



Ship Type: All Trade Area: USA

Bulletin 370 - 07/04 - Dealing With Law Enforcement Officers - USA

This advice is to provide guidance to Members in handling those maritime claims which carry a threat of both civil and criminal penalties to the ship's personnel, ship owner and ship operators. The greatest exposure to criminal penalties will probably involve alleged pollution and serious maritime accidents in which there is loss of life. Given the increased risks, it may be necessary to engage both criminal and civil lawyers to defend the interests of all those concerned.

The enclosed guidelines pertain to US criminal investigations only. For guidance in dealing with other countries where US law does not govern, you will need the guidance of a local lawyer as arranged by the Club.

The purpose of this guide is to promote cooperation with law enforcement without waiving any legal rights during an investigation.

Nothing in this advice should be construed to excuse ship officers from reporting obligations to local authorities.

GUIDELINES

1. You should notify Owner/Operator immediately of any inquiries made of you by any law enforcement office or agency.
2. Law enforcement officers in the United States can include the US Coast Guard, Immigration Authorities, FBI, EPA, State Police, US Attorney, District Attorney, Attorney General, US Customs.
3. You should ask to see proper identification of any law enforcement officer who comes aboard the ship or wishes to ask questions. Full details of the identification provided should be recorded by you.
4. Early involvement of a defence lawyer is essential. In most cases, owners/operators or the P&I Club will arrange for specialized input of criminal lawyers.
5. You have the right to remain silent and have the opportunity to consult with a lawyer before giving either written or oral statements to law enforcement and have a lawyer present during any questioning. If you choose to remain silent communicate that to law enforcement officials to the effect that, for example, "I understand that I have the right to remain silent and to consult with a lawyer, which I wish to do before saying anything more."
6. You cannot order crewmembers not to speak to law enforcement but you should inform your crewmembers that they have the right to remain silent and the right to consult with lawyers before they must decide whether to give statements to law enforcement officers concerning a criminal investigation.
7. If English is not your first language or that of your crewmembers, you each have the right to insist on utilizing the services of a qualified translator before responding to any interviews or questions.
8. It is a serious and separate crime to lie to a law enforcement officer. Accordingly, make sure that if you do say something, it is the truth.
9. Do not coach or tell your crewmembers what to say. If they have any doubts about how to respond to questions they should be directed to consult with the lawyer appointed to assist them.

10. Law enforcement officers may offer you immunity from criminal prosecution in exchange for your statement/testimony. Do NOT rely on promises made by law enforcement officers to the effect that what you or a crewmember says cannot be used against you in a criminal proceeding. Law enforcement officers do not have authority to make such promises. Any valid immunity from criminal prosecution must be approved by a Court and US Justice Department Lawyers and be in writing. Law enforcement officers cannot threaten or intimidate you to make statements. If this occurs, be sure to notify and consult with the lawyer appointed to assist you.
11. The U.S. Coast Guard may have the right to take certain ship documents from the ship when in port. If they insist on taking documents from the ship, be sure to ask for copies and an inventory of any documents or physical evidence removed from the ship.
12. Other than certain ship documents, the Coast Guard and law enforcement officers should need a search warrant signed by a Judge to remove ship's machinery, equipment, or to search an officer or crewmembers' personal belongings. You do not have to consent to the removal of such items or search of personal belongings without being shown a search warrant. If you are asked to consent to a search of personal belongings or removal of ship's machinery or equipment, you should consult with the lawyer appointed to assist you. If you do not agree to the search, you should tell the law enforcement officers that "I do not consent to the search [or removal of items]."
13. While you may not consent to a search, you should not use force or physically prevent a law enforcement officer from taking or searching if they insist on proceeding despite your lack of consent. The legal validity of the search will be decided by a Court as long as you can demonstrate you did not consent. For that reason, if you do not agree to a search or removal of ship's equipment, you must:
 - Clearly tell the law enforcement officer conducting the search that you do not consent.
 - Keep a written record of the law enforcement officer's demands and your responses to those demands.
 - Record the areas of the ship visited and the locations searched.
 - A ship's officer should accompany any law enforcement officers searching the ship.
14. Under no circumstances should you tamper with, hide or destroy any documents or evidence aboard the ship. To do so is a serious crime under US Law.
15. It is important to let the lawyer appointed to assist you to respond to official inquiries involving jurisdictional questions, i.e., the application of the law of the flag, the scope of territorial waters, etc. Your innocent statements could be misunderstood or taken out of context.
16. On occasion, separate lawyers may have to be appointed, one to protect your individual interests and another to protect the ship's interests. The appointment of the lawyer to protect the ship's interests and/or your interests will be made by the owners in consultation with the P&I Club. This does not mean there can be no cooperation between the lawyers appointed as often your interests and the ship's interests are the same.
17. You should note that in the United States, there are pollution crimes based on strict liability and simple negligence. There does not have to be criminal intent for an individual to be liable for a pollution crime in the US.
18. It is recommended that before responding to any media inquiries during a criminal investigation, the matter should be discussed with the home office to identify a spokesperson and to coordinate a proper response. This needs to be accomplished on a high priority basis.
19. You and your crew should be familiar with and must follow all rules and regulation concerning your ship, including reporting requirements relating to notification of pollution, accident, or hazardous conditions.
20. If you have any questions concerning these guidelines, please contact your home office.

If Members have any questions concerning these guidelines, please contact the Club for further information.

Source of information: Louise Livingston
Thomas Miller USA
Louise.Livingston@Thomasmiller.com