

# The Value of Check Lists

By Chris Richmond

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At today's shipyards there can be a variety of daily tasks, all running the gamut across industrial and marine. Staying on top of safety is a full-time job and details are critical. You can micro-manage efficiently with simple check lists. Here are a few examples from a local yard we work with:

## **On the marine side**

**Station bills:** Are they relevant? If not, rewrite them.

**Wheelhouse:** All house lights, spotlights, running lights and deck lights; no hitches in the steering function or throttle function; fuel; check all instruments.

**Engine room:** All safety equipment, including safety glasses, hard hats, safety gloves, hearing protection, non-slippery decking, flashlights, fire extinguishers. Check all fluid levels and heat and shaft shielding.

**Charts:** Are they up to date? We all get lazy sometimes and rely too much on electronics to the point where we can't even find our charts. Channel markers are often updated and moved. Your GPS may need updating as well as your charts.

## **On the dry side**

**Company vehicles:** Tire pressure and wear, engine oil, lights and gauges. A complete safety check and a place to note unusual items including whether anything is broken or protruding.

**Fork trucks:** Hydraulic fluid and all other fluids. Check the load lock (twice). Battery and safety equipment including fire

extinguishers, also driver certification.

**User manuals:** Are they handy and can you quickly refer to them in case you need to troubleshoot a problem with your electronics? Most user manuals have a toll-free number to call in case you need expert help to figure something out. You may need to make one of those calls when you're out to sea and have nobody else to help you.

**Paint rooms:** All ventilation working; filters clean; respirator filters clean; all painters beard free and able to use coveralls, etc.; fire suppression systems checked.

**Welding shop:** All safety equipment, including helmets, gloves, eyewash station, welding curtains, all gas bottles chained in and welder leathers available to all.

Nothing is too obvious or basic to appear on a check list. Having checklists and using them effectively are two separate things. Keep track of how your employees are using them to stay on top of both safety as well as maintenance. This can help keep your equipment in good shape as well as keeping your claims down.

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# What You Should Know About Hull Perils

By Chris Richmond

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A commercial hull policy can sometimes resemble an action-packed maritime novel: Covered perils of the sea can include men of war, pirates, letters off mart and detainments of all kinds are just some of the terms you might read there. But what about when you just have a problem with your engine? This may or may not be covered.

A hull policy is a named peril policy, meaning unless something is a stated peril- written right there in the policy - it is not covered. That said, a hull policy still provides rather broad coverage. There are always exclusions; for instance, wear and tear is not a covered cause of loss. But you should know about two coverages found in a hull policy: Latent Defect and Negligence of Repairers.

Latent Defect is defined as a flaw in material existing at the time of the building of the vessel or machinery not discoverable by ordinary methods of testing. While the expense of replacing the broken part is excluded, the ensuing damage can be covered.

Negligence of Repairers is another peril which can provide important coverage. Should you have a repair to your vessel's

engine – and it fails – then you may have coverage. Case in point: An insured had a high-pressure fuel line fail repeatedly on his engine. An investigation determined that during a previous repair job, the repairer had not installed the proper number of clamps as stated by the manufacturer. This produced excessive vibration and eventually stress fractures. The client was relieved two-fold. First that he had found out why he was repeatedly blowing fuel lines, and also that he now had a covered cause of loss. Aside from the repair being covered, he could also claim loss of use from the cancelled charters that he suffered.

Claims can come in all different sizes and varieties. Don't be afraid to give your agent a call to discuss what is going on with your vessel. While it may initially appear that there is no coverage, some investigation into the root of the problem can often yield positive results.

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# **Commercial Hull Policy Coverage & Equipment On and Off Your Vessel**

By Chris Richmond

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Your commercial hull policy provides coverage for more than just your hull. A policy may extend coverage to the “hull, tackle, apparel, engines, boilers, machinery, appurtenances, equipment, stores, boats and furniture.”

But what happens when you have a claim involving any one of these items? If the claim is covered, then you will first have to pay the deductible. Depending on the amount of hull coverage you have, this can be rather sizable and may well exceed the value of what was damaged. Let's look at some ways to help improve your coverage

Do you have a tender? Have it listed separately on the policy with its own hull limit and a smaller deductible. The liability from your vessel still extends to the small boat but when the tender has its own hull value listed, you can have a much more manageable deductible. And don't forget to tell your insurance agent when you buy a new outboard for the tender. This can greatly increase its value and quickly exceed the value for which you have insured the tender.

