ukraine there is a state operated welfare system, but due to low salaries an extensive shadow economy exists⁷ which extends to the welfare services. Consequently, someone using the system would have to pay but not be able to claim a receipt for the full amount paid. It is also reported that the general standard of medical care is poor. By contrast, in the Philippines there are only rudimentary welfare services and medical care generally has to be paid for, but receipts can be obtained and it is reported that very good care is purchasable.

⁵ Seafarers deployed from outside the Philippines may not be covered by the POEA contract.

⁶ Sec. 3[d], Executive Order No.247 cited in Castillon-Lora, T.D. (2003) *Republic Act No. 8042: And All You Want to Know About Possible Claims In Overseas Employment*. Manila: Rex Book Shops Inc.

⁷ Estrin, S., Rosevar, A. (1999) 'Enterprise Performance and Corporate Governance in Ukraine' in *Journal of Comparative Economics* 27, 442-458.

Methods

- Forty-two confidential in-depth interviews were conducted, by local researchers, with seafarers or seafarer family members.
- Supporting documents were obtained where available and included copies of quitclaims, contracts and medical reports.
- Informants were initially identified by trade unions, crewing agencies, welfare organisations and practising lawyers.
- It was not possible to use probability sampling methods as the basis of informant selection because:

No accessible databases exist containing appropriate lists of individuals.

Seafarers' residences in the Ukraine and the Philippines are geographically dispersed over considerable distances.

- Finding sources through a range of agencies with different interests, minimised anticipated bias in the sample group as far as was practicable. The aim of the project was to provide sufficient cases to *illustrate* the extent of compliance with the IMO/ILO Guidelines.

Findings

1. The use of Quitclaims

The IMO/ILO Guidelines recommend the use of a simple receipt form for the settlement of contractual payments and use of the model form appended to the guidelines is recommended within which there is no reference to the waiving of rights to pursue further claims. However, despite the recommendations, 'quitclaim forms' (where the recipient both acknowledges receipt of sums received and additionally releases the employer from any future claim) are still widely used. Evidence of the continued use of quitclaims derives from claimants' statements and actual quitclaim forms.

Comments from claimants

The widespread use of quitclaims was illustrated by the testimony of claimants who reported that they were required to sign a document waiving all their rights to pursue any further action relating to the claim. The overwhelming majority of those cases that had been settled required the claimant to sign a receipt and release form (quitclaim) to conclude the process. All cases of completed claims found in the Philippines during the course of the study had been settled with a quitclaim. The reason for this is that the Philippine government has provided for the use of quitclaims with section 20G of the standard POEA contract which states that:

The seafarer or successor in interest acknowledges that payment for injury, illness, incapacity, disability or death of the seafarer under this contract shall cover all claims arising from or in relation with or in the course of the seafarers employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of the Philippines or any country.

The following are a few of the many references made by individuals to having signed a quitclaim dated after the introduction of the IMO / ILO Guidelines.

Example 1

The Ukrainian widow of a 47-year old Electrician, who died from a head injury, signed May 2002:

I wrote a receipt saying that I received the money and have no claims against them. (u15.27)

Example 2

The son of 60-year old Ukrainian Master who had died of a heart attack states that:

I have signed a document saying that I received the money and that all matters regarding compensation are resolved and I shall not go into court on the subject....in the early December 2002. (u3.37)

Example 3

This Filipino seafarer (AB) injured his arm and fingers and received compensation for partial disability in May 2003. He said:

I already signed the quitclaim. It says there that you can no longer run after the agency, the owner or the principal and all others, and that all that you need to claim has already been satisfied. (p13.106)

Example 4

This 54-year old Filipino Chief Cook settled his claim February 2003. He recalled:

The document states that you have no more complaints ... All those present signed. Even my daughter signed. Then you pledge aloud that you are satisfied with what you have received and have no further complaints. (p3.57)

Example 5

In several cases individuals signed quitclaims and then realised they are bound by the release. This thirty one year old seafarer (AB), injured onboard, received his contractual compensation in the Philippines and is currently (August 2003) pursuing a case for negligence in Europe. He was concerned that having signed a quitclaim in the Philippines this may prejudice his negligence case:

I was told by the Chaplain [supporting the case in Europe] that I might not be paid because of the release document I signed in the Philippines. (p5.72)

Documents

The conclusion that the use of quitclaims continues to be practised is further supported by actual examples of documents that have been used and collected from the Ukraine and the Philippines. A sample of the documents collected has been anonymised and included in Appendix 2.

Uncertainty about what has been signed

Several claimants reported that they were unclear as to what exactly they had signed. The reasons for this were several.

Translation. The document was in English, a foreign language for the claimant. This was an infrequent but for the individuals concerned, a serious problem. As the widow of a Ukrainian Bosun says:

When in the morning [I was called to sign] ...I was in such state and everything was in English and when I had already signed, I realized that I didn't know what I had signed. Perhaps I had to ask for a translation, but I didn't ask. (u21.22).

General confusion. The Ukrainian Master of a cargo vessel, who suffered an unspecified illness, reported signing a quitclaim but when the document was produced it was merely a receipt. It may be that what he was told he was signing was not what he was actually given to sign. On the other hand he may have simply misunderstood what was said. Whatever the explanation this,

combined with other examples, raises issues of language and translation and the potential for claimants to be misled. Confusion about the proper procedures in the claims process in general, appeared to be a common feature of claimants' experience.

The company didn't want to pay for the time I spent in hospital... But I came across an article in the crew agreement that I have to be paid not only the hospital expenses but also for the disability.... Later they agreed to pay me if I sign a document that I have no claims and abandon any other claims in the future...To be frank I was afraid, I hesitated long before signing it. (u14.13)

Pressure to Sign

It is clear from the evidence that quitclaim forms are still widely used. For some individuals this is not perceived as a problem; they have received their contractual benefit, have lawyers present to inform them of what they are signing, the process is transparent and they sign in full and clear knowledge of what they are doing. However, for some claimants the event is confusing and pressured; typical reasons given for this included:

- Not enough time to consider the options.
- Lack of knowledge of proper normal practice
- Financial need and the fear of losing a settlement

The following comments from claimants illustrate these points.

Example 1

The widow of a 47-year old Ukrainian Electrician, who hit his head in the swimming pool and lost consciousness but received no medical assistance, said:

A representative of the insurance company called me and said that you are to be paid compensation of USD5,000, but we need a preliminary receipt from you, that if we pay you this amount you are waiving further claims. Of course that was a real shock and I didn't know how to answer him and said that I was not ready to answer on the spot ... and it was even said that if I don't accept this sum now, I wouldn't receive any compensation at all. (u15.20)

Example 2

The widow of a 48-year Filipino Chief Officer says:

I called our legal counsel but he was in Laguna, so I was left with no choice I went alone to sign the quitclaim, even though I was feverish that Monday... So I asked the correspondent "Why do you have to clear the crewing agency, owners and P &I club from any obligation? Does my husband have any liabilities unsettled? (p11. 16)

Example 3

The widow of 46-year old Ukrainian Fourth Engineer said:

The release form was written in English and an interpreter read it to me. At that minute my hands and legs started shaking, I was in shock and everything was like a haze. I hadn't yet come to terms with the loss of my husband. I was in very bad condition. She read me the release, but I didn't understand what was said. As she read it, I was thinking about everything that has happened, about my children and what I should do. I was in a very bad way. I didn't sign at once, but left the room and discussed it with my friend. What was I to do, what could I do in such situation? He said: "accept the money since they offer it to you because who knows what may happen later and you need to feed your children." (U17.33)

The following extended example is included to illustrate some of the worst practice and the ways in which safeguards can fail.

