

THE THREE FACETS OF THE DIVE LOG BOOK:

Prevention, Treatment, Indemnification

By François JAECK, Avocat à la Cour (Barrister), DAN member, CMAS Instructor

At the end of a dive, before closing their bag, many divers set about the ritual of filling in their dive logbook, like one last postcard that they take away in their luggage. The name of the country is more important than the name of the dive sites; the depth and duration of the dive are entered to summarise the dive parameters; followed by the account of the feats accomplished, wonders seen and sensations felt.

The dive logbook represents mainly the interest that each one of us derives from practising this activity and that leads us to accept its limits.

Although the importance of a dive, whatever it might be, is most certainly a major factor for the diver him/herself; "others" (termed "third parties" in legal terminology) are very often indifferent to it. The role and significance of the dive logbook is restricted to that of a simple private journal.

That is the paradox of the dive logbook: the importance that we accord to it is generally inversely proportional to its actual potential.

However, its universality and technical nature should lead it to be regarded as a real instrument of prevention, treatment, and, if necessary, indemnification.

INSTRUMENT OF PREVENTION

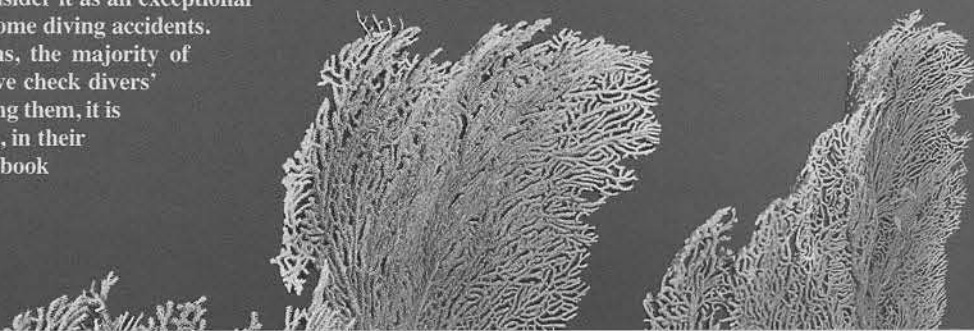
Most organisations that teach scuba diving or allow people to practice scuba diving recommend and sometimes even impose using a dive logbook.

The dive logbook has, therefore, as a role to attest to a minimum number of dives in order to meet the requirements for a brevet or to achieve a higher qualification.

Beyond that of a simple postcard, the dive logbook also has a probationary function.

The universality of the dive logbook and thus the universality of this probationary function should lead each and everyone to consider it as an exceptional tool for the prevention of incidents and even some diving accidents.

In fact, even though, for purely legal reasons, the majority of organisations that teach or allow people to dive check divers' brevets and medical certificates before accepting them, it is rare for them to ask to see logbooks; although, in their defence, not many divers present their logbook spontaneously either.



However, looking at it allows us to get a more precise idea of the real level of activity and hence of the real ability of the diver to do a dive that is proposed for him/her with the minimum risk.

The dive logbook is an excellent source of information in this regard:

- It reveals the real conditions in which the brevet was obtained (in a cold and dark quarry or in a warm and bright sea);
- It shows experience of a particular environment (such as cave diving for example) which, if not legally, can sometimes in practice be at least as useful as a technical level;
- It shows the length of time diving and the frequency of diving... but

could see him/herself being accused of misfeasance for not having consulted a simple document - the dive logbook - that would have allowed him to appreciate more accurately the ability of a diver to conduct a dive in unusual conditions.

In fact, a medical certificate only attests to the absence of contraindications to scuba diving.

The dive certificate only attests for its part to a level of practice attained at a given date.

But only the dive logbook can at the same time attest to the level of



also any prolonged interruption of diving;

- It can also show a regular violation of regulations by a diver.

