

Claims for Marine Accidents in the Panama Canal

I. INTRODUCTION

Vessels having a Panama Canal pilot aboard while involved in a marine accident, such as a collision, allision or grounding, may be able to recover their losses from the Panama Canal Authority (“ACP”). In order to do so, the vessel’s interest must follow the procedures established in the ACP’s Organic Law and Regulations, and, if necessary, may also seek redress in Panama’s Maritime Courts. The recovery procedure against the ACP is an administrative one and entails, as a prerequisite, a hearing and investigation conducted by its Board of Local Inspectors (“BLI”). Depending on the type of incident involved, the BLI investigation and hearing can be requested at the discretion of the ACP, or in any case when so requested by the master or agent of the vessel involved. It is important to keep in mind that any vessel involved in an accident while having a ACP pilot aboard should request a BLI investigation before departing the Canal waters in order to avoid a possible waiver of its right to recover damages, administrative and judicially, against the ACP. Therefore, in case of an accident causing damage to the vessel’s hull, the vessel should request a BLI investigation before departing Canal Waters in order to safeguard its rights of recovering damages. BLI investigations are promptly conducted and completed, so the vessel can continue its voyage.

II. PILOTAGE and PANAMA CANAL WATERS

Pilotage is compulsory for vessel navigating in Panama Canal Waters. The ACP, the autonomous and legal entity established and organized under the terms of Panama’s National Constitution and Organic Law No. 19 of 1997, determines the number of pilots assigned to each vessel navigating in canal waters and once assigned, the pilot shall have exclusive control of the navigation and movement of such vessel. According to Annex A of the canal’s Organic Law, the canal operation compatibility area, or Canal Waters, is described as a continuous area generally following the course of the Panama Canal, and generally contiguous to it, running from the Atlantic to the Pacific Ocean. It includes the following areas, as well as the land and water areas encompassing them:

1. The Atlantic entrance and its anchorage areas
2. Port of Cristobal
3. Gatun Locks, Dam, Spillway and power station
4. Portions of the Gatun Lake
5. Culebra Cut
6. Pedro Miguel Locks
7. Miraflores Lake, Locks, Spillway, Filtration Plant and power station

8. Port of Balboa
9. The Pacific entrance and its anchorage areas
10. The new set of locks.

III. MARINE ACCIDENTS – BLI INVESTIGATION

Under its Organic Law, the ACP is authorized to adjust and pay indemnity for damages to vessels or their cargoes, crew or passengers, which may arise from their transit through Canal Waters, when the BLI determines during its investigation that the damage was caused through fault or negligence on the part of the ACP or its workers and the ACP accepts the BLI determination. As part of the BLI investigation into marine accidents, the BLI must conduct a hearing and has the authority to summon witnesses or other persons - including the vessel's crew - to testify, may administer oaths, and request submissions of log books and other vessel documents. A BLI investigation and hearing is a prerequisite to recover damages for any claim, administrative or judicial, against the ACP

The BLI must investigate the conditions and circumstances surrounding any *serious marine accident* that occurs in Canal Waters and involves ACP personnel or equipment. Serious marine accidents include:

1. Any accident causing substantial damage to any structure, plant or equipment of the ACP;
2. Any accident involving death or resulting in serious personal injury; or resulting in damages to a vessel which require the making of repairs prior to its departure, provided that the ACP has reason to believe that at the time (i) there was ACP personnel or equipment aboard; or (ii) ACP personnel or equipment was assisting the vessel involved in the accident; or (iii) ACP personnel or equipment were situated aboard the vessel, ashore or otherwise, so as to have been a factor in the accident.

The BLI may also proceed to investigate non-serious marine accidents when the investigation is requested by the master or agent of the vessel involved or, at the discretion of the ACP Maritime Operations Director, in any other marine accident that warrants an investigation. When the investigation is to be done at the request of the master or agent of the vessel, such request must be made in writing, addressed to the Chairman of the BLI, and prior to the departure from the Canal of the vessel involved. It is important to keep in mind that failure to request the BLI investigation prior to the vessel's departure shall be considered a waiver of the right to an investigation and to claim against the Panama Canal.

The ACP is represented by counsel from its Legal Department. The vessel is also normally represented by legal counsel during the BLI hearing. BLI investigations (hearings) are normally commenced within 12 hours after the accident has occurred and completed in a matter of hours, so that the vessel, if not disabled, may continue its

voyage. Subsequently, usually within a month, the BLI issues a report, which includes its Findings of Fact and Opinion into the causes of the accident.

IV. ADMINISTRATIVE CLAIMS

The ACP takes into consideration the following factors when determining the amount of the damage award for injuries to a vessel:

1. The actual or estimated cost of repairs;
2. Charter hire actually lost by the owner or charter hire actually paid during the time the vessel is undergoing repairs. In the event that the vessel is not operated under charter but directly by the owner, evidence shall be secured as to the sum for which vessels of the same size and class can be chartered in the market;
3. Maintenance of the vessel and crew wages, if they are found to be actual additional expenses or losses incurred outside of the charter hire;
4. Other expenses which are definitely and accurately shown to have been incurred by reason of the accident or injuries

The ACP administrative procedure follows a comparative fault scheme. Thus, if the fault or negligence of the ship operator or shipowner, the master, crew or passengers contributed to the injury, the award for damages shall be reduced in proportion to the degree of negligence or fault attributable to the ship owner or ship operator, vessel, its master, crew or passengers. In addition, the ACP does not allow recovery for agent fees or commissions, undefined or undetermined items subject to speculation or conjecture, or damages that may result from any excessive time, demurrage, or delays while the vessel is in transit in the Canal. As a result, the ACP will never accept claims resulting from any of the following events or circumstances:

- a. Landslides or other natural causes;
- b. Construction or maintenance work in the Canal, its equipment or installations;
- c. Obstructions arising from accidents;
- d. Time required for admeasurements of vessels;
- e. Vessel traffic congestion;
- f. Time required for investigation of any accident. However, the ACP shall allow awards for demurrage or delays in the transit of the Canal if the BLI investigation of the accident exceeds 24 hours or if the accident is attributable to the fault or negligence of an Authority employee.

The administrative procedure before the ACP starts with the filing of an administrative complaint by the vessel's legal counsel, which must be filed within two (2) years of the date of the accident. Such complaint should be accompanied by documentary evidence of all damages suffered by the vessel.

The ACP may request any additional evidence it deems necessary to prove the damages claimed during the administrative process. The process ends with the final determination of the claim by the ACP, either in the form of a final settlement offer, which may or may not be accepted by the vessel, or by denial of the claim by the ACP.

V. SUITS AGAINST THE ACP

Any claimant who is dissatisfied with the determination of responsibility and damage awarded by the ACP may bring an action in the Panama Maritime Courts of Panama. The claimant must file the action against the Canal within one (1) year from the notification to the claimant or his duly authorized representative of the final determination on the award made by the ACP. The Panama Maritime Courts shall have exclusive and exclusionary jurisdiction over any other national or foreign court of justice to hear all claims, actions, or lawsuits arising from a marine accident against the ACP. While most claims against the ACP are settled through the administrative process, there have been dozens of lawsuits filed against the ACP in the Maritime Courts of Panama. Most have ended in out-of-court settlements, while some have gone to trial on the merits.