

**Ship owners' liability towards crew members and their insurance  
cover for such claims**



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# 1 INTRODUCTION

## 1.1 Topic

The aim of the thesis is to look into the safety net for Norwegian seafarers. First, I will look at laws and regulations in Norway covering the minimum obligations the shipowner has for its crew. I will then tie this to P&I insurance and look into what coverage the clubs offer in relation to crew coverage. To narrow the subject down, I will only look into the condition of Norwegian seafarers and when looking at P&I coverage, I will mainly focus on the statutes and rules of Skuld P&I club, although the Statutes and Rules of the P&I clubs are quite similar. My main field of interest is the insurance coverage of the crew as a total picture.

I will try to cover the rules and regulations the shipowner or employer has to oblige with. This being rules and regulations put down in Norwegian legislation and the different collective wages agreements regulating the working conditions for Norwegian seafarers that are agreed upon between the sailors (Union) and Shipping company/Manning company (Shipowner association).

Further, I will look into the P&I coverage that the shipowner is buying to protect himself for liability that can arise in respect of crew. When discussing the crew coverage there are four specific situations that I will look closer into and see how the obligations on the shipowner will turn out. These are:

- The time span that the shipowner is obliged to provide coverage, or is responsible for the crew.
- Coverage of personnel in case of injury, illness and death.
- Coverage of personal property.
- Coverage when a sailor needs to be sent home due to illness or death within the family.

## 1.2 Method and sources

The second chapter is an introduction of marine insurance, with some history and the development of the field, where I will try to explain how the marine insurance related to the topic of this thesis got to where it is today. I feel this is of interest to get an overall picture of the subject presented here. Further, I will look at the International group of P&I Clubs to give a picture of how the global P&I market came to be what it is today, and how this is now working. The main source used for the historical part is the Gard handbook on P&I insurance, in addition to different web pages. The pages most frequently used are the ones of Gard, Skuld and the International Club. When writing about the International Group, I have used the Pooling Agreement and the International Group Agreement together with the material already stated.

The third chapter is meant as a description of the legal framework that protects the seafarers. First, I will focus on the legal text with regulations, mainly the Seaman's act. The regulations I have used will be explained where needed. Further, I will give a presentation of the collective wages agreements that are in use for Norwegian seafarers on Norwegian vessels. Norway has two shipping registers which contain some differences for the seafarers. These differences will be discussed as a closing of chapter three.

I will primarily focus on the Law as it is written, with regulations where it is needed. For explanation reasons I will also look into the latest commentaries of the Acts I have used. As I will not go too deep into the subject I have for most of the questions found answers in the Law Commentaries 2008. For this reason and the fact that the Seaman's act is from 1975 and the maritime world has changed quite considerably for the last 35 years, I have not looked much into the preparatory work of the Act. There have been some Amendments to the Seaman's act, the most important one in 1985, where rules on direct employment by the shipowner were implemented, but as for the sections of the Seaman's Act used in this thesis the sections have only small differences to the ones written in 1975. As this section is only an overview of the responsibility the seafarer has, and the comments found in the Law Commentaries 2008 were satisfactory to provide a picture of the shipowner's responsibility towards the seafarer, case law has for the most parts been left out of the thesis.

The collective wages agreements used are the latest available agreements. I have primarily used the Nordic NIS Agreement for Officers on the Bridge, and supplemented this with the “Safety Insurance” that is mandatory through this agreement. I have also looked at other Collective wages agreements for NOR vessels to see if there are any differences between the agreements.

In the last part about NIS and NOR, I have used the NIS Act together with the Maritime Code, and also the web pages of the Shipping registers. The reason for including a chapter about NIS and NOR is to show that there are differences in the shipping registers. In the NIS registers there are also made some openings to look away from the Seaman's act in some regards. Some comments in this chapter are from the book *Sjømannsrett*<sup>1</sup>.

In chapter four it is the Rules and regulations of Skuld that are laid down as a basis together with legislation providing answers for the questions raised. For explanations, there will be supplements from the Gard handbook on P&I Insurance together with Gard Guidance to Statutes and Rules. Where the literature does not give a clear enough picture of the rules, I have obtained some comments from people working at Skuld P&I Club in Oslo in order to get explanations on how the matters are dealt with in real life. In chapter four, I will also look into the Norwegian National Insurance Act and the mandatory “Safety Insurance”, as this will cover for some of the liability that the shipowners have towards the seafarers.

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<sup>1</sup> Dalheim, Urdal Sand and Østre; 2008

## 2 P&I INSURANCE, HISTORY AND PRESENT

### 2.1 Development of Marine Insurance

Marine insurance can be traced back in time as far back as the Phoenicians<sup>2</sup>, a civilization living in the Mediterranean from around 1550-300 B.C. Further development followed through the Roman time, but it was not until the 13<sup>th</sup> century that traces of marine insurance as we know it today were found. This was found in the merchant cities of Lombardy, especially Florence, around year 1250. The oldest existing marine insurance contract is dated 23<sup>rd</sup> of October, it was written by Lombard merchants, providing insurance for the vessel Santa Clara on a voyage from Genoa to Majorca. The concept of transferring a maritime risk to an independent third party kept developing both in England, Holland and Belgium due to migration of the Lombard's. Similar development came about in the Hanseatic cities of northern Germany. The Hanseatic influence expanded north, and the first Scandinavian marine insurance company was established in Denmark in 1726<sup>3</sup>, while the first marine insurance company in Norway was established in 1809<sup>4</sup>.

#### 2.1.1 Development of P&I Insurance

The first marine insurance companies and individual underwriters in the London market were only insuring what today is known as Hull and Machinery.

During the first part of the 19<sup>th</sup> century the shipowners saw an increasing need for third party liability insurance. This came in particular from the English case *de Vaux vs Salvador* in 1936, where it was established that damage caused to another vessel in a collision was not recoverable under the standard insurance terms used at the present time in the London market. Standard terms were extended to cover this liability, but only for  $\frac{3}{4}$  of the collision

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<sup>2</sup> <http://en.wikipedia.org/wiki/Phoenicia>

<sup>3</sup> Det Kongelige Octrojerede Søassurance Compagnie

<sup>4</sup> Oxefjordens Inbyrdes Assuranceselskab

liability. The shipowners were left with the remaining quarter of liability, presumably to make the owners more aware and take precautions to avoid collisions. The Lord Campbell's Act of 1846<sup>5</sup>, which gave a new right for coverage to dependants of persons who had lost their lives as a result of a wrongful act of others, also provided a new need for third party coverage. During this time, transport of persons increased due to emigration, especially from Europe to the US and Australia, but also from Africa to the US. This could potentially lead to huge financial liabilities for the shipowners, and the shipowners could face liabilities that were greater than the value of the ship itself.

These increasing third party liabilities lead to considerable concern amongst the shipowners. In 1855, the Shipowners' Mutual Protection Society (now the Britannia Steam Ship Insurance Association Limited) was founded as a response to this increasing liability that the shipowners were facing. The original cover of the society only covered liability in respect of death and personal injury claims, claims for the one quarter collision liability not covered by Hull insurance and for excess collision liability, i.e. for the liability for collision claims in excess of the sums insured in the Hull policy.

During the first years, these clubs were only Protection societies. It was not until 1874 that the Indemnity clause was added to the Protection society. This came as a result of the sinking of the vessel *Westenhope*, which was carrying cargo bound for Cape Town, but on the way she diverted to Port Elisabeth to pick up additional cargo. On the way, the vessel was lost and the court held that the shipowner could not rely on the exclusion clause in the contract of carriage on the cargo liability because of the deviation. Therefore, the shipowner was held liable for the cargo. This was the reason why the Protection societies amended their rules and included an indemnity clause, thus the P&I term and the first P&I clubs were born. This was further developed by the Harper Act in the US in 1893, which restricted the shipowners right to rely on exclusion clauses in their Bills of Lading, and require them to exercise due diligence to make their ship seaworthy. These rules were widely adopted throughout the world in 1924 as the Hague Rules came into play and was adopted. At this time, P&I clubs also started to offer defense cover for their members.

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<sup>5</sup> Fatal Accident Act



### 2.1.2 P&I Insurance in Norway

In Norway, a similar development to the one in England was taking place, especially after the Harper Act in the US. This as a result of numbers of Norwegian ships trading regularly to the United States. The first Norwegian P&I club was established in Christiania (Oslo) in 1897. This was the Skuld P&I club, a separate association with its roots in the Hull club Skibsassuranceforeningen Christiania formed in 1867. In 1907 the second Norwegian P&I club, Gard, was established in Arendal by the managing director of the Arendal Hull club. Both the Norwegian clubs were set up with the English rules as models but with a different organizational and management structure.

The Norwegian P&I clubs started out with their own segment of ships. Gard grew steadily between the world wars, and decided after the Second World War to also include non Norwegian ships in its fleet. The first non Norwegian ship was entered in 1958<sup>6</sup>, and continued to bring in foreign registered vessels after this. At the same time, Skuld also had an increasing tonnage among its members, but they opened for non Scandinavian members already in 1924. Both associations started out carrying all their insurance and reinsurance themselves. But as the potential losses grew, especially in concern of environmental disasters, a need for more and easier reinsurance grew.

Both Gard and Skuld became members of what came to be the International group (see next subchapter), a group of P&I insurance associations that today consists of 13 P&I clubs which provide liability insurance for over 90 per cent of the worlds shipowners. Skuld became a member in 1981, and Gard was a member from 1982.

The situation today is that both the Norwegian P&I clubs have a strong financial structure and are still expanding.

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<sup>6</sup> <http://www.gard.no/pages/GardNO/AboutUs/GardPandIClub?MainMenuID=3&SubMenuID=9>

## 2.2 International Group, pooling agreement

Today, all the major P&I clubs are members of the International Group and work together to provide insurance for the members.

The cooperation was started for several different reasons; the most important came to be the Pooling Agreement, where the members of the International Group share the costs of a claim when it passes a certain limit. The International Group also purchases the reinsurance together, as will be focused on later.

The cooperation between the P&I clubs started in the late 19<sup>th</sup> century. At that time, the International Group was called the London Group of P&I clubs. At first it consisted of six London clubs, and the first claim sharing agreement was entered into in 1899. The claim sharing agreement was the same then as today, with a framework that guides the sharing of a claim in different layers. In 1951, the organization also started buying market reinsurance together. This is done to get the best possible prices on market reinsurance. Reinsurance is to buy protection for amounts over certain limits with other insurance associations around the world, in case of exceptionally large claims.

After the first pooling agreement was created, a need for restrictions was found and as well as a certain limit of discipline amongst the parties of the Pooling Agreement. This was laid down in the International Group Agreement (IGA). The main goal here was to restrict competition between the clubs, and to ensure that none of the Associations within the Group offers unreasonable low rates to attract clients.

### 2.2.1 The international Group Agreement 1999<sup>7</sup>

The main focus of the IGA is to ensure the discipline needed to operate the pooling agreement. The first IGA was formed in October 1929, when the members of the London group started insuring vessels flying US flags. The main reason for this was to avoid that unreasonably low rates were given to attract new vessels, at the expense of the vessels each P&I club already had. It was decided that if a club within the Group made an offer to insure a US vessel, no other club should offer a lower rate. This agreement was in force until

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<sup>7</sup> [http://www.igpandi.org/downloadables/Intl\\_Grp\\_Agrmnt\\_1999.pdf](http://www.igpandi.org/downloadables/Intl_Grp_Agrmnt_1999.pdf)

WWII, and in 1953 this agreement was extended to apply for all businesses within the Group. This agreement was eventually called The Inter-club Gentleman's Agreement. The agreement includes regulations on vessels being moved from one club to another within the Group. The Group has special rules when it comes to signing vessels that comes from other Associations within the International Group. There are also quite strong sanctions that will reduce the reinsurance cover for clubs breaking the Gentleman's Agreement.

### 2.2.2 International Group of P&I Association, 2008 Pooling Agreement

The pooling agreement is the legal framework for members of the Club in respect of claims sharing within the Club and also for purchasing of market reinsurance for all the members. The pooling agreement is not a named risk insurance. The determinants are whether the claims of interest have arisen in respect of the insured owner's interest in the entered ship and in connection with the operation of the vessel. The risks cannot be excluded unless they are in breach of the exclusions found in the appendixes in the Pooling agreement<sup>8</sup>.

These exclusions are generally what are found in the Statutes and Rules of each and every P&I club, as will be mentioned later in the thesis. The various risks that are covered by the pooling agreement are of such nature that they are considered to be suited for claim sharing on a mutual basis. The claim sharing structure is common for all P&I Clubs in the group, and a Chart of the reinsurance structure is shown in Appendix II.

Of all single claims the individual P&I club must provide cover the first costs of a casualty or damage itself. The limit for the first individual club retention in 2009 is up to USD 7 million (club Retention). Then the following USD 23 million is covered by the pool<sup>9</sup> (Pool Layer). To get to the first general Excess Layer at USD 50 million, the remaining USD 20 million is reinsured with Hydra<sup>10</sup>.

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<sup>8</sup> Appendix IV and V in the 2008 Pooling Agreement

<sup>9</sup> The International Group

<sup>10</sup> Hydra Insurance Co Ltd

Then there are three General Excess layers; the first two for USD 500 million, and the last one for USD 1000 million. In addition to this, there is a collective overspill protection.

On the first general excess layer of USD 500 million the Hydra has reinsured 25%, while the next two layers are reinsured in the open market.

The market reinsurance and the pool coverage then come up to a total coverage of USD 2050 million. The reinsurance of USD 2000 as the Groups reinsurance is currently the biggest single Marine insurance contract<sup>11</sup>, and gives the Group an enormous bargaining power and opportunity to get the members the best rates for reinsurance as they are negotiating for over 90 per cent of the total fleet in the world.

In excess of the “third general excess layer”, the International Group can call for an overspill call from all the P&I clubs in the Pooling agreement. The proportion that each and every club has to pay is calculated at the basis of the entered tonnage in each P&I club. The individual P&I clubs can either pay the overspill call from reserves or demand for an overspill call from its own members again. In the Skuld rules, this is found in section 4.4, while it in the Gard rules, it is found in Rule 18. However, the maximum overspill call from each entered ship “is now limited for any entered Ship to 2,5 per cent of the limit of liability in respect of property claims for that ship pursuant to the provisions of the international Convention on Liability for Maritime Claims 1976”<sup>12</sup>. This can come as an extra premium that the shipowner has to pay, on top of the regular annual premium.

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<sup>11</sup> <http://www.igpandi.org/The+Group+Agreements/Pool+reinsurance+programme>

<sup>12</sup> Gard Guidance to the Statutes and Rules. Page:129

### **3 THE SHIPOWNERS RESPONSIBILITY FOR THE SEAFARER**

#### **3.1 Introduction**

In normal terms the seafarers, (both officers and crew), are employed by a shipowner, or the seafarer is employed by a manning company. There can be different arrangements; either direct employment with the shipowning company, the shipowning company can be the owner of a manning company, or the shipowning company is renting work power from an independent manning company.

