

When armed guards are required for foreign crewmembers in the US

The club is frequently contacted by members regarding situations in US ports when the United States Coast Guard (USCG) has required the shipowner to hire armed guards. Members often have questions as to why the services of an armed guard are necessary.



Rebecca Hamra
Claims Director
T +1 646 753 9022
E rebecca.hamra@ctplc.com

Introduction

The most common situations in which armed guards are required include:

- to accompany a crewmember who is receiving medical treatment in the US
- to escort stowaways or a crewmember out of the US who is deemed at risk for deserting
- to guard the ship when Customs and Border Protection (CBP) deems the crew are at high risk for desertion.

Governmental authorities

When dealing with foreign crewmember issues in the US, members should be aware of the three main governmental authorities typically involved: USCG, CBP, and Immigrations and Customs Enforcement (ICE). In conjunction with ICE and CBP, USCG enforces US immigration laws and determines if ships are in compliance with US security and immigration regulations. As such, a situation that begins as an exercise of border control falling within the realm of CBP can develop into a security case, thereby involving USCG and ICE.

Medical treatment

In the event of a crewmember requiring medical treatment in the US following an injury or illness, the shipowner must submit CBP forms I-94 and I-259, as well as evidence of a medical condition to CBP, on the crewmember's behalf, so that the crewmember might receive conditional landing rights (commonly referred to as 'shore leave'). The conditional landing permit is required for crew to come onto US soil to receive medical treatment (commonly referred

to as 'medical parole'). If granted, CBP, in its discretion, can require that the crewmember be accompanied by an armed guard while in the hospital and during recovery. The responsibility for the resulting expenses associated with armed guards falls on the shipowner.

Illegal immigrants

Illegal immigrants on commercial ships commonly fall into three categories: deserters, absconders and stowaways.



A **deserter** is a crewmember who has been granted conditional landing status by CBP but departs the ship with no intention of returning to the ship or exiting the US within the bounds of the visa on which they were permitted to enter.

An **absconder** is a crewmember who has been refused a landing permit and departs the ship without permission.

A **stowaway** is a person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities.¹

¹ The Convention on Facilitation of International Maritime Traffic, 1965, as amended, (The FAL Convention),

Deserter

In the case of a deserter, CBP typically does not take any additional action aside from the initial investigation of the incident because, essentially, CBP has already determined that the crewmember deserter poses an acceptable risk to the US. Even if the ship in question has a recent history or pattern of deserters, subsequent USCG action is normally not warranted, aside from notifying CBP of the pattern. Because the deserter received a landing permit and CBP determined the crewmember should be permitted to land, the crewmember does not pose a security risk to the US.

However, if the shipowner has a significant pattern of desertion, USCG and CBP will classify the ship as an 'elevated security risk'. USCG policy allows a captain of the port (COTP) to require crew security plans for a 12-month period. During that time, the ship may be required to have armed guards each time it is in a US port. If a deserter is later located by CBP or ICE, the responsibility for the cost to house the crewmember during proceedings, repatriate the crewmember to his home country and any other related expenses falls on the shipowner.

Absconder

In regards to an absconder, USCG and CBP have entered into a Memorandum of Agreement Regarding the Detention of Certain High-Risk Crewmembers, which came into force in 2014. The purpose of the Memorandum is to provide guidance to shipowners and define the roles that CBP and the USCG play in the case of an absconder. Some of the information is considered sensitive security information and is not released to the public. The procedures do, however, explain that CBP gathers intelligence on ships and crewmembers prior to entering US ports, and flags particular ships or crewmembers that may warrant additional security measures. It also lists 25 countries that require additional security screening and potentially additional monitoring. If a crewmember bears the nationality of one of these countries, CBP may order the master to detain the crewmember on board the ship, place the ship under armed guard and require other appropriate security measures. USCG has stated that it has discretion to modify security measures and may consider alternatives offered by the shipowner.

Also, if a shipowner has a significant pattern of absconders in the US, CBP has discretion to order ships associated with the shipowner to employ armed guards while in US ports, even if there are no crewmembers on board who are considered high risk under the standard operating procedures.

Armed guards

In the circumstances described above, CBP can approve or reject the proposed armed guard services chosen by the shipowner. Since armed guards are not usually state or local law enforcement officers, CBP requires certain identifying information for screening purposes. In the club's experience, the local agent will be the best resource for finding suitable guards. In regards to cost, most security guard companies charge anywhere from \$45 to \$100 an hour. These costs can add up, especially if the crewmember remains in the US for an extended amount of time (eg while recovering from a surgical procedure).

How P&I cover responds

P&I cover can respond to a shipowner's liability at law or under certain approved contracts in respect of death of or injury to crewmembers. Yet it is often unclear to what extent cover would respond to crewmember immigration incidents. The key often lies in whether the expense is classified as operational in nature. The costs for armed guards relating to the security and repatriation of stowaways, deserters and absconders may be covered. On the other hand, the cost of armed guards ordered by CBP to safeguard the crew due to homeland security risks is not recoverable under P&I club rules as this is considered an operational cost. Thus, if a ship is ordered under armed guard due to a high-risk crewmember or because the shipowner has a history of absconders or deserters, these costs would not be covered. On the other hand, if a crewmember needs medical treatment and CBP orders an armed guard to accompany the crewmember, the cost of these services would be recoverable.

