



CORONAVIRUS (COVID-19) AND THE GARD COVER

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As we have all seen over the past weeks, the Coronavirus (COVID-19) pandemic has impacted every aspect of global commerce and continues to evolve daily.

As a result, Members have raised many questions concerning Club cover.

While every case will depend on its specific facts, we identify below the heads of cover most likely implicated by the COVID-19 pandemic and provide guidance to Members on the most frequently asked questions.

For the latest information and advice related to the COVID-19 outbreak, we recommend consulting the dedicated COVID-19 section on the [Gard website](#) and the resources listed there.

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P&I

Crew

If a crewmember is ill or dies due to a COVID-19 infection, is there cover?

If a crewmember is infected with the virus while employed by Members, [Rule 27](#) will cover the costs in relation to the illness and, should the crew member die, in relation to their death, in accordance with the terms of the employment contract and/or applicable law. Essentially, liability for infection with the COVID-19 virus is covered under [Rule 27](#) in the same manner as any other covered crew illness, including evacuation, hospitalization, medical care, maintenance, and repatriation expenses.

What if a crewmember is infected ashore, or on their way to join the vessel, or on their way home after disembarking the vessel?

Liability can also arise if the crewmember is infected ashore while in the service of the vessel or on their way to join the vessel or on their way home after leaving the vessel, *provided* these periods are covered under the employment contract then there is cover.

What if a crewmember is displaying symptoms of infection and must be tested for the COVID-19 virus?

If a crewmember is displaying symptoms of the virus during periods covered under the employment contract, the reasonable costs of testing for the COVID-19 virus would be covered in the same manner as liabilities for other medical care and associated costs under Rule 27. However, if the crewmember is not showing any signs or symptoms of the virus, and testing is conducted as a precautionary measure, e.g., as part of crew change protocols and/or local regulations/policies, then the costs of testing are considered operational in nature and not covered.

What if a crewmember's training or medical certificates expire or are about to expire, and the necessary crew changes cannot be effected?

Cover is not prejudiced for crewmembers whose training or medical certificates expire while on board.

Will this affect the vessel's seaworthiness?

This will not affect the vessel's seaworthiness from a cover point of view provided safe manning levels are maintained in accordance with flag state requirements.

For further information see the [Gard Guidance to Rule 27](#).

Persons Not Carried on Board

What if a person is infected with COVID-19 while performing work on board the vessel?

If a person is infected with the virus while performing work on board, e.g. port authority personnel, port agents, third-party surveyors, stevedores, etc., [Rule 30](#) will only cover the costs in relation to the illness and/or death from the virus where the applicable law imposes a liability on Members, or in the case of a contractor, under the terms of the contract. Generally, liability under the applicable law would require a breach of a duty of care owed in direct connection with the operation of the vessel, e.g. failing to take proper measures to disinfect areas attended in the course of the work performed on board.

For further information see the [Gard Guidance to Rule 30](#).

Diversion

Are diversion expenses covered when there is a case of COVID-19 on board?

If a vessel must divert to secure treatment for an infected crewmember on board, the *extra* costs of fuel and other items set out in the Rule would be covered provided they were incurred *solely* for the purpose of getting medical treatment.

Are diversion expenses covered when there is a suspected case of COVID-19 on board?

If a vessel must divert to secure treatment for a crewmember on board suspected to be suffering from COVID-19, cover of the *extra* costs of fuel and other items set out in the Rule will depend on the specific facts and circumstances of each case, provided the *extra* costs were incurred *solely* for the purpose of getting medical treatment.

For further information see the [Gard Guidance to Rule 31](#).

Quarantine

If the virus is present *on board* a vessel and provided that Members have exercised reasonable care to avoid calling at ports where the vessel is likely to be quarantined, cover is available for costs and expenses incurred in direct connection with complying with a *quarantine order* of the vessel. There is a specific exception for the vessel's running costs and expenses. e.g. wages and fuel, which regardless of the quarantine order and virus on board, would have nevertheless been incurred.

If the virus is *present* on board and it becomes necessary to disinfect the vessel or crew, related costs and expenses are covered, e.g. costs of a specialized company required to carry out the disinfection.

What if the vessel and/or crew are voluntarily quarantined/self-isolated, when there is no COVID-19 virus on board and no quarantine order has been issued?

If the virus is not present on board and no quarantine order has been issued, there is no cover for costs and expenses under [Rule 48](#). There would also be no liability under [Rule 27](#) where the crew are not ill/infected.

What if the vessel is placed under a quarantine order because of the nationality of the crew, or due to the previous port of call, but the virus is not present onboard?

If the virus is not present on board the vessel, then costs incurred in connection with the quarantine order would not be covered under [Rule 48](#).

What if a crewmember is not infected, but is quarantined ashore due to local regulations/policies before joining the vessel or after leaving the vessel?

If there is no virus on board the vessel and the vessel is not under a quarantine order, the costs and expenses relating to the quarantine of the crew before embarkation or after disembarkation are considered operational in nature and not covered under [Rule 48](#). However, if a crewmember is quarantined after disembarkation because the virus is present on board the vessel, costs and expenses relating to the quarantine will be covered.

What costs and expenses are covered when the virus is present on board and the vessel is under a quarantine order?

Cover is available for costs and expenses incurred in direct connection with complying with a quarantine order of the vessel. Only *net* costs and expenses are recoverable, i.e. those costs and expenses over and above the vessel's usual running costs, and which would *not* have been incurred but for the outbreak of COVID-19 on board. For example, costs and expenses that are incurred in bringing the vessel to anchor in the quarantine area, in carrying out the required inspections or expert analysis, and in taking measures to eliminate the virus by fumigation or other forms of treatment would be covered.

What if there is lost time, or similar losses from the delay?

Cover is not available for loss of time, loss of market or similar losses that result from delay.

What if the vessel is not under a quarantine order, but the virus is present on board and it becomes necessary to disinfect the vessel?

If the virus is present on board the vessel and it becomes necessary to disinfect the vessel and/or the crew, the costs and expenses incurred to carry out the disinfection would be covered.

What if the virus is not present on board, is there cover for costs and expenses incurred in disinfecting the vessel?

If the virus is not present on board the vessel, there is no cover for costs and expenses incurred in disinfecting the vessel. For further information see the [Gard Guidance to Rule 48](#).

Defence

What kinds of claims are likely to arise?

Most COVID-19 Defence disputes will concern contracts of affreightment, charterparties, bills of lading or other contracts of carriage; delay of the ship; and property damage, personal injury or loss of life.

Claims made by Owners

Breach of safe port warranty

Unpaid hire

Demurrage/Detention

Indemnities for claims relating to the illness or death of crew

Indemnities from charterers for losses and claims brought against owners by third parties

Losses arising from the vessel needing to take on bunkers or supplies outside an infected area

Losses arising from the prohibition or blacklisting of vessels by other ports or authorities after calls to COVID-19 affected areas

Indemnities for disinfection expenses and time vessel spends in quarantine.

Claims made by Charterers

Breach of charter (arguing port was safe)

Recovery of over-paid hire

Off-hire during periods of quarantine/detention due to crew illness

Indemnities for claims brought by third parties

Force majeure and Frustration declarations in order to suspend/avoid contractual liabilities/obligations

Laytime/demurrage exclusions

Claims made by Third parties

Claims by receivers for not receiving goods/receiving goods later than expected

Damage to cargo resulting from delays

Claims by third parties entirely un-connected with the adventure claiming that Charterers or Owners are responsible for spreading the disease.

For further information see the [Gard Guidance to Rule 65](#).

Do I have Cover if I fix a vessel knowing that it will be going to a port affected by COVID-19?

Generally, Defence cover with Gard for both Owners and Charterers will not be prejudiced per se if a ship is sent to an area affected by COVID-19. However, our advice to Members is that, at all times, they should act as a prudent uninsured. Members should not act recklessly and should consider carefully whether it is prudent to proceed to a port with the knowledge that it would most likely be detained/quarantined on arrival at that port or subsequent ports.

Foreseeable loss or damage is not covered by insurance. Unforeseeable loss or damage is covered by insurance (subject to terms and conditions). So, if it is known that the vessel will be quarantined upon arrival and that that quarantine period will result in loss and damage, then it is unlikely that

such losses would be covered. With that said, the issue of recoverability of losses/damages is fact specific to each case and the Club's discretionary guidelines for cover as set out in the Rules.

Relevant considerations for Cover may include whether Members' activities amount to unlawful or unduly hazardous trading or an alteration of the risks declared at the time of taking out insurance which ought to have subsequently been notified to the Club.

Whether Defence cover will respond to a dispute depends primarily on the merit of Members' case. The Club will, in determining whether to exercise its discretion to cover, consider several factors such as the amounts at stake compared with the costs involved in pursuing a dispute as well as the likelihood of a successful recovery. This will have to be determined on a case by case basis.

How does COVID-19 affect my contractual rights and obligations under a charterparty or at law?

This is a complicated question and there is no easy answer. A lot will depend on the applicable contractual terms some of which may be expressly provided for in the contract and others may be implied by law.

We have published articles which deal with some of the scenarios that parties may face and the legal position: [Effect of COVID-19 on charterparty terms](#) and [COVID-19 and force majeure clauses under English law](#).

We strongly recommend that Members contact Gard at the earliest point a potential COVID-19 related claim may arise. We can provide advice on the parties' rights and liabilities in those specific circumstances and, where needed, appoint/recommend appropriate counsel for further legal advice and assistance. Gard continues to be guided by the views and recommendations issued by the WHO and other expert agencies in respect of this outbreak and Gard advises Members and clients to remain vigilant.

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