Do you store items ashore during the off season? Some policies will reduce the coverage on these items while off the boat by covering only claims based on fire. Be aware: Should an item be stolen then your boat's policy will not react.

Have you installed special equipment on your vessel to perform specific work? They can be scheduled on your policy with a stated value along with an appropriate deductible.

Do you operate equipment overboard? Good luck getting that added to your commercial hull policy. If you have ROV units stored on board your boat you may be able have them scheduled on your hull policy but as soon as they go overboard coverage would cease. Obtaining a stand-alone policy specifically written to cover your ROVs is the proper way to provide coverage. This policy will react to claims from incidents both on the boat as well as in the water.

Take a moment to look at your boat and the equipment that you have on board, then give your insurance agent a call and discuss

the current limits you for the vessel and everything on it, especially what can be stored (or is stored) on land. You will be happy you did should you need to file a claim.

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# Maintenance, Cure and Wages – and Your Insurance

By Chris Richmond

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Chris Richmond

Commonly referred to as The Jones Act, coverages under the Merchant Marine Act of 1920 provide broad benefits for your crew. It is always important to review what your crew are entitled to and what insurance you should have for this.

Under the MMA of 1920 if a crewmember is injured or falls ill

while in service to the ship then they are eligible for maintenance, cure and wages.

Maintenance is lodging and meals should an injured crewmember have to find alternative accommodations due to the claim; the cure is doctor's visits and medical treatment until maximum medical cure has been reached and wages are the pay the affected crewmember would have earned had they not been laid up. Your protection and indemnity policy will respond to this if you have crew coverage.

Be sure to keep your crew count accurate as you can. If you have more crew on board than you have listed on your insurance policy, you may suffer a co-insurance penalty. Insurance companies generally don't like to cover something (or someone) who isn't specifically written in a policy.

It is also important to remember that maintenance, cure and wage claims are no-fault. This means a crew member only has to establish that they were in service to the ship at the time of their injury or illness and then these benefits are available to them.

Though this can vary, the standard to establish seaman status as a crewmember is generally seen as spending 33% of one's time in service to the ship.

I always tell my clients to let an adjustor determine whether or not a claim is valid. If you know of an incident or a crew member reports one, turn in the claim and let the insurance company decide. Otherwise, you may face suit under the Jones Act.

The Jones Act allows for crewmembers to sue the vessel for damages resulting from injuries they may have suffered aboard the vessel either because of negligence or unseaworthiness.

Should the claim be successful the crewmember would be entitled to future lost wages as well as damages for pain and suffering. Again, the crewmember must establish seaman status – but again, let the insurance adjuster make that call.

You P&I insurance can be one of your vessel's larger expenses but a claim that is not handled properly can cost you much more. Don't be afraid to let your agent know what is happening on board involving injuries. You're paying for your insurance to cover you when you need it in cases like these.

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## Start With the Exclusions



Chris Richmond

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When a boatyard or builder makes an investment in purchasing a



building most likely they will want to have the structure insured. But just because you purchase property coverage does not mean that your building is insured for all potential hazards. Two big exclusions on property insurance forms are flood and earth movement, both of which can pose a significant threat to your building.

First things first. (This is a long sentence, but an important one.) The insurance definition of a flood is a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or two or more properties from overflow of inland or tidal waters, rapid accumulation or runoff of surface waters from any source, mudflow, collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents or water exceeding anticipated cyclical levels that result in a flood as defined as above.

If you have a bank loan on your property, most likely the bank will require you to have this flood coverage for at least the amount that is on the loan. Coverage can be provided through The National Flood Insurance Program. Your premium will vary depending on what flood zone the property is in.

While people talk about earthquake coverage, in the insurance world it actually is referred to as "Earth Movement," with earthquake being just one of many categories. Besides earthquakes being excluded the Earth Movement list includes landslides, man-made mines, earth sinking and volcanic eruption. Depending on your location, coverage for this can be either bought back from your carrier or as a stand-alone coverage through a specialty broker.

Sage advice when looking at your insurance policies: Start with the exclusions. While it is important to know what you are

covered for, it is equally important to know what your policy does not cover. Don't think that just because you have an insurance policy that everything is covered. Have a conversation with your agent about your coverages to make sure you have what you need.

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## Claims: Always Call Your Agent



Chris Richmond

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Insurance can often be one of your business's larger expenses and one that you hope to rarely use. But please don't think that making a call to your agent to report a claim is going to adversely affect your policy's premium. Even if you think that the incident is minor and not worth reporting, a quick call your agent can save you from some major hassles down the road. Here are a few things to remember to keep a claim hassle-free.