Example 4

June 2003. A tanker in the Middle East exploded killing four seafarers. The following is the story regarding the signing of the quitclaim for payment of death benefit to one family as told by the brother of the victim.

From the airport to the funeral parlour a lawyer from the P&I correspondents and a Captain – representative of the ship's agent followed us. They asked my parents to sign the release – or what you call – Quit Claim. My sister was there to help my parents. Knowing well that the burial was at 1:00 p.m., between 10-11 a.m. they were pressing my parents to sign and since there were already many people waiting at home to attend the burial they no longer read the rest of what's contained in the papers. That's how much pressured they were under at that time. We asked them to wait 'till after the burial. But they didn't heed our request even while my brother's body was still in the house. They kept on calling, asking my parents to come over [to the government office OWWA] and sign, we were wondering why were they in a hurry?... According to my sister, the Captain blurted out, "What's this? Isn't this enough? My sister asked, "Can we talk about this after my brother's burial?" Instead the lawyer blurted out, "Why do you refuse to sign? What's your apprehension? I came here to help you, but it seems like you don't want to cooperate. What else do you want us to do for you? This is actually what your brother is entitled to receive why do you refuse the offer?" At that instance we were somewhat enticed to accept - even more so when they said: "the relatives of the other three victims' have already been compensated and that we were the only last in line"... Then we went to OWWA to sign the documents in the presence of the arbiter. There were many documents to sign. We thought at this point that the others were already compensated. We were wrong. When we called them later we learned that they refused to accept the offer as per advice of their lawyer. The OWWA representative remarked, "It looks like there's something amiss with the documents you want their parents to sign." They answered, "What's the problem? That's what they are entitled to receive." There was some argument there. But they insisted on having the documents signed anyway.

They insisted the other three families had already been paid. You're the last. That's how we got hooked. They didn't tell us the real score. That's why we signed [the release papers] because the other three did. They said we were the last to do so. It's like we've been had and from what my sister read, we have already waived all our rights to file other claims since we have already been fully compensated.

Since my brother's life has been snapped from us, my father said, "If only my son can be brought back to life we will not file appeal for the payment of what's really due him." But since the dead can no longer come back we have decided to demand payment for the rest of the benefits due my brother. Our decision now is to join and support [the lawyer engaged by the other three families] because they deceived us. They bluffed us into believing that the other three had already settled. (p17)

Summary

The aim of this study was to demonstrate whether IMO/ILO Guidelines are being complied with. Insofar as the use of quitclaims is contrary to the Guidelines, then on the basis of the material presented it has been shown that, on this point, the guidelines are not being adhered to. The data presented clearly demonstrate that with regard to the use of 'receipt and release' forms there is widespread non-compliance with the IMO/ILO Guidelines on this specific issue in both the Ukraine and the Philippines.

Findings

2. Claims Procedures and Practices

The evidence in both the Philippines and the Ukraine suggests that cases of injury and death are often dealt with amicably, in accordance with seafarers' contracts, and without the need to file formal claims and that cases dealt with in this manner are settled promptly and to the satisfaction of the claimant. In some cases quitclaims requiring the release of rights were used.

However where cases were contested claimants experienced various forms of problem. These included the length of time necessary to reach a settlement, difficulties associated with dealing with third parties in a foreign country, and issues of legal jurisdiction. Medical disputes concerning disability grading and the cause of illness are seen to be the main reason for claims being contested. These points will now be discussed in turn, followed by a discussion of claimants' satisfaction with their settlements.

Duration

The cases settled amicably and in-house were completed within 6 months. Contested cases typically lasted 1 to 3 years. The longest case recorded was 10 years and was still ongoing. Where a case is prolonged the claimants can get into serious financial difficulty, putting them under pressure to settle quickly. As this Filipino Chief Cook said:

I had waited long enough. I was already in dire need of money. Here's the cash being offered, should I wait till this body of mine gives in? For now I'm more worried about my pocket. I have no more savings. I travel from Manila to Cebu, Cebu to Manila, that's getting very costly. Plus I have no more money to send my children to school ... I urgently needed the money. I had no more savings left and my wife was also very ill. I have already closed my bank account and I've sold several pieces of my personal belongings, so I decided \$25,000 is fine - why wait for the \$40,000, that could still be a long wait. (p3.48).

It seemed that the legal process was sometimes deliberately protracted by shipowners and insurance representatives. One Ukrainian widow reported that:

The company protracted in the way they just didn't attend the court. They had 10 non-appearances in sequence and each hearing was moved to the next month. That is why it was so protracted and lasted so many years. (u1.34)

Similarly a Filipino Third Officer, who injured his back lifting a heavy object, commented:

The progress is too slow. My lawyers filed another position paper and said they are still awaiting response from the P&I correspondents. (p11.83)

Problems cited when dealing with Foreign Owners

The evidence shows that claimants often have to pursue their claims in a foreign jurisdiction. The fact that the shipowner is based in a different country from the claimant need not be a problem provided claimants are dealt with fairly and professionally. However where claims are contested, claimants can be intimidated by foreign shipowners with apparent wealth and power. As this wife of an injured seafarer said:

[W]e thought that it is just impossible to achieve justice in our country. I mean that: if it was a Ukrainian company, ship-owner, vessel, it would be possible to achieve something. But since this is a [foreign] ship-owner, we decided that he is stronger...he has his lawyers and he has money. (u19.28)

At a practical level people need to be able to communicate and without a common language there are issues relating to the adequacy and verification of translation, and the cost of translators, telephone calls and faxes. As this Ukrainian Motorman states:

They asked us to translate everything into English - we paid for those translations with our last money. (u20.27)

Even successful negotiation of the legal system does not guarantee a successful outcome, as this 49-year old Ukrainian Captain discovered when the crewing agency, which also managed the ships, merged with another:

The judgement after moving from one court to another was in our favour. After this the case was appealed and the original judgement overturned. But we put the case for cassation [appealed] to the Supreme Court of Ukraine and wait now...But during this time [the company] was liquidated, and if I win this brings me no more than moral satisfaction. The company has been liquidated, there are no assets available and nobody can be forced to pay...the only possible thing to do is exact the payment from the vessel if it visits a Ukrainian port, but there should be the court decision. (u.8.20)

To be sure of success it is necessary to pursue the claim where the principal has assets. For example this Ukrainian widow engaged lawyers in Greece [the owner's home country] to pursue the case on her behalf. Once the owners were aware that she had local legal counsel they quickly agreed to settle:

I hired a lawyer in Piraeus ... [the shipowner is there] ...and that law company is close to it. The first time when I placed the company before the fact, that I have legal counsels and we are going to go to court, they said in the company: "we are paying you." (u12.28)

In a similar vein it is possible to arrest the vessel, as two claimants managed to do, but this is a difficult and highly complex process, as the Ukrainian widow of a Bosun described:

When my husband joined the vessel she had one name, but in the end of the voyage she had another name, a new flag. This means that it is practically impossible to find information on the computer about this vessel. I don't know, maybe it is more simple somewhere, but it so difficult here to resolve such an issue. (u21.25)

Medical Disputes

Consideration of the transcripts as a whole reveals that the majority of informants are involved in medical disputes of some form. This appears to be the area where matters are least clear and the area where the law is most in need of attention. The major areas of dispute are: disability grading, the work-related nature of illness, and the need to establish a causal link between incidents and subsequent disabilities or death.

