



BRITANNIA P&I GUIDE

COVER FOR THIRD PARTIES

VISITING OR TRAVELLING ON BOARD

INTRODUCTION

Members often have questions about the Club's cover for the many third parties who are required to visit an entered ship while in port or at anchorage, or who may travel on board for a voyage or extended period.

The Member as the owner or operator of the entered ship will owe a duty of care to such third parties while on board and any breach of that duty caused by negligence on the part of the owner or operator may create liabilities on the part of the Member to the third party.

THIS GUIDE

summarises the cover provided by the Club to the Member when such third parties become ill or are injured or, in extreme cases, die whilst on board the entered ship (or as a result of something happening on board).

THIS GUIDE IS NOT

a substitute for the Club Rules and does not provide an exhaustive answer to the many situations which can arise. Your usual contact at the Club should always be approached for advice on any specific situation.



COVER FOR THIRD PARTIES VISITING OR TRAVELLING ON BOARD

RULE 19(4) LIABILITIES IN RESPECT OF ILLNESS OR INJURY OR DEATH OF THIRD PARTIES

Liabilities in respect of illness or injury or death of third parties are covered under Rule 19(4) in the Britannia Class 3 Rules which provides as follows:-

Compensation and damages for which the Member is liable which are payable by reason of the illness or death of, or injury to, any person, other than a Seaman or Passenger, and the diversion expenses specified in Rule 19(6) associated with the said illness, death or injury.

PROVIDED ALWAYS THAT:

- (i) cover under this Rule 19(4) is limited to liabilities, costs and expenses arising out of a negligent act or omission on board or in relation to the operation of the Entered Ship, or in relation to the handling of its cargo from the time of receipt of that cargo at the port of shipment until delivery of that cargo at the port of discharge; and
- (ii) there shall be no recovery under this Rule 19(4):
 - (a) unless the Managers have (except in the case of a relative of a seaman) approved of the presence of the third party to travel on board the Entered Ship and the terms and conditions on which he is carried and the Member has paid or agreed to pay such additional Call or premium as may be required by the Association; or
 - (b) in respect of personnel (other than those employed for marine purposes) on board the Entered Ship employed by someone other than the Member where the Entered Ship is providing accommodation to such personnel in relation to their employment on or about an oil or gas production or exploration facility, unless there has been a contractual allocation of risks as between the Member and the employer of the said personnel which has been approved by the Association (see Rule 19(15)); or
 - (c) in respect of hotel, restaurant, bar or other guests or visitors and catering crew on board the Entered Ship when moored (other than on a temporary basis) and open to the public as a hotel, restaurant, bar or other place of entertainment.

WHO ARE THIRD PARTIES?

THE TERM "THIRD PARTY"*

- marine superintendents, often from the Member's shore-based office, carrying out maintenance and safety checks
- other shore based employees of the Member
- relatives of seamen, typically wives and children
- riding and maintenance crews
- representatives of port authorities and other state or public bodies
- cargo superintendents usually employed by charterers
- familiarisation crew of prospective purchasers of the entered ship
- official or unofficial guests of the shipowner or operator or charterer
- students or trainees (not employed as crew).

Rule 19(4) is not applicable to seamen, who are covered under Rule 19(1), nor to passengers who are covered under Rule 19(2). A seaman is defined in the Rules as "A person (including the Master) engaged under articles of agreement or otherwise contractually obliged to serve on board an Entered Ship including a substitute for such person and also including such persons while proceeding to or from such Ship". A passenger is defined as "A person carried on board an Entered Ship by virtue of holding a ticket of passage".

As a result of the risk of piracy in certain areas, security guards (usually armed but not always) are often put on board Members' entered ships. Once the security contract has been reviewed by the Member's relevant claims team and found in order (usually on the basis of the unamended BIMCO GUARDCON), cover in respect of an owner's legal liabilities to a security guard is routinely extended in accordance with Rule 19(4), although it should be emphasised that this cover is for "slip and trip" type liabilities only, i.e. the usual type of injuries for which a shipowner will be liable to a third party arising out of the shipowner's negligence, rather than injuries that the armed guards may sustain during a fire-fight with pirates.

