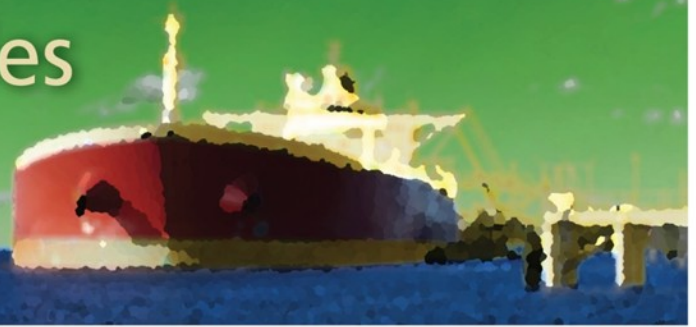


Underwriting Guides



Charterer's Risks and Liabilities

CHARTERER'S RISKS AND LIABILITIES

TYPES OF CHARTERER

- **Demise or Bareboat Charterers** — are in essence leasing the ship without the crew. In terms of risk and liability, the charterer steps into the shoes of the shipowner by assuming responsibility for maintaining manning and operating the ship. A bareboat or demise charterer needs the same insurance protection through P&I, H&M and ancillary covers as a shipowner.
- **Time Charterers** – whilst not assuming responsibility for maintenance, repair, manning and navigation of the vessel, the time charter does take on much of the risk and responsibility for the commercial operation of the ship. They make a number of major decisions about trading the ship and thus assume responsibility for matters such as when, where, how and what cargo is loaded, carried and discharged from the vessel. As a result, they assume a significant range of liabilities for death, injury or damage to property arising from those decisions. Time charterers also place their own property such as bunkers, containers and equipment on board the vessel, and in so-doing expose them to marine perils.
- **Voyage Charterers, Space Charterers or Slot Charterers** – assume less risk than time charterers because decisions such as when, where and how cargo is loaded are usually a matter of shared responsibility with the Shipowner; but voyage, space and slot charterers do often assume responsibility for all or part of loading and discharge operations and for risks associated with the inherent qualities and condition of the cargo.

HOW DO CHARTERER'S RISKS AND LIABILITIES ARISE?

- **By Contract** – charterers' principal contractual risks arise under the charterparty, charterer's bills of lading, cargo booking notes and contracts with stevedores. All these contracts expose charterers to liability for loss of or damage to property (such as cargo or the vessel) and/or personal injury (such as to stevedores or ship's crew).
- **In Tort or Delict** – typically liability for death or personal injury to third parties such as crewmen or stevedores is caused by the negligence of the charterers or their employees.
- **Statutory Liability** – typically fines, customs penalties, failure to provide safe working systems and oil pollution (especially in the USA, but also elsewhere).

“CARRIER”

In respect of liabilities for loss of or damage to cargo, charterers may, depending on the contract terms and the applicable laws, be considered as the legal “carrier” of the cargo. In such cases the charterer may in the first instance be responsible for risks and liabilities for cargo loss or damage, even though they may have rights of recourse against the shipowner or other third-parties. However, full recovery in respect of these rights of recourse cannot be guaranteed.

In many jurisdictions, the so-called “identity of carrier clauses” in bills of lading which seek to identify the shipowner as the

Charterer's Risks and Liabilities

carrier are held to be non-effective and the charterer may be found liable.

CHARTERER NAMED UNDER OWNER'S INSURANCE POLICY :

It is sometimes thought that charterers can shelter themselves from charterer's risks and liabilities by agreeing with shipowners to take the benefit of the shipowner's own insurance cover. Clauses to the effect that the charterers shall have the benefit of the shipowner's insurance cover are still sometimes found in time, voyage, space or slot charters. However, charterers should be warned that they cannot rely on these clauses alone, as agreements of this type in the charter party are unenforceable as between the charterer and the owner's insurer, as the insurer is not a party to the charter party. Therefore, such a clause in the charter party will in itself not provide the charterer with cover. Furthermore, even if the charterer is named under the owner's P&I policy, the charterer is often only covered for those liabilities which would fall on the owner and may not provide cover for the charterer's own liabilities.

The charterer is, therefore, better protected if he obtains his own insurance. Indeed, no International Group P&I Clubs will agree to name a third-party charterer under an owner's P&I policy. The only exceptions are when naming bareboat charters or where naming the charterer for "mis-directed arrow" cover only (as, for example, seen in Supplytime 89 and 2005 charter parties). However, in these situations, at the very least the charterer should obtain copies of the current insurance policies to ensure he is named under the owner's P&I policy.

In the case of Hull and Machinery insurance, it is not unusual for long-term charterers to be named and waived under the ship owner's Hull and Machinery policy. This is often found where the vessels have high values, such as LNG vessels, and where the period of the charter parties may be exceptionally long, typically fifteen or twenty years.

CHARTERER NAMED UNDER CARGO INSURANCE :

Another special situation where a charterer may be named under another insurance policy is in the case of traders who own the cargo whilst it is carried on board the chartered vessel. To save insurance costs, the charterer can arrange with his cargo insurers to be named and waived under the "all risks" cargo insurance in his capacity as charterer (as well as cargo owner). This will allow the charterer to exclude liability to cargo risks under his charterer's liability P&I cover.

COMMON SITUATIONS WHERE A CHARTERER MAY FACE LIABILITY

- **Loss of or Damage to Cargo** - this is a charterer's single most important area of risk. The charterer faces liability in two distinct ways. First, he may be found directly liable to the cargo owner, because he issued his own bill of lading, or because under the relevant law (which will depend on where the accident occurred, or where the vessel trades, or the bill of lading terms), he may be determined by the courts to be the "carrier" under the Bill of Lading. Secondly, the charterer may be liable for damage to cargo because he has to indemnify the shipowner or disponent owner or his sub-charterer under either a charter contract or a booking note.