Disability grading is a major cause of dispute often centring on differing medical opinions offered by experts acting for each party, i.e. seafarer and P&I correspondent, in support of their own position. There was concern expressed by all parties that medical experts provide assessments tailored to order. As this Filipino Pumpman stated:

What was so disturbing was I sought medical attention from three doctors and all said I had arthritis. I then saw my personal doctor at the Infant Jesus hospital who suggested I get x-rayed. The x-ray alone indicated something was wrong. It appears that my MRI scans had been doctored. They seem to have been in cahoots over my case, because you can't choose your own doctor you go where they recommend you to go. If I only knew that they had this internal agreement I should have sought the opinion of another doctor so that the fight is fair and square. (p4.51)

There are several problems facing seafarers who have suffered an illness or disabling injury. Even if they recover fitness, in general they will not gain re-employment because there are so many other seafarers competing for work. While one individual interviewed had been re-employed after suffering an injury, the evidence suggests that normally seafarers who have suffered an illness or injury have to conceal their medical history if they are to obtain re-employment. Equally, if they are graded as unfit for sea service they may receive a partial disability award, but this will probably not be sufficient to retire on. Seafarers who have invested in their own training and spent their working life at sea are not generally skilled to do anything ashore that would offer comparable remuneration. Consequently they are inclined to file for the maximum level of compensation whatever their initial medical grading. With ready access to lawyers and no charge for filing a case at the NLRC it could be argued that the judicial system in the Philippines facilitates, if not encourages, litigation

Work related clauses in contracts can be the source of long running disputes over whether an illness should be compensated. The Ukrainian widow of an Electrical Engineer reported that he fell down the Engine Room steps hurting his side and breaking several ribs. Once home he required numerous visits to hospital before finally succumbing to a heart attack. The widow has a medical statement linking the fall to the death, but the P&I correspondents dispute the quality of the medical opinion. She explained:

We had all medical documents from all clinics, but we did not have a generalizing document which would establish the cause-effect connection - that the injury and death are connected directly, because in the Death Certificate it is said about cardiac pulmonary failure. It was necessary to put everything together into one conclusion, well, here we have the Oblast Medical-Social Commission, I had its medical comment, but that was not enough for the representatives of P&I... because they expressed mistrust that this type of cardiomyopathy could be the result of his injury. (u4.21)

Nonetheless the correspondents visited the widow at home and offered her ten thousand US dollars to settle. She refused. They asked her how much she would settle for. She replied that "this is not a marketplace" and asked them to leave. She simply wanted her contractual entitlement. The case continues.

Settlement: the good, the bad and the afraid

In this study there were several informants whose cases were dealt with amicably in-house without recourse to external agencies or processes and all expressed satisfaction with the outcome even though they were required to sign quitclaims waiving all their rights in relation to the claim. In addition several claimants who contested their claims still expressed their satisfaction with the eventual outcome, including this Ukrainian widow of a Second Officer:

[T]he trade union took me out of misery till old age. Look, let's put it this way: my pension amounts to 112 hryvnias (20 US dollars) and, practically, this is misery. (u2.44)

There were even two cases where it appeared that clubs had paid-out when not strictly required to by the terms of the contract. One Filipino Chief Engineer who had failed to declare a pre-existing illness was still compensated as the following field note records:

[The beneficiary] showed me copy of Release and Quit Claim which was paid to Chief Engineer X in the amount of \$5,000. It stated there clearly that this entitlement was for humanitarian assistance. In fact he was not supposed to receive any amount for the reason that he misrepresented his illness. Per his medical history he has already been diagnosed to have cancer of the bones since 1993. When he went on board the last time, he falsified his statement on the item whether he had cancer. Hence when he fell on board it was because his constitution was already very weak. (Interviewer's Note 19.08.03).

The second case was more contentious. The shipowner failed to make a payment to the P&I club and cover was withdrawn retrospectively. However the club still paid what, according to the contract, should have been the widow's entitlement. The widow was obviously grateful for payment, but considered the system to be wrong and felt angry that a situation could arise at all in which her continued financial well-being was put in jeopardy. She explained:

The compensation has been paid. But the shipowner had not made an insurance payment ... and the P&I Club broke with them ... so the P&I Club writes that the money is not supposed to be compensation but, let's say, an alternate act of kindness. That is, the Club made a concession, like, it did us a favour. They say that they could have paid no money to us, taking into account that the agreement is cancelled ... But this a controversial point: the man died when this agreement was in effect, and for a long time the Club refused to pay us the full amount of compensation that was stated in the contract. (u5.31)

On the other hand there were those who felt they had not received their contractual entitlement, and yet others who were afraid to pursue claims alleging fear, bribery, acts of deception and bullying. For example, one Ukrainian widow was of the belief that she was entitled to payment for her under-age child, but no payment was made. Despite her deep reservations she settled because:

I thought 'one today is worth two tomorrows.' Even this sum could be lost and I have to raise my child and provide an education. (u15.38)

Another Ukrainian, the Widow of a Fourth Engineer was even more forthright in her suspicions regarding payment for children:

This is what you are to be paid according to the contract, and we pay you this money...I said: "Wait, but I have children, and I know that something should be paid to them." But

they said: "In your case nothing is to be paid to the children and you will not be paid anything...But in the release form there were both my details and my children details... After I signed it, and went out, I understood why they put the children's names in this form too... there is some trickery here. (U17.46)

Likewise this Ukrainian widow suspected duplicity:

[T]hey determined payment of compensation of USD60,000. And I got to know that USD60,000 is for ratings. But he is an officer...they began telling me that he wasn't an Electrical Engineer, that he was an Electrician. I said that I didn't understand....[Later] I got to know that on the crew list my husband's position was Electrical Engineer – it was signed by Captain X. My husband's disability award was also signed by Captain X. But in the disability act my husband's position is stated as Electrician. A man, the Captain, signed two important documents where different positions are stated. (u18.35)

The same widow also recalled how she was almost bullied into accepting even less than her entitlement on the assumption that she was ignorant of the contract:

And later [I was asked] to sign a receipt that I had received USD 48,000 and had no claims against the company. But at that very moment I put two and two together. I said: "I beg your pardon but it is 80% disability and I know that at 51 % disability 100% of the sum must be paid." I said that I was not going to sign this. I didn't sign this receipt and left. And two days later the agent came to me and said: "You will be paid 60,000." (u18.34)

Some individuals were scared to claim for fear of not being re-employed. Crewing agencies also appeared to play on this and in a couple of cases made offers of jobs as an incentive not to claim. On several occasions offers were made to employ other members of the family. The widow of an Electrical Engineer whose husband had a fall onboard, reports that initially after the accident he was afraid to claim lest he was not employed again, he subsequently died:

When it was mentioned about claiming compensation, he was scared because he feared he would lose the chance to work again. That is why he didn't want the company to know about the accident and didn't want to make a claim. (u4.20)

The same concerns were expressed by this wife of a seafarer (AB) who fell when a step on a ladder gave way:

Close friends, those who sailed and know sea-law insisted that my husband should seek legal counsel. But he hasn't done this. He said that he has to feed his family, he has to go to the voyage again, and if he were to start this he didn't know how he would earn our living. (u19.33)

However having run up large debts paying medical bills they appealed to the owner to reimburse the medical costs. The owner agreed but only if they signed a release form:

[W]hen I bought medicines and visited medical Centres I collected receipts. Later we faxed copies of all the bills, with dates, with names of medicines, to the shipowner. There was no answer from him, absolutely nothing. Then they invited my husband to go to a voyage again, the same shipowner. And when the husband joined the vessel, the shipowner also arrived and said: "if you give me a paper that you are 100% healthy and

have no claims against me, I will pay you for those bills". We agreed to this because of financial problems, there was no money in the family. (u19.24)

Similarly this Filipino Widow of a 65-year old Chief Engineer tells how she initially refrained from using a lawyer to pursue compensation for her husband's death to avoid risking her son's job:

In fact many lawyers advised me to file my claim. At that time I decided not to pursue the claim because my son was under contract with the same agency of his father. They even promised to get him onboard. My son appealed, "Mama, please don't file just now, let me go onboard first." In the end nothing happened. He didn't get onboard at all. (p14.36)

Whereas this brother of a deceased Filipino 31-year old Galley Assistant recalls how he was offered the chance to take his brother's place with the crewing agency:

Do you know that the Captain came to visit us at home and repeatedly offered my parents, us children to take the place of our deceased brother? My reply was, "I am not a seaman, Captain. I am a Commerce graduate. I am not inclined towards that line." He said, "But that's okay, all you have to do is get a seaman's book. While I am still connected with the Agency, I'll endorse you so as to continue your brother's plans." Well, I chose not to be a seaman. I think that offer had a hidden agenda. For sure it was meant to sway as from running after the company for their negligence/shortcomings. (p17.28)

This practice was reported in both the Philippines and Ukraine. It may be that offering employment to other siblings and family members is intended as an act of support especially in cases where seafarers are unable to continue to work at sea and their contract does not allow for a payment that would be adequate for them to retire on. However it was clear that claimants often experienced such 'offers' as attempts to discourage, or prevent, them from making claims for their due compensation.

Summary

Cases were identified where claimants reported that the case had been dealt with professionally, amicably and quickly. However, cases were also identified where the claimant had settled quickly, and signed a quitclaim, out of financial need. By contrast, other cases had been contested and lasted several years before a settlement was reached. Where cases took an extended time to settle the majority of claimants reported experiencing grave financial circumstances. Disputed cases commonly centre on conflicts in medical opinion. Further, claimants often have to pursue their case in a foreign legal system with the associated problems of communication and cost.

Findings

3. Lack of Understanding

The first stages in the claims process require careful examination as these reveal much that underlies the negative experience of the claims process expressed by many of the claimants. A lack of understanding and sensitivity by company representatives when informing relatives of an incident can cause great distress. In addition, claimants are often ignorant of the employment contract and the procedures to be followed in making a claim.

The Incident: Breaking News

Many informants felt upset and frustrated from the very beginning of the process because of the lack of information they received about the incident and the way in which the information was conveyed.⁸ The following comments from the widow of a Chief Engineer demonstrate what a sensitive time this is for the informants as she recounts the moment she was informed of her husband's death:

The [shipowner] in the U.S. called the owner of their [crewing] agency in the Philippines. I know [the manager of the crewing agency] personally - but he found it difficult to relay the news to me. He called a close friend of mine, and this friend called me at 11:30 in the evening. She asked, "Cora, when did you last talk to John?" "Just this morning." "Cora, Cora..." was all she can say. I sensed something was wrong. So I filled in the words to confirm: "John is dead?" "Yes, he is dead."... "He's dead. He's dead. He's dead." I was moving around the house. My mind went blank, I can't even cry. I was too shocked I guess... When staying in the house was already unbearable I woke up my children. "Wake up! Wake up! Your Papa is dead." We all went out of the house because I can't stay in much longer. (p14.36)

And yet in passing such sensitive information shipping representatives often appear to show little tact and/or may fail to provide the detailed information so desperately sought. Informants reported receiving brief cursory messages that their relative had an accident or was dead, but with little or no detail or explanation. Furthermore, they were given little or no opportunity to ask questions, as this widow of a Second Officer stated:

I was visited and told that my husband has died and I am to call the telephone number, that's all. That was the end of everything. (u2.33)

Indeed there were even several instances of Russian speaking relatives being informed in English by letter or telephone of their relative's death. As the son of a deceased 52-year old Chief Officer recounted:

The man spoke English, all of us were shocked, the only thing we understood was that my father had been taken off the vessel by helicopter and transported to hospital. He said to call tomorrow morning to the office and gave the office number. We asked our friends [who spoke English] to make the call. The shipowner said that: "Your father died" (u5.20)

⁸ Often for the bereaved the single most important part of the story is how and why the person died. This can be a major concern in unexpected and sudden death.

Walter, T. (1999) *On Bereavement: the culture of grief*, Buckingham: Open University Press.

It could be the case that while obliged to inform the family at the earliest opportunity, employers are not in a position to convey more information at the time, or are reluctant to say too much or express regret out of fear that it be construed as an admission of liability. But such explanations would not account for the off-hand manner in which at least some of these cases appear to have been handled or for the use of a foreign language. Such behaviour is generally construed as disregard for the feelings of the relatives. It also brings into question the value shipowners and crewing agencies place on the life of a seafarer and in a way that is plain to the family. As a result relatives may be left feeling lost and betrayed.⁹ The subsequent lack of information and a need to make sense of the incident can lead relatives to question official stories and to be suspicious and disbelieving.

There are, however, examples of good practice, and this underlines the lack of common standards. A Ukrainian widow, for example, gave a positive report of a crewing agency saying that “they advised me about the accident at once, they called me, they helped me” (u15.18). In some larger companies there are specific individuals or welfare officers to assist the claimant.