It is not unusual that shipowners have set aside some of the management for independent companies. This can be manning, technical management or the commercial running of the ship. For manning reasons there can be totally independent manning agencies that are responsible for finding and employing crew for the shipowner. In some shipowning companies, the company is divided into separate firms in legal terms, where the manning company is renting out work power to the shipowner. According to the Seaman's Act chapter II about Hire agreement, Section 3, first paragraph, the seafarer shall be employed in the service of the shipping company. But according to ND 2004 s.404; if the management company employs the seafarer in their own name, then the management company is the Shipowner and employer in respect of the Seaman's Act<sup>13</sup>.

Personal experience seems to indicate that direct employment is the most common way of employment on Norwegian vessels, especially regarding officers and work leaders (Bosum) on deck.

In this thesis, I will only focus on Norwegian seafarers employed on Norwegian collective wages agreements where Norwegian Law is applicable. But the laws and minimum

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<sup>13</sup>

requirements are quite similar to all shipping nations that have ratified the ILO<sup>14</sup> conventions for the welfare and safe working conditions for seafarers.

Seamen work and live under circumstances that are quite different from what we see on shore. As a consequence of this, Norway has for a considerable period of time had special legislation for the seafarers' legal position and service conditions. The legal status of the seafarers was included in the Norwegian legislation as early as in Christian V's Norwegian Law of 1687. In 1923, the rules and legislation concerning the seafarers were taken out of the common maritime legislation and put into an own Seaman's Act (February 16<sup>th</sup>, 1923). Amendments were done in 1931, 1935, 1939 and 1949 before a whole new Seaman's Act came July 17<sup>th</sup> 1953. This was again amended several times, with the latest amendment in 1971, before we got the Seaman's Act of 1975 (30<sup>th</sup> of May 1975), which with amendments is the current legislation for seafarers.<sup>15</sup>

Ever since the 1923 legislation there has been tight cooperation between the Nordic countries. The laws are nearly similar in both Denmark, Sweden, Finland and Norway, only with minor wording differences. For the rest of this thesis, I will only concentrate on the Norwegian Seaman's Act of 1975, with the latest amendments from 2008.

### 3.2 The Seaman's Act

The Norwegian Seaman's Act<sup>16</sup> is divided into 5 chapters:

1. The scope of the act.
2. The employment agreement.
3. Ship duties.
4. Disputes.

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<sup>14</sup> International Labour Organization, The Maritime Labour Convention 2006

<sup>15</sup> Own translation from Forarbeid til Lovene 1975, Innstilling om ny sjømannslov page 6.

<sup>16</sup> LOV 1975-05-30 nr 18: Sjømannslov

## 5. Miscellaneous provisions.

I will try to look into the most important sections for this thesis, and supplement with commentaries where needed.

According to Ch. 1, the Scope of the Act, 1<sup>st</sup> paragraph, the law is applicable to everybody who is employed on a Norwegian vessel, but not for people only working onboard when the vessel is in port. A Norwegian ship is defined both in the NIS Act section 1 and the Maritime Code chapter 1, section 1. Further, it is stated how the Act is applicable for employees who are not Norwegian residents or Norwegian citizens, but this falls outside the scope of this thesis.

The scope of the Act, according to section two can also be extended to apply either in whole or in part for other seamen than Norwegians, Norwegian residents, or people from within the EEA agreement. The Act can also, either in whole or in parts be made applicable for other installations at sea than a ship, or for foreign ships chartered by a Norwegian shipping company, but this is only when prescribed in a Government regulation.

In chapter 2, Employment agreement, regulations regarding the employment are found. According to section 3, Agreement of Employment, the seaman is employed by the shipping company in the shipping company's service. The employment agreement shall be in writing. What is repeated in this chapter is that this is the minimum requirements, and the rules are applicable if nothing else is stated in the collective wages agreement<sup>17</sup>.

The first section which is interesting for the thesis is section 11, The Seafarers right to Compassionate Leave. In paragraph 1, it is stated that a seafarer who is notified that his parents, spouse, or children has passed away or is seriously ill can demand leave.

The same applies if other circumstances make it a matter of compassion for him to be given leave according to paragraph 2, but if the ship will become unseaworthy because of the seafarer leaving on grounds of the 2<sup>nd</sup> paragraph, the leave is only granted if a qualified replacement can be obtained. If the seafarer leaves because of reasons mentioned in the 2<sup>nd</sup>

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<sup>17</sup> See chapter 3.2.

paragraph he is obliged to compensate for the costs of getting a replacement. But this can fall away totally or partly, as the remaining service time that the seafarer has left on his current contract and the circumstances for the leave as a whole should be considered.

In subchapter 3 about Doctors Examination, Illness and Death, in the second chapter concerning the Hiring Agreement, section 27 Care of Sick or Injured, it is stated that if the seafarer has become ill or has become injured, the master shall make sure that he is taken good care of. Either onboard the vessel or at shore at the expense of the shipping company. This includes given proper care, medical help, medication and nursing. Further, it is stated that if a master leaves an injured sailor abroad in the care of a Foreign Service station, the master shall furnish security for such expenses that the shipping company is responsible for according to this Act. This being the expected costs for providing care for the seafarer as long as the shipping company is responsible for his medical treatment.

In section 28 considering Right to Wages and Care etc. During Illness or Injury, the direct obligations for the shipping company are found. According to section 28, 1<sup>st</sup> paragraph, an ill or injured seafarer is entitled to nursing care at the expense of the shipping company as long as he or she is in service onboard the vessel. If the seafarer is ill or injured as he or she is leaving the vessel, he or she is entitled to get the same care for 16 weeks after leaving the vessel. If the seafarer in Norway or any other place of residence is a member of any social benefit program or National Insurance which will cover for his medical care, the shipping companies' obligations end when the social benefit program takes over, at the latest two weeks after the seafarer has arrived in the country of residence.

If the seafarer who is a resident of Norway is suffering from tuberculosis, mental illness or sexual transmitted disease, the Norwegian state covers the expenses that the shipping company does not get covered by the National health benefit program.

These conditions shall not limit the rights that the seafarer at any given time has according to the National insurance legislation. In case of nursing in Norway, the shipping companies



obligation to provide care pursuant to this falls away when care is given after National insurance<sup>18</sup> .

Section 30, Death and Funeral and 31 Funeral Expenses etc. covers what happens if a seafarer dies while in the service of the ship, or while he or she is under medical care provided by the shipping company, or is traveling at the expense of the company. It is stated that the master shall give notification to the family of the deceased, and make arrangements for his or her funeral or for the repatriation of the coffin. If cremation is wanted by the family or demanded by the local government, the master shall make these arrangements, and afterwards arrange for the home sending of the ashes.

According to section 31 Funeral Expenses etc. the expenses for the above shall be carried by the shipowning company if the seafarer dies while onboard the vessel, while he or she has the right to get nursing care and while he or she is traveling at the expense of the company. The Norwegian state will bear the expenses if the seafarer is under care of the state or is traveling for the expense of the state.

The last section that is directly connected to the questions of the thesis is section 47 Compensation for Loss of Effects. The first paragraph states that if some of the private property of the seafarer has been lost or damaged due to loss of the ship, piracy, fire, other shipwreck or other incidents that have come over the ship, the shipping company shall pay compensation in accordance with Government regulation<sup>19</sup>. No deduction shall be made for necessary clothing according to §18 second paragraph. The second paragraph states that the shipping company shall cover property meant for personal use onboard, or property that the vessel is storing for him, when lost or damaged in other ways than mentioned in the first paragraph. The compensation may be reduced due to the seafarer's own actions and the

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<sup>18</sup> LOV 28 Feb 1997 nr 19: Lov om Folketrygd

<sup>19</sup> [1986.02.03 nr 0241](#): (NHD) Forskrift om erstatning for tapte eiendeler.

circumstances otherwise. Here the Government can issue regulations on the terms and amount of the compensation<sup>20</sup>.

### 3.2.1 Other sources regarding the Seaman's Act

As seen in the Act, the shipping company or the shipowner has several direct obligations towards the seafarer. This is commented on more than in the law text in the Law Commentaries<sup>21</sup>, by Edvin A. Skoghøy.

In section 11, it is stated that the seafarer can demand leave in certain circumstances when close relatives die or get seriously ill. The term "close relative" includes registered gay partner, and adoptive child is equal to own child. However, live in partner falls out<sup>22</sup>. In other circumstances he or she can ask for leave. In the case of "close relative", there is no question, but in other matters it might look like it is up to the shipping company to decide whether or not to grant the leave. Whether or not the seafarer has to compensate the shipowning company for the costs incurred with sending and paying a qualified reliever is decided by the shipping company. It is also a requirement that a qualified reliever can be obtained, but once again it might seem like it is just a question of what effort the shipowning company puts into the matter that will decide.

In case of illness and/or death the matter seem less complicated. Here, the shipowner has a direct liability towards the seafarer no matter what, at least for a certain period of time or until some kind of National social benefit program takes over the responsibility for the seafarer. According to the legislation, it might be a problem to decide when the obligations of the shipowner come into play. There are also some mandatory insurance for personnel on Norwegian conditions that comes into play here, both these matters will be discussed more in the next subchapter about the collective wages agreements.

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<sup>20</sup>        Ibid

<sup>21</sup>        Norsk Lovkommentar 2008

<sup>22</sup>        Norsk Lovkommentar 2008 Page: 1062 (141) (142)

When it comes to compensation for lost or damaged property as is mentioned in section 47 of the Act the rules are clear; the shipowner is responsible for lost or damaged personal property, unless the damage or loss is caused by gross negligence or intent by the seafarer. The collective wages agreements will also in this concern be more specific than the legislation.

### 3.3 Collective wages agreement

#### 3.3.1 Introduction

The collective wage agreements regulate the working conditions agreed between the seafarers and the ship owners. These are different depending if it is for Officers on the bridge<sup>23</sup>, officers in the engine<sup>24</sup> or for the rest of the crew<sup>25</sup>, and are negotiated with the ship owning association<sup>26</sup>. The difference is caused by the fact that there are different labor organizations for the different positions onboard. The collective wage agreements are negotiated and agreed upon every two years, but are also discussed and minor changes made usually only with a regulation of the wages are done on a yearly basis. The last main negotiation for collective wage agreement in Norway was held at the end of 2008. The collective wage agreements used in this thesis is valid from late 2008 until late 2010, but there will be a small review of them in the fall of 2009.

There are different agreements for different vessels and different trades. There is one agreement for NIS registered vessels, Nordic NIS agreement. For NOR registered vessels the collective wages agreements are divided into four separate agreements, according to the trade of the vessel. There are separate agreements for offshore service vessels, shuttle tankers, ferries and a fourth agreement for other vessels<sup>27</sup>. These categories have different collective wages agreements depending which category they are for, Officers on bridge, engine, deck etc.

The Norwegian maritime directorate has a standard employment agreement<sup>28</sup> which Norwegian ship owning companies are using for their employers. On top of the

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<sup>23</sup> Norsk Sjøoffisersforbund

<sup>24</sup> Det Norske Maskinistforbund

<sup>25</sup> Norsk Sjømannsforbund

<sup>26</sup> Norges Rederiforbund

<sup>27</sup> Sjømannsrett Page: 264

<sup>28</sup> See appendix 1

employment agreement it is stated: “According to Seamen’s act of 30 May 1975 §3 with regulations”, from this we see that Norwegian seafarers are employed according to the Seaman’s Act with regulations. Further down on the same agreement in box 10, “*Wages, overtime pay and other conditions according to collective agreement between*”, we find which collective wage agreement that the seafarer is employed under. Minimum requirements for the employment agreement are also found in regulations to the Seaman’s act<sup>29</sup>.

The collective wage agreement is defined in the Norwegian “Labour Disputes Act<sup>30</sup>”, section 3. I will mainly focus on the collective agreement between Norges Rederiforbund and Norsk Sjøoffisersforbund concerning employees who are resident of a Nordic country or Norwegian citizens who is serving on vessels registered in NIS (Nordic NIS-agreement). For the general conditions that I will look into in this thesis the collective agreement between the respective labor organizations are quite similar. Where there are differences between the agreements it will be commented.

### 3.3.2 The agreement

The collective agreement (Nordic NIS-agreement) is meant for Masters and officers on the bridge who are a resident of a Nordic country or Norwegian citizen serving on a NIS registered vessel. It is also for Electricians who are members of Norsk Sjøoffisersforbund. It is divided into 19 sections concerning everything from the employment, expenses when employment commences, wages, holiday/time off, uniform, linens and so on. I will restrict my comments to those sections which are of particular interest for the questions discussed in this thesis.

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<sup>29</sup> [1986.02.03 nr 0230](#): (NHD) Forskrift om ansettelsesavtale og hyreoppgjørsskjema

<sup>30</sup> LOV 5 Mai 1927 nr 1: Lov Om Arbeidstvister

The different collective wages agreements all have a starting section which is stating the parties it is intended for. For NOR registered vessels, the first part of the collective wages agreement is “Hovedavtalen<sup>31</sup>” between NHO<sup>32</sup> and LO<sup>33</sup>.

In section two, concerning expenses at employment and compensation for the stay, it is stated that the seafarer shall be free of expenses when being employed or leaving the vessel. He shall also be free of expenses when acquiring or renewing passport and visa, and when traveling to and from the vessel.

Section 4.9 has more information about the compassionate leave that is found in the Seaman’s Act section 11. It is stated that the seafarer can be given up to 14 days compassionate leave every year in situations mentioned in the Seaman’s Act section 11, first paragraph.

Section 10 regulates traveling to and from the vessel. Expenses when traveling to the vessel to sign on a new contract, and the trip back home again after completion of the contract is covered by the company. The same applies if the seafarer has to be sent home earlier because of illness or he has been injured.

Section 12, Insurances, Additional-pension, Effect-compensation and Loss of ship payment; this section covers insurances, and compensation for personal belongings that are of interest for the questions raised.

Section 12.1 states that everybody that is employed on this collective agreement is covered by a “Safety Insurance<sup>34</sup>”, this “Safety Insurance” cover amongst other things regular accident insurance, insurance against work related diseases and loss of medical certificate.

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<sup>31</sup> [http://www.lo.no/Documents/Lonn\\_tariff/Hovedavt\\_lo-nho\\_web.pdf](http://www.lo.no/Documents/Lonn_tariff/Hovedavt_lo-nho_web.pdf)

<sup>32</sup> Landsorganisasjonen i Norge: <http://www.lo.no/>

<sup>33</sup> Næringslivets Hovedorganisasjon: <http://www.nho.no/>

<sup>34</sup> Yrkesskadeforsikring og trygghetsforsikring, see 3.3.3

In cases concerning personal property or belongings as found in the Seaman's act section 47, the regulations are found in 12.2; In case of shipwreck, fire or other accident with the vessel where the seafarer's belongings are either lost or damaged, the ship owning company shall pay compensation according to the amount given in the Seaman's Act, at the present time 2/3 G<sup>35</sup>. In the next paragraph it is stated that the same applies if something happens to the seafarer's personal belongings when traveling to or from the vessel. The coverage will fall away if the loss of belongings is a consequence of the seafarer's intent or gross negligence.