First and foremost, make the call and report the claim to your agent. Alerting your agent does not reflect on you negatively. In fact, insurance adjustors appreciate this kind of reporting

because it gives them a baseline right at the time of the claim. Recording the essential facts in a timely fashion helps greatly in case something develops from the incident six months down the road. And, as a bonus you, get to touch base with your agent. This is always a good thing.

Second, should the claim involve damage to property, keep the damaged items secure so they will not suffer any further damage. Should you have to make emergency repairs, document the damage first so an adjustor can see it. You don't want the damage to get worse due to your inattention.

Third, save receipts. Once repairs start on your vessel or property, the bills will accumulate. Keep all associated receipts and send them to your agent who will then forward them to the adjustor. If you are doing repairs yourself, keep track of your own time.

Were there witnesses to the accident? Record their names and contact information. See if anyone took photos or video with their cell phone. Is there a security camera which could have captured the event? All of these sources of information can help you with your claim.

Finally, we are back to where we started. Report your claim. All too often I hear from a client that something happened six or eight weeks ago. The time to call your agent is right after the incident occurs so the adjustors can start their investigation and document all the facts – with your assistance. Strike while the iron is hot and get all the facts down while they are fresh in your mind, and in the mind of any witnesses. You will be happy you did.

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# Properly Insuring Your Employees in Case of Injury



Chris Richmond

By Chris Richmond

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Shipyards and marine related business are comprised of a wide variety of jobs and with this variety comes different types of injury coverage for the people who work there. Just because you believe your employees are properly covered does not mean they are. Take a moment to review these three areas of injury coverage.

## **Jones Act**

Officially called “The Merchant Marine Act of 1920,” this covers employees who are considered crew members on your vessels. Seamen employed on vessels traveling from U.S. port to U.S. port are entitled to coverage under the Jones Act, with the coverage provided under a vessel’s Protection and Indemnity policy. Crew are covered for injury and illness while ‘in service to the ship’ through the Maintenance and Cure portion of the coverage. Crew are also entitled to sue the ship or ship owner for

unseaworthy or negligent conditions which they believe caused their injury. To be considered a crew member, the employee must spend roughly a third of their time at work in service to the ship.

## **USL&H**

Employees who are working around docks, wharves or servicing a vessel will fall under the U.S. Longshore and Harbor Workers Act. These are your stevedores, repair crew, crane operators or similar employee who service, load or go on and off vessels but are not considered crew members. The two determining factors for USL&H are Situs and Status, both of which need to be met in order to be eligible for this coverage. To meet the Situs test, an injury must have occurred while working on or near navigable waters. The Status test is met by the work being done. Exclusions include office workers, aquaculture and boat builders who build recreational vessels less than 65 feet in length. Even if you have a boat yard where you feel you would never have a USL&H risk, it is very inexpensive to have this added to your state workers compensation policy on an 'if any' basis. This way you have at least some defense covered should a USL&H claim be filed against you.

## **State workers compensation**

Your office staff and other employees are covered under your state workers compensation act. Keep in mind that if you have employees who work in other states besides the one where your business is located then you need to list these as well. State workers compensation acts are no-fault laws which means they cover a claim as long as the employee's accident happened within the scope of their employment.

This is a very quick explanation of a very important insurance coverage. Take the time to review your operation and exposure with your agent to help you get the coverage you need.

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# Learning About Special Terms and Conditions on a Marine Insurance Policy



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By Chris Richmond

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Your commercial vessel's insurance policy actually consists of two separate policies: Your hull policy and your protection and indemnity policy. While the actual hull and P&I policies typically consist of accepted insurance forms, insurance underwriters always add additional terms and conditions. These are worth noting because they can significantly affect your policy.

Look at the final pages of your policy to see these special terms and conditions. While these vary by insurance company, here are a few to keep an eye out for:

- **Commercial vessel use warranty:** This stipulates that there is only coverage for what has been declared on the policy for the vessel's commercial usage. If you are operating as

a passenger vessel but decide to do some commercial fishing , be sure to notify your agent as your commercial use warranty needs to be amended.