So many precious elements that allow a particular level of ease to be supposed, or, on the contrary, that should lead to further questioning about the actual ability of the diver to carry out the dive that is envisaged without danger not only to him/herself, but also to the dive group. Those organising dives therefore should ask themselves about the liability that they could incur by not consulting a simple document - the dive logbook. They know that it exists and they are aware that it could contain elements that could lead them to authorise diving only under the condition of taking extra precautions or by being extra vigilant.

It is worth noting that it has already been decided, notably by the French courts, that independently of respecting the legal framework, the fact of trusting a medical certificate without any other precautions can constitute a fault of misfeasance since the dive organiser has knowledge of its particular limitations.

It does not appear hence wrong to envisage that the organiser of a dive

experience, ease and individual aptitude required to carry out the planned dive.

Furthermore, all divers are encouraged to trust their buddy to assist them in the case of difficulty... When two dive buddies do not know each other, which can occur frequently, particularly when diving abroad, it is the duty of the organiser of the dive to be particularly vigilant when organising dive groups to so that they are made according to the actual abilities of everyone... and not consulting a dive logbook could constitute from that point of view a fault of misfeasance.

But what applies to the dive organiser also applies to the diver: trust is earned according as it is deserved.

Consulting dive logbooks would allow everyone to assure themselves that the dive organiser's choice is appropriate, to reinforce the reciprocal trust, to avoid a source of stress, or conversely, to inform them about incidents or accidents that could have been avoided by a more appropriate appreciation of the real abilities of the diver or by the simple adoption of specific precautionary measures.

The dive logbook, through its probationary function in relation to the real experience of a diver, should thus be regarded as an excellent instrument for the prevention of incidents and possibly even diving accidents, if everyone took the trouble to complete it and allow it to be consulted.

INSTRUMENT OF CARE

But when the diving incident or accident could not be avoided the dive logbook still has a role to play.

Careful practice of diving should lead all organisers to be certain of the parameters of those groups diving under their responsibility:

- In order to detect any violation of regulations;
- To suspect a greater risk of a decompression accident particularly associated with not diving within the limits of safety;
- And, if necessary, to provide quick, albeit summary information to doctors about the details of a dive.

One might think that the dive logbook is scarcely of any value in this respect.

That is to forget that no small number of accidents happen following a lapse of time when the diver is no longer under the direct control of the dive organiser and does not have the information gathered by them anymore.

Carefully reporting from that point of view the details of a dive and any incidents in one's logbook is the most reliable and quick means of providing information to the medical services in the case of necessity.

How many divers, alas by negligence or pride, do not record incidents that happened during a dive in their dive logbook, preferring instead to keep them to themselves, in the sometimes mistaken idea that they will always be able to relate them should the need arise.

But on this point, the advent of the electronic dive logbook, the corollary of the profiles saved by dive computers, can be a source of diagnostic and decision-making support that is all the more valuable for doctors the more it reveals, objectively, the exact conditions of a dive and provides therefore, beyond signs and symptoms, further details about the exact conditions of a dive and thus on the probable cause of the accident.

In fact, not only is the total time and maximum depth automatically recorded in it, but also the exact profile of the dive and most importantly the ascent rate and the actual duration of any stops.

The most recent interfaces of air-integrated computers furthermore reveal gas consumption and thus allow respiratory rhythms, stress, physical effort and even shortages of air to be inferred.

The dive logbook, specifically in its electronic aspects, can thus be a very useful complimentary instrument allowing doctors to better tailor treatment to the actual circumstances of an accident.

INSTRUMENT OF INDEMNIFICATION

But when a dive logbook doesn't allow for an accident to be prevented or treated without consequences, it can still contribute to an acceptable indemnification.

A true diver's "black box", the logbook constitutes in fact both an essential instrument in order to understand the causes of an accident and a means to reach an indemnification.

Between the damages intentionally sought by a victim who would never be entitled to indemnification and the damage intentionally created by a third party who has full liability for the damage, insurance companies and solicitors usually need to determine any liabilities accrued by the diver, the instructor and the organiser of the dive.