The loss/ damage have to be reported as soon as the seafarer becomes aware of this to the right instances to be able to get compensation.

The last thing to bring up is section 12.3, insurance in case of death. The seafarer is covered by a group life insurance that covers illness or natural death. The insurance sum is minimum 8 G.

### 3.3.3 "Safety insurance" under the Agreement

The "Safety Insurance" under the collective wages agreement is a mandatory insurance for everybody working as a seafarer under Norwegian collective wages agreements. The insurance has two different sections, one for work related injuries, and a safety insurance part. The work related part is for incidents happening in the service of the vessel, and the safety part is both in the service of the vessel and for the whole period off duty. This includes also the whole period when the seafarer is at home on vacation.

The insurance covers work related injuries, work related illness, other accidents (in the seafarers time off/vacation), and loss of medical certificate. The insurance is valid as long as the seafarer is employed, and there are different compensations for different accidents, and also a small difference if the seafarer is on the vessel or at home on leave. The different

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<sup>35</sup> Folketrygdens grunnbeløp

maximum compensation limits are stated in the policy<sup>36</sup>. The rest of the terms and practical use of the “Safety Insurance” will be looked at as the rules come into play in chapter 4.

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<sup>36</sup> See appendix III



### 3.4 Differences in NIS and NOR

Seafarers working under Norwegian conditions and regulation are mainly employed on either Norwegian owned or registered vessels. There are two different shipping registers in Norway, NIS<sup>37</sup> and NOR<sup>38</sup>. For the purpose of this assignment I will look into the biggest differences between the shipping registers.

The NOR register is a mandatory registration for Norwegian vessels with a length over 15 meters, provided that they are not registered in the registry of another country. The rules upon registration in the NOR register is found in the Norwegian Maritime code, chapter 2. There are certain rules about ownership and management that has to be fulfilled to register vessels in the NOR register. These are Norwegian ownership and that the vessel is being run from Norway. After the EEA agreement, residents of other EU countries shall have the same conditions as Norwegians<sup>39</sup>.

The NIS register is an open register for all shipowners. It was created in 1987, and the rules are found in the NIS act<sup>40</sup>. NIS registered vessels fly the Norwegian flag and are subject to Norwegian legislation with some exemptions and special rules. When it comes to ownership and operation of the vessels everybody can register in NIS. The condition for registering in NIS is that there has to be a “genuine link” between the shipowner and Norway. According to chapter one in the NIS act, General Conditions, section 1 Conditions for registration: The ownership structure has to satisfy the national condition found in section one of the Maritime code of 1994. If the ownership structure does not satisfy the national conditions, registration can be done if the ship owning company is a limited partnership with its head office in Norway or a ship owning partnership with a managing owner<sup>41</sup> who satisfy the conditions for managing owner<sup>42</sup> in the Maritime code section 5. If

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<sup>37</sup> Norsk Internasjonalt Skipsregister.

<sup>38</sup> Norsk Ordinært Skipsregister.

<sup>39</sup> <http://www.nis-nor.no/NOR.aspx>

<sup>40</sup> LOV 1987-06-12 nr 48: Lov om Norsk Internasjonalt Skipsregister

<sup>41</sup> Reder.

none of these conditions are met, according to the last paragraph of section one, vessels can be registered in NIS if the shipowner has a representative in Norway that can accept lawsuits on behalf of the shipowner.

The biggest difference in the two shipping registers is the rules found in the second chapter; “Special provisions relating to ships in NIS”. In section 6: “wages and work conditions”, second paragraph it is stated that collective wage agreement can be agreed either with Norwegian or foreign Unions. This meaning that on NOR ships the employees has to be hired on Norwegian terms and conditions, but on NIS registered ships the shipowners are allowed to employ foreign citizens on collective wages agreements from their respective countries.

In the same chapter, section 8 of the Seaman’s act, Mustering etc., some of the mandatory regulations in the Seaman’s act can be deviated from if otherwise agreed in collective wages agreements. Mandatory sections in the Seaman’s Act that can be deviated from that is of interest for the questions raised is, Section 11 concerning Compassionate Leave, and section 47 concerning Loss or Damage to Personal Property.

As mentioned in the last subchapter there are different collective wages agreements for NIS and NOR registered vessels. The “Safety Insurance” also have a different name, but according to Harald Thommasen in Rederienes Landsforening the conditions for the safety insurance are the same for both NIS and NOR vessels. The conditions agreed upon in the Collective Wages Agreements are also similar when it comes to the rights of the seafarer and the obligations that the shipowners has. The sections in the Seaman’s Act, which according to NIS Act can be deviated from in collective wages agreements, are still kept the same in the collective wages agreements for NOR registered vessels as in the Nordic NIS Agreement.

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<sup>42</sup> Reder

## 4 COVERAGE OF NORWEGIAN SEAFARERS UNDER P&I INSURANCE

### 4.1 General coverage of crew in P&I insurance

P&I insurance is the shipowner's third party insurance. The conditions that will be focused most on are the Statutes and Rules of Skuld<sup>43</sup>, in some of the cases the Gard Rules<sup>44</sup> will also be looked upon, but only to see if there are any differences between the Norwegian Clubs in regards of crew.

As already mentioned the P&I clubs are mutual associations, where the shipowners are the insured members and also the owners. Each club has its own set of statutes and rules, and as stated in the Skuld statutes 1.1.3, "The purpose of the Association is mutual insurance against liability and losses incurred by members in direct connection with the operation of the entered vessel, including any business related to such insurance, hereunder defense insurance, insurance of charterers and insurance of mobile offshore units and similar mobile floating structures".

When looking at the risks that are covered by Skuld P&I, we find this in the rules under 2.2. In 2.2.1 it is stated "The member is only covered for such of those risks specified in Parts II (P&I cover), III (Defense cover) and Appendix 7 (Additional Insurances) of these Rules as are expressly agreed between the members and the Association". Further in 2.2.2 it is stated that the cover is subject to limitations and other terms set out in parts I and Appendices 1-6.

Already here we see that shipowners can agree on different terms when it comes to P&I insurance, and that coverage of seafarers under P&I insurance can vary depending on the terms that are set out in the insurance contract and the agreement that are made between the shipowners and the P&I club.

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<sup>43</sup> Skuld Statutes and Rules 2009

<sup>44</sup> Gard Statutes and Rules 09

Further in 2.3 we find the Scope of Cover. The members are only covered in respect of liabilities, losses, expenses and costs incurred by the member which arise;

2.3.1, in direct connection with the operation of the entered vessel by the member in the member's capacity as owner or charterer of the vessel.

2.3.2, in respect of the member's interest in the entered vessel, and

2.3.3, out of events occurring during the period of entry of the vessel for the relevant risk in the Association.

As we see here in the Scope of Cover, the members are only covered for what they have agreed upon when entering into the insurance contract with the P&I club. Some shipowners divide their insurances in different insurance companies, this could as an example be shipowners who buy travel insurance for their crewmembers, an insurance that will cover for some of the shipowners liability that P&I would normally provide cover for. But according to Flavia Mellilo at Skuld Oslo, it is not usual for shipowners to agree less cover than what can be obtained from the Statutes and Rules, it is more usual to contract extra coverage than the standard cover.

The different liabilities that are found under standard coverage by Skuld P&I rules are cargo liability, extra cargo handling costs, crew, passengers, other persons carried onboard the vessel, persons not carried onboard, stowaways, diversions and related costs, collision and contact liability, property liability, pollution, wreck removal, obstruction, general average contribution for both hull and cargo, fines, confiscation, quarantines and disinfection requirements, salvage, towage, mitigation cost, legal and associated costs and members own property loss.

As mentioned in 2.2, one can also buy additional insurances for risks that are mentioned in Appendix 7; these are: Charterers liability for loss or damage to the entered vessel, Combined charterers' cover, Charterers bunkers, Deviation, Storage of cargo, Container risks, Through transport, Crew familiarization and superintendents, Salvage, Supply and diving support vessels, Strikes, Freight, Electronic trading, War risks, Chemical, Bio-Chemical Electromagnetical weapons and computer virus risks.

The coverage for crew as a whole is found in section 7. The definition of crew is found in Appendix 1, crew; “Persons, including the master contractually obliged to serve on an entered vessel (except persons engaged only for nominal pay), including substitutes for such persons and including such persons while proceeding to or from the vessel”.

The standard insurance for crew shall cover the members’ liability for:

7.1.1, injury, illness and death

7.1.2, hospital and medical expenses arising for injury, illness and death

7.1.3, loss of or damage to personal effects

7.1.4, costs of repatriation and maintenance ashore resulting from injury, illness or death, or major casualty to the vessel which renders the vessel unseaworthy and necessitated the signing off of the crew

7.1.5, the cost of the funeral or sending home the coffin or ashes, and the personal effects of deceased crew member

7.1.6, cost of repatriation incurred as a result of leave to attend to close relative, or the funeral of a close relative who has died or become seriously ill after the crew member signed on

7.1.7, costs of repatriation under a statutory obligation

7.1.8, wages to serving crew members or, if deceased, their dependants as a result of injury, illness or death

7.1.9, compensation for loss of employment to serving crew members as a result of being signed off due to a major casualty to the vessel which renders the vessel unseaworthy, and necessitates the signing off of the crew, and

7.1.10, cost of providing substitute crew member, or repatriation in accordance with Rule 7.1.6.

However there are several exemptions, which are found in 7.2;

“The standard insurance shall not cover liabilities, costs and expenses which arise”;

7.2.1, under the terms of a crew contract or other agreement, unless those terms have been approved by the Association,

7.2.2, as a result of expiry, termination or breach by the member of a crew contract or other agreement, or expiry of the crew members period of service, or sale of the vessel, or any other act of the member in respect of the vessel,

7.2.3, out of the carriage of cash or valuable object referred to in Rule 30.1.6, or

7.2.4, in respect of catering crew when the vessel is moored (otherwise than on a temporary basis) and is open to the public as a hotel, restaurant, bar or other place of entertainment.

There are also some general limitations, which are found in Appendix 5A. These will be looked closer into if needed when studying some cases and practice in the next subchapters. In section 7.4 additional insurance coverage that can be separately agreed upon is found, that is coverage for permanently employed crew members who are ashore or supervisory crew on new buildings or on vessels which are about to be delivered to the member. It is also stated that the exemption in 7.2.3, concerning the carriage of cash or other valuables can be insured if specially agreed upon.

Further to be mentioned are the general exclusions found in section 30 of the Rules. Here I will only mention those exclusions interesting in regards of crew:

“The insurances shall not cover liabilities, losses, expenses or costs”,

30.1.3, Which are recoverable by the member under another insurance policy, or which would have been recoverable under another standard insurance policy but for any term in such a policy providing for deductibles or excluding or limiting liability on the grounds of double insurance.

30.1.4, Which relate to a person performing work in the service of the entered vessel covered by a social insurance by public or private insurance required by the legislation or a collective wages agreement governing the contract of employment, or which would have been covered had such insurance been affected.

30.1.6, Which arise out of carriage of cash, bank notes or other forms of currency, bullions, works of art, precious or rare metals or stone, plate or other objects of a rare or precious

nature, specie, bonds or other negotiable instrument, whether carried as cargo or as passengers' baggage or as a crew effect or otherwise and whether the value is declared or not.

In the event of anything happening and the shipowner is having a claim against the P&I club, according to section 31 of the Rules "The member shall have the burden of proving that any claim against the Association results from a risk covered under the insurance". Further in section 37, under 37.1, "The member shall lose all right to compensation unless the member gives notice to the Association of any event which may give rise to a claim on the Association within six months of the member becoming aware of it.

One last thing that should be mentioned from the Skuld Rules is what is found under section 47, Arbitration and Law. It is stated that unless otherwise agreed disputes between the Association and a member shall be determined by arbitration in Oslo, and the rules and any arbitration proceedings shall be governed by Norwegian Law. The Insurance Contract Act of 1989<sup>45</sup> shall according to the Skuld rules not apply.

According to 30.1.3 the P&I coverage only comes into play if there is no other insurances that is applicable for the incident. So here we have to go into the different cases and look at the conditions under the Norwegian National welfare insurances. We also have to look at the collective wages agreement and the conditions for the "Safety Insurance and Collective Life Insurance", that the shipowners are obliged to have signed for all their crew. There might also be other insurances that cover the different cases. This being mandatory liability insurance for cars bringing personnel from one point to another (agents, taxi etc.), airlines having their own insurances for both passengers and luggage and so on.

So all in all the question seems to be if there are other insurances that are liable to pay compensation for the loss in reference. If not, then P&I will reimburse for the loss if the accident falls within the limits of the P&I rules.

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<sup>45</sup> LOV 1989-06-16 nr 69: Lov om forsikringsavtaler (forsikringsavtaleloven).

## 4.2 When does coverage start and stop - general observations

When a seafarer sets off to join his vessel there can be many different stages of transport, all depending on where he or she is set to sign on the vessel. If living in Stavanger and going onboard in Stavanger there might only be some minutes of walking from home. But if the same seafarer is going onboard a construction vessel in the Gulf of Mexico, or on an anchor handling vessel in Malaysia there can easily be five different kinds of transport, taxi to the first airport, then 4 different stages with airplane including waiting inside and outside the airports, transport by an agent, and finally a helicopter or crew-boat transfer out to the vessel itself. And on top of this he or she might have at least one stay in a hotel somewhere, or if the crew is really unlucky there might be several hotel nights and waiting days in for example New Orleans while waiting for the fog to clear up in the Gulf of Mexico.

So an important question here is how the seafarer is covered by the shipping company during these different stages? And is the shipping company covered again under P&I or under other insurances if a seafarer gets ill while waiting for the next transport stage, or he or she gets injured while in the hotel or ends up in car crash either on the way to a shopping mall or while transferring to the helicopter base?

Here the practice in shipping companies is different as well, some companies are insured under P&I all the way, some companies have offered the seafarers travel insurances for either the seafarer or his whole family, and some shipping companies are self insured. They will pick up the bill themselves if something happened to the seafarer when travelling to and from the vessel if no other insurances comes into play.

### 4.2.1 Case: The different stages of transport

As written above there can be several different transport legs on a journey to or from a vessel, but before going into P&I coverage it is the legislation and Collective Wages agreements that tells us what the shipowners obligation is in these cases.

The Seaman's act does not have anything written directly about the shipowner's responsibility for the seafarer when travelling to or from the vessel. The only thing that



implies some responsibility by the shipowner is in the second chapter, Employment Agreement, under section 21, Calculation of Wages, second sentence: “If he to get to the vessel has to perform a journey from the place he signed the work agreement, then the payment runs from the day the travelling commenced”.

The Norwegian practice here is that the seafarer first signs the work agreement<sup>46</sup> with the shipping company and are told which vessel, sailing period and the date that the crew change are planned. Further the agreement is sent to NAV<sup>47</sup>, and the sailor has to meet at NAV’s office in person to get a seaman’s book. This book is the official record of the sea time that the seafarer has. At NAV, the papers are stamped, and the vessels name and information is written into the seafarer’s seaman’s book. This is the official time that a Norwegian seafarer is mustered on the vessel.