- **Lay up warranty:** If you do not operate your vessel year-round, you can get a break on the premium by adding a lay up warranty. But if you operate your vessel during this period no coverage will apply should you need it. Lay up warranty differs slightly from company to company but basically your boat needs to be in a state of decommission and not used for any purpose during the lay up period.
- **Diving warranty:** Do your operations sometimes involve commercial diving? This is excluded from your policy. Typically all overboard activities are excluded but some can be bought back (such as swimming or snorkeling). Diving requires a special policy.
- **Gear and cargo exclusion:** Some insurance companies will exclude fishing gear that is not permanently installed on your vessel (and your catch also will be excluded from coverage). Other cargo you are transporting may also not be covered. Cargo can often be added back on but if you are storing the cargo on shore before getting underway you will need additional coverage for that.
- **Crew warranty:** If you have crew covered on your policy, there will be a number stating how many crew members the policy is providing coverage for. Should you have more crew on board and you have not reported the increase to your insurance company, then the policy may only respond proportionally to the number of crew your policy states by the number of crew you have on board at the time of the claim.

Just as commercial vessels vary, a commercial hull and P&I policy is not a one-size-fits-all. Have a conversation with your agent about your operations and vessel usage to ensure that your insurance will be there when you need it.

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# Why Should Your Insurance Agent Review Your Business Contracts?



By Chris Richmond

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Clients often ask us to review contracts they are preparing to sign. This is actually the most important part because after they sign a contract there is not much point in our reviewing it. One of the first things we tell them is that we are not lawyers and they should call their own attorney – but we are happy to review the insurance portions. Aside from limits of liability and mandatory coverages, nine times out of 10 there are three requirements which can significantly change their insurance coverage.

**Hold Harmless:** Commonly added to insurance clauses in contracts, this essentially promises to hold harmless from any and all claims the company you are doing business with. This provides a very broad exemption of liability and often can be reworded more favorably to include “in conjunction with your work under this contract.” You should also demand the contract is reciprocal to



both parties and that the other party holds you harmless, as well.

**Waiver of Subrogation:** Another common condition added to contracts, this essentially prevents your insurance company from collecting from the other party if they were negligent in the claim. If your insurance company pays for damage done to your vessel by the other party in the contract, a Waiver of Subrogation prevents the insurance company from suing the other party in the contract to recoup their payment. Again, if this is required, make sure the other party waives subrogation, as well.

**Additional Insured:** This clause allows the other party to share your liability limits if they are named in a claim related to the work being done in the contract. This means the liability limits are now cut in half, reducing your overall coverage limits – and that the other party in the contract is now getting liability coverage for free. We are seeing this requested more often these days and often an underwriter will want to know the relationship between the two parties, to explain the need to be added as additional insured.

Contracts are part of doing business and can be as simple or as complicated as the parties involved require. When it comes to the insurance language in your contracts, be sure to reach out to your agent for a thorough review and advice on what you are about to sign.

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# Everyone Who Uses a Computer Needs Cyber Coverage



By Chris Richmond

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A recent policy review with a client found an interesting update. The client, who distributes seafood, had reduced gross revenues. This was not surprising, given the downturn in the economy. What was surprising was a sharp increase in retail sales. Further discussion revealed that they had a growing online store with direct sales to consumers. They were in need of a cyber policy.

Whether or not you sell goods online, you really should consider a cyber policy. On daily basis, headlines in publications for every industry outline hacks, phishing schemes and other cyber crimes.

There are two important types of cyber liability to know about: First party and third party.

A first party cyber liability occurs when your own data is stolen. This can include your own employees' personal information or information about your customers. A cyber liability policy will provide credit monitoring services to assist the affected individuals which could help minimize the

risk of identity theft. Included in the category of first party cyber liability are:

- Funds Transfer Fraud. Funds Transfer Fraud is an intentional, unauthorized instruction transmitted via email to a financial institution to transfer funds. If your computer system is compromised, a hacker can have access to your banking information and initiate fraudulent electronic wire transfers.
- Lost Business Income. Lost business income due to cyber theft, (a hack or data breach), is not covered unless cyber coverage is in place. Your regular business insurance policy covers you for things like fire, theft and wind, but not anything cyber-related.

Third party liability coverage can provide protection for damage caused by your business to third parties due to a hack. This could be confidential client information that you store in your system. Coverage included in this category are:

- Breach of Privacy: A client's personally identifiable information has been accessed by an unauthorized party.
  - Misuse of Personal Data: Personal data is stolen or misused and they suffer financial damages.
  - Transmission of Malicious Content: Failure to stop the transmission of virus, malware or other malicious content.
- Many liability policies come with limited cyber coverage but also they leave gaps in coverage. A stand alone cyber policy can cover these gaps and provide the insurance that a business needs today.