The ongoing role of the crewing agency is crucial to the experience of the claimant. The crewing agency acts as the face of the company; it is at this level that the seafarer has direct interaction with the representatives of the employer. It is here the contract is signed and it is from here salaries are paid. It is to these people the seafarer speaks when making arrangements, seeking clarification or resolving problems. Thus the first point of contact is liable to be the crewing agency that placed the seafarer aboard the ship. Hence it would be expected that this would be the main source of support for the seafarer, family member in the event of an incident. In the better companies there are provisions made for the individuals to be guided through the process with one member of staff assigned to deal with the case and provide information and support. Several claimants reported positive experiences, but many more found the agencies were unhelpful, often wanting nothing to do with the claimant. The emotional consequences for families were often significant as they found themselves depressed and alone, as one Ukrainian widow said:

It was very difficult for me that I was all by myself. There was no support from the marine community. The disaster was at sea, my husband worked at sea so many years. (u15.39)

Likewise this widow recalls wanting to give up on the process after her attempt to obtain documents from the employer:

Oh my God, you know I wanted to give up... I shall not articulate this. (Cries, pause) I was in the condition that I didn't want to live. If they refused me humanly, normally, but when you come and the people hide their faces. The man has worked 39 years for the company and when I came I heard: “Listen, I can do nothing, I am busy. Woman, you even don't let me eat.” Let a person tell me at least some words with compassion. They understood that I was totally confused and yet they added to my difficulties. (u2.37)

⁹ Walter (1999).

Contracts

Seafarers are seldom familiar with the terms and conditions of their contract, as this 44-year old Ukrainian Motorman says: “We practically don’t know our contract, we just sign it and that’s all” (u20.20). In Ukraine the larger agencies provide pre-departure seminars. In the Philippines all seafarers are supposed to receive pre-departure briefings. The purpose of these seminars is, in part, to ensure seafarers are familiar with the terms and conditions of their contracts, including issues relating to illness, injury and death. Some seafarers did have thorough briefing as the following comment from a 54-year old Filipino Chief Officer confirms:

We were briefed on this before we were deployed. We were even briefed on specific instances like if your feet are amputated, how much. That was explained to us. (p7.72)

However, others suggested that pre-departure briefings were often not held. For example, one Filipino Second Officer alleged that matters are often different in the Philippines and that an attendance certificate may be issued whether or not the seafarer has attended a seminar:

I have only attended an orientation seminar once and I have been at sea for 10 years. This is the practice now. When a seaman leaves to join a ship, the shipowner will ask the crewing agency to provide a pre-departure certificate...But often there is no seminar conducted, as most of the seamen living in this place (boarding house) will tell you. (p.6.28)

Whatever the reason, the fact is many seafarers still report that they do not know the terms and conditions of their contract. This could be due to the seafarer not taking the time to understand what they are signing or overlooking consideration of the company policy with regard to injury and death; but then, which individuals, in any industry, are fully aware of their terms and conditions of employment? There are also, however, cases where seafarers are required to leave to join ships at short notice and so have little or no time to even see their contracts. As the widow of an Electrical Engineer discovered when she questioned a family friend, a Captain:

He said that we are given the contract when we are boarding the bus. And we read the contract when we are in the bus already. I said that is you who read and what about the crew? Does the crew read? It comes out that they don’t read. (u10.30)

Likewise this widow of a 47-year old Electrician recalled the day her husband signed his contract. She told us:

A man called us, urgently, there was a vessel and the train...was leaving at six, well, we had two hours and a half to pack his bags. We drove to the company. Do you think he read the contract? He checked on the salary and that’s all. (u15.25)

Often, although seafarers are sent to join ships without the opportunity to see the contract, they may sign a document in the office of the crewing agency. However this is generally no more than a cover sheet, as this Filipino Second Mate who suffered an injury to his leg:

Filipino seaman when going to work we do not even see our contract. This is the system practiced in our country today. The contract we sign is in a blank form. We only sign our signature after that finished! They did not even explain to us what is inside in the contract. (p6.26)

In these situations the first opportunity the seafarer will have to read the contract will be when on the vessel. But even then the contract may not spell out in detail the P&I cover for injury or death, and/or it may not be sufficiently clear for a seafarer to fully understand. Contracts with foreign principals are usually written in English. But even if the seafarer himself/herself is fully informed, this information may not be related to the family member who subsequently has to negotiate settlement of claims. The following examples given by widows in the Ukraine and the Philippines are illustrative:

Before that happened, I was always sure that my husband had good health, and that nothing alike would happen to my husband, and I had even never talked with him whether an insurance exists or not. It happened so that we kept away from that matter. (u10.29)

I hope someone can guide the wives of seafarers who have lost their husbands because of death or have had injuries on board. Because we are totally ignorant about these things I hope seamen's wives, like me, will be allowed to participate in pre-departure seminars. I am an example of that ignorance. (p1.65)

Some agencies in the Philippines actually encourage wives to attend the pre-departure seminar and some have very recently begun to produce a pamphlet containing simple instructions on what to do in the event of an incident which they encourage seafarers to give to their family.

The fundamental problem, however, is that with an over-supply of seafarers and insufficient jobs, seafarers are grateful for work and do not feel themselves to be in a position to question too deeply, whatever the conditions, for fear of losing the opportunity to work. As this comment from an injured motorman made clear:

I just signed and went to work. And if you don't want to, there are other people who will work. (u20.21)

A 41-year old widow of a ship's Electrician made the same point:

Ukrainian seafarers have no rights. They are even afraid to go to ITF, because they will not be employed later. This information is being spread, and they agree with everything to earn some money. (u15.25)

While seafarers are desperate to work they are open to potential exploitation and as such they have no choice but to sign whatever is put in front of them. Indeed our data suggest that it is common practice for seafarers in Ukraine, and to a lesser extent in the Philippines, to pay to be placed aboard a ship. In these circumstances they are hardly likely to quibble over the fine print in their contracts.

Summary

The occurrence of an injury or death in any family is generally traumatic for all those involved. The data collected as part of this research clearly demonstrate how a lack of sensitivity at such a time on the part of representatives of shipowners and managers and /or P&I clubs, or lawyers, can appear extremely callous. It is not unusual for individuals to lack knowledge of their employment contract, but at times of tragedy with so much else going on individuals may be particularly confused and bewildered. Cases of best practice have been highlighted where individuals are aware of their entitlements and received necessary guidance and assistance. But it has also been shown that cases occur where individuals are left ignorant and floundering at a time of crisis.

Conclusion

The accounts given to interviewers in the course of this research by those who had been involved in a claim for compensation were forceful and at times extremely shocking. Whilst representatives of insurance companies and crewing agencies might argue that the majority of cases of injury and death are dealt with quickly, amicably and to the satisfaction of the claimant, this view was not supported by the majority of those claimants interviewed as part of this study. Amongst those interviewed there was widespread ignorance about contracts, entitlements and procedures relating to claims and often little help or guidance from the crewing agencies or the insurers. Additionally, there are instances where individual claimants report experiencing delays in the process and feeling pressured to sign documents, either as a result of their own straitened financial circumstances or due to more direct form of verbal coercion. Importantly the experiences reported appear to be qualitatively similar over time and between the two countries suggesting that, in the range of cases considered, the IMO/ILO Guidelines have had little impact.