According to the quoted sentence in section 21 of the Seaman’s act, the shipping office is not obliged to start paying the seafarer when he is mustered, but when he commences the journey to the vessel. But nothing is written about the conditions and crew coverage during the travel. It is also not stated when the payment shall start in time, just that it is the day when the travel commenced.

In the collective wages agreements there are no direct statements about when the obligation for the shipowners starts and stops. We find some indications under §2 “Sailing periods and work schedule”, §6 “Expenses concerning hiring, traveling and travel time” and in §8 about insurances.

According to § 2, under 2.1 it is stated that the work schedule is based on 6 months’ work time and 6 months off every year, further on in 2.4 “Extra compensation shall be paid after the following rules if the change day differs from what is planned”. The rules are similar as the one found in the Seaman’s act §21, that the days used extra for traveling or that due to other unexpected happenings shall be compensated for. The compensation shall be

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<sup>46</sup> See Appendix I.

<sup>47</sup> The Norwegian Labor and Welfare Service

calculated for whole days, when calculating the pay this means 1/30 of the monthly payment every day used extra.

In § 6 all expenses incurred by the seafarer are mentioned. The cases mentioned here, that the seafarer shall be without expenses imply that the seafarer is in the service of the company.

§6.1 states that, hiring and travelling to and from the vessel shall be without expenses for the seafarer. Further the seafarer shall bear no expenses when signing on, or going back home after fulfilling a contract. Also all expenses for passport, renewing of passport and visa shall be held by the ship owning company, the time used here shall also be compensated with 1/30 of the monthly pay for each day used.

The last subject mentioned in the collective wages agreement is found under liability for personal effects. If there is a ship-wreck, fire or other accident where the seafarers effects is damaged or lost the shipowner shall pay compensation with up to 2/3 G. The second subsection states that the same compensation shall be paid by the shipowning company for personal effects if the effects are lost or damaged when traveling to or from the vessel that he or she was set to sign on to. The shipowners are also obliged to pay extra wages if the seafarer has to attend courses while he is on time off. This is the same if it is courses that the employer demands the seafarer to have because of the trade (DP<sup>48</sup> etc.), or if the seafarer has to attend a meeting on behalf of the shipowner or courses to maintain his certificate according to the STCW convention<sup>49</sup>.

So to put this a little more easily, the collective wages agreements states that the shipowner is obliged to pay wages to the seafarer both when traveling to and from the vessel if the travelling goes for more than the original change day, when acquiring documents needed for the service onboard and for meetings and courses that he has to attend. This implies that the seafarer is in the service of the Shipping Company in all these instances.

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<sup>48</sup> Dynamic Positioning

<sup>49</sup> IMO convention on Standards on Training, Certification and Watchkeeping.

This means that the seafarers who are a part of the Norwegian National insurance plan<sup>50</sup>(NNIP) should be covered according to chapter 13 of the National Insurance Act<sup>51</sup>, regarding compensation for work related injuries, as stated in the last paragraph of 13.6: “When travelling to or from the workplace the occupational injury coverage for work related injuries applies if the transport is done in the respect of the employer, or is of such character that it gives a bigger risk of injuries”.

But the coverage for personal effects might only be in force when traveling to or from the vessel, as stated in the collective wages agreement.

For Norwegian seafarers it might seem like most of the coverage for medical expenses and in cases of injury and death are either covered by NNIP or “Safety Insurance”. But for citizens not covered by social benefit insurances and for Norwegian crew in respect of lost property or other things not covered by the Norwegian state or other insurances, P&I will cover the liability that the shipowners has towards his employees.

The definition of crew has already been mentioned together with the coverage. An interesting point is the time that the P&I clubs cover the crew. There are no exact definitions either in Skuld or Gard rules that expressly state when the coverage for a crewmember starts or stops in respect of P&I insurance, but both companies have the same definition under the scope of cover. In the Skuld Rules this is found in 2.3, Scope of Cover: the member is only covered when the incident or accident is in “direct connection with the operation of the vessel”. The P&I exclusions from in section 30 also comes into play: the P&I club will not cover anything covered by another insurance or any National Social Insurance or other private insurance required by the state or collective wages agreements covering the crewmember.

The definition in “direct connection with the operation of the vessel” implies that the incident or accident has to happen in the operation of the vessel. According to Ragnhild Rødsjø who is working with personnel claims at Skuld Oslo, direct connection with the

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<sup>50</sup> Folketrygden,

<sup>51</sup> LOV 1997-02-28 nr 19: Lov om Folketrygd

operation also covers the liability the shipowner has towards his crew while the seafarer is travelling at the expense of the shipowner to sign on a vessel or after signing off until he or she reach point of hiring or place of residents. This period is the direct transport from the seafarer's place of residence to the vessel, and after signing off. In other words the P&I clubs covers the shipowners liability has towards the seafarer from at commencement of his journey and back again. The only thing that has to be fulfilled is that the "journey" is done as one consecutive journey. If the seafarer goes on vacation, either when going to the vessel or when going back home the employer will not be liable for the days spent on vacation. As long as the seafarer is traveling at the expense of the company, these legs of traveling should be covered, but not the time spent for own vacation. The same goes if the seafarer has to attend a course right before he enters the vessel. Then the days at the course and travelling to the course could be a liability for the employer but will not be covered under P&I, only the journey from the course and to the vessel.

### 4.3 Coverage of personnel in case of injury, illness and death

The question of interest here is how to apply the general observations in 4.2.1 when it comes to personnel injury. Also if there are any differences in the coverage if the person is getting injured while working onboard the vessel, if he or she is on shore for the night to have a drink, or if there is an accident when the agent is bringing the crew from the hotel to the helicopter base before or after the seafarer has mustered on or off the vessel for the trip he or she is going on.

There can also be different kinds of accidents onboard the vessel; in many cases it is a series of small things that end up in an accident, but what if the seafarer himself is the main cause in his own accident? On most vessels there are regulations concerning the use of PPE (personal protective equipment), the equipment should be available, but in many cases it is up to the seafarer himself to use the right equipment and to use it correctly. This can be everything from body harness when working at heights, it can be fresh air systems when entering closed compartments or gloves, breathing mask and protective suit when working with chemicals. Will the coverage be any different in these cases?

As stated in the collective wages agreement for NOR registered Offshore Service vessels, section 7, under “7.1, Personal protective equipment and working clothes; Personal protective equipment and working clothes shall be distributed without charge according to the rules and regulations that are currently at play. The seafarer is obliged to use the PPE that is handed out.” The Nordic NIS agreement has in regard to the same subject a different wording, but basically the same content.

There are several possible outcomes here. We have the case where the sailor becomes ill, we have the case where an accident ends up with an injured seafarer, and the worst case where the illness or accident leads to the death of a crew member. Each of these cases will be looked into separately.

In the case of illness or injury the obligations of the shipowner is found in the Seaman’s act section 28, 1<sup>st</sup> paragraph; an ill or injured seafarer has right to get medical care as long as

he is in service onboard. If he is still ill or injured when leaving the vessel the shipping company is obliged to provide the same care up to 16 weeks after he signs off. Further it is stated that if the seafarer is resident of a country with a National Insurance program that will provide for his care, the shipping company is only liable for the care of the seafarer until this insurance program takes over, and not more than two weeks after he arrive at the place of residents. In paragraph four of the same section we find an exemption to this rule, “The seafarer cannot claim these benefits from the ship owning company if he with the intent of fraud has not informed about the illness or injury at the time his engagement started. The same applies if after his engagement he or she deliberately inflicted himself with the illness or injury”.

In the collective wages agreement there is nothing more mentioned about this subject, but the collective wages agreement has mandatory “Safety Insurance” that that the shipowner has to sign for seafarers employed on Norwegian collective wages agreements. The “Safety Insurance” provide cover for occupational injury, accidental injury and occupational illness that are established in the time span that the insurance is valid, which means after the seafarer has mustered or gotten his papers signed at NAV. The “Safety Insurance” gives reference to the National Insurance Act, chapter 13 Occupational Injury Coverage, for the definition of occupational injury. Section 13-3 Occupational Injury states; “Occupational injury means a personal injury, a disease or a death that are the result of a work related accident while the member is covered by occupational injury insurance”. Further the same section states that an occupational injury is intended to mean a sudden and unexpected utter event that the member has been exposed to while at work. It continues with the exception of repetitive strain injuries, which are not to be covered. Further from the conditions for the “Safety Insurance”, the diseases mentioned in the National insurance act section 13-4; “occupational illnesses that are to be held equal to occupational injury”, here there are several diseases mentioned in two regulations<sup>52</sup>, but these are not directly connected to the question raised.

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<sup>52</sup> [1997.03.11 nr 0219](#): (AID) Forskrift om sykdommer og forgiftninger m.v. som skal likestilles med yrkesskade

In the “Safety Insurance” there is coverage both for injuries that lead to permanent disability and death.

The losses in case of occupational injury and cost incurred with the injury: this being hospital costs, medical treatment, disability payment, loss of future income and so on will be covered by the “Safety Insurance”. So for Norwegian crewmembers there seem to be coverage all the way for injuries, both while traveling to embark or disembark the vessel. For this type of accident P&I will not have to cover anything for Norwegian seafarers.

When looking at the wording for the safety insurance the only coverage provided is for “Occupational Illness or Occupational Injury and for other accidents (during time off)”. When it comes to coverage of illness this seem to be a different and separate category that falls outside the coverage of the “Safety Insurance”. According to the Seaman’s Act section 28, 1<sup>st</sup> paragraph as stated earlier, an ill seafarer has right to get nursing care. In this case when it comes to illness and not an accident, it seem like the shipowner has an obligation towards the seafarer, and that the coverage falls outside the coverage of the “Safety Insurance”. Some of the costs here will be covered by the Norwegian state through NAV, according to the National Insurance Act, Section 5-24 Support for Medical-services abroad. The section states that a member of the Norwegian health benefit program shall be covered for necessary medical expenses while abroad. The connection to Norwegian seafarers is found in one of the regulations to section 5-24 of the same Act; Regulation concerning extended support for health-services while staying abroad<sup>53</sup>. The regulation, in section 2; Who is Covered, letter b, “coverage is provided for a member who is employed on a Norwegian registered vessel, or a seaman who is registered applying for a berth by a Norwegian consulate”.

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[1997.03.11 nr 0220](#): (AID) Forskrift om yrkessykdommer, klimasykdommer og epidemiske sykdommer som skal likestilles med yrkesskade.

<sup>53</sup> [1997.04.30 nr 0391](#): (AID) Forskrift om utvidet stønad til helsetjenester under opphold i utlandet

It should be noted that Norway has a medical cooperation with most of the EU countries through the EEA agreement, an agreement called reciprocal agreement. This gives citizens of the respective country a right to get medical care in Norway, and the other way around. All one needs is a European health insurance card<sup>54</sup>. This will provide coverage for expenses in most European countries who are EEA members<sup>55</sup>. For countries outside of the EEA area it is the National Insurance Act, with the regulation mentioned that covers for expenses in regard of illness concerning Norwegian seafarers on Norwegian vessels. According to these rules mentioned the medical expenses will be carried either directly or indirectly by the Norwegian state.

The only thing not covered so far is the transport home if the ill seafarer is still ill and not able to travel in normal ways. Here there is no coverage by the Norwegian state according to the legislation.

As stated earlier, if no other insurance or benefit schemes are liable, then the P&I rules should be looked upon for cover. According to the Skuld Rules, section 7.1.1 and 7.1.4. Skuld will cover the shipowners liability for illness, and also for maintenance ashore and repatriation of the seafarer as a consequence of the illness.

The difference if it is an occupational illness or accident, or regular illness will be determinative upon who is liable to pay the expenses for the repatriation of the seafarer. If it is due to illness this will have to be covered by the shipowner, who then again is covered by the P&I insurance as stated above. If it is due to occupational illness or injury, the costs of repatriation shall be covered by NAV according to section 5-25, Support after Occupational Injury, second paragraph; “after an occupational injury has occurred the necessary expenses for repatriation will be covered”.

In the case of death, there are also regulations in the Seaman’s act, found in section 30. If a seafarer dies while in service of the vessel, travelling on the expense of the ship owning

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<sup>54</sup> <http://www.nav.no/page?id=363>

<sup>55</sup> List of countries: <http://www.nav.no/Om+NAV/NAV/Folketrygdens+form%C3%A5l/E%C3%98S-land>



company or while in medical care on behalf of the ship owning company, then the master is obliged to notify the next of kin, and make arrangements for the home sending of the coffin or ashes. The expenses connected to this shall be covered by the ship owning company, according to section 31.

Here again some of the liability will be covered under the “Safety Insurance” under the collective wages agreement. The compensation to the spouse or live in partner, and compensation for the children of the deceased, is borne by the “Safety Insurance”. The “Safety Insurance” will also provide coverage for the funeral expenses, with an amount up to 1/2G.

The rest of the costs that will incur, such as costs of sending home ashes or coffin, will rest with the shipowner. According to the Skuld rules 7.1.5, this is something that the P&I insurance will provide cover for.

One last subject that can be of interest of discussing is the different social benefits that come into play and what instances are covering for the different ones.

For Norwegian employees there is a right to get sickness benefit. This sickness benefit is stated in the National Insurance Act, section 8.17 to 8.19. It states that sickness benefit shall be paid by the National insurance<sup>56</sup>. However there is a period of 16 days called “Employer Period<sup>57</sup>”, for which the employer has to pay the sickness benefit, before the National insurance takes over<sup>58</sup>.

These 16 days will be recoverable for the shipowner from the P&I club according to Skuld Rule 7.1.8, wages to serving ill crewmember. After the employment period in sick wages the National insurance take over the payment of the sick or injured seafarer.

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<sup>56</sup> In practice by NAV

<sup>57</sup> AGP. Arbeidgiver-periode.

<sup>58</sup> According to National Insurance Act section 8-19

For seafarers there are also some special regulations found in the National Insurance Act section 8-44, seafarers in foreign trade shall be entitled to receive sickness benefits if he is no longer able to work as a seafarer, but not work-disabled in other means.

When it comes to death of a seafarer while he is in the service or employed by a shipping company, the living relatives are entitled to some compensation. According to the Seaman's Act section 25, Wages in case of Death; if the seafarer leaves spouse or children under the age of 18, the surviving relatives are entitled to one month's salary. This salary will also be covered by the P&I club after Skuld Rule 7.1.8, "Wages to serving crew members, if deceased, their dependants as a result of injury, illness or death.

For further compensation it is the Safety insurance that will come into play, as the insurance provide compensation for spouse/live in partner with up to 15G, and for children with up to 6.5G.

There can be several reasons for an accident to happen onboard. The most tragic kind is when the seafarer himself intended to make an accident, either to harm himself or other personnel.

One of the questions raised earlier was how insurance coverage would be if a seafarer by gross negligence or willful acts contributed to an incident, and harming himself.

