

## NEW ADMIRALTY RULES: ELECTRONIC TRACK DATA IN COLLISION CLAIMS

### New Admiralty Court procedural rules highlight importance of electronic track data in resolving collision disputes

On 28 February 2017, amendments to the procedural rules for admiralty claims in the English Courts came into force. These amendments are specifically targeted at ensuring the early exchange of electronic track data in a potential collision claim. This reflects the importance of this data in promoting the early resolution of collision disputes where possible, otherwise in expediting and simplifying the trial of the proceedings.

Electronic track data is a digital or electronic recording of the track of a vessel as recorded by a ship or shore-based Automatic Identification System (AIS) or Electronic Chart Display Information System (ECDIS) or a Voyage Data Recorder (VDR). AIS is increasingly seen as playing a significant role both in avoiding collisions, because it improves the safety and efficiency of navigation, and also in providing crucial information in the event that a collision does take place.

As a result, the English Admiralty Court has introduced changes to the procedural rules that deal with the management of collision claims, specifically where electronic track data is available.

A Case Management Conference (CMC) is now mandatory for all collision claims and must take place within six weeks of the last Statement of Case being filed. The CMC is when the Court sets down a timetable for the future progress of the case up to trial and gives directions on the way the case is to be conducted going forward. In the event that electronic track data has been disclosed by either or both parties, the Court may decide, among other things, to:

- > Limit further disclosure to contemporaneous documents made shortly before or after the collision;
- > Limit or exclude expert evidence;
- > Limit witnesses to those most closely connected with the collision;
- > Dispense with oral evidence;
- > Limit the number of assessors to one or dispense with assessors altogether;
- > Dispense with an oral hearing, deciding issues of liability on an agreed bundle of evidence and written submissions; and
- > Make a costs capping order.

The broad discretion the Court now has to modify normal procedure in this way is an acknowledgement that, in many collision cases, the availability of electronic track data can greatly aid the quick and efficient disposal of disputes over liability for the collision.

Under the amendments, the parties to an anticipated collision claim now have a duty to take all reasonable steps to promptly obtain and/or preserve any original or copy electronic track data in their control. This covers: (i) data that is in a party's physical possession and/or (ii) data the party has a right to possession of and/or (iii) data that a party has a right to inspect or take copies of.

The parties are also expected to have mutual disclosure and exchange of any electronic track data very early on in the proceedings, within 21 days after the defendant files its further acknowledgment of service. Where both parties have electronic track data in their control, they must exchange this data within seven days of a request by one of the parties to do so.

In addition, an application by one of the potential parties for pre-action disclosure, i.e. before proceedings have been issued, will be looked on favourably by the Court on the grounds that such disclosure might end in the dispute being resolved before a claim has even been started and associated costs incurred. Importantly, where a party proves uncooperative in disclosing/exchanging its electronic track data, the Court may penalise it in costs.

### Comment

These are significant changes to the way in which collision or potential collision claims will be dealt with by the English Court going forward. Overall, these changes should reduce the cost and expense associated with a collision liability trial and, as such, should be seen as a positive and welcome step by the Admiralty Court.

Parties to such claims should take note of these amendments and ensure that they comply with their obligations to obtain, preserve and collect electronic track data that is in their control. Otherwise, they may face costs sanctions imposed by the Court and, perhaps more importantly, hinder the otherwise early resolution of any collision dispute.



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