Less typical, but also classified as third parties, would be pilots and stevedores (although the Club does not need to be notified of their attendance on board as this is routine and operational), customs officers, as well as surveyors or lawyers attending on board as part of a casualty or investigation into a claim (subject to the Member's express approval). However, this list is not exhaustive and is merely indicative of the type of person going on board who would be classified as a third party.

* ALSO REFERRED TO AS "SUPERNUMERARIES", ALTHOUGH THAT TERM NO LONGER APPEARS IN THE CLUB'S RULES.



WHAT LIABILITIES TO THIRD PARTIES ARE COVERED?

THE COVER INSURES AGAINST:

- Liability to pay compensation and damages for which the Member is liable which are payable by reason of the illness or death of, or injury to, the third party.
- Liability to pay hospital, medical or funeral expenses in relation to such illness, death or injury.

ALWAYS PROVIDED THAT:

COVER IS LIMITED TO LIABILITIES, COSTS AND EXPENSES ARISING OUT OF:

- a negligent act or omission
- on board the entered ship
- or in relation to the entered ship
- or in relation to the handling of its cargo from the time of receipt of that cargo at the port of shipment until delivery of that cargo at the port of discharge.

Rule 19(4) is therefore indemnifying the Member against liabilities that may arise from negligence on the part of the Member. This type of liability usually arises from a breach of a duty of care to the third party or from a breach of a regulation or of a statutory requirement. This is why the cover is sometimes referred to as "slip and trip" cover, e.g. the third party slipping down some oily steps which the Member has not made safe, or a third party tripping on an obstruction which should not have been there or which should have been marked.

Cover is limited to liabilities, costs and expenses *arising out of a negligent act or omission on board or in relation to the operation of the Entered Ship*. It is important to recognise that this cover only responds when the negligent act or omission occurs on board the entered ship. The cover is not necessarily dependent on the third party being on board the ship. For example, a linesman may be hit by a mooring line negligently thrown from the ship or a third party may be injured whilst on the pilot ladder due to a sudden manoeuvre by the ship - it is the act or omission that must occur on board although in the majority of cases the third party is on board the ship.

In this respect it can also be seen that this cover under *Rule 19(4)* differs conceptually from the Club's cover for seamen under *Rule 19(1) (Liabilities in respect of Seamen)* where the seaman is covered from the time he leaves home until he returns home.

WHEN SHOULD YOU NOTIFY THE ASSOCIATION OF A THIRD PARTY VISITING OR TRAVELLING ON BOARD?

If the third party is travelling on board – i.e. undertaking a voyage, even if only a short one – then the cover is subject to the Managers' prior notification and approval (with the exception of relatives of the crew – the Managers do not need to be notified of their presence on board). However, there is no need for prior approval where the third party is merely attending on board whilst moored in port, and Members would still benefit from *Rule 19(4)* cover during the time these third parties are on board. If any persons are coming on board in port for any reasons not in the usual course of the ship's operations, then Members should advise the Club in advance.

EXAMPLES

EXAMPLE 1

A Member's shore-based superintendent undertakes a voyage from Singapore to Australia on board the Member's entered ship to carry out routine maintenance and safety checks. The Club should be notified (as the superintendent is travelling on board). The Club may then confirm that cover under *Rule 19(4)* (Liabilities in respect of illness or injury or death of third parties) will be extended in respect of owner's legal liabilities to the superintendent from the date from embarkation to disembarkation; usually at no additional premium.

Any right of recovery under *Rule 19(4)* will be limited to those incidents caused by Members' negligence and for which the Member is legally liable. Club cover would not respond to contractual liabilities and/or the Member's liabilities as the employer towards the shore-based superintendent (the Members' liability to the third party as an employer is excluded under *Rule 20(9) (Employers' Liability)*). We would therefore expect a third party in these circumstances to have adequate personal or travel insurance to cover them in the event of any illness/accident/loss whilst travelling to and from the vessel and whilst on board, as any right of recovery under *Rule 19(4)* from the shipowner will be limited to those incidents caused by the Member's negligence and for which the ship owner is legally liable.

The Club will then issue an endorsement to the vessel's Certificate of Entry (unless there is already provision for this in the Certificate of Entry) confirming the extension of this cover for the relevant period.