Time charterers typically may have to indemnify owners under the charter for cargo damage caused by bad stowage or defective lashing or securing carried out by the charterer's stevedores. Voyage charterers bear a similar risk when they charter on FIOS terms. Under the Inter-Club Agreement, whether or not incorporated into the NYPE charter, the charterer can be obliged to bear either 50% or 100% of cargo loss in certain circumstances.

Even if a charterer has a complete right of indemnity in respect of cargo damage, either against the shipowner or disponent owner or sub-charterer, he remains exposed if he cannot make a recovery because of insolvency of the other party, or inability to enforce his claim.

- **Personal Injury** – because under many time, voyage, slot or space charters the charterer remains responsible in whole or in part for arranging and paying for stevedoring and other loading and discharging operations, he may be held liable for death or injury sustained by any person engaged in those operations, whether it be a stevedore or other port worker or a member of the ship's crew.

In many jurisdictions - particularly in the United States – the courts are prepared to find charterers wholly responsible for death and personal injury, or they may decide to find both owners and charterers liable to compensate the injured party.

Charterers may also find themselves liable for death or injury caused during loading, carriage and discharge of hazardous cargoes, particularly if the cargo is incorrectly labelled.

- **Pollution** – what would at first glance seem to be entirely a shipowner's liability may, in fact, represent a significant exposure for a charterer. In certain jurisdictions, oil pollution legislation – particularly in the USA – defines the "operator" of

Charterer's Risks and Liabilities

the vessel sufficiently widely to include a charterer. Direct liability for oil pollution is, therefore, a real risk for a charterer.

Time charterers may find themselves liable for pollution, including fines, during bunkering operations, where a spill is caused by a vessel contracted by them to deliver bunkers to the chartered vessel. Full recourse against the bunker vessel owners may not always be possible.

The most serious pollution risk for a charterer probably arises from charterer's orders for the vessel to proceed to an unsafe port, where she sustains a casualty and spills bunkers or cargo. In one case, following the grounding of a tanker in Spain in 1992, the owner's indemnity claim against the charterer in respect of pollution by ship's cargo amounted to some US\$65M.

- **Damage to hull** – charterer's liability for loss of or damage to the chartered vessel can range from relatively small claims for routine damage caused by stevedores, to the total loss of the ship. As with serious claims for oil pollution, a charterer may be liable to indemnify the owner for the total loss of the ship as a result of ordering the vessel to an unsafe port. An equally serious risk for any charterer, whether time, voyage, space or slot, is loss of or serious damage to the vessel and all or part of its cargo, caused by the dangerous properties of the cargo loaded by the charterer. Spontaneous combustion in bulk cargoes, fire or explosion of IMO cargoes loaded in containers, liquefaction of slurry or concentrate cargoes are examples of recent causes of casualties involving serious damage to or loss of the chartered vessel. The charterer may find himself liable to indemnify the owner for having shipped a dangerous cargo, and then unable to enforce rights of recourse against a shipper.

Damage to the chartered vessel's machinery through the provision by a charterer of defective bunkers may also expose him to significant claims.

- **Fines** – charterers face exposure to fines imposed in respect of cargo to broadly the same extent as claims for cargo loss or damage. Fines may also form part of indemnity claims by shipowners or disponent owners or sub-charterers against the charterer.
- **General Average, Salvage and Special Charges** – a time charterer will offer to put his own property on board a vessel in the form of bunkers, containers not carried as cargo and other equipment such as lashing material.

Thus he faces the risk of having to pay general average or salvage costs and special charges in respect of such property on board a vessel which suffers a casualty. Again, recovery from the shipowner of such contributions or charges may be prevented by the terms of the charterparty.

- **Legal Costs and Related Expenses** – even where a charterer may ultimately be able to avoid liability in respect of the risks summarised above, he may be exposed to incurring significant legal costs and other expenditure in defending himself against claims. In the case of a major casualty involving death or serious personal injury, serious damage to cargo, pollution or loss of or serious damage to the vessel, such legal and related costs could be considerable.

Charterers often find themselves engaged in more contractual relationships in the trading of the vessel than a shipowner. There will be at least one charterparty, and maybe two if the vessel is sub-chartered. There will be stevedoring contracts, booking notes, bills of lading or waybills, agency agreements and so forth. The greater number of contracts, the greater the potential for disputes between the charterer and his contract partner. Dispute resolution by litigation or otherwise can involve substantial costs, particularly where claims between charterers, owners and disponent owners or sub-charterers are concerned. Disputes may often involve several parties other than the charterer, particularly if there is a chain and the potential for escalation of costs is considerable.

SUMMARY

The liability environment in which the shipping industry operates is becoming increasingly hostile. The industry is becoming ever more regulated, particularly in areas of safety and pollution. Penalties and costs imposed in respect of pollution and environmental damage have increased worldwide, not only in the USA. Compensation levels for death and injury have also increased. Liability regimes for sea carriers have become more rigorous and the opportunities for ship operators – particularly charterers – to limit their liabilities under the applicable laws have reduced. Time, voyage, space and slot charterers face increased exposure, whether directly to third parties or through contractual liabilities and indemnities. In certain circumstances, these risks and liabilities are large enough to undermine or destroy the financial base of even the most well-established charterer; that is why an increasing number of charterers recognise the need to take out insurance protection.
