

Self-insuring or gambling the company - the perils of being an uninsured charterer

The P&I insurance offered to shipowners by the Clubs of the International Group is a commercial bargain realisable only through the buying power of 90% of the world's ocean-going tonnage. But there is no comparable scheme for Charterers so how are you, the Charterer, protected?

For a modest premium, a shipowner can benefit from billions of dollars' worth of cover protecting them against an array of third party risks including pollution, collision liability, cargo claims, and personal injury. A Charterer's needs are comparable and insurance to match is therefore required.

For operational claims under charter parties, such as unpaid hire, speed and performance, and delivery and redelivery disputes, the Clubs' FD&D cover provides experienced claims management and legal costs support.

In terms of a Charterer's FD&D needs, they are party to the same operational claims but may also have a back-to-back position along the charter chain, possibly on inconsistent terms. An intermediate charterer may even incur the costs of two arbitrations, one with their disponent owner and another with their sub charterer, in respect of the same dispute.

A cursory assessment of a charterer's P&I insurance needs may suggest them to be slight, perhaps extending only to the value of the cargo. Certainly, a charterer's exposure for cargo loss or damage should not be underestimated. Even where the charterer is not the bill of lading carrier, they may be liable to indemnify the shipowner under their head charter for cargo claims. An intermediate charterer may find that such liability ultimately rests with them, for example, if the terms of the Interclub Agreement in the head charter are not repeated in the sub charter.

The reality, however, is that a typical charter party is littered with obligations making the charterer potentially liable for damage caused to the vessel during the fixture.

Some cargoes are dangerous, being inflammable, corrosive, or explosive, while others risk compromising the ship's stability, such as bulk cargoes that tend to liquify or containers of mis-declared weight. A charterer may be strictly liable for any ensuing damage even where the properties of the cargo in question were unexpectedly peculiar or not declared by their shipper.

Nor is it only cargo which might damage the ship. Most charter parties stipulate that the charterer is liable for damage caused by stevedores. A charterer may also find that they are liable for damaging the vessel's engine if the bunkers they purchase prove to be unsuitable.

Ports and berths can be dangerous places. A typical charter party will provide that the ports and berths nominated by the charterer must be safe, which means the ship must be able to use them without encountering danger that cannot be avoided by good seamanship. Bad weather and inadequate infrastructure can make a port unsafe, as can political risks such as conflict. Some of the largest claims directed at charterers concern the total loss of the vessel at the nominated port and the inevitable litigation over whether that port was safe. In the leading case of *The Ocean Victory*, the vessel was totally lost while attempting to leave Karishma. Had the shipowners proved the port to be unsafe, their charterers could have been liable for US\$ 137.7m, comprising US\$ 88.5m for the loss of the vessel, wreck removal costs of US\$ 34.5m, US\$ 12m in environmental salvage costs, and US\$ 2.7m lost hire.

A charterer's potential third party damage exposure under their contract is great and the risk factors, such as the characteristics of the cargo or set-up of the port of call, may be well-beyond their sphere of control. A charterer without P&I cover is said to be "self-insuring." This is surely a misnomer in circumstances where such risks have the potential to wipe out all except the largest of companies.

West offers Charterers and Traders specialised insurance cover against these risks. Our Charterers Comprehensive Cover provides a flexible and custom-built insurance product designed to fully protect Charterers for the third party risks they face as well as for primary delay, all backed by outstanding service delivered by our dedicated Charterers and Traders team.

Charterers & Traders

For further information please see West's Charterers Comprehensive Cover page on the website outlining the full scope of cover, product guide, key facts and case studies.

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