In fact, the right to indemnification of an individual who partakes in a sporting activity and who injures him or herself alone is generally limited. Compulsory health insurance companies will generally only assume responsibility for those costs - subject to the individual legal systems of every country - for medical care directly related to the treatment of the accident; but the majority of the very substantial addi-

tional costs as well as the majority of damages suffered will not be, by law, compensated.

This is incidentally the reason for which sport organisations are generally obliged to inform their members that it would be in their interest to take out an insurance policy to cover physical injury.

Specifically in terms of diving, the diver must bear in mind that accidents very often involve extremely high costs, the organisation and assumption of responsibility for repatriation of the diver and those accompanying him/her as well as the implementation of support at an international level...

A diver who is not mindful of this reality will realise very quickly but usually too late the meaning of exclusion and guarantee limitation clauses which very often account for the differences in premiums between two insurance contracts.

In fact, if the victim of the accident does not qualify for compensation by their insurer as a result of limitation and restrictive clauses in their contract or when the "contractual" indemnification that is paid is insufficient to completely compensate them for the damages suffered, there may be no other option open to them other than to try to establish the fault of a third party in order to try to obtain compensation through the third party's insurance company.

The two arguments cannot but conflict with each other: that of the victim who seeks to prove the existence of the fault of a third party - usually the instructor - (such as exceeding the safety limits, failure to react or an inappropriate reaction to an incident, failure to do a safety stop, ascent rate too fast etc.) and that of a third party who tries to also legitimately prove that the accident was not in fact attributable to him/her, but was the result of carelessness on the diver's part, exceeding his/her qualifications, or, if applicable, by an unexpected and unforeseeable cause that would constitute a case of force majeure.

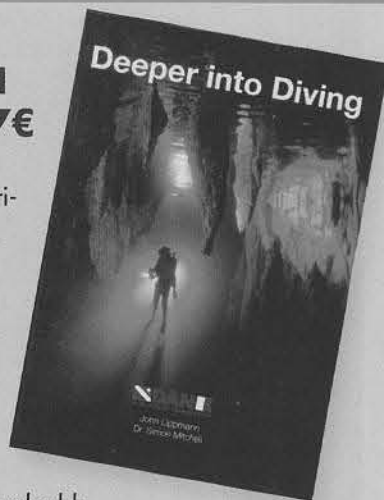
But in the in camera world of diving who can be believed?

It is up to the victim therefore to provide the proof of the course of the dive.

DEEPER INTO DIVING (ENGLISH VERSION): 42,47€

This bestseller is for the experienced diver, the technical diver, the dive instructor, and other diving and dive medical professionals. It contains information on a variety of decompression procedures and technical information that is not easy obtainable.

This book also provides very valuable insights into diving physiology and various physical and medical aspects of deeper diving



Order your copy today in the DAN Europe online catalogue at www.daneurope.org

Human testimony, by its very subjective nature, can only be fully evaluated with extreme care because of the issues of litigation. Moreover, without having to suspect malicious intention on the part of one or both parties in the dispute, experience shows that two people who are present at the same event will experience it differently and will relate it distinctly and this is all the more so when the testimony is related some time after the event.

Therefore the only source of information that is truly objective and therefore reliable is that within the information stored by the dive computer and which can be accessed using the electronic interface for the computer.

Objective data can be viewed at intervals of only a few seconds about the depth, air consumption, ascent rates and warnings; allowing firstly to compare the testimonies related with the objective data stored, and therefore either reinforce the evidential strength of the human testimony, or on the contrary point to the weakness of it, and secondly to indicate a further analysis of the facts if necessary.

Can the circumstances of a dive be better appreciated so, such as whether the diver respected the regulations or not, whether conservative or risky profiles were adopted, the occurrence of stress, breathlessness, physical effort during a dive, abnormal ascent rate or omitted decompression stops; so many factors that can give an insight into the behaviour of a diver during a dive and the care or lack of care that they demonstrate.

So many elements that allow us to understand:

- The absence of the fault of the third party and the "undeserved" nature of the dive accident, which can exonerate the disputing third party as regards the occurrence of the accident and which will refer the diver to an insurance contract that they may or may not have signed and to the limits of it,
- Or inversely a fault of misfeasance committed by the instructor or the diver, which will lead inevitably to a debate about the shared liability between the victim and the third party, and therefore to the recourse to be provided to one over the other.