APPENDIX 1

IMO/ILO Guidelines

INTERNATIONAL MARITIME ORGANIZATION



IMO

E

ASSEMBLY
22nd session
Agenda item 10

A 22/Res.931
17 December 2001
Original: ENGLISH

Resolution A.931(22)

*Adopted on 29 November 2001
(Agenda item 10)*

**GUIDELINES ON SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF
CONTRACTUAL CLAIMS FOR PERSONAL INJURY TO
OR DEATH OF SEAFARERS**

THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE,

NOTING the importance in the plan of action of the International Maritime Organization (IMO) of the human element, which is central for the promotion of quality shipping, and the core mandate of the International Labour Organization (ILO), which is to promote decent conditions of work,

RECALLING the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up as well as the relevant international labour standards applicable to maritime employment,

RECALLING ALSO the generally accepted principles of international human rights applicable to all workers,

NOTING the Convention on Limitation of Liability for Maritime Claims, 1976, as amended, the International Convention on Maritime Liens and Mortgages, 1993, and the International Convention on Arrest of Ships, 1999,

NOTING ALSO that in a significant number of cases there are serious problems in regard to the handling of seafarers' claims for personal injury or death, which involve a human and social dimension,

RECOGNIZING that there is a need to recommend minimum international standards for the responsibilities of shipowners in respect of contractual claims for personal injury to or death of seafarers,

CONSIDERING that shipowners, in discharging their responsibilities for providing safe and decent working conditions, should have effective arrangements for the payment of compensation for death or personal injury,

CONSIDERING ALSO that, given the global nature of the shipping industry, seafarers need special protection,

CONSIDERING FURTHER that full and prompt contractual compensation should be paid without prejudice to any other legal rights that seafarers or their next of kin may have,

CONCERNED that, if shipowners do not have effective insurance cover or other effective forms of financial security, seafarers are most unlikely to obtain full and prompt compensation,

NOTING that the Guidelines represent a valuable contribution to the objectives of eliminating the operation of sub-standard ships and enhancing the social protection of seafarers,

RECOGNIZING also that the present resolution does not call for the adoption of additional mechanisms where national law already meets or exceeds the provisions of the Guidelines,

CONSIDERING that IMO Assembly Resolution A.898(21) on Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims did not directly address contractual claims for personal injury to or death of seafarers, but was concerned to ensure that shipowners have effective insurance cover or other effective forms of financial security for maritime claims,

CONVINCED that the adoption of guidelines is an appropriate interim measure to ensure payment of compensation for personal injury to and death of seafarers,

1. ADOPT the Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers set out in the annex to the present resolution;
2. REQUEST Member Governments to bring this resolution and Guidelines to the attention of shipowners and seafarers and their respective organizations;
3. INVITE Member Governments to ensure that shipowners comply with the Guidelines;
4. INVITE the IMO Assembly and the ILO Governing Body to consider other appropriate action for longer-term sustainable solutions to address the problems covered by these Guidelines;
5. REQUEST the IMO Assembly and the ILO Governing Body to keep the Guidelines under review and to amend them as necessary; and
6. INVITE Member Governments to note that these Guidelines will take effect on 1 January 2002.

ANNEX

**GUIDELINES ON SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF
CONTRACTUAL CLAIMS FOR PERSONAL INJURY TO
OR DEATH OF SEAFARERS**

1 INTRODUCTION

1.1 The purpose of the Guidelines is to assist States, when establishing their national requirements, to identify the most crucial issues relating to the payment to seafarers of contractual claims for personal injury or death.

1.2 The Guidelines recommend measures to be implemented by shipowners to ensure that there is an effective insurance cover or other financial security to provide full and prompt payment of such claims. The Guidelines also contain recommendations for certification and provide a model receipt and release form for such claims.

1.3 These Guidelines are also suitable for fishing vessels.

2 DEFINITIONS

2.1 For the purposes of these Guidelines unless expressly provided otherwise:

- .1 *Shipowner* means the owner of the ship or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities*;
- .2 *Seafarer* means any person who is employed or engaged in any capacity on board a seagoing ship;
- .3 *Personal injury* means any disease or impairment of a seafarer's physical or mental condition arising out of or in connection with employment of the seafarer;
- .4 *Claims* means valid contractual claims for compensation for personal injury or death at levels provided for within the terms and conditions of employment of seafarers;
- .5 *Insurance* means effective insurance or other forms of financial security to meet claims against shipowners which comply with the functional criteria set out in these Guidelines; and
- .6 *Insurer* means any person or entity providing insurance for a shipowner.

* Article 1(c) of the Recruitment and Placement of Seafarers Convention 1996 (No.179) and Regulation IX/1.2 of SOLAS 1974 as amended.

3 SCOPE OF APPLICATION

3.1 Shipowners are urged to comply with these Guidelines in respect of all seagoing ships.

3.2 These Guidelines do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

4 SHIPOWNERS' RESPONSIBILITIES

4.1 Shipowners, in discharging their responsibilities to provide for safe and decent working conditions, should have effective arrangements for the payment of compensation for death or personal injury. Shipowners should arrange for their ships effective insurance cover that complies with these Guidelines.

4.2 Shipowners should take steps, when a claim arises, for its prompt payment. Shipowners should also ensure that all valid contractual claims should be paid in full. There should be no pressure, by their representative or by the representative of their insurers, for a payment less than the contractual amount or for a payment which in any way conflicts with these Guidelines.

4.3 Where the nature of the personal injury makes it difficult for the shipowner to make a full payment of a claim, an interim payment should be made to the seafarer so as to avoid undue hardship.

4.4 Shipowners should display on board contact details of the persons or entity responsible for handling claims covered by these Guidelines.

5 PAYMENT OF CLAIMS

5.1 Notwithstanding provisions of national law, the parties to the payment of a contractual claim are recommended to use the Model Receipt and Release Form attached as an Appendix to this Annex.

6 INSURANCE COVER

6.1 The functional criteria for insurance for claims should include, *inter alia*, that:

- .1 the contractual compensation, as provided by the contract of employment and without prejudice to (2) below, should be paid in full and without delay;
- .2 the seafarer should receive payment without prejudice to other legal rights, but such payment may be offset against any damages resulting from any action in tort arising from the same incident;
- .3 the shipowner should ensure that a certificate is provided indicating the period of cover of the insurance;
- .4 the seafarer should receive prior notification if the insurance is to be cancelled and be notified immediately if it is not to be renewed; and
- .5 the insurance should provide for the payment of all claims arising during the period for which the certificate is valid.

7 CERTIFICATES

7.1 Shipowners should ensure that their ships have on board a certificate issued by the insurer. It should be posted in a prominent position in the seafarers' accommodation.