The answer to this is found written straight out in the conditions for the "Safety Insurance": in clause 3 in the Insurance conditions for the "Safety Insurance" it is stated that the insurance is valid world wide, and will provide full coverage even if the injured has contributed to the incident by intent or gross negligence.

#### 4.4 Coverage of personal property

The coverage of personal property is found in both the Seaman's act section 47, in the collective wages agreement section 8.4 and in the Skuld Rules section 7.1.3. But there are different wording in the different rules and legislation. When looking at Appendix 1 of Skuld Rules we find a definition for what may come under personal property. "Personal property including clothes, documents, navigation and other technical instruments and tools, but excluding valuables and any other article which, in the opinion of the Association, are not reasonably required by the crew".

There are several definitions to look into here, the exclusion under the P&I coverage exclude valuables and other articles that it is reasonable for the crew to bring. The collective wages agreement through the regulation to the Seaman's act states an upper limit for the claim to be  $\frac{2}{3} G^{59}$ , but nothing is stated upon the nature of the items.

In the collective wages agreement it is stated that the shipowner or shipping company is liable for the same amount whether personal belongings are lost during traveling to the ship or back again after completion of the contract.

It seems to be what is written in the collective wages agreement that is guiding for what the shipowner is obliged to cover for his crew, and this is only described as "effects". In this respect it might seem like the personal effects that are lost or broken shall constitute a liability for the shipowner as long as the seafarer did not lose or destroy it by intent or gross negligence. But looking at the Skuld rules it is stated that they are not covering personal belongings that are valuable or in the opinion of the association not reasonably required by the crew.

On most oceangoing vessels there are communication systems via satellite, which provide telephone and internet service for the crew. It is also normal to have wireless connection onboard the vessels so that the crew can get on line in their cabins. But will the laptop then be covered by the P&I insurance, is this reasonably required to have? The effects that I have seen from own experience that is common to bring onboard, that might be defined as

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<sup>59</sup> FOR 2009-06-18 nr. 668, "Vedtak om grunnbeløp i folketrygda og særtillaget, ordinær sats" Folketrygdens Grunnbeløp, 2009: 72.881 NOK

valuable and not reasonably required needed by the crew is a laptop and expensive cameras.

According to the Seaman's Act, as stated in chapter 2 of the thesis, the shipowning company is obliged to pay compensation for lost or damaged property that is onboard the vessel in case of ship wreck, fire, piracy other accidents or groundings. The liability limits for the shipowner are found in "Regulation about reimbursement for lost belongings"<sup>60</sup>. In § 2 of this regulation it is stated that reimbursement according to §47 of the Seaman's Act shall be paid for damaged or lost property with the following maximum sums unless higher sums are agreed upon in the collective wages agreements:

- a) Seafarers on ships outside Norwegian waters, with up to 2/3 G.
- b) Seafarers on ships in Norwegian waters and pilots, with up to ½ G.

According to the Norwegian Law it looks like the shipowner is only liable for the belongings of the crew while the property is onboard, but there are no limitations on what kind of personal belongings that can be taken onboard. In section 3 of the regulation<sup>61</sup> it is only used the wording, "property for personal use", and "that the seafarer keeps onboard or that the vessel is keeping for him". So according to the legislation and regulations it might seem like all property kept onboard should be reimbursed if damaged due to incidents mentioned above and in The Seaman's act §47. The only thing here is according to the last sentence of § 3 of the regulation<sup>62</sup>, that the reimbursement can be lowered, or not be given at all when looking at the actions, conditions onboard or the conditions as a whole.

In the collective wages agreements it is basically the same wording as in the Seaman's Act, and reimbursement sums are the same. The only difference is that in the collective wages agreement, last sentence of section 8.4.1, it is stated that the personal effects shall also be reimbursed when the seafarer is travelling to or from the vessel.

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<sup>60</sup> [1986.02.03 nr 0241](#): (NHD) Forskrift om erstatning for tapte eiendeler.

<sup>61</sup> Ibid

<sup>62</sup> Ibid

P&I coverage seem to be bit more strict, especially as regards which articles that reimbursement is paid for. As already written P&I will not cover what “in the opinion of the Association, are not reasonable required by a crew member”. The term used by Gard in the case of personal belongings covered by the club is the “exclusion of valuables and any other article which in the opinion of the Association is not an essential requirement of a crew member”<sup>63</sup>. In the Gard handbook on P&I insurance<sup>64</sup> we find a better explanation on the term reasonable required by the crew, “The term essential requirement literally means that without such article(s) the crew member would face difficulty working and living on board the ship”. And here it is brought up that examples on such articles can be glasses and hearing aids. But it is also stated that the Association has some discretion to decide what articles are essential requirement for the crew and which are not. In practice the association would normally cover liability in respect of articles that are commonplace in the living quarters at home, such as stereos, compact disks and books. But in this book from 2002 it is stated that laptops intended only for personal use would normally fall outside. The question then is whether laptops now in 2009 is something that are “commonplace in the living quarters at home” or not? When considering that it is now wireless internet connection on most vessels for the crew to use on their time off, and one of the most used ways of communicating with the rest of the world now is through the internet, it might seem hard to understand that a laptop should not be covered. One last thing to mention from the Gard Handbook on P&I Insurance is that it is normal to impose a limit of liability for personal property that can vary from USD 2000 to USD 4000 per crew member (2002). The present norm is coverage for personal property at 3000 USD for each crew member, unless otherwise stated in the collective wages agreements that are approved by the Association.

Here it might seem like there may be differences in what the shipowner is liable for according to the Seaman’s Act and the collective wages agreements and what P&I are

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<sup>63</sup> Gard Statutes and Rules 2009, Rule 27, IV

<sup>64</sup> Gard Handbook on P&I insurance. Page: 263, 264

willing to cover. For the amounts that the P&I clubs will cover, there do not seem to be any problems, it is what is agreed in the collective wages agreement, and the Seaman's Act that will be guiding. When it comes to the nature of the effects that can be onboard the P&I clubs have in their Rules laid down limitations as to what objects they are providing compensation for. As mentioned it should be essential for the crew member, and something that is commonly found in the living quarters back home. According to the "Gard Guidance to statutes and Rules", on page 170, this could mean stereos, CD's, DVD's, I-pods, books, mobile phones, and laptop computers. For other valuables there might be limitations. One thing that should be mentioned is that even though Gard has a guidance that say some valuables are expected, the rules do not have to be interpreted the same way in other Associations.

The collective wages agreements do not say anything in this concern, only effects. But the commentaries to the Seaman's Act state that according to ND 1942 s.532 FH, "There is no requirement to the kind of effects"<sup>65</sup>.

#### 4.4.1 Case: Hand luggage gone missing when travelling to or from the vessel

What happens if a seafarer loses his hand luggage with his camera, some cash, laptop and other personal belongings when travelling to or from the vessel he is assigned to? To simplify the whole case we can assume that the loss was not caused by gross negligence or intent by the seafarer.

In the collective wages agreement it is stated that the same coverage as mentioned in the Seaman's Act section 47 should apply when travelling to sign on, or after signing off the vessel. In the collective wages agreement it is made reference to the Seaman's Act section 47 in the last paragraph of section 12.2 concerning compensation for effects.

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<sup>65</sup> Norsk lovkommentar 2008, page 1077, section (407) "Det stilles heller ikke noe krav til eiendelens art."

The maximum compensation amount do not seem to be of any question here, as the amount is stated clearly in the Regulation connected to section 47 of the Seaman's act. There might be a divergency when it comes to the kind of property that is covered according to the Seaman's Act and the effects that the P&I club will pay compensation for. As read in the Law commentaries there are no specific rule up on which kind of property it is, as long as it is lawful object that the seafarer is allowed to bring onboard the vessel<sup>66</sup>.

The responsibility of compensating for lost or damaged property when it comes to the nature of the effects might seem to be bigger for the shipowner in this respect than what he can expect to get back from the P&I club.

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<sup>66</sup> Norsk lovkommentar 2008, page 1077, section (407)

#### 4.5 Coverage when sailor needs to be sent home due to illness or death in family

When there is illness or death in the closest family, the seafarer has the right to go home to attend the funeral or to look after his sick relatives. This right is stated in the Seaman's Act section 11 about the seafarers right to compassionate leave; it is written that the seafarer can demand leave and go home if his or her parents, spouse or child is seriously ill or deceased. According to the law commentaries<sup>67</sup> registered gay companion will be equal to spouse, but not live in partner (gay or straight).

Here it is not stated anything about the time limit for the seafarers leave, or anything about a qualified replacement being obtained.

In the collective wages agreements the section about welfare leave refers to the Seaman's Act section 11, with some more describing comments. The compassionate leave can be given with up to 14 days each year, and the persons that are covered by the Seaman's Act section 11.1 is extended to also cover sisters and brothers, parents in law, live in partner, grandchildren and mother/father of own children.

The second paragraph of the Seaman's Act section 11, further states that the same applies if other grounds of compassion make it necessary for him to be given leave. For this section it is a requirement that a qualified reliever can be obtained. The seafarer can also be held economically responsible for providing the reliever, even though the remaining service time together with the circumstances as a whole should be taken into consideration in this respect.

When looking at the P&I rules, the P&I club will cover the "cost of repatriation incurred as a result of leave to attend to a close relative, or the funeral of a close relative who has died or become seriously ill after the crew member signed on"

Here the wording can seem to be more open, the word close relative might be interpreted to also be grandparents if they are really close.

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<sup>67</sup> Norske Lovkommentarer 2008, Page 1062 section (141)



The other interesting thing is that the close relative has to have become seriously ill or have deceased after the crew member “signed on”. What if the crewmember got the message on the way to the vessel and needs to turn back home again before he or she has signed on the vessel? And at what time is the crewmember actually signed on a vessel?

For the first phrase “close relative”, according to Gard Handbook on P&I insurance page 261 this means spouse, parents or children. But according to Skuld, the Norwegian collective wages agreements are approved by the association so the word “Close relative” will have the same meaning as in the agreement.

As discussed earlier in the thesis, the time that the seafarer is actually signed on the vessel can be a matter of different opinions. But for the reference her, signed on means the time when the seafarer left his place of residence to commence his journey towards the vessel.

#### 4.5.1 Case: Compassionate leave when a grandparent dies

In many families people are not necessarily closest to their parents, one could be closer to the grandparents. Or the seafarer could be closer to a girlfriend than to the mother of his children. What happens in these cases if there is seriously illness or deaths?

The rules in both the Seaman’s act and the collective wages agreement seems to be quite clear, that there are strict rules that the persons that are seriously ill or diseased must be within those persons mentioned, and the rules of the P&I club follow what is written in the collective wages agreement.

In the Seaman’s act section 11, second sentence it is stated that the seafarer can also be given leave if other circumstances makes it a matter of compassion for him to be given leave. But in this case it is a condition that if the vessel becomes unseaworthy because of the seafarer leaving it is a condition that a qualified substitute can be obtained.

Further in the third sentence it is stated that if a seafarer leaves because of matters stated in the second sentence, he himself shall be economically responsible for the costs of getting a replacement. The reimbursement can be set down or be taken away totally when considering the seafarers remaining time of his contract and the circumstances as a whole.

An interesting question here can be if the seafarer can get compassionate leave to attend the funeral of a grandparent after the second sentence of the Seaman’s act section 11, and the

compensation that he is obliged to pay for the substitute can be paid by P&I under the paragraph where it is stated that they will compensate for the leave to attend the funeral of a close relative?

Something close to an answer to this can be found in the Gard handbook on P&I insurance<sup>68</sup>. Firstly it is here stated that, “for the purpose of cover, close relative means spouse, parents and children”, but as already commented on this wording has been widened in the collective wages agreement.

The most interesting statement found in this section is that “the association may cover such cost and expenses even if there is no legal liability for the member to grant compassionate leave”.

Some guidance is also found in the commentaries to the Seaman’s Act<sup>69</sup>. If others close to the seafarer die or gets seriously ill, the seafarer can be granted compassionate leave according to the provision in the second paragraph.

An opening to get compassionate leave even if it is for other reasons than those mentioned seem to be within the regulations. The Law commentaries stated that an application for this has to be given to somebody that on behalf of the company that can accept this, this being the master in most cases. But from there on it is up to the shipping company to decide whether or not to grant the leave. Especially if the seafarer is part of the safety manning onboard the vessel, or the vessel will fall beneath the minimum safety manning if the seafarer leaves, the leave will for most reasons not be granted before a qualified reliever has been obtained. The shipping company has no obligation to find a reliever, so in this case it seem to be up to the shipping company and what effort they put into the matter that decides if a qualified reliever can be obtained, and the seafarer being granted compassionate leave.

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<sup>68</sup> Page 261

<sup>69</sup> Norske Lovkommentarer 2008, Page 1062 Section (142)

For the matter of coverage the ship owner will get for compassionate leave there do not seem to be too many questions.

According to the Skuld rules, section 7.1.6 and 7.1.10, the P&I club will cover for the member's liability for costs of repatriation for the seafarer that leaves to attend to a close relative, and also for the costs of the replacements.

As also stated above, from the Gard handbook, these costs might also be covered if there is no legal liability to give compassionate leave. These being the cases that fall under the second paragraph of section 11 of the Seaman's act. The only thing stated about cases as this is that members are asked to seek approval from the association before approving the leave.

Having this in mind it seem like there is an opening to give compassionate leave if grandparents or persons close to the seafarer has passed away or gotten seriously ill. This might look like it is just a matter of the effort that the ship owning company is willing to put into it.

## 5 Summary

The “safety net” around Norwegian seafarers working on Norwegian contracts is quite complex. The main legal tool regarding the rights of the seafarers is the Seaman’s Act with regulations. The next layer for the “safety net” is the respective collective wages agreements. These two sets of rules are what describe the shipowner’s responsibility towards the seafarer. These regulations describe everything from wages, what happened in case of injuries or death, regulations concerning working hours and time off and most other matters concerning working life of a seafarer.

When it comes to where the shipowner can seek cover for his liabilities as an employer towards the seafarers, this is also to some extent covered in the legislation, if not then it is found in different insurance policies.

One thing that came up in the thesis is that there are considerable differences regarding the different types of losses, illness, occupational illness or injury and death.

For occupational injury, illness or death some of the liability the shipowner has is covered by the mandatory “Safety Insurance” that the shipowner has to provide for his crew. And some of the liability is covered by the Norwegian state through the National Insurance scheme. The regulations concerning the National insurance scheme is found in the National Insurance Act. The National insurance Act also regulates the coverage which the state will provide through NAV when it comes to illness and sickness benefit. Most terms when talking about occupational injury, illness and sickness benefits are also described in this Act.

After studying the mandatory insurance, and costs that are covered by the state through different regulations, there are still some expenses that the shipowner is liable for. These are the expenses that are picked up by the P&I club. As already stated, the P&I club will only cover for costs that are not recoverable from any other instances. The way to proceed in a case where the shipowner has liability toward the seafarer is to first see if any insurance, or the Norwegian state can provide coverage for the incident in reference. If

there is no coverage anywhere, then the rules of the P&I club should be examined to see if there can be coverage through their rules.

