



# Are professionals in the Superyacht industry all at sea when it comes to insurance?

by Sarah Allan, *Maritime Lawyer*

**When I was 18, I crewed a yacht from France for the Arc Race from Las Palmas to St Lucia. I then spent a year working on boats, sometimes as a permanent crew member, and other times as a day worker or stewardess. Now over twenty years on as a maritime lawyer, I realise that whilst no serious incidents arose, I was ignorant of what, if any, arrangements were in place in the event of a serious or even minor accident, or were I to be seriously ill whilst far from home.**

Since then the industry has grown exponentially, the size of yachts is ever increasing, and with that, the risk of serious injury or fatalities has increased. There are also more professional crew than ever. From our experience, and indeed simply by speaking to friends who work in the industry, many are still in the dark as I was, even though times have moved on.

Disputes can arise where an injured crewmember or guest does not wish to make a fuss at the time, but changes their mind when the full impact of their injuries becomes apparent later on. If significant time has gone by, the notification period to present claims to insurers may have passed. The period in which an injured party has to bring a claim (known as the limitation period, which may only be one or two years in some jurisdictions) may also have expired in the country where the courts have legal jurisdiction to determine the claim. At worst, an injured party may have commenced legal proceedings in the wrong jurisdiction within time, only to find that the limitation period has expired in the correct jurisdiction. Their recourse may then only be against their lawyer. Any such unfortunate scenarios are bound to end up in resentment between the injured party, the owner and the insurer.

These problems are not uncommon. Establishing the place where the courts have jurisdiction to determine a personal injury claim is not straightforward. Even if that is easily established, it does not follow that the same law applies. A familiar story might be an injury caused by an exploding block recently installed by a sub-contractor during a refit at a local yard, occurring off an island in the Caribbean. The yacht is registered in the Cayman Islands, the injured crew or guest is British, living in the South of France, the owner is a company registered in the BVI, the employer is a management company registered in the Channel Islands, and so on.

Prompt action is to be recommended in the event of a serious incident where these issues come into play. Advice from a legal expert

familiar with maritime law and multi-jurisdictional disputes should be sought at an early stage (a word of caution not all personal injury lawyers have this experience, so you need to ask).

As an experienced sailor, I certainly do not wish to encourage unwarranted claims within our arena; but instead to make professionals in the industry, crew and guests alike aware of the potential risks and problems in the event of an incident or medical emergency. The starting point is knowing what insurance cover is in place and the procedures to follow in the event of an incident. This is important as, notwithstanding good intentions, disputes often arise out of misunderstandings, or a failure to follow the appropriate claims procedure under the correct insurance policy in the first place.

For instance, one might correctly assume that an owner of a large yacht has adequate insurance for its yacht. However, whilst this may be the case, the owner's insurance might not cover a person's expectations of what should happen, or indeed their medical needs, in the event of an accident or medical emergency.

One might be surprised that many smaller and/or non-commercial yachts are not legally obliged to have any insurance in many countries' coastal waters. Whilst some owners might insure to protect their asset or interests, others may have only done so as it was a prerequisite in order to secure a berth in a marina, or partake in a race. They might also have sought the most economical policy possible. For such yachts, a single policy covering hull and machinery, legal liability to third parties and limited liability for guests and crew for personal injury and medical expenses, would be quite usual.

However, the position has changed somewhat for larger yachts. This is because many yachts (motor and sail) are now either of a gross tonnage subject to international conventions, and/or are chartered. Insurance is essential, if not obligatory. However, you might find an owner instead has a number of different policies to cover the different risks, which is arranged by an insurance broker.

For instance, a large yacht may now at least have a hull and machinery policy, and P&I (protection and indemnity) cover responding to legal liabilities to third parties. This should also cover liabilities arising under international conventions such as the Maritime Labour Convention 2006 for employed crew compensation, sickness benefits and repatriation. However, the P&I policy insurance may require an owner to have separate crew medical insurance in place

intended to respond to the immediate demands of an incident. Therefore, its cover is usually subject to the crew medical responding first. Personal accident cover may be desirable for employed crew. Dependent on the cruising range, kidnap and ransom, and additional premium for war risks may also be appropriate (albeit, as regards the former, details may not be disclosed for good reason).

Whether working on board any size of yacht as a permanent or temporary crew member, subcontractor or guest, you should find out whether an owner has insurance cover which would cover you and that it would meet your expectations in the event of an accident or medical emergency. If racing, the policies may distinguish between paid race crew, and race crew who are friends of the owner or captain as opposed to guests. You need to check. Some key questions which you should consider are as follows:

- Do the policies cover you in the capacity that you are on board in the range that the yacht is operating? For instance, does the policy cover permanent crew only? If so, how many? Does it cover day workers, or race crew as well?
- Is there medical insurance in place? Is it sufficient to cover the cost of flying you as fast as possible to your desired place for treatment, or even home? Even better, does it include a Medevac scheme?
- Does the insurance provider pay for the medical expenses up

front, or do you or the owner or captain have to pay them in the first instance, to be recovered on an indemnity basis upon receipt of evidence of payment?