7.2 Where more than one insurer provides cover for claims, certificate from each insurer is required.

7.3 As a minimum, the certificate should include:

- .1 name of the ship;
- .2 port of registry of the ship;
- .3 call sign of the ship;
- .4 IMO number of the ship;
- .5 name of the provider of the financial security;
- .6 place of business of the provider of the financial security;
- .7 name of the shipowner;
- .8 period of validity of the financial security; and
- .9 an attestation that the financial security meets the recommended standards set out in these Guidelines.

APPENDIX

MODEL RECEIPT AND RELEASE FORM

FOR CONTRACTUAL CLAIMS

Ship:

Incident:

Seafarer/Legal heir and/or Dependant:

Shipowner

I, [Seafarer] [Seafarer's legal heir and/or dependant]* hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Shipowner's obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of my/the Seafarer's employment and I hereby release the Shipowner from its obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to my/the Seafarer's legal heir and/or dependant's right to pursue any claim at law in respect of negligence, tort or any other legal redress available and arising out of the above incident.

Dated:

Seafarer/Legal heir and/or Dependant:

Signed:

For acknowledgement:



Shipowner/Shipowner representative: Signed

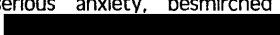
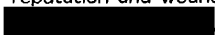
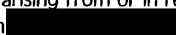
Insurer/Insurer representative: Signed

* delete as appropriate

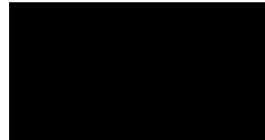
Appendix 2: Release Forms

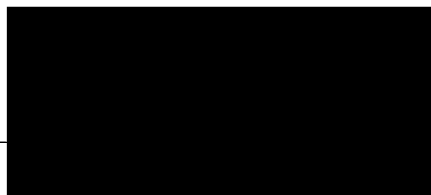
Page from Philippine quitclaim dated May 2003.


RELEASE, QUITCLAIM AND WAIVER

PAGE 2 OF 4

10. I understand fully and agree, that by my acceptance of the US DOLLARS TWENTY THOUSAND NINE HUNDRED (US\$20,900.00) as full and final settlement of my disability benefits, I am renouncing and waiving, any and all future claims, defenses or legal action concerning my illness/es, disease/s, disability/ies or any physiological impairment that are existing and/or may manifest in the future, including but not limited to resulting physical suffering, mental anguish, serious anxiety, besmirched reputation and wounded feelings against 
 OWNERS, CHARTERERS, AGENTS, UNDERWRITERS and P & I CLUB in any jurisdiction worldwide;
11. I do hereby agree that, the U.S. DOLLARS TWENTY THOUSAND NINE HUNDRED (US\$20,900.00) that I received in compensation for my disability benefits shall cover all claims arising from or in relation with or in the course of my employment with  including but not limited to damages arising from contract, tort, fault or negligence under the laws of the Philippines or any other country;
12. In the event of my untimely demise, all my heirs, assigns, executors, successors-in-interest or persons claiming right or title shall be forever barred from commencing any action or claim for death compensation, benefits, and/or damages against any and all parties named herein in any jurisdiction worldwide;
13. I hereby certify that the contents of this document were translated to me in my native language and I have understood its full import, contents and consequences and hereby gives my full concurrence;
14. I am executing this RELEASE, QUITCLAIM AND WAIVER with full knowledge and understanding of its contents, effects and consequences;

IN WITNESS WHEREOF, I have hereunto set my hand on this 14th day of May 2003 at Makati City, Philippines.





Page from Philippine quitclaim dated August 2003.

3

E. Do you know that signing this Release settles and ends EVERY right or claim you may have anywhere in the world, whether it be based on contract, tort or on other grounds? Yes

Therefore, I am signing my name upon the words **THIS IS A RELEASE** and alongside the seal, which is printed below and which is adopted by me as my own, to show that I mean everything that is said on this paper.

Dated 18 August 2003

SIGN HERE >>> This is a release _____
(Name and signature of claimant)

Seal

[Redacted signature]

Assisted by: ***

[Redacted signature]

(Name and signature of claimants' counsel)

Witnesses:

[Redacted signature]

(Name and signature of Labor Arbiter)

REPUBLIC OF THE PHILIPPINES)
CITY OF MAKATI)S.S.

ACKNOWLEDGMENT

In the City of Makati, Philippines, this 18th day of August 2003 before me, a Notary Public, in and for the said city, personally appeared [Redacted] with Community Tax

*** If claimant has counsel

Ukrainian quitclaim dated November 2002.

22 November The Receipt
of 2002.

I [redacted] son of died master
" [redacted] " captain [redacted]

received compensation for lost of
life in amount of USD 30000
(thirty thousand), unpaid salary in
amount of USD 5140 (five thousand
one hundred forty) and funeral
expenses in amount of USD 500
(five hundred), total amount of
USD: 35640 (thirty five thousand six
hundred and forty).

I declare that I have no and will
have no more any claims on this
subject (about compensation for
lost of life, unpaid salary and funeral
expenses) and any other claims connected
with death of my father.

This receipt was written by me personally
Witness of thereof: On behalf of
OWNERS of

[redacted]

[redacted]

Ukrainian quitclaim dated December 2002.

ODESSA, UKRAINE

This DECEMBER, 19 of 2002

THE RECEIPT

I, the undersigned [REDACTED]
holder of Seaman Passport No. [REDACTED] issued at [REDACTED]
on the 07.07.2001 in my capacity of CHIEF OFFICER
serving on M./V. [REDACTED] " [REDACTED]
of [REDACTED]
have received the compensation for partial permanent incapacity occupied during service on
board the named vessel in full amount and have no and will have no more any Claims due this
subject to [REDACTED] and to the Owners/Operators/Managers of the named vessel.

In witness thereof

Name, Surname [REDACTED]

Signature [REDACTED]

IN WITNESS THEREOF :

Appendix 3: Summary of Cases

Ukraine

1. Chief Engineer. Suicide. Bulk carrier in poor repair. Ukrainian company. Filed claim 2 years after death with help of union. The company missed 10 court appearances. Settled post-guidelines.
2. Second Mate. Heart Attack. Bulk Carrier. Ukrainian company. St Vincent Flag. Filed claim 2 years after death with help of union. Company reluctant to supply documents. Settled pre-guidelines.
3. Master. Heart attack. Greek Company. Received compensation after arresting vessel. Signed quitclaim post-guidelines.
4. Electrical Engineer. Suffered a fall-hurt his left side. Tanker. Hong Kong company. Subsequently succumbed to heart attack. Medical opinion linking fall with subsequent death disputed. Ongoing.
5. Chief Officer. Heart Attack. Chemical Tanker in poor condition. Greek Company. Malta Flag. Had no contract. Contract from previous voyage produced by company as basis for award. Received compensation pre-guidelines.
6. Second Engineer. Ukrainian company. Suicide. Received compensation post guidelines.
7. Chief Officer. Neurological problems (including loss of memory). Taken to the airport and given a ticket to Ukraine, to the capital, from where he had to make his own way home with no one to accompany or assist him during the entire journey. Paid for own medical treatment. Received compensation and signed receipt (but has no idea what it said) post guidelines.
8. Master. Heart Attack mid Atlantic. Greek company, managed from UK. Bahamas Flag. Bulk carrier. No treatment available until ship reached port. Ongoing.
9. Father reluctant to talk. Son died on containership. German company. Managed from Cyprus. States that everything was resolved in a proper way.
10. Second Electrical Engineer. Died of pre-existing illness. Contractual death benefit USD\$1,000. Had medical prior to joining and found to be OK. The widow received no compensation.
11. Seafarer (AB). Fall. Containership. Greek company. Hospitalised in Europe, company pressed to repatriate him, intervention of third parties enabled him to stay until completion of treatment. Informant reports medical practitioners in Ukraine said they could not have provided the same level of treatment. Tried to claim for follow-up treatment in Ukraine but received nothing, but able to return to work.
12. Bosun found dead in bed. Greek company. Panama Flag. Widow engaged a Greek lawyer and company offered to settle. Currently awaiting the payment.