## 6 References

### 6.1 List of literature

- Gard Handbook On P&I Insurance, 5<sup>th</sup> Edition, Edgar Gold, 2002
- Gard Guidance to the Statutes and Rules, Richard Williams, 2008
- Sjømannsrett, Dalheim, Urdal Sand and Østre, 2008
- Forarbeid til Lovene 1975, Bind I, Forarbeid til lover nr. 1-51
- Norsk Lovkommentar 2008, Lødrup, Kaasen and Tjomsland. Seaman's act chapter: Edvin A. Skoghøy

### 6.2 Treaties/Statutes

- LOV 1975-05-30 Nr. 18: The Norwegian Seaman's act
- LOV 1994-06-24 Nr. 39: The Norwegian Maritime code.
- LOV 1987-06-12 Nr. 48: The NIS act
- LOV 28-02-1997 Nr. 19: National Insurance act.
- LOV 05-05-1927 Nr.1: Labour Disputes Act
- LOV 1989-06-16 nr 69: Insurance Contracts Act

### 6.3 Web pages

- <http://www.nis-nor.no/NOR.aspx>
- <http://www.nis-nor.no/NIS.aspx>
- <http://www.igpandi.org/Home>
- <http://www.nav.no/page?id=363>

- <http://www.nav.no/Om+NAV/NAV/Folketrygdens+form%C3%A5l/E%C3%98S-land>
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- <http://www.igpandi.org/The+Group+Agreements/Pool+reinsurance+programme>
- <http://en.wikipedia.org/wiki/Phoenicia>

## **7 Annex 1: Employment Agreement**



## **8 Annex 2: Chart of Reinsurance Structure**

## **9 Annex 3: Yrkesskedeforsikring og Trygghetsforsikring**







Jfr. sjømannslov av 30.5.1975 §3 med forskrifter /  
According to Seamen's act of 30 May 1975 §3 with regulations

1 Dato ansatt i rederiet / <i>Date of engagement in the shipping company</i>		2 <input type="checkbox"/> Ny / <i>New</i> <input type="checkbox"/> Endring / <i>Alteration</i>	
Avtalen gjelder fra dato / <i>The agreement applies from date</i>			
<hr/>			
3 Fødselsnr / <i>Birth no</i>	4 Etternavn / <i>Surname</i>	5 For- og mellomnavn / <i>First and middle name(s)</i>	
6 Nasjonalitet / <i>Nationality</i>	7 Hjemmeadresse / <i>Home address</i>	Tlf / <i>Phone</i>	
8 Nærmeste pårørende – navn og adresse / <i>Name and adress of next of kin</i>		Tlf / <i>Phone</i>	
<hr/>			
9 Arbeidsgiver – navn og adresse / <i>Name and address of employer</i>		Organisasjonsnummer / <i>organisation reg. number</i>	
<hr/>			
<b>Ansettelsesforhold / <i>Terms and conditions of employment</i></b>			
10 Hyre, overtidsbetaling og andre vilkår etter overenskomst mellom / <i>Wages, overtime pay and other conditions according to collective agreement between</i> og / <i>and</i>			
11 Spesielle vilkår, andre opplysninger. Herunder opplysninger om begrensning i tjenesteplikt / <i>Special conditions, other information including information concerning limitation of duty service</i>			
<hr/>			
12 Stilling / <i>Rank, Rating</i>	13 Hyre fra og med / <i>Wages from and including</i>	14 Eventuelt fratredelses sted / <i>Possible place of terminating service</i>	
15 Prøvetid / <i>Probationary period</i>		16 Gjensidig oppsigelsesfrist / <i>Mutual period of notice</i>	
<hr/>			
<b>Fylles bare ut ved midlertidig ansettelse / <i>To be completed only in cases of temporary employment</i></b>			
17 Fatøyets navn / <i>Name of vessel</i>		18 For bestemt tidsrom / <i>for specified period</i> Fra / <i>From</i> Til / <i>to</i>	
19 En bestemt reise og eventuell varighet / <i>One specified voyage and possible duration</i>			
20 Avløser for / <i>Relief for</i>			
21 Arbeid av forbigående varighet / <i>Temporary employment</i>			
<hr/>			
<b>Må fylles ut for hånd / <i>To be filled in by hand</i></b>			
22 Ansettelsesavtalen inngått – sted og dato / <i>The employment agreement signed – place and date</i>			
.....			
For arbeidsgiver / <i>On behalf of employer</i>		Arbeidstaker underskrift / <i>Employee's signature</i>	
23 Forevist / <i>Presented</i>		Stempel / <i>Stamp</i>	
<hr/>			
..... Sted og dato / <i>Place and date</i>		..... Mønstringsmyndighetens underskrift / <i>Signature of mustering authority</i>	

## RETTLEDNING OG KOMMENTARER FOR UTFYLING AV ANSETTELSESAVTALEN

### Generelt

Avtaleskjemaet er utformet slik at det fyller de krav som er fastsatt i forskrift av 3. februar 1986 om ansettelsesavtale og hyreoppgjørsskjema i medhold til sjømannsloven § 3. Ansettelsesavtalen er en privatretslig avtale inngått mellom den enkelte arbeidsgiver og den enkelte sjømann. Avtalen utfylles i minst to eksemplarer. Arbeidstaker og arbeidsgiver skal ha hvert sitt eksemplar.

Om det avtales vilkår i strid med bestemmelser i sjømannsloven av 50.05.1975 med forskrifter, vil lovbestemmelsene gå foran avtalen. Det samme gjelder i forhold til gyldige tariffavtaler som partene er bundet av.

### Rubrikk 1:

Er ansettelsesavtalen inngått før ikrafttredelse av de nye bestemmelsene i sjømannslovens § 3 med forskrift, angis datoen for den opprinnelige avtalen i dette felt.

### Rubrikk 2:

Er det første gang en ansettelsesavtale inngås krysses av i feltet "ny". Gjelder det endring i en tidligere inngått avtale krysses av i feltet "endring". I datofeltet angis tidspunktet den nye avtalen eller endringsavtalen skal gjelde fra.

### Rubrikk 3:

For arbeidstaker som ikke er tildelt ellevesifret nummer føres bare fødselsdato i rekkefølge: dag, måned, år.

### Rubrikk 8:

Her føres opp navn, adresse og telefonnummer til den pårørende man ønsker kontaktet i påkommende tilfeller. Utfylling av denne rubrikken skjer frivillig etter sjømannens ønske.

### Rubrikk 10:

Her kan det vises til konkret tariffavtale eller det kan angis mer generelt, som f.eks.: "Den til enhver tid gjeldende tariffavtale for vedkommende stillingskategori og fartsområde fastsatt mellom ..... og .....". Foreligger ingen tariffavtale det kan vises til, oppgis de hyrebetingelser som skal gjelde i rubrikk nr. 11.

### Rubrikk 11:

Etter sjømannsloven har sjømannen rett og plikt til å tjenestegjøre på ethvert av rederiets norske fartøyer. Eventuelle begrensninger må avtales spesielt og skal fremgå av rubrikk 11. Slike begrensninger kan gjøres generelt, f.eks. ved at avtalen gjelder tjeneste på alle rederiets fartøyer sjømannen har kvalifikasjoner for å tjenestegjøre på innenfor den avtale stillingskategorien. Her kan eventuelt angis de bestemte fartøyer han skal tjenestegjøre på, eller de av rederiets skip avtalen ikke gjelder. Videre kan det i rubrikken anføres spesielle rettigheter utover det lov eller tariffavtale gir. Dette kan gjelde adgang til permisjon, opplæring, hjemreise, pensjon o.s.v.

Hvor sjømannen ikke omfattes av tariffavtale, oppgis månedshyre og overtidsbetaling pr. time. I rubrikken kan også anføres spesielle begrensninger som f.eks. "ikke ror og utkikk". Dersom rubrikken ikke er stor nok til å få med alle spesielle vilkår og opplysninger, kan det fortsettes på eget ark.

### Rubrikk 12:

Skal sjømannen alternere mellom flere stillinger avhengig av hvilket skip han er på, f.eks. fører eller overstyrermann, anføres begge stillingstyper her.

### Rubrikk 14:

Dersom fratredelsen ikke avtales, utfylles denne rubrikken med "hvor som helst".

### Rubrikk 15:

Prøvetid kan rettsgyldig avtales for inntil 6 måneder, jf sjømannslovens § 3 nr. 2.

NB! Rubrikkene 17 til og med 21 fylles bare ut ved midlertidig ansettelse, jf sjømannslovens § 3 nr. 3.

### Rubrikk 20:

I denne rubrikk fylles ut navnet til den person sjømannen skal vikariere for eller være avløser for.

### Rubrikk 22:

Begge de to originale eksemplarene av avtalen som partene skal ha hvert sitt av, skal undertegnes.

### Rubrikk 23:

Ved påmønstringer og ommønstringer skal ansettelsesavtalen legges frem for mønstringsmyndigheten.

## GUIDELINES AND COMMENTS REGARDING COMPLETION AND EMPLOYMENT AGREEMENT

### General

The contract form is designed so that it satisfies the requirements issued in the regulations of 3 February 1986 concerning the Employment Agreement and Settlement of Wages Form in pursuance of the Seamen's Act § 3. The Employment Agreement is a civil-law agreement which is entered into between the individual employer and the individual seaman. The agreement is to be completed in at least two copies, the employer and employee retaining one copy each.

If conditions in violation of the provisions in the Seamen's Act of 30 May 1975 with regulations are agreed, the legal provisions will take precedence over the agreement. The same applies in relation to valid collective agreements which may bind the parts.

### Box 1:

If the Employment Agreement was entered into before implementation of the new provisions in § 3 of the Seamen's Act with regulations, then state the date of the original agreement in this box.

### Box 2:

If this is the first time an Employment Agreement has been made, cross of "new". If a previously entered agreement is altered, cross of "alteration". State the date from which the new altered agreement is to run in the date box.

### Box 3:

For employees who have not been assigned an 11 digit identity number, enter the birth date (6 digits) in the order: day, month, year.

### Box 8:

Enter the name, address and telephone number of the relative of associate you want to be contacted in the event it should be necessary. Completion of this box is voluntary as seaman wishes.

### Box 10:

Reference to a definite collective agreement can be made here, or more generally, as for example: "the collective agreement applicable at all times for this rank and area of trade as agreed between ..... and .....".

If no collective agreement is applicable, state the wages conditions which will apply in Box 11.

### Box 11:

According to the Seamen's Act the seaman is entitled and obliged to serve on any of the shipping company's Norwegian vessels. Any limitations must be agreed separately and shall be stated in Box 11. Such limitations can be general ones, for example that the agreement shall apply for service on all the shipping company's vessels on which the seaman is qualified to serve in the agreed job category. Any given vessels van serve on may be stated, or alternatively the vessels which the agreement does **not** cover.

Moreover, the box can be used to indicate special rights beyond those provided for by law or collective agreement. This may be the case for availability of leave, training, travel home, pension agreements, etc.

Where seaman is not covered by collective agreement, the monthly wage and hourly overtime rate shall be stated. The box may also be used to state special limitations, for example "not helm or watch duties".

If the box is too small to accommodate all the special terms and details, continue on a separate sheet.

### Box 12:

If the seaman is to alternate between several positions depending on which ship he is on, for example master or chief mate, then state both positions here.

### Box 14:

If the place of terminating service has not been agreed, write "anywhere" in this box

### Box 15:

A period of probation may legally be agreed for up to six months, cf. Seamen's Act § 3, subsection 3.

NB! Box 17.21 should only be completed for temporary employment, cf. Seamen's Act § 3, subsection 3.

### Box 20:

Write the name of the person for whom the seaman is to deputize or substitute for in this box

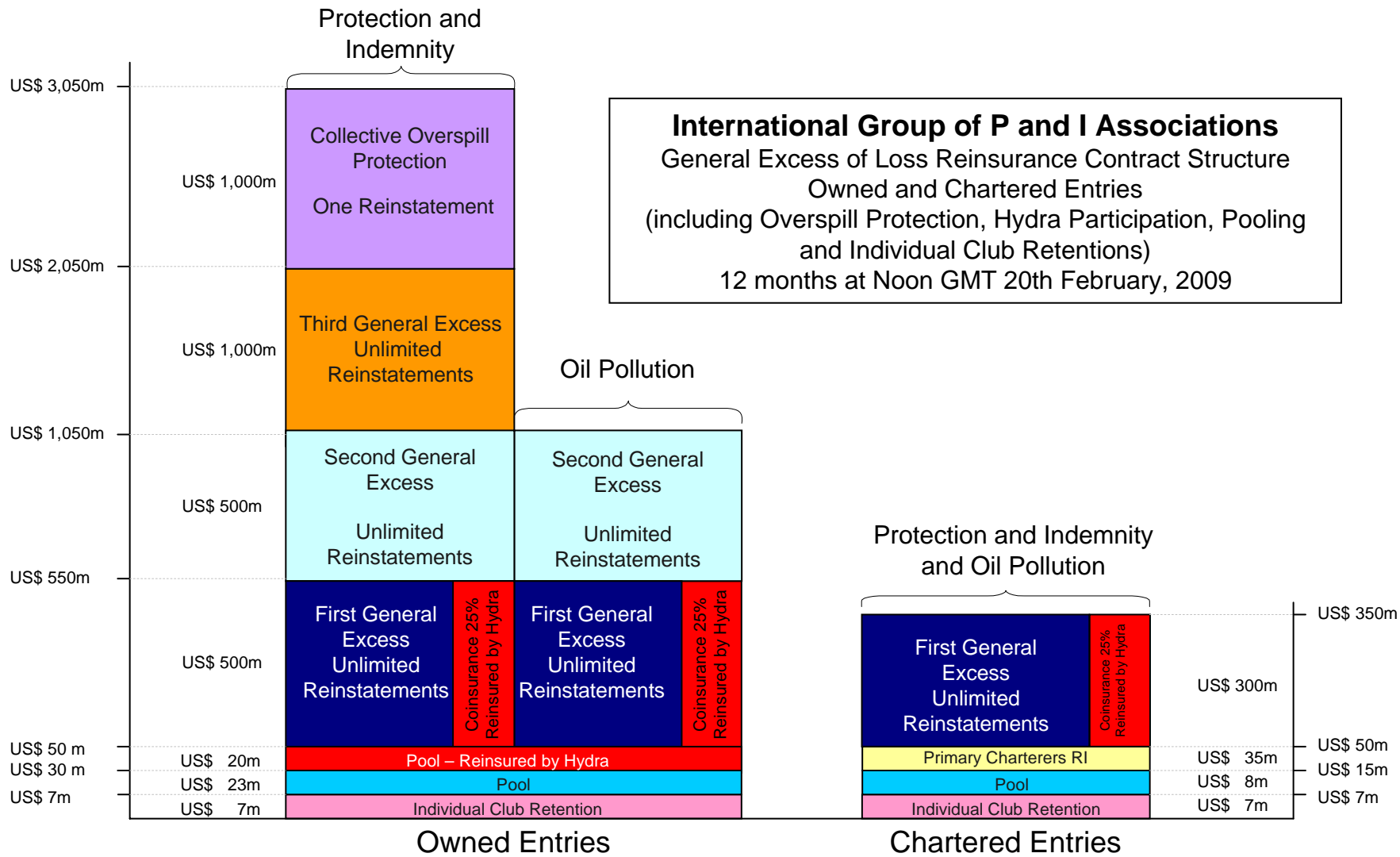
### Box 22:

Both the originals of the agreement – one to each of the parts – shall be signed.