If the electronic dive logbook constitutes thus an invaluable source of objective and reliable information contributing to the understanding of any liabilities, the dive log book on paper still retains its full importance in the appreciation of one of the indemnifiable types of loss or damage: the loss of amenity.

In fact, independently of the damages associated with the costs of medical care, pain endured, temporary or permanent functional disability; there is a specific type of loss or damage – the loss of amenity – that the dive log book can play an essential role in evaluating. In its widest interpretation, loss of amenity is defined as the range of disturbances that a victim suffered or will suffer in his/her living conditions, that have as their root cause the consequences of the accident that they were a victim of.

In a narrower interpretation, loss of amenity is defined as the impossibility for the victim to indulge in a specific sporting activity that they previously indulged in. Whether it is in the "broader" sense of the loss of amenity, or the "narrow" sense, the dive logbook is an essential instrument to obtain an appropriate indemnification for this loss. In the narrow interpretation of the loss of amenity, that limited to compensation for the inability to engage in a specific sport activity, the victim would have to first of all provide proof of their physical disability and the fact that it is a contraindication for a specific sporting activity, in this case, scuba diving. The proof of the disability can be easily reported by medical expertise

and proof regarding the contraindication to diving can be provided by referring to the indicative lists issued by the recognised medical authorities of many government organisations, commercial as well as associative, which govern the practise of scuba diving.

But the victim will still have to provide proof above all that they really practised diving before the accident, of the length of time of the activity and its frequency.

In fact, the indemnification of this loss will be obviously less for a diver who dived for the first time a few days earlier and who had only a very limited amount of practise at the activity, while the compensation will be a lot more substantial for an established diver who dives regularly.

Yet, on this point, aside from the situation of those individuals who practice sport at a high level with a well-established reputation, an individual who engages in a sport on a "recreational" level may have difficulty establishing in an evidentiary way the reality of the significance of their involvement in the sport, whether it is in ambit of an amicable or legal recourse.

A diver has however a valuable tool: their dive logbook.

Provided that it has been conscientiously filled in, it should in fact establish both the length of time diving as well as the number of dives carried out prior to the accident, whether it is a question of a dive accident, or otherwise.

This document, although filled in by the victim, can prove to be vital, since it can be difficult to contest if a diver has taken the care to have their dives witnessed by a third party who, by putting a stamp next to the entries that allows him/her to be identified (instructor number, dive centre address etc), attests therefore to the accuracy of the information next to it in the logbook.

To attempt to contest the dive logbook entries can prove all the more difficult the greater the number of third parties and the higher their qualifications.

Producing the logbook is therefore probably the best means for a diver to establish the reality, the length of time diving, the importance and frequency of scuba diving practice and thus to obtain the most appropriate indemnification possible for the loss of amenity that would result from the physical incapacity caused by an accident, whatever its cause.

But if the dive logbook is thus called upon to play an essential role in the indemnification of loss of amenity in its narrow interpretation, its role extends equally to its broad interpretation.

In fact the dates, places, notes, viewed by a third party can establish the places of practice, the number of trips abroad, the exoticism of the destinations and the amazement of the dives... So many elements that can demonstrate the importance of the loss of amenity, not only linked to the inability to practice scuba diving, but also the deprivation of a leisure activity practiced in these good and sometimes marvellous conditions.

In the light of such a document, it would be tricky to say the least to contest both the principle as well as the importance of the loss of amenity suffered.

Despite its powerful potential, experience shows that the dive logbook is rarely used in all of these dimensions.

Everyone would benefit from it however... in order to prevent, treat and, in the case of necessity, provide for appropriate indemnification of an accident suffered by a diver.

NB: If this article was directly inspired by French Law, the universality of the dive logbook and the essential principles of indemnification of loss or damages, indicate that the principles evoked are transferable across the main legal systems.