13. Chief Engineer. Killed in accident ashore. Bulk carrier. Portuguese company. Widow enlisted help of union and a lawyer, but after a year and a half has no news. Friends phoned the owner and recovered outstanding salary payments. Ongoing.
14. Captain contracted unspecified illness and hospitalised in foreign port. Cargo vessel. Italian company. Liberian Flag. Company stopped paying salary at the moment taken to hospital. After illness not fit for sea service. Experienced problems getting medical records. Company reluctant to pay for medical treatment. After checking CBA contacted P&I club and company finally agreed to pay if he signed a quitclaim. Settled pre-guidelines.
15. Electrician . Head injury, received no medical treatment and died. Bulk Carrier. Greek company. Panama Flag. Widow never saw a contract, had no funds to go to court and with nobody to advise her, she had no understanding of what to do. Received compensation and signed release form pre-guidelines.
16. Seafarer (OS). Infarction at sea, arrived a week later in port. Repatriated with doctor and hospitalised. Declined to reveal amount of award. But very satisfied with the way case handled, received settlement within 1 month. Settled and signed quitclaim post guidelines.
17. Fourth Engineer. Death from asphyxia, possibly due to inhaling fumes. Bulker carrying fertiliser. Greek Owner. Settled, date not specified, but close to introduction of guidelines.
18. Electrical Officer. Fall. Hospitalised in foreign port but received very poor medical treatment. Finally repatriated but his condition still very poorly requires close supervision. Settled and signed quitclaim pre-guidelines.
19. Seafarer (AB). Fall. Company Greek. Afraid to file a claim for fear of not being re-employed. Owner offered to pay medical bills if agreed to sign quitclaim. Signed because short of money post guidelines.
20. Motorman. Heart Attack.. Bulk Carrier. Had to stay onboard several days. Put off the ship and had to make his way home unassisted. Received invalidity grading and presented all documents to company, but has received only sick leave payment. Afraid to go court because of costs, already deeply in debt.
21. Bosun found dead in his cabin.. Company Cyprus. With assistance of third parties recovered unpaid salary. Signed a receipt but it was English and had no translation.

Philippines

1. Chief Officer. Died of Cirrhosis of liver. Japanese company. Paid quickly. Believes that some salary payments were not made, would like to pursue further action but signed quitclaim pre-guidelines.
2. Bosun. Broken leg. Signed over power of attorney to a lawyer for 25% of claim. Receives advances from the lawyer. Ongoing.
3. Chief Cook. Stroke. Bulk carrier. Flag Panama. Received compensation, paid 10% to lawyer. Settled quickly because needed money. Signed quitclaim post guidelines.

4. Pumpman . Fall. Tanker. Company American. Flag Panama. Disputed disability grading. Settled because financially desperate. Signed quitclaim post-guidelines.
5. Seafarer (AB). Hit by falling object. Containership. Flag Antigua. Received compensation in Philippines. Filed negligence case in Europe but concerned that Philippine quitclaim could jeopardise case.
6. Second Mate. Fall. Master failed to write a report. Car carrier. Flag Panama. On return to Manila crewing agency refused to take acknowledge his claim. As his condition deteriorated he sought medical care at own expense. Engaged lawyer on commission basis (25%). No knowledge of contract or procedures, hands over all responsibility to lawyer. Ongoing.
7. Chief Officer. Illness. Treated in foreign hospital condition managed. Car carrier. Company Japanese. Returned to Manila and hospitalised where recruited by lawyer. Prior to meeting the lawyer it hadn't occurred to him to claim compensation. Received compensation and paid lawyer 20%. Signed quitclaim post-guidelines.
8. Widow of seafarer (AB) Lost overboard. Settled amicably. Company Japanese. Speaks warmly of crewing agency and assistance received. Settled post guidelines.
9. Master. Drowned. Bulk carrier. Flag Singapore. Case settled amicably. Crewing agency initial delayed in telling her he was lost, but otherwise speaks highly of them. Settled post-guidelines.
10. Seafarer (AB) Fall, but continued to work for a couple of years. When refused work due to his age, engaged lawyer and filed claim. Ongoing.
11. Third Officer (41). Back injury. Greek company. Flag Cyprus. Captain refused to let him off duty or repatriate him. Once home he contacted a lawyer. Case ongoing and he is short on funds.
12. Second Mate. Suspicion of murder. No cause of death stated on death certificate. Award to be paid a week after interview, post guidelines.
13. Seafarer (AB). Fall. German company and flag. Settled amicably. Needed to settle quickly because he has young children. Signed quitclaim post-guidelines. Wife is angry feels they should have got more.
14. Chief Engineer. Died in his sleep. Offshore supply boat. Company American. Agency said they could not help because it was not work related. Widow engaged a lawyer contacted the company and provided them with a copy of the contract. They realised the death had occurred before the amended POEA contract took effect. Settled and paid lawyer 20%. Signed quitclaim post-guidelines.
15. Chief Engineer. Fall. Paid as humanitarian gesture, as he had lied about at medical about knowledge of pre-existing illness. Post-guidelines. Died several months later.
16. Galley Assistant . Lost overboard. Crewing agency seeking compensation on behalf of family, but progressing slowly. Family live on an island remote from Manila, and have no knowledge of procedures or finances to pursue the claim, so rely on the goodwill of the agency.

17. Galley Assistant. Killed in explosion. Tanker. Received compensation and signed quitclaim post-guidelines.
 18. Seafarer (OS) killed in explosion. Case ongoing.
 19. Chief Officer. Back injury. General cargo ship. Hong Kong company and flag. While onboard ship transferred to different crewing agency who were reluctant to accept responsibility for him. Engaged a lawyer at 15%. Financially pressured into settling because of large debts. Received settlement and signed quitclaim pre-guidelines.
 20. Chief Officer. Survivor of collision. Flag Panama. Received small award, but didn't want to pursue any further claim for fear of being unable to gain re-employment. Signed a receipt, but not sure of the content, pre-guidelines.
 21. Seafarer (AB). Fractured leg. Tanker. Flag UAE. Offered disability award but rejected it and engaged a lawyer for 15%. Ongoing.
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