FURTHER EXAMPLES OVERLEAF

EXAMPLE 2

If the superintendent is only visiting the Member's ship while in port, then the Club does not need to be notified (as the superintendent is not travelling on board, i.e. not undertaking a voyage) and the Member will automatically benefit from cover under *Rule 19(4)* in respect of the owner's legal liabilities to the superintendent while he is on board the ship in port.

EXAMPLE 3

If any persons are coming on board in port for any reasons which are not in the usual course of the ship's operations, then the Member should advise the Club in advance. Examples have included where film crews are using the ship for a photo "shoot" or military personnel are using the ship for training purposes. Large groups of VIPs or schoolchildren visiting a ship in port also pose an enhanced risk and should be discussed with the Club in advance. If third parties are visiting a ship in a litigious jurisdiction such as the United States, especially a large group, or if the third party is a US national visiting the ship in any jurisdiction, then the Club should also be notified so the enhanced nature of the risk can be assessed and, if necessary, an additional premium charged.

EXAMPLE 4

The wife and children of a crew member of a Member's entered ship are joining the crew member on board for a voyage (or in some cases staying on board for a longer period). The Club does not need to be notified as the relatives of seamen are excepted from the usual notification requirements (see sub-paragraph (a) of *Rule 19(4)(ii)*). Members will automatically benefit from cover under *Rule 19(4)* in respect of owner's legal liabilities to the relatives of the crew member while they are on board the ship in port.

Again, and perhaps even more so in the case of relatives of seamen, especially children, the Club would expect the family members to have adequate personal or travel insurance to cover them in the event of any illness/accident/loss whilst travelling to and from the vessel and whilst on board, as any right of recovery under *Rule 19(4)* from the shipowner will be limited to those incidents caused by Members' negligence and for which the shipowner is legally liable.

If, for example, a child on board required emergency medical treatment for an illness which had nothing to do with any negligence on the part of the Member (e.g. a common, albeit serious, childhood illness such as tonsillitis), then the Club would expect the third party's medical or travel insurance to respond to any costs incurred. It is worth mentioning in this context, that while there is no set minimum age for children to be allowed to travel on board, Members are discouraged from allowing children under the age of about two years old to travel on board for extended voyages as it can be hard for them to communicate their illness which makes it difficult for those on board to determine whether the ship may need to deviate to seek emergency medical treatment for the sick child.

In this context, the Member's cover under *Rule 19(4)* is independent of any moral or statutory duty they might have to provide emergency medical care to a third party. Whilst the expenses might only be recoverable under *Rule 19(4)* if there was a legal liability on the Member, the exception might be if the ship has diverted to seek urgent medical treatment for the sick or injured person. In that case, the Member's diversion

expenses (essentially the net loss to the Member over and above the expenses that would have been incurred but for the diversion or delay, such as additional bunkers consumed) might be recoverable under *Rule 19(6) (Diversion Expenses)*. However, Members would be expected to look to the third party/their reinsurer for recovery of these expenses in the first instance.

PRACTICAL STEPS

Making sure a third party is safe while on board is essential. The Member can take the following practical steps

- The Member should have a documented process in place to ensure compliance with the safety familiarisation provisions for visitors that may be required by the International Convention on Standards of Training, Certification and Watchkeeping (STCW) for Seafarers, the STCW Code and/or the International Safety Management (ISM) System. This should include (but not be limited to) the third party attending a safety briefing carried out by a designated and qualified member of the crew as soon as the third party arrives on board, prohibited and dangerous areas should be discussed and the third party should be supervised as necessary and provided with suitable clothing and footwear if required.
- A pre-joining checklist will be useful to ensure, for example, that the third party's details are recorded and that the third party has the relevant visa and health documents. The third party should give proof of the adequate level of their own medical or travel insurance, and a visitor's logbook should be signed.
- It is advisable that third parties, including relatives of crew members, sign a Letter of Indemnity (LOI) as soon as they arrive on board. This is not a requirement of cover under the Club's *Rule 19(4)* but it serves to protect the member's position while also making the third party aware of their rights and obligations. The Club can provide the wording of a suitable LOI on request.

FURTHER INFORMATION

Please contact britanniacommunications@tindallriley.com