### Box 23:

When mustering on or re-mustering, this Employment Agreement shall be presented to the mustering authorities









Rederienes Landsforening



## Yrkesskedeforsikring og trygghetsforsikring

1.1.2008 - 31.12.2008

## Sammendrag

### Yrkesskade- og trygghetsforsikring for medlemmer i Rederienes Landsforening

Forsikringsordningen for den enkelte arbeidstaker dekker yrkesskade, yrkessykdom, annen ulykkeskade (i fritiden) og tap av helseattest som konstateres i det tidsrom forsikringen er i kraft for den enkelte arbeidstaker.

**Skader må meldes uten ugrunnet opphold og senest innen ett år etter at erstatningsberettigede har fått kunnskap om de forhold som begrunner kravet.**

#### A. Tap fra skadetidspunkt til oppgjørstidspunkt

Faktiske tap, utgifter og inntekter som påføres arbeidstakeren frem til forsikringselskapet foretar oppgjør.

#### B. Merutgifter i fremtiden

Påregnelige fremtidige merutgifter som følge av skade eller yrkessykdom.

#### C. Medisinsk invaliditet

Påført mén dersom skade eller yrkessykdom har etterlatt varig medisinsk invaliditet.

#### D. Tap av fremtidig erverv

Ervervsmessig uførhet, altså nedsatt evne til fremtidig inntekt p.g.a. skade eller yrkessykdom.

#### E. Erstatning til ektefelle/samboer

Erstatning til ektefelle/samboer ved bortgang av forsørger. *Vanlig sykdom er ikke dekket.*

#### F. Erstatning til etterlatte barn

Det beregnes særskilt erstatning for hvert barn, regulert etter alder.

#### G. Utgifter til begravelse

Erstatning ytes med 0,5 G.

#### H. Etteroppgjør

Hvis invaliditetsgraden endrer seg vesentlig innen 5 år, kan erstatningen vurderes på nytt.

#### I. Tap av helseattest

Ved varig tap av helseattest ytes en engangserstatning. Eventuelle andre ytelser under forsikringer finansiert av arbeidsgiver kommer til fradrag.

#### Folketrygdens grunnbeløp, G

Folketrygdens grunnbeløp fastsettes av Stortinget hvert år og er pr 1.5.2007 NOK 66.812,-. Beløpet blir gjenstand for indeksregulering basert på levekostnadsindeks og reallønnsutvikling.

### Yrkesskedeforsikring (i tjenesten)

#### Erstatning til barn ved tap av forsørger

Maks 6,5 G

Eneforsørger får dobbel erstatning

#### Erstatning til ektefelle/samboer ved tap av forsørger

Maks 15 G

#### Begravelsesutgifter

0,5 G

#### Etteroppgjør

Endring av invaliditet

#### Tap av fremtidig erverv

Grunnerstatning 22-30 G

#### Medisinsk ménerstatning

Grunnerstatning 0,75-5,5 G

#### Fremtidige utgifter

Maks 21 x årlige utgifter

#### Tapt inntekt

Fra skadetidspunkt til oppgjørstidspunkt

#### Påførte utgifter

Faktiske tap

### Trygghetsforsikring (i fritiden/tjenesten)

Denne forsikringen dekker også yrkesskader dersom ytelserne er høyere enn under yrkesskedeforsikringen.

#### Erstatning til barn ved tap av forsørger

Maks 3 G

#### Erstatning til ektefelle/samboer ved tap av forsørger

Maks 14 G

#### Begravelsesutgifter

0,5 G

#### Tap av fremtidig erverv

Grunnerstatning 22-30 G

#### Medisinsk ménerstatning

Grunnerstatning 0,33 -7 G

#### Fremtidige merutgifter

Maks 15 x påregnelige årlige merutgifter

#### Tap og utgifter

Fra skadetidspunkt til oppgjørstidspunkt

#### Tap av helseattest

Maks 8 G

# Forsikringsbevis (RLF)

## Yrkesskadeforsikring - Trygghetsforsikring For forsikringsperioden 1.1.2008 – 31.12.2008

Dette forsikringsbevis er utstedt som en bekreftelse på Deres dekning under kollektiv forsikringsavtale nr. 79020817 inngått mellom Gjensidige Forsikring (GF) og Rederienes Landsforening (RLF). Den kollektive forsikringsavtalen oppbevares hos RLF til gjennomsyn.

Dette forsikringsbevis er en bekreftelse på den tariffmessige forpliktende trygghetsforsikring av rederiets mannskap.

Forsikringsbeviset gir sammen med vedlagte vilkår en beskrivelse av dekningsomfang og forsikringssummer.

### 1. Forsikringens omfang

Forsikringen skal gjelde for alle ansatte på skip så lenge tjenesteforholdet består uansett om de er i land eller om bord på skip tilhørende rederi tilsluttet RLF. Forsikringen gjelder både i arbeid, ferie/fritid og under permisjon/permutteringer m.v. fra det tidspunkt arbeidstakeren er ansatt i rederiet.

#### Personell som ikke er omfattet av forsikringen:

Rederiets kontorphersonale, inspektører, reiseoperatører som ikke er fast ansatt i rederiet, pårørende eller andre til arbeidstakere på skip som medfølger skipet som passasjerer, uten hensyn til om de er oppført på mannskapslisten som påmønstret eller ikke.

Selvstendig restaurantpersonell ansatt hos andre enn reder, såfremt restauratøren ikke gjennom medlemskap i NHO/RLF er bundet under RLFs tariff-avtaler.

### 2. Ikrafttredelse – inntreden

Forsikringen trer i kraft den 1.1.2008 for de arbeidstakere som frem til 31.12.2007 var med i tilsvarende trygghetsforsikring i GF, og fortløpende for nye arbeidstakere som fyller betingelsene i henhold til forsikringsbevisets punkt 1. Betingelsen for at arbeidstakere som var med i ordningen pr. 31.12.2007 skal være forsikret i den nye forsikringsperioden, er at forsikringstaker har mottatt bekreftelse på deltakelse i forsikringsordningen.

Nye medlemmer kan etter nærmere avtale med GF forsikre arbeidstakere i den løpende forsikringsperioden, 1.1.2008 – 31.12.2008.

### 3. Opphør

Forsikringen for den enkelte arbeidstaker opphører når vedkommende ikke lenger fyller betingelsene i henhold til forsikringsbevisets punkt 1.

### 4. Forsikringssummer

Forsikringssummer fremgår av forsikringsvilkårene, se seksjon A3 samt Lov av 16. juni 1989 nr. 65 om yrkesskadeforsikring.

### 5. RLFs oppgaver og plikter

Det enkelte rederi tilsluttet RLF skal, som grunnlag for beregning av premie, hvert år før 1. januar gi Aon Grieg (AG) oppgave over det antall arbeidstakere på skip som omfattes av forsikringsordningen. Antallsoppgaven som er utarbeidet av AG og RLF skal også benyttes som antallsoppgave for fordeling av ansatte i relasjon til opplysnings- og utviklingsfondet. AG sender RLF kopi av mottatte oppgaver. Manglende innsendelse av antallsoppgave på det fastsatte tidspunkt rapporteres til RLF.

#### Plikter i henhold til FAL

RLF's medlemmer skal på forsvarlig måte sørge for at arbeidstakere som etter forsikringsbevisets punkt 1 omfattes av ordningen, blir orientert om innholdet i dette forsikringsbevis. Medlemmene plikter for øvrig å formidle meldinger til og fra arbeidstakerne og GF, jfr. FAL § 19-3.

Medlemmene skal føre register over de forsikrede arbeidstakere. Registeret må inneholde de nødvendige opplysninger for å kunne fastslå forsikringsdekningen i henhold til denne avtale, jfr. FAL § 19-2, bokstav e.

#### Informasjonsplikt

Medlemmene og GF har i samarbeid en informasjonsplikt overfor arbeidstakerne, jfr. FAL § 19-3.

#### Ansvar for feil og forsømmelser

Feil eller forsømmelser av de plikter denne avtale stiller opp, kan medføre et gjensidig erstatningsansvar for medlemmene og GF.

### 6. Premie/regulering av premie ved antallsendring

Premie pr. person for forsikringsperioden 1.1.2008 - 31.12.2008:

<i>Trygghetsforsikring</i>	
Yrkesskadeforsikring (inkl. Lov)	NOK 4.300,-
Fritidsulykkesforsikring	NOK 880,-
Lisensforsikring	NOK 5.800,-
<b>Totalt</b>	<b>NOK 10.980,-</b>

Premien gjelder for alle offiserer og mannskap omfattet av RLFs tariffavtaler med Norsk Sjømannsforbund, Det Norske Maskinistforbund og Norsk Sjøoffisersforbund.

Premien er basert på det antall arbeidstakere som er tilmeldt ordningen. Hvis antall personer tilmeldt forsikringsordningen endrer seg i løpet av forsikringsperioden, skal merpremie belastes, samt premie til gode utbetales. Premierregulering på grunnlag av antallsvariasjon foretas slik:

«Differansen mellom antall forsikrede arbeidstakere pr. 1. januar og antallet pr. 1. januar foregående år, multiplisert med den halve årspremie med mindre særlige forhold foreligger».

Dersom innkrevd premie ikke blir betalt i rett tid, tas saken opp med RLF med sikte på eventuell utelukkelse fra forsikringsordningen.

Under henvisning til Forsikringsavtaleloven §11-2 gjøres spesielt oppmerksom på følgende:

#### **A. Ansvarsbegrensning – tap av helseattest**

Selskapet svarer ikke for tap av helseattest ved:

- Sykdom uten klare symptomer som legen kan iakttå og registrere. Selskapet svarer heller ikke for angst for opphold på eller reise til fartøyer, eller for følger av misbruk av alkohol eller annet beruselsesmiddel eller misbruk av slike medikamenter som bare selges mot legeresept. Svangerskap og forløsning anses ikke som sykdom.
- Ulykkesskade som rammer den forsikrede under utførelse av en forbrytelse eller forsøk på dette eller mens han er under innflytelse av narkotiske midler eller beruset – med mindre det godtgjøres at det ikke er noen årsakssammenheng mellom den forsikredes påvirkede tilstand og ulykkestilstanden.
- Sykdom eller ulykkesskade som skyldes forsett eller grov uaktsomhet.
- Sykdom eller ulykkesskade som skyldes utøvelse av boksing, bryting, judo og karate – hanggliding, fallskjermhopping og ballongfart – svømmedykking og hastighetsløp med motorkjøretøy.
- Dødsfall (uansett årsak).

#### **B. Meldefrist**

For trygghetsforsikringen gjelder følgende krav til meldefrist: Den erstatningsberettigede mister retten til å kreve erstatning dersom krav ikke er meldt forsikringsgiver innen ett år etter at den berettigede fikk kunnskap om de forhold som begrunner kravet.

#### **C. Tvister – nemndbehandling (jfr. FAL § 20-1)**

Dersom partene er uenige i erstatningsspørsmålet har den erstatningsberettigede under forsikringen, i tillegg til behandling i skadenemnda (vilkårenes pkt. 12), rett til å kreve behandling i Forsikringssskadenemnda eller Avkortningsnemnda. Nærmere opplysninger kan fås hos Forsikringsklagekontoret, Bygdøy Allé 19, 0262 Oslo.

# Forsikringsvilkår (RLF)

## Yrkesskadeforsikring – Trygghetsforsikring For forsikringsperioden 1.1.2008 – 31.12.2008

Disse vilkår gir sammen med vedlagte forsikringsbevis en beskrivelse av dekningsomfang og forsikringssummer.

### 1. Formål

Trygghetsforsikringens formål er å yte erstatning til arbeidstakere som rammes av yrkesskade, ulykkeskade eller yrkessykdom.

### 2. Trygghetsforsikring

Trygghetsforsikringen dekker yrkesskader, annen ulykkeskade og yrkessykdommer som konstateres hos arbeidstaker i det tidsrom trygghetsforsikringen er i kraft for arbeidstakeren.

En sykdom/yrkessykdom anses konstatert på det tidspunkt sykdommen er påvist av lege, selv om korrekt diagnose først ble stilt på et senere tidspunkt eller sykdommen først senere ble godkjent som yrkessykdom.

Trygghetsforsikringen dekker også yrkessykdom som konstateres etter at arbeidsforholdet er brakt til avslutning, og må anses forårsaket hos arbeidsgiveren.

Trygghetsforsikringen dekker permanent tap av helseattest p.g.a. ulykkeskade eller sykdom.

Forsikringsytelser finansiert av ny arbeidsgiver går til fratrukket i erstatningen.

- Forsikringen gjelder i hele verden
- Forsikringen gjelder 24 timer i døgnet
- Drukning er dekket
- Selvmord er dekket
- Beruselse/narkotiske midler er dekket

### 3. Hva regnes som yrkesskade, annen ulykkeskade og yrkessykdom?

Under trygghetsforsikringen skal yrkesskade forstås som legemsskade eller sykdom som må anses forårsaket av arbeidsulykke som går inn under Lov om Folketrygd kap. 13. Med yrkessykdom forstås sykdom som etter regler i h.t. Folketrygdlovens paragraf 13-4 er likestilt med yrkesskader. Hørselstap under 50db dekkes allikevel ikke. Det skal ses bort fra skadelidtes mottakelighet for en yrkessykdom med mindre denne mottakelighet er den helt overveiende årsak til sykdommen. Med annen ulykkeskade forstås varig invaliditet eller dødsfall som følge av ethvert ulykkestilfelle som inntreffer i ferie og fritid. Med ulykkestilfelle menes plutselig ytre begivenhet uavhengig av den forsikredes vilje.

Trygghetsforsikringen gjelder over hele verden og gir full erstatning også ved skadelidtes forsettlig eller uaktsomme medvirkning til skaden.

### 4. Hva som skal erstattes

Når yrkesskaden, annen ulykkeskade eller yrkessykdom er konstatert erstatter trygghetsforsikringen:

- a) Tap og utgifter skaden eller yrkessykdommen har påført skadelidte frem til det tidspunkt trygghetsforsikringen foretar oppgjør. Tap og utgifter under NOK 300,- erstattes likevel ikke. I tillegg til erstatningen betaler trygghetsforsikringen renter fra tapet påløp til oppgjør finner sted. Renten beregnes ut fra den enhver tid gjeldende rentesats etter Forsikringsavtaleloven. Tap og utgifter skaden eller yrkessykdommen har påført arbeidstakeren skal utgjøre det som måtte overstige alle rettmessige ytelser fra norsk folketrygd.
- b) Merutgifter som i fremtiden må påregnes som følge av skaden eller yrkessykdommen. Erstatningen settes til 15 ganger de påregnelige årlige merutgifter hvis skadelidte på oppgjørstidspunktet er under 56 år, 12 ganger det årlige beløp hvis skadelidte er 56-59 år, 10 ganger beløpet hvis skadelidte er 60-69 år og 8 ganger beløpet hvis skadelidte er fylt 70 år. Med merutgifter menes de utgifter som overskrider alle berettigede ytelser fra norsk folketrygd eller det man anser ville vært dekket i tilfeller der skadelidte ikke er medlem av norsk folketrygd.
- c) Påført mén hvis skaden eller yrkessykdommen har etterlatt varig medisinsk invaliditet. Ménerstatning beregnes på grunnlag av Folketrygdens grunnbeløp på oppgjørstidspunktet, nedenfor kalt G, på følgende måte:

0 - 14 %	medisinsk invaliditet	= 0,33 G
15 - 24 %	“	= 0,5 G
25 - 34 %	“	= 1 G
35 - 44 %	“	= 2 G
45 - 54 %	“	= 3 G
55 - 64 %	“	= 4 G
65 - 74 %	“	= 5 G
75 - 84 %	“	= 6 G
Over 84 %	“	= 7 G

Den erstatning som fremkommer etter foregående ledd reduseres med 2,5 % for hvert år skadelidte, da skaden ble konstatert, var fylt mer enn 55 år. Denne bestemmelsen skal dog ikke føre til reduksjon ut over 50 %.

I tillegg til erstatningen betaler trygghetsforsikringen renter fra det tidspunkt skaden, eller yrkessykdommen, ble konstatert og til oppgjør finner sted med den til enhver tid gjeldende rentesats etter Forsikringsavtaleloven.

- d) Tap av fremtidig erverv. Ved 100 % ervervsmessig uførhet settes erstatningssummen i utgangspunktet til 22 G.

Hvis skadelidtes bruttolønnsinntekt i Folketrygden i det år skaden konstateres og/eller i året før tilsvaremer enn 7 G, forhøyes erstatningen slik:

Ved brutto inntekt inntil	For gj.snitt av de 2 år
8 G	- 24 G
9 G	- 26 G
10 G	- 27 G
11 G	- 28 G
12 G	- 29 G
over 12 G	- 30 G

Ved beregning av gjennomsnittet, settes den laveste årsinntekt ikke under 7 G.

Hvis skadelidtes varige ervervsmessige uførhet er lavere enn 100 %, reduseres erstatningen tilsvarende.

Videre reduseres erstatningen med 5 % pr. år for hvert år skadelidte på oppgjørstidspunktet hadde fylt mer enn 55 år.

Retten til erstatning opphører ved 67 år.

Hvis det må antas at skadelidte vil få tap i fremtidig erverv til tross for at han på oppgjørstidspunktet har fylt 67 år, erstattes dette tapet.

- e) Tap av forsørger for ektefelle. Som likestilt med ektefelle regnes:

- Person som vedkommende har levd sammen med i ekteskapslignende forhold, hvis det i Folkeregisteret eller tilsvarende register i andre land, fremgår at vedkommende har hatt samme bopel som arbeidstakeren i de siste 2 år, eller det på annen måte godtgjøres at det ekteskapslignende forhold vedvarende har bestått i de siste 2 år.
- Person som har felles bopel og felles barn med arbeidstakeren.

Denne erstatning bortfaller ved skilsmisse, lovformelig separasjon eller annen faktisk permanent atskillelse.

Erstatningen settes til 14 G. Hvis forsørger ved dødsfallet var 56 år eller mer, reduseres erstatningen som under pkt d) frem til fylte 67 år. Ved dødsfall etter 67 år utgjør erstatningen 1 G.

I tillegg til erstatningen betales rente som under pkt c).

- f) Tap av forsørger for etterlatte barn. Erstatningen beregnes særskilt for hvert barn. Erstatningens størrelse avhenger av barnets alder ved forsørgers bortfall og utgjør når barnets alder er:

20 år - 0,5 G	11 år - 2,2 G
19 år - 0,8 G	10 år - 2,3 G
18 år - 1,0 G	9 år - 2,4 G
17 år - 1,4 G	8 år - 2,5 G
16 år - 1,7 G	7 år - 2,6 G
15 år - 1,8 G	6 år - 2,7 G
14 år - 1,9 G	5 år - 2,8 G
13 år - 2,0 G	4 år - 2,9 G
12 år - 2,1 G	3 år og yngre - 3,0 G

I tillegg til erstatning betales rente som under pkt c).

- g) Utgifter til begravelse er 0,5 G.

## 5. Lisensforsikring (tap av helseattest)

a) Forsikringen gjelder ved permanent tap av helseattest p.g.a. erstatningsmessig skade eller p.g.a. sykdom slik at den sikrede ikke lenger kan gjøre tjeneste ombord. Dette gjelder også selv om skadelidte kan få annet arbeid i land. Det kreves minimum 4 års pensjonsgivende fartstid for å bli omfattet av ordningen. Erstatningen ved mer enn 4 års pensjonsgivende fartstid utgjør 6 G. Erstatningen ved mer enn 8 års pensjonsgivende fartstid utgjør 8 G. Hvis skadelidte på tidspunktet for forsikringstilfellets inntreden hadde fylt mer enn 50 år gis erstatning etter følgende skala:

Alder t.o.m.	
50 år	100 %
51 år	90 %
52 år	85 %
53 år	80 %
54 år	75 %
55 år	65 %
56 år	50 %
57 år	20 %
58 år	0 %

Bestemmelsen omfatter de enkelte arbeidstakere, som når forsikringen trer i kraft for vedkommende, har gyldig helseattest i henhold til gjeldende forskrifter. Forsikringen trer i kraft på det tidspunkt vedkommende ble omfattet av overenskomst med avtale om trygghetsforsikring.

Forsikringstilfellet inntreffer den dag «udyktighetserklæring» blir utstedt med varig virkning.

Dersom forsikringstilfellet inntreffer i en sammenhengende sykemeldingsperiode som fortsatt løper etter at arbeidsgiver har brakt sikredes ansettelsesforhold til opphør skal sikrede være omfattet av trygghetsforsikringen på tidspunktet for udyktighetserklæring, så lenge årsaken til utstedelse av udyktighetserklæring er sammenfallende med årsaken til sykemeldingen og vedkommende var omfattet av trygghetsforsikringen første dag av den aktuelle sykemeldingsperioden. Det er videre et vilkår at forsikringstilfellet inntreffer senest ett år etter ansettelsesforholdets opphør.

## b) Begrensninger

Selskapet svarer ikke for tap av helseattest ved:

- Sykdom uten klare symptomer som legen kan iakta og registrere. Selskapet svarer heller ikke for angst for opphold på eller reise til fartøyer eller for følger av misbruk av alkohol eller annet beruselsesmiddel eller misbruk av slike medikamenter som bare selges mot legeresept. Svangerskap og forløsning anses ikke som sykdom.
- Ulykkesskade som rammer den forsikrede under utførelse av en forbrytelse eller forsøk på dette eller mens han er under innflytelse av narkotiske midler eller beruset – med mindre det godtgjøres at det ikke er noen årsakssammenheng mellom den forsikredes påvirkede tilstand og ulykkestilstanden.
- Sykdom eller ulykkesskade som skyldes forsett eller grov uaktsomhet.
- Sykdom eller ulykkesskade som skyldes utøvelse av boksing, bryting, judo og karate – hanggliding, fallskjermhopping og ballongfart, svømmedykking og hastighetsløp med motorkjøretøy.
- Dødsfall (uansett årsak).

## c) Utbetaling av erstatning

- Har den forsikrede rett til erstatning for samme skade eller sykdom under trygghetsforsikringen, yrkesskadeforsikringen, ulykkesforsikring eller andre forsikringsordninger finansiert av arbeidsgiver, reduseres erstatningen under lisensforsikringen med tilsvarende beløp. Arbeidsgiver og skadelidte har ansvar for å gi opplysninger om andre slike arbeidsgiverfinansierte forsikringer. Dersom lisenserstatning blir utbetalt først, blir denne å betrakte som en a-kontoutbetaling som kommer til fradrag i det endelige erstatningsoppgjør under de arbeidsgiverfinansierte forsikringer.
- Erstatning for tap av helseattest kommer kun til utbetaling én gang

## 6. Skadeoppgjør

### Melding om skade

Ved skade skal skadeskjema fylles ut og undertegnes av skadelidte, skadelidtes pårørende eller medlemmet med bekreftelse fra dette om at skadelidte var i tjenesteforhold på skadedagen.

Skadeskjemaet skal snarest sendes til:

Gjensidige Forsikring

Postboks 276

1326 Lysaker

Telefon 22 96 80 00

Telefaks 22 96 90 70

### Dødsfall

Har yrkesskaden, ulykkeskaden eller yrkessykdommen medført døden innen ett år, betales dødsfallserstatningen med den sum som er nevnt i vilkårene. Eventuell erstatning som måtte være forskuddsbetalt for samme skade eller yrkessykdom kommer til fradrag. Dør den forsikrede av annen årsak innen ett år etter yrkesskaden, ulykkeskaden eller yrkessykdommen inntraff, betales ikke erstatning.

Dør den forsikrede senere enn ett år etter at yrkesskaden, ulykkeskaden eller yrkessykdommen inntraff, betales ikke dødsfallserstatning, men invaliditetserstatning.

### Livsvarig invaliditet

Har yrkesskaden, ulykkeskaden eller yrkessykdommen medført invaliditet som antas å bli livsvarig, skal det betales invaliditetserstatning innen tre år. Mener noen av partene at invaliditetsgraden kan forandre seg, kan det kreves at endelig oppgjør utstår, dog ikke lenger enn tre år etter at ulykkeskaden inntraff. Erstatningen skal i dette tilfelle fastsettes etter den invaliditetsgrad som må antas å bli endelig.

For fullstendig invaliditet betales hele forsikringssummen, for delvis invaliditet betales en tilsvarende mindre del av den.

## 7. Regress

Kan skadelidte forlange at tredjemann erstatter skaden, inntreter selskapene ved utbetaling av erstatning i skadelidtes rett mot tredjemann.

Skadelidte og arbeidsgiveren har plikt til å gi selskapene alle opplysninger som er tilgjengelige for dem, og som er av betydning for gjennomføringen av trygghetsforsikringens regress.

## 8. Forholdet til lov om yrkesskadeforsikring (gjeldende fra 1.1.1990).

Hvis trygghetsforsikring gjelder for arbeidstakeren på konstateringstidspunktet (jfr. pkt 2, 2. ledd ovenfor) og arbeidstakeren samtidig er berettiget til erstatning etter Lov om yrkesskadeforsikring av 16. juni 1989 nr. 65, kan arbeidstakeren ved en yrkesskade velge om han vil kreve erstatning beregnet etter vilkår for trygghetsforsikring eller etter Lov om yrkesskadeforsikring.

Arbeidstakeren er likeledes berettiget til erstatning fra yrkesskadeforsikringen i tilfelle som nevnt i lovens § 5, siste ledd: «Dersom arbeidstakeren ikke lenger er i arbeid, svarer forsikringsgiveren til arbeidstakerens siste arbeidsgiver» og § 6, 1. ledd: «Opphører en forsikringsavtale å gjelde svarer forsikringsgiveren likevel inntil ny forsikringsavtale trer i kraft. Forsikringsgiverens ansvar faller likevel bort senest fire måneder etter opphøret av avtalen».

### Forholdet til Forsikringsavtaleloven

For trygghetsforsikringen gjelder Lov om forsikringsavtaler av 16. juni 1989 nr. 69 (FAL) i den utstrekning loven ikke er fraveket i foranstående vilkår.

## 9. Generelle vilkår

Trygghetsforsikringen dekker dødsfall, invaliditet og skader som direkte eller indirekte er forårsaket av krig, invasjon, fiendtlige handlinger, angrep av fremmed makt, enten krig er erklært eller ikke, borgerkrig, revolusjon, opprør, oppstand, militær eller annen uregelmessig maktovertagelse, tumulter (opptøyer), streiker, lockout, arbeiderkonflikter eller andre alvorlige forstyrrelser av den offentlige orden, forutsatt at forsikrede ikke er direkte engasjert eller deltar på en av de stridende parters side.

### Renter av erstatningsbeløp

Sikrede har krav på renter overensstemmende med reglene i paragraf 18-4 i Lov om forsikringsavtaler av 16. juni 1989, nr. 69 dersom disse ikke er fraveket i vilkårene.

### Følgene av svik

Den som gjør seg skyldig i svik mot selskapet, taper enhver rett etter forsikringsavtalen. Har man flere forsikringsavtaler med selskapet, taper man også rett til erstatning etter disse ved samme hendelse og selskapet kan med en ukes varsel si opp enhver forsikringsavtale med vedkommende.

### Twister

Twister vedrørende denne forsikringsavtale skal avgjøres etter norsk rett og av norske domstoler.



#### **10. Skadeforebyggende arbeid**

Selskapene skal i samarbeid med arbeidslivets organisasjoner bidra til generell informasjon vedrørende skadeforebyggende virksomhet. Selskapet skal så langt det er mulig gi organisasjonene innsyn i trygghetsforsikringens skadeerfaringer.

#### **11. Forsikringstakerens medbestemmelsesrett**

Endringer i disse vilkår skal skje i samråd med arbeidslivets organisasjoner.

#### **12. Skadenemnd**

Hvor det i en konkret sak oppstår tvist om tolking av disse vilkår eller om erstatningens størrelse kan skadelidte kreve at det opprettes en skadenemnd bestående av fire medlemmer.

Sammensetningen av skadenemnden skal være som følger:

- Ett medlem fra forsikringsselskapet
- Ett medlem fra den involverte arbeidstakerorganisasjon
- Ett medlem fra RLF
- En nøytral person som godkjennes av begge parter

Den nøytrale representanten er nemndens formann og har dobbeltstemme ved stemmelikhet.

#### **13. Skadenemndens mandat**

Skadenemnden skal på anmodning av den som krever erstatning eller selskapet avgjøre tvister om tolkning av disse vilkår eller om erstatningens størrelse

Likeledes kan skadenemnden på skadelidtes eller organisasjonens anmodning gjenoppta en tidligere avgjort sak hvis det etter oppgjøret fant sted konstateres uforutsette og vesentlige forverring av skadelidtes helsetilstand eller ervervsevne som følge av skaden eller yrkessykdommen.

Erstatningssaker som gjelder skader og yrkessykdommer som omfattes av denne forsikring, kan ikke prøves for domstolene om ikke saken er behandlet i skadenemnden.

#### **14. Erstatninger som er forårsaket av**

- a) Atomreaksjoner
- b) Epidemier

erstattes ikke.



Utarbeidet av Aon Grieg i samarbeid med Gjensidige Forsikring