- What do you have to do in the event of an accident or medical emergency under the respective insurance policies?
- Does the owner have insurance for personal accident? Does the policy only cover you whilst on board and on a ship’s business, or would it cover you whilst on holiday and/or away from the yacht on your own business?

Having an understanding of the insurance arrangements in place means that you can make an informed decision as to whether you want to go on board at all, speak with the captain/owner about obtaining more suitable cover, and/or make your own arrangements.

Taking matters into your own hands can be recommended if you are regularly hopping from boat to boat as a crew, or as an industry professional (sail maker, engineer or rigger) regularly on board different yachts in various places in that capacity. If you decide to arrange your own insurance, it is important to check the small print carefully. Professionals in the industry really do need to have bespoke policies, which cover the type of work they do. For instance, a standard travel insurance policy is unlikely to cover superyacht racing, may have very restricted cruising ranges, and is unlikely to cover someone working in a professional capacity.



Comanche – photograph courtesy of [www.markoconnell.photodeck.com](http://www.markoconnell.photodeck.com)

Additionally, if self-employed, one should consider what cover is in place in the event of a serious injury resulting in a long interruption to your ability to work. A common misconception is that you may recover under an owners' insurance policy consequential losses arising from an injury on board. In fact, unless a policy provides it will pay out a specific sum in the event of an accident, it does not follow that an owner will be liable for consequential losses by way of damages. Such liability only arises if, by way of example, there was a legal liability arising from the owners' negligence. In cases of a serious injury like loss of limb or head injury, potentially caused by someone's negligence it will usually be necessary to involve lawyers to assess these damages and legal proceedings may be necessary. If this is necessary, and you seek advice from a solicitor on a 'no win, no fee' basis, ensure that the costs implications are explained to you and that you understand. In some instances part of the solicitor's fee will come out of any damages sum secured.

I have focused in this article on injury or medical emergencies against which a professional may wish to be protected. However, professionals may also be exposed to claims being advanced by third parties against them arising out of incidents, whether ashore or an accident on the water. One should not underestimate the value of insurance cover that includes limited legal expenses and legal costs protection.

Having had my first experience of sailing on a superyacht at the St Bart's Bucket this year, I was quite taken aback by the sheer size

and loads on these yachts which ordinarily cruise. It was evident from speaking with professionals that there is an element of uneasiness about what could go wrong. The reality is that there will always be risks in this industry and indeed accidents can and do happen on much smaller craft. Comparatively the incidents on such large yachts appear to be few and far between. This is most likely attributable to people in the industry and organisations such as the Super Yacht Racing Association continually assessing risks and making improvements to make yachting as safe as possible.

This said, professionals and owners should still have frank conversations about the insurance cover and arrangements in place in the event of an accident or medical emergency. If everyone knows what needs to be done in the event of a serious incident, and are aware of the correct procedures to be followed, such actions tend to lead to the resolution, rather than escalation, of disputes. This can only be good for the industry, although one might be reluctant to have that "what if" conversation in the first place.

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## DID YOU KNOW? The PYA Confidential Advisory Service

Written by a PYA Council member

**Did you know that one of the many services the PYA provides to members is a confidential advisory service?**

Almost every day the PYA Office is contacted by members wanting advice on a great variety of topics. Many of these requests involve purely technical matters and most are answered directly by our staff, but a proportion of them concern personal problems, usually related to employment matters, and are forwarded by our staff to one or another of our small team of senior members who are available to try to help.

From my own experience, I would say that around half of the problems that come my way concern either non-payment of wages or disputes about employment termination. The others involve a wide range of problems and I have recently tried to help in cases involving serious injury, physical assault and intimidation.

It should be stressed that my colleagues and I provide advice on a personal basis, using our knowledge and experience, and we are not acting as representatives of the PYA.

It's also important to understand that our service is confidential and we do not discuss any case with outside parties unless we have obtained the specific consent of the member involved.

As mentioned above, the majority of cases seem to involve non-payment of wages and/or disputes arising out of the termination of employment. The non-payment of wages is often fairly simple to resolve because, in most cases, the owner or manager will pay once they understand that legal processes exist whereby the seafarer can go to court to make a claim against the vessel.

Disputes about what is due when a seafarer's employment ends (holiday pay, repatriation, etc.) often arise because the terms of employment have either not been put in writing or are not sufficiently detailed. In these cases I find it's usually best that a mutually acceptable settlement be agreed.

I get a great deal of satisfaction from being able to use my long experience in our industry to help our members when they meet problems, and I like to believe that this service which my colleagues and I offer is one of the things that makes membership of the PYA